

DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)
KERRY COUNTY DEVELOPMENT PLAN 2022-2028

“Development Plan” means the Kerry County Development Plan 2022-2028

“Planning Authority” means Kerry County Council

WHEREAS the powers and duties of the Minister for Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended), other than the power to prosecute an offence, have been delegated to the Minister of State at the Department of Housing, Local Government and Heritage pursuant to the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2020 (S.I. 559 of 2020).

WHEREAS the Minister of State at the Department of the Housing, Local Government and Heritage in exercise of the powers conferred on him by Section 31 of the Planning and Development Act 2000 (as amended) ("the Act"), and consequent to a recommendation made to him by the Office of the Planning Regulator under Section 31AM(8) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Kerry County Development Plan 2022-2028) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps:

- a. Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9.);
- b. Amend the reinstated map 12.4 of Volume 1 and Map 5 of Volume 4 to change the designation of all areas identified as 'Open-to-Consideration' to 'permitted in principle';
- c. Amend the reinstated map 12.4 of Volume 1 and Map 5 of Volume 4 to designate the following areas as 'permitted in principle':
 - (i) those areas of the county identified as 'areas for further assessment' in map 6.25 of the Wind Zoning Methodology (Appendix 6 of the Development Plan) and identified as of 'Low / Medium' or 'Medium' visual sensitivity in the Landscape Review (Appendix 7 of the Development Plan); and
 - (ii) those areas identified as practical resource constraints relating to the 1km buffer zone identified for each settlement in the Wind Zoning Methodology;
- d. Replace references to 'Open-to-Consideration' with 'Permitted in Principle' throughout Volumes 1 and 4 of the Development Plan consistent with a. and b. above;
- e. Delete material amendments MA 14.20 and 14.21.

STATEMENT OF REASONS

I. Pursuant to section 31(1)(ba)(i)

The Kerry County Development Plan 2022-2028 is inconsistent with the policy objectives of the National Planning Framework, specifically NPO 55, which states that it is an objective to 'promote renewable energy use and generation at appropriate locations.....to meet national objectives towards achieving a low carbon economy by 2050', and the requirements for the planning authority to comply with, and the development plan to be consistent with, the aforementioned National Policy Objective under sections 10(1A) and/or 12(11) read in conjunction with section 12(18);

II. Pursuant to section 31(1)(c)

Introduces a mandatory 1km setback distance for wind turbines from settlements through the Wind Zoning Methodology which significant constraint was not included as a material consideration in the Strategic Environmental Assessment Environmental Reports when taking into account likely significant effects on climatic factors.

III. Pursuant to section 31(1)(c)

The Development Plan does not have adequate regard to Ministerial Guidelines issued under Section 28 of the Act, specifically the requirement under the Wind Energy Development Guidelines for Planning Authorities (2006) that the development plan must achieve a reasonable balance in responding to overall Government Policy on renewable energy, enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development in order to provide a plan-led context to the assessment of individual wind energy development proposals.

Specifically, the Development Plan as made, whilst informed by a step-by-step analysis of areas suitable for wind energy (or sieve analysis), the planning authority in conducting the analysis did not have adequate regard to section 3.5 of the guidelines. Specifically in determining 'the most suitable location for wind energy development' the planning authority did not apply the landscape sensitivity ratings determined by the

planning authority in its Landscape Review and provided no or no adequate reasons as to why the outcome of the review could not be implemented.

Specifically, the Development Plan as made does not identify in the Development Plan maps key areas where there is significant wind energy potential and where, subject to criteria such as design and landscape planning, natural heritage, environmental and amenity considerations, wind energy development will be acceptable in principle.

IV. Pursuant to section 31(1)(c)

The Development Plan as made identifies, through material amendment MA 12.9, land where wind energy development is 'Open-to-Consideration' which was determined as unsuitable for wind energy development in the Wind Zoning Methodology carried out by the planning authority, and for which the SEA Environmental Reports concluded that significant effects could not be ruled out and the Natura Impact Reports concluded that potential direct and/or indirect adverse impacts on the conservation objective of European sites could not be ruled out;

V. Pursuant to section 31(1)(ba)(i)

The Development Plan as made does not support the achievement of the national strategic outcomes contained in the National Planning Framework, specifically NSO 2, to maintain 'the strategic capacity and safety of the national roads network';

VI. Pursuant to section 31(1)(c)

The Development Plan as made does not have adequate regard to Ministerial Guidelines issued under Section 28 of the Act, specifically the requirement under the Spatial Planning and National Roads Guidelines for Planning Authorities (2012) that the development plan must 'implement the policy ... to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply ... for all categories of development', and to the limited exceptions provided for under the guidelines.

Specifically, the Development Plan as made includes objectives to facilitate and support planning applications for development that will result in the creation of new access points from new development and the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kilometres per hour (kmh) apply.

VII. Pursuant to section 31(1)(c)

Further, the statement under Section 28(1A)(b) attached to the Development Plan as made fails to include information that demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (II), (III) and (VI), above, as contained in the guidelines, because of the nature and characteristics of the area or part of the area and to give reasons for the forming of that opinion and to explain why it is not possible to implement the policies and objectives, contrary to Section 28(1B)(b);

VIII. Pursuant to section 31(1)(c)

No adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the wind energy strategy and the policy for access to national roads are consistent with an overall strategy for the proper planning and sustainable development of the area.

IX. Pursuant to section 31(1)(a)(i)(II) and section 31(1)(b)

The Minister is of the opinion that the Development Plan has failed to implement a recommendation made to the planning authority by the Office and that the Development Plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area.

GIVEN under my hand,

Minister for Local Government and Planning

day ___ of ___ 2022.