



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

OPR Ref: AD-003-22

29th July 2022

Mr. Peter Burke TD

Minister for Local Government and Planning

Department of Housing, Local Government and Heritage

Custom House

Dublin 1

D01 W6X0

BY HAND AND BY EMAIL

**Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act
2000 (as amended) – Kerry County Development Plan 2022-2028**

A chara,

I am writing to you in relation to the recent adoption by the elected members of the Kerry County Development Plan 2022-2028 (the 'Development Plan').

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator ('the Office') pursuant to section 31AM(8) of the *Planning and Development Act 2000* (as amended) (the 'Act') to issue a Notice to you on the basis that, having considered the Development Plan, the Office is of the opinion that:

- a) the Development Plan has not been made in a manner consistent with and fails to implement the recommendations of the Office, which required specific changes to the Development Plan, having regard to the Specific Planning Policy Requirements of the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* (2017) (*Interim Guidelines*), to the *Wind Energy Development Guidelines* (2006) (*the Wind Energy Guidelines*) and to National Policy Objective 55 (NPO 55) of *Project Ireland 2040 National Planning Framework* (NPF).

Specifically, the Development Plan:

- i. does not indicate how the implementation of the Development Plan will over its effective period contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and potential wind energy resource (in megawatts);
 - ii. does not provide an objective evidence-based spatially defined area where wind energy development is permitted in principle commensurate with the total land area of the county; and
 - iii. does not omit the 1km exclusion / buffer zone around settlements, and therefore fails to promote renewable energy generation at appropriate locations to meet national objectives towards achieving a low carbon economy by 2050 and is therefore inconsistent with NPO 55 and with the specific planning policy requirements of the *Interim Guidelines*;
- b) as a consequence of the above, the Development Plan made by Kerry County Council fails to adequately provide for a renewable energy strategy, specifically in relation to wind;
- c) the Development Plan has not been made in a manner consistent with, and fails to implement, the recommendations of the Office, which required specific changes to the Development Plan, having regard to the requirement to maintain the capacity, efficiency and safety of national roads, avoiding 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 60kmh apply, under the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)* (*Spatial Planning and National Roads Guidelines*), and under National Strategic Outcome 2 (NSO 2) of the NPF.

Specifically, the Development Plan 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, under:

- MA 14.20
- MA 14.21

and therefore fails to maintain the strategic capacity and safety of national roads, and therefore fails to support the achievement of National Strategic Outcome NSO 2 of the NPF for enhanced regional accessibility and fails to have regard to the *Spatial Planning and National Roads Guidelines*;

d) as a consequence of the above, the Development Plan made by Kerry County Council fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of section 10(1) of the Act; and

e) the use by you of your function to issue a direction under section 31 of the Act would be merited.

The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

1. Background

1.1 Draft Kerry Development Plan 2022-2028

The Draft Kerry Development Plan 2022 – 2028 (the draft Plan) was on public display from 6th December 2021 to 23rd February 2022.

Chapter 12 Energy in Volume 1 of the draft Plan set out the proposed objectives and policies of the planning authority in respect of renewable energy, including wind energy policy under section 12.5.4.1 Wind Energy. Among others, this included the identification of Wind Energy Policy Areas under section 12.5.4.1.3 comprising areas of the county designated as ‘Open-to-Consideration’ and ‘Repowering Areas’ in Map 12.4 (and associated Map 5 in Volume 4), with associated objectives KCDP 12-13 to KCDP 12-20. An additional wind energy objective was included under section 12.5.5 Community Consultation, Community Benefit & Microgeneration / Community Projects.

The wind development areas identified in Chapter 12 and in Volume 4 have been derived from the Wind Zoning Methodology attached as Appendix 6 to Volume 1. A Landscape Review was attached as Appendix 7 of Volume 1.

A statement was appended (Appendix 2) to the draft Development Plan, as required under section 28(1A)(b) of the Act, concerning the implementation of Ministerial Guidelines. The statement did not include any information to demonstrate that the planning authority has formed the opinion that it is not possible to implement certain policies and objectives of the Minister contained in any relevant guidelines, as outlined further in detail below, and did not provide any reasons for not implementing any such policies or objectives. Such information and reasons are required where section 28(1B)(b) of the Act applies.

The Office made a submission to the draft Plan containing eight (8) recommendations and eight (8) observations on 23rd February 2022.

Recommendation 7 (Renewable Energy Targets and Wind Energy) of the Office's submission to the draft Plan required the planning authority to review the renewable energy strategy for the county to:

- (i) indicate, based on relevant and meaningful metrics, how the development plan will contribute to meeting national targets on renewable energy and climate change mitigation and, in particular, wind energy production and the potential wind energy resource (in megawatts), and
- (ii) demonstrate that the draft Plan is consistent with the targets in (i) above, and in particular
 - (a) re-evaluate the "Areas for Further Assessment" to provide for a total area where wind zoning development is 'permitted in principle' commensurate with the area of the county, and other areas where wind energy development is open for consideration, ensuring greater correlation between the Wind Zoning Methodology and Landscape Review in the draft Plan; and
 - (b) remove the exclusion criterion applied in the sieve mapping analysis to exclude areas within 1km of settlements.

The Office did not receive a notice under section 12(5)(aa) of the Act. Such a notice is required where, inter alia, the planning authority decides not to comply with a recommendation of the Office and must contain reasons for the decision.

1.2 Material Alterations to the draft Plan

The elected members, having considered the draft Plan and the Chief Executive's (CE's) Report on submissions received, resolved to amend the draft Plan. The material alterations to the draft Plan were on public display from 18th May 2022 to 16th June 2022.

The material alterations included a number of changes including but not limited to:

- amendments to the Wind Energy Policy, and
- amendments to the policy on access to national roads.

The Office made a submission on 16th June 2022 to the material alterations to the draft Plan containing four (4) recommendations and one (1) observation. The letter also noted the decision of the planning authority not to comply, in particular, with Recommendation 7 of the Office's submission on the draft Plan concerning the wind energy strategy.

The Office recommendations at material alterations stage included:

- MA Recommendation 1 – Access to national roads
- MA Recommendation 2 – Wind energy development.

1.3 Adoption of Kerry County Development Plan 2022-2028

The elected members of Kerry County Council resolved to make the Kerry County Development Plan 2022 – 2028 at a Council Meeting on 4th July 2022.

Subsequently, the Chief Executive sent a notice letter under section 31(AM)(6) of the Act dated 7th July 2022 to the Office advising of the making of the Development Plan and specifying the recommendations of the Office not complied with. The notice letter only addressed the recommendations of the Office made at material alterations stage.

The section 31AM(6) notice letter stated that MA Recommendation 1 and MA Recommendation 2 had not been complied with, either in full or in part.

Having reviewed the CE's reports on the draft Plan and material alterations to the draft Plan, the notice of the making of the Development Plan and the reasons in the notice letter, the Office has concluded that, with the exception of the below, the recommendations of the Office have been responded to in the reports and/or notice and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context.

Renewable Energy Targets & Wind Energy

Recommendation 7 of the Office's submission on the draft Plan required the planning authority to indicate how the development plan will contribute to national targets, in particular, wind energy production and the potential wind energy resource (in megawatts) in the county, as required by the specific planning policy requirements (SPPR) of *the Interim Guidelines*.

It also required, having regard to the *Wind Energy Guidelines* and the *Interim Guidelines*, that the planning authority demonstrates the consistency of the draft Plan with the delivery of wind energy resource, as required by the SPPR, through the provision of a total area where wind energy is '*permitted in principle*' and '*open for consideration*' commensurate with the size of the county; and to remove the exclusion zone around settlements applied in the Wind Zoning Methodology.

Recommendation 7 - Renewable Energy Targets & Wind Energy stated:

In accordance with the provisions of section 28(1C) of the Act, and having regard to the government's commitment in the Climate Action Plan 2021 to achieve 80% of electricity from renewable sources by 2030, NPO 55 which promotes renewable energy use and generation to meet national targets towards achieving a low carbon economy by 2050, and section 28 guidelines Wind Energy Development Guidelines (2006) and the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017), the planning authority is required to:

- (i) indicate, based on relevant and meaningful metrics, how the development plan will contribute to meeting national targets on renewable energy and climate change mitigation and, in particular, wind energy production and the potential wind energy resource (in megawatts) in the county as required by item (2) of the of the SPPR in the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017), and*
- (ii) demonstrate that the draft Plan is consistent with the delivery of part (i), and in particular:*
 - (a) re-evaluate the 'Areas for Further Assessment' to provide for a total area where wind zoning development is 'permitted in principle' commensurate with the area of the county, and other areas where wind energy development is open for consideration, ensuring greater correlation between the Wind Zoning Methodology approach and the Landscape Sensitivity Mapping as detailed in the Landscape Review, Appendix 7; and*
 - (b) remove the exclusion criterion applied in the sieve mapping analysis to exclude areas within 1km of settlements which is inconsistent with item (3) of the SPPR the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change, and revise Map 12.4 'Wind Energy Areas' accordingly.*

The *Wind Energy Guidelines* are section 28 guidelines concerning the development of wind energy strategies as part of the development plan review process. The section 28(1A)(b) notice in Appendix 2 of the Development Plan states that the renewable energy policies, objectives and standards in Chapter 12 of the Plan have been prepared having regard to the said guidelines and to the *Draft Revised Wind Energy Development Guidelines* (2019) (*Draft Guidelines*) which have not been issued by the Minister under section 28.

In order to provide a plan-led context to the assessment of individual wind energy development proposals the *Wind Energy Guidelines* require that:

The development plan must achieve a reasonable balance between responding to overall Government Policy on renewable energy and 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.

The *Wind Energy Guidelines* also indicate that the development should include strategic aims and objectives including:

the identification on development plan maps of the key areas within the planning authority's functional area 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.

The *Wind Energy Guidelines* set out an evidence-based step-by-step guide to the analysis (or sieve analysis) of areas suitable for wind energy under section 3.5, and a similar approach is contained in the *Draft Guidelines*. The planning authority's Wind Zoning Methodology (Appendix 6), which determined the areas where wind energy development is 'Open-to-Consideration' departed from the step-by-step guide through the failure to properly integrate the output of its Landscape Review (Appendix 7) and to include a mandatory separation distance between wind energy developments and settlements.

The draft Plan did not provide that wind energy development was 'permitted in principle' or 'acceptable in principle' in any part of the county¹.

The *Interim Guidelines*, issued under section 28, include a Specific Planning Policy Requirement (SPPR), which states:

It is a specific planning policy requirement under Section 28(1C) of the Act that, in making, reviewing, varying or amending a development plan, or a local area plan, with policies or objectives that relate to wind energy developments, the relevant planning authority shall carry out the following:

¹ The Development Plan Volume 6 Development Management Standards & Guidelines applies the term 'permitted in principle' rather than 'acceptable in principle'.

- (1) *Ensure that overall national policy on renewable energy as contained in documents such as the Government's 'White Paper on Energy Policy - Ireland's Transition to a Low Carbon Future', as well as the 'National Renewable Energy Action Plan', the 'Strategy for Renewable Energy' and the 'National Mitigation Plan', is acknowledged and documented in the relevant development plan or local area plan;*
- (2) *Indicate how the implementation of the relevant development plan or local area plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts); and*
- (3) *Demonstrate detailed compliance with item number (2) above in any proposal by them to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use into their development plan or local area plan. Such a proposal shall be subject to environmental assessment requirements, for example under the SEA and Habitats Directives. It shall also be a material consideration in SEA, when taking into account likely significant effects on climatic factors, in addition to other factors such as landscape and air, if a mandatory setback or variation to a mandatory setback proposed by a planning authority in a development plan or local area plan would create a significant limitation or constraint on renewable energy projects, including wind turbines, within the administrative area of the plan.*

The section 28(1A)(b) statement in Appendix 2 of the Development Plan states that the Chapter 12 of the Plan has had regard to the *Wind Energy Guidelines* and the *Interim Guidelines* in its preparation. However, the statement, which also specifically refers to the implementation of SPPRs contained in certain section 28 does not refer to the SPPR contained in the *Interim Guidelines*. Insofar as some regard may have been had to the *Wind Energy Guidelines* and the *Interim Guidelines* the provisions of those guidelines were misunderstood. No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why aspects of the guidelines have not been implemented. The

section 28(1A)(b) statement did not include any information to demonstrate that the planning authority has formed the opinion that it is not possible to implement certain policies and objectives of the Minister, including the SPPR contained in the *Interim Guidelines*, and did not provide any reasons for not implementing any such policies or objectives. There is a positive obligation on the planning authority, pursuant to section 28(1A)(b) to give reasons for the forming of this opinion. There is a failure to address or explain why it was considered appropriate to make the Development Plan without implementing the relevant policies set out in the *Wind Energy Guidelines* and the *Interim Guidelines* and therefore why the policies and objectives of the Minister have not been implemented.

It is an objective of the NPF under NPO 55 to:

Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy.

The *Climate Action and Low Carbon Development (Amendment) Act 2021*, requires the Government to ‘*pursue and achieve*’ a national climate objective of a ‘*climate resilient ... and climate-neutral economy*’ (net-zero GHG emissions) by the end of 2050², and sets a binding interim target to reduce greenhouse gas emissions by 51% by 2030³. This is to be achieved through, inter alia, annual climate action plans⁴.

The *Climate Action Plan 2021* sets a target of 80% for electricity demand generated from renewable sources by 2030⁵. It anticipates that this will be delivered by up to 8GW for onshore wind, in addition to at least 5GW offshore wind and 1.5-2.5GW solar, of which 500MW of renewables will be delivered through community based projects. This is to enable further emissions reductions in the region of 6 MtCO₂eq. *The Climate Action Plan 2021* indicates that onshore wind energy continues to play

² Section 3 of the Act, as amended.

³ Section 6A of the Act, as amended.

⁴ Section 6 of the Act, as amended.

⁵ Section 11.2 Targets, CAP 2021.

the largest role in meeting national renewable energy targets over the period to 2030.

Chapter 12 of the draft Plan did not indicate how the Development Plan would contribute to national targets on wind energy production (in megawatts). The chapter did not refer to the national targets under the *Climate Action and Low Carbon Development (Amendment) Act 2021*. It also did not refer to the *Climate Action Plan 2021*, except in relation to micro-renewable energy generation, but rather referred to the lower national targets of the *Climate Action Plan 2019*. Further, the draft Plan did not promote wind energy generation at appropriate locations to meet national objectives for renewable energy and GHG emissions reductions.

The planning authority did not comply with the recommendation. No notice under section 12(5)(aa) issued from the planning authority. However, the CE's Report under section 12(4) responded to Recommendation 7, which is summarised as follows:

- Kerry has the largest installed WE MW per sq.m with potential 742MW output, notwithstanding 35% of county is covered by SPA / SAC / NHA / pNHA, with 42MW outstanding. The WE production is equivalent to Kerry being the 3rd largest country in the EU in terms of MW per sq.km.
- A review of the Wind Zoning Methodology has been conducted, including the removal of the 1km setback around settlements, which assessment resulted in no additional areas considered suitable to be designated as 'open for consideration'.
- This area has potential for 201 WTs with 703MW potential yield, excluding consideration of separation distances and local topographical features.
- Community wind energy development may also be considered outside these areas.
- The draft Plan provides the framework for approximately 289MW additional renewable energy output over the plan period, including hydro (6MW), solar (373MW) and bioenergy (10MW).

The Chief Executive recommended the Wind Zoning Methodology, in Appendix 6 of Volume 1 of the Plan be updated, but did not specify what these updates would consist of, and no update was published as part of the material amendments.

The Chief Executive also recommended additional text be included in section 12.5.4.1.3 *Wind Energy Policy Areas*, supportive of community-based wind energy projects, but did not specify same. As noted above, no section 12(5)(aa) Notice was issued by the planning authority.

Several amendments were proposed at material alteration stage relating to renewable energy, including MA 12.5 to MA 12.23. However, the amendments did not:

- indicate how the development plan will contribute to national targets in relation to wind energy production and the potential wind energy resource (in megawatts) in the county;
- demonstrate that the draft Plan is consistent with the delivery of such targets by providing a total area where wind energy is 'permitted in principle' and 'open for consideration' commensurate with the size of the county; or
- remove the 1km exclusion zone around settlements applied in the Wind Zoning Methodology (a revised WZM was not published with the material amendments).

Regarding the failure to remove the exclusion zone, which is an effective mandatory 1km setback distance from settlements, the SEA Environmental Report and SEA Environmental Report Addendum did not include this significant constraint as a material consideration when taking into account likely significant effects on climatic factors as required by item (3) of the SPPR.

MA 12.9 amended the extent and location of land identified as 'Open-to-Consideration' for wind energy development in Map 12.4 Wind Energy Areas (and Map 5 Wind Zoning in Volume 4 of the draft Plan), as detailed in figure 1, below. This resulted in the area of land where wind energy development was 'Open-to-Consideration' being reduced from c.5,900ha, or less than 1.3% of the county area (figure 1) to under 3,400ha, or c.0.7% of the county area (figure 2).

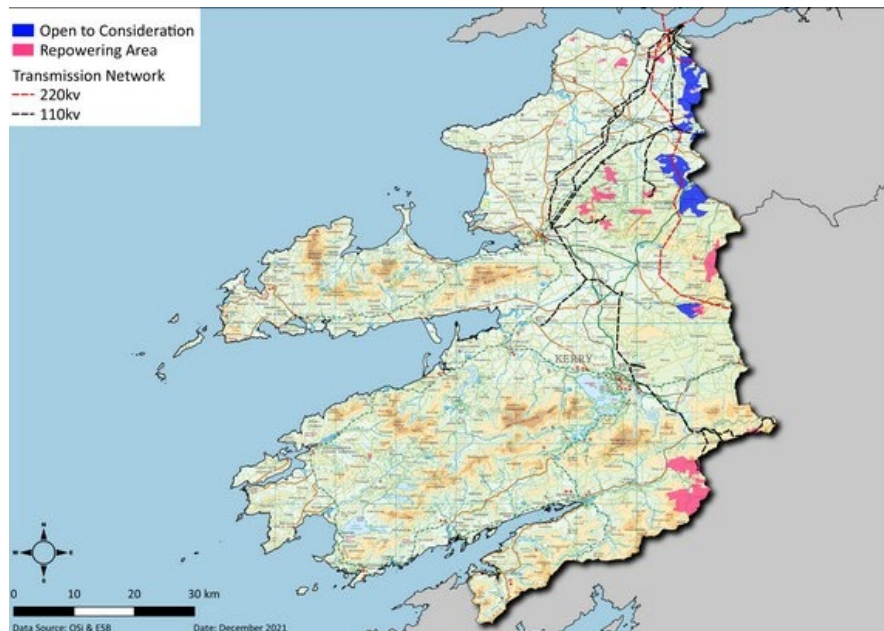


Figure 1: Wind Energy Areas, as defined in Map 12.4 of the draft Kerry County Development Plan 2022-2028 (and Map 5 of Volume 4 of the draft Plan)

The planning authority's SEA Environmental Report Addendum concludes that the removal of areas 'Open-to-Consideration' will have a negative effect on the county's ability to comply with targets identified in Ireland's Climate Action Plan. The SEA Environmental Report Addendum recommended that MA 12.9 not be included and the text revert back to original section 12.5.4.1.4.

The Natura Impact Report (NIR) Addendum Report recommends that the additional areas designated as 'Open-to-Consideration' under MA 12.9 revert back to 'Unsuitable for Wind Development', or alternatively that specific text be added to section 12.5.4.1.4 as mitigation, neither of which recommendations were accepted in the Development Plan as made.

The revised areas 'Open-to-Consideration' also conflict with the planning authority's Wind Zoning Methodology report, which determined that the subject areas were 'Unsuitable to Wind Development'.

The potential for wind energy development within the revised areas is therefore considered to be highly constrained.

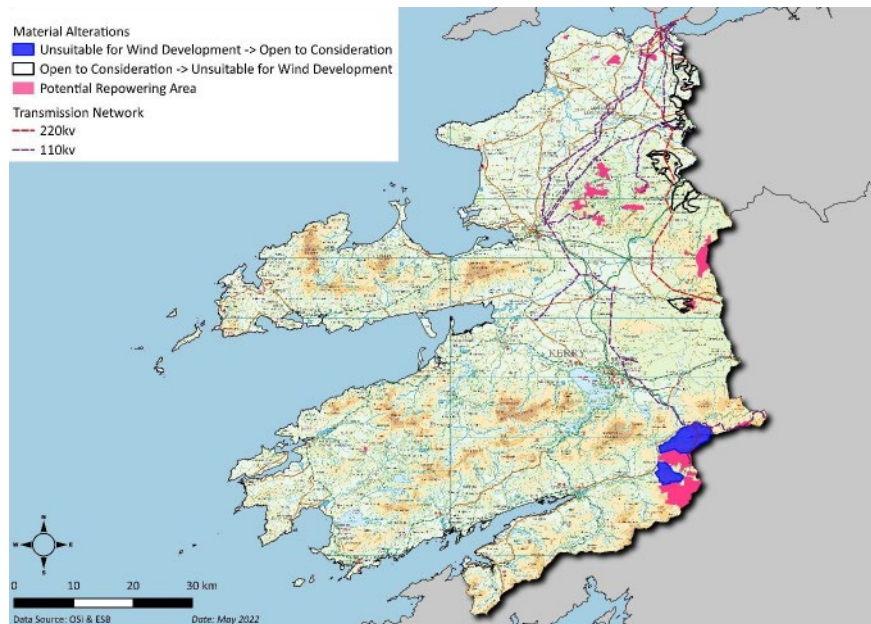


Figure 2: Amended areas where wind energy development is ‘Open-to-Consideration’ under MA 12.9 of Map 12.4 the Kerry County Development Plan 2022-2028 (and Map 5 of Volume 4 of the draft Plan).

MA 12.9 also amended the text under section 12.5.4.14 ‘Open-to-Consideration’, but the Office did not raise specific concerns in respect of the subject amended text.

MA Recommendation 2 of the Office’s submission to the material alterations to the draft Plan required the planning authority to make the plan without MA 12.9.

MA Recommendation 2 – Renewable Energy Targets and Wind Energy stated:

Having regard to NPO 55 and the provisions of the Wind Energy Development Guidelines for Planning Authorities (2006), which recommend the implementation of the evidence-based approach to the determination of areas suitable to accommodate wind energy development through the sieve analysis approach, as was implemented in the Wind Energy Methodology⁶ (excluding the Areas for Further Assessment) carried out by the planning authority, and having regard to the conclusions of the planning authority’s Strategic Environmental Assessment Environmental Report and its Natura Impact Report, the planning authority is required to make the Plan without MA 12.9.

⁶ Note, this refers to the Wind Zoning Methodology.

The Chief Executive recommended not to adopt MA 12.9 concerning areas identified as 'Open-to-Consideration' for wind energy development, having regard to the SEA ER Addendum and to the National Climate Action Policy setting national targets for renewable energy for onshore wind. The Chief Executive advised that in the event the material amendment was adopted the lands that overlap the Special Area of Conservation (Site no.000365: the Killarney National Park, McGillycuddy Reeks and Caragh River Catchment SAC) should be omitted from the designation, having regard to the recommendations of the SEA ER Addendum.

The elected members did not remove MA 12.9 as recommended by the Chief Executive. As set out in the section 31AM(6) Notice, the elected members gave the following reasons for not accepting the recommendation of both the OPR and the Chief Executive to remove MA 12.9, as summarised below:

- Kerry is leading in terms of wind energy production both in Ireland contributing c. 18% of the national wind energy total to the grid.
- Kerry is ranked 3rd in terms of wind energy production in comparison to other European Countries.
- Kerry contributes 742MW of the regional wind energy generating capacity, yet Kerry's landmass is 16% of the region which should be factored into consideration.
- Undue emphasis on wind energy as a renewable source, emphasis to be placed on other renewable sources.
- Onshore wind energy is unreliable.
- The ask for Kerry is not proportionate and does not take into account what wind energy infrastructure is already in place.
- Any evidence-based approach must consider existing energy production.
- Alternative "areas for consideration" have been provided as outlined under MA 12.9.
- The number of applications for solar farms must be taken into account.
- Kerry is already making a huge contribution to the grid.
- In the absence of National Guidelines on wind energy it is very difficult to develop a local policy.
- There is a saturation of wind turbines in certain part of the county.

- Challenges also exist when wind farms become obsolete and are no longer operational.

Consideration of reasons given by Chief Executive and elected members

The Office acknowledges the reasons set out in the Chief Executive's report under section 12(4) for not complying with Recommendation 7, and the elected members' reasons for not complying with MA Recommendation 2 set out in the section 31AM(6) notice.

Regarding the reason given that the absence of national guidelines makes it difficult to develop a local policy, Recommendation 7 alerted the planning authority to the *Wind Energy Guidelines* and the *Interim Guidelines*, inclusive of an SPPR, as the relevant Ministerial guidelines, issued under section 28 of the Act, to inform the amendment of its wind energy policy and objectives.

The planning authority did not address the requirement under section 28(1)(C) that planning authorities comply with SPPRs in the performance of their functions; or the requirement under sections 12(11) and 12(18) that elected members, in making the development plan are obliged to ensure the development plan is consistent with the objectives of the NPF and RSES and with SPPRs in section 28 guidelines.

The Office acknowledges that there is already a very high level of wind energy production in Kerry compared to most other counties and, indeed, compared to many other European countries. However, wind resource and potential, like most energy resources such as solar, hydro, gas, oil and coal, are not evenly distributed on a spatial basis and will necessarily be more efficiently and effectively exploited in areas with greater resources. In this regard, the first step in the step-by-step sieve analysis approach recommended in the *Wind Energy Guidelines* is to determine areas with extensive wind energy resources to inform the policy approach in the plan.

It is evident that wind resources have been significantly exploited within geographic regions with favourable wind energy resources, such as in Kerry, supported by appropriate objectives and policies in previous county development plans. However, part (2) of the SPPR requires the planning authority to indicate how the implementation of that plan '*over its effective period*' will contribute to realising national targets for wind energy production (in megawatts).

Due to conflict between the amended areas 'Open-to-Consideration' and the conclusions of the planning authority's SEA Environmental Report Addendum, the recommendations of the Natura Impact Report Addendum Report and with the Wind Zoning Methodology report, the adopted Plan effectively limits future wind energy development to repowering projects within existing schemes identified in map 12.4 (and Map 5 of Volume 4), in addition to community projects outside those areas, for which no MW target is included.

Although the Chief Executive indicates that the Wind Zoning Methodology was reviewed, including the omission of the 1km buffer around settlements, no amendments to the methodology was published at material alterations stage and the review does not appear to have taken account of the greater potential to accommodate wind energy development within landscapes identified as of lower sensitivity in the Landscape Review. The Office further notes that the inclusion of the mandatory setback of wind energy development from settlements, through the Wind Zoning Methodology, was not a material consideration of the SEA (ER Addendum) in taking into account likely significant effects on climatic factors, contrary to part (3) of the SPPR in the *Interim Guidelines*.

Regarding the assertion of the Chief Executive that the areas 'Open-to-Consideration' in the draft Plan has potential for 201 wind turbines with 703MW potential yield, this does not take account of separation distances and local topographical features which might reasonably be considered to constrain opportunities for wind energy development. The restricted size and dispersed and fragmented nature of the subject land designation would also limit the potential for individual wind farms of scale, thereby reducing potential yield compared to a single regular shaped area of equal size. It also does not take account of the high rate of attrition for proposed wind energy projects.

Regarding the reason that emphasis should be placed on other renewables, including solar, rather than on wind, although part (2) of the SPPR requires the planning authority to indicate how the implementation of the development plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, it places a particular emphasis on wind energy resource.

Material amendment MA 12.6 of section 12.5.1 of the draft Plan included estimated production (in megawatts) for certain renewable energy sources (solar, hydro and bioenergy) but did not provide a figure for estimated production for wind energy. The adopted Plan also provides appropriate objectives and policies to support and facilitate renewable energy sources, excluding further onshore wind energy.

The approach taken by the planning authority is therefore contrary to SPPR of the *Interim Guidelines* and to NPO 55, and also does not have regard to the step-by-step guide (sieve analysis) approach recommended in the *Wind Energy Guidelines*.

Regarding the reason that there is a saturation of wind turbines in certain parts of the county, the Wind Zoning Methodology has already identified areas with potential for cumulative impact, and these areas have been taken into account in Map 12.4 (and Map 5 of Volume 4 of the draft Plan).

The reasons given do not, therefore, address the substantive issue in the Recommendation 7, that the planning authority demonstrate how the Development Plan will contribute to meeting national targets on wind energy production as required by the SPPR of the *Interim Guidelines* and to provide for a total area where wind energy development is 'permitted in principle' commensurate with the total area of the county, and consistent with the Wind Zoning Methodology.

The reasons given also do not address the substantive issue in MA Recommendation 2 that the replacement areas identified where wind energy development is 'Open-to-Consideration' is contrary to the conclusions of the planning authority's SEA Environment Report Addendum and to the recommendations of the Natura Impact Report Addendum Report, is inconsistent with NPO 55, and fails to have regard to the evidence-based approach to the determination of areas suitable to accommodate wind energy development in the *Wind Energy Guidelines*.

Access to National Roads

At material alterations stage the planning authority introduced two material amendments which support and/or facilitate applications for development which require access onto national roads or that would generate additional traffic at existing accesses onto national roads, under MA 14.20 and MA 14.21.

MA 14.20:

Support new planning applications which require access onto National Primary/Secondary Roads where there are existing entrances

MA 14.21:

Support all applications on local private roads, with sufficient width, over 250m in length, with 3 or more residences, be treated as any other application on a public road, entering from a national primary or secondary road.

The Office required the planning authority, under MA Recommendation 1, to make the Plan without MA 14.20 and 14.21, having regard to section 2.5 of the *Spatial Planning and National Roads Guidelines* and consistent with National Strategic Outcome 2 of the NPF to maintain the strategic capacity and safety of the national road network.

MA Recommendation 1 – Access to National Roads stated:

Having regard to the requirements under section 2.5 of the section 28 Spatial Planning and National Roads Guidelines and to NSO 2 of the National Planning Framework, the planning authority is required to make the Plan without the following material amendments:

- MA 14.20
- MA 14.21

Section 2.5 of the *Spatial Planning and National Roads Guidelines* requires all development plans must implement the policy measure ‘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’.

A key message of the *Spatial Planning and National Roads Guidelines* is that ‘Development plans must include policies which seek to maintain and protect the safety, capacity and efficiency of national roads and associated junctions, avoiding the creation of new accesses and the intensification of existing accesses to national roads where a speed limit greater than 50 kmh applies’. This is supported by NSO 2

to maintain the strategic capacity and safety of the national roads network, with particular regard to inter-urban roads as part of enhanced regional accessibility.

Section 2.6 of the *Spatial Planning and National Roads Guidelines* provides for exceptional circumstances to the section 2.5 requirements, where '*planning authorities may identify stretches of national roads where a less restrictive approach may be applied*' as part of the plan review process '*having consulted and taken on board the advice of [TII]*' and subject to specific criteria. Exceptional circumstances may be applied:

- (1) *in the case of development of national and regional strategic importance which by their nature are most appropriately located outside of urban areas and where the locations concerned have specific characteristics that make them particularly suitable for the developments proposed; and*
- (2) *to certain lightly-trafficked sections of national secondary routes serving structurally weak and remote communities where a balance has to be struck between the important transport functions of such road and supporting the social and economic development the areas.*

The section 28(1A)(b) statement attached as Appendix 2 of the draft Plan, which stated '*Chapter 14, Connectivity, specifically Section 14.4.1.1, Access onto National Roads and objectives KCDP 14-27, KCDP 14-28 and KCDP 14-29 sets out the Council's intention to comply with these guidelines*' was not amended at material alterations stage, having regard to the requirements under 28(1B)(b).

The Chief Executive's report recommended that material amendments MA 14.20 and MA 14.21 be rejected in order to comply with Section 2.5 of the section 28 Guidelines *Spatial Planning and National Roads Guidelines* and to NSO 2 of the *NPF*. However, the elected members did not remove the amendment, as recommended by the Chief Executive, and made the Plan with MA 14.20 and 14.21, with amended text as follows:

MA 14.20:

- (a) *Facilitate and support planning applications for economic job creation entities which require access onto the National Primary / Secondary Roads*

subject to compliance with Section 2.5 and 2.6 of the Guidelines, with early engagement with the TII.

- (b) *Favourably consider new planning applications which require access onto National Primary / Secondary Roads for family members where there are existing entrances which is supported by a detailed Road Safety Audit.*

MA 14.21:

Support applications for family members on local private roads, with sufficient width, over 250m in length, with 3 or more residences, be treated as any other application on a public road, entering from a national primary or secondary road which is supported by a detailed Road Safety Audit.

The elected members gave the following reasons for not accepting the recommendations of both the OPR and the Chief Executive to remove both MA 14.20 and 14.21 and adding additional text to MA 14.20:

- Kerry has the second largest length of National Secondary roads in the country. The Ring of Kerry is 112 miles long, the length of National Primary roads in the County is 96km (1.9% of states total) and the length of National Secondary roads in the County is 338km (6.8% of the states total). These represent 8.8% of the State's National Primary and Secondary Road network.
- Removing 14.20 and 14.21 would restrict a family member from securing planning permission, using an existing entrance which the Members deemed as unreasonable.
- The view expressed by the members was that local private roads are similar to existing local roads and on this basis residents along those private roads, in certain areas, are being discriminated against due to the fact that the road hasn't been taken in charge.
- It was the view of the members that once a planning application was accompanied by a comprehensive road safety audit, it would adequately address any safety concerns.

- In most cases planning applicants at present are received from people residing at home and so would not contribute to increased traffic congestion.
- National policy does not allow for a case by case assessment.

Consideration of reasons given by Chief Executive and elected members

The Office acknowledges that there is a significant network of national roads in the county, the primary purpose of which is to provide strategic transport links between the main transport centres of population and employment, and to provide access between all regions. Accordingly, the *Spatial Planning and National Roads Guidelines* require that all development plans must implement the policy approaches set out in section 2.5 in the interest of maintaining strategic capacity, efficiency and safety.

However it is evident from OSI mapping that the county also has a dense network of regional and local roads which indirectly provide access to the national road network to lands throughout the county. In addition, there is a significant network of other roads, which provide access to those local and regional roads.

The Office notes the reason given that the omission of the amendments will impact on applications for family members using an existing entrance. However, the policy requirement under section 2.5 of the *Spatial Planning and National Roads Guidelines*, to avoid the creation of any additional access point or the generation of increased traffic from existing entrances to national roads where >60kph speed limit applies, applies to all categories of development.

As noted above, the provision for exceptional circumstances under section 2.6 of the *Spatial Planning and National Roads Guidelines* allows for the identification of certain developments of national and regional strategic importance, subject to specified criteria and following the advice of TII, to which the restrictions under section 2.5 would not apply. No such developments along defined stretches of road have been identified in the adopted Plan. Section 2.6 also allows for exceptional circumstances for lightly trafficked national secondary roads serving structurally weak and remote communities. The adopted Plan does not identify stretches of national secondary roads in this regard.

The Office notes the reason given that a road safety audit will be required to support applications for residential development with indirect access to a national road via a private local road access. However, the consideration of individual applications and road safety audits on an ad hoc basis is not consistent with the requirement for a plan-led approach to maintaining the strategic capacity and safety of the national road network, or with the exemptions under section 2.6.

Regarding the reason that there would be no increase in traffic congestion from applications for dwellings sharing an entrance as the applicant most often lives there already, the Office does not accept that appropriate objective evidence has been provided to support this assertion. Again, it does not address the substantive issue in relation to sections 2.5 and 2.6 of the guidelines.

The Office also notes that the planning authority's SEA Environmental Report Addendum concluded that the two material amendments were at variance with national policy under the guidelines and recommended that they be removed.

The reasons given do not address the substantive issue in MA Recommendation 1 and do not demonstrate that the planning authority has had adequate regard to the requirements of the *Spatial Planning and National Roads Guidelines*, specifically the requirements of sections 2.5 and 2.6.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why MA 14.20 and MA 14.21 have been retained in the Development Plan nor how this approach is consistent with an overall strategy for the proper and sustainable development of the area.

The statement under section 28(1A)(b) attached to the Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the *Spatial Planning and National Roads Guidelines* because of the characteristics of the area, in addition to the reasons for the forming of that opinion, contrary to section 28(1B)(b). As indicated above, there is a positive obligation on the planning authority to do so in these circumstances and the planning authority has failed to do so.

Further, the inclusion of MA 14.20 and MA 14.21 does not support the achievement of the national strategic outcomes of the NPF, specifically NSO 2 to maintain *‘the strategic capacity and safety of the national roads network’*.

Therefore, the making of the Plan with MA 14.20 and 14.21 fails to have adequate regard to ministerial guidelines, and fails to support the achievement of the national strategic outcomes of the NPF, specifically NSO 2 to maintain *‘the strategic capacity and safety of the national roads network’*, and in the Office's opinion the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

2. Opinion of the Office and Reasons

Having considered the adopted Development Plan, the Office also notes, under section 31 AM(7) of the Act, that the said Development Plan has not been made in a manner consistent with the recommendations of the Office.

Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the notice letter dated 7th July adequately justify the failure to implement those recommendations or explain how, notwithstanding that failure, the Development Plan as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

As you will be aware, under section 31AM(1)(a-e) of the Act, the Office has a statutory duty to evaluate and assess local authority development plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of local authority development plans such as this Development Plan:

- The provisions of section 31AM(2) as set out above.
- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.

- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.
- Under section 31S, the Office must, in performing its functions, have regard to:
 - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns, villages or other areas, whether urban or rural,
 - b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,
 - c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
 - d) the requirements of relevant acts of the European Union, in particular, those relating to—
 - (i) the Environmental Impact Assessment Directive,
 - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
 - (iii) the Habitats Directive, and
 - (iv) the Birds Directives,

in so far as those requirements relate to planning authorities by virtue of being designated competent authorities for the purposes of those acts.

Accordingly, having considered the Development Plan in light of section 31AM(1)(a-e), section 31AM(2), section 31AM(3)(a), section 31P(3) and section 31S, and the

letter from the planning authority of the 7th July 2022 issued under section 31AM(6), the Office is of the opinion that the Development Plan has not been made in a manner consistent with the recommendations of the Office under Section 31AM (7).

As set out below, the Development Plan as made is not consistent with the policy objectives of the NPF and with the Specific Planning Policy Requirements contained in Ministerial Guidelines issued under section 28 of the Act; does not support the achievement of the national strategic outcomes of the NPF; and fails to have regard to certain Ministerial Guidelines issued under section 28 of the Act, in relation to wind energy as a renewable energy and in relation to access to national roads, which matters individually and cumulatively represent a failure to set out an overall strategy for the proper planning and sustainable development of the functional area of Kerry County Council.

The Development Plan as made is in not consistent with a requirement contained in Ministerial Guidelines issued under section 28 of the Act, specifically items 2 and 3 of the Specific Planning Policy Requirements contained in the *Interim Guidelines*. Specifically the Development Plan:

- fails to indicate how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts), and having regard to the binding interim target to reduce greenhouse gas emissions by 51% by 2030 under the *Climate Action and Low Carbon Development (Amendment) Act 2021*, to be achieved through, inter alia, the targets in the *Climate Action Plan 2021* including a target of 80% electricity demand generated from renewable sources by 2030, the majority of which is anticipated to be delivered by onshore wind (8GW); and
- introduces a mandatory 1km setback distance for wind turbines from settlements through the Wind Zoning Methodology which fails to demonstrate detailed compliance with item number (2) of the SPPR and 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

The planning authority has failed to have adequate regard to the *Wind Energy Guidelines* in that the Development Plan does not 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:

- is informed by a step-by-step analysis of areas suitable for wind energy (or sieve analysis) that 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 failed to apply the landscape sensitivity ratings determined by the planning authority in its Landscape Review.
- 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.

Furthermore, the adopted Development Plan includes material amendments, made to the draft Plan, relating to policies and objectives concerning wind energy development that are inconsistent with the conclusions of the Appropriate Assessment Natura Impact Report Addendum Report and the conclusions of the Strategic Environmental Assessment Environmental Report Addendum, and that are inconsistent with the Wind Zoning Methodology prepared by the planning authority.

The Development Plan as made does not have adequate regard to the *Spatial and National Roads Guidelines* which provide that the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads with speed limits greater than 60km, having regard to provisions of sections 2.5 and 2.6 of the guidelines and does not support the achievement of the national strategic outcomes

of the NPF, specifically NSO 2 to maintain *‘the strategic capacity and safety of the national roads network’*.

No or 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 policy for access to national roads in the Development Plan as made is consistent with an overall strategy for the proper planning and sustainable development of the area.

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 as contained in the *Wind Energy Guidelines*, the *Interim Guidelines*, including the SPPR, and in the *Spatial Planning and National Roads 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).

There is a positive obligation on the planning authority, pursuant to section 28(1A)(b) to give reasons for the forming of this opinion.

As set out above, the factors that the Office has taken into account in forming this opinion are as follows:

- (i) The requirements of sections 10(1), 12(11), 12(18) and sections 28(1), 28(1A), 28(1B) and 28(1C) of the Act.
- (ii) The National Planning Framework including National Policy Objective 55 and National Strategic Outcome 2, which state the following:

NPO 55

Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.

NSO 2 Enhanced regional accessibility (inter-urban roads)

Maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements.

- (iii) The Specific Planning Policy Requirement under the *Interim Guidelines*, issued by the Minister under section 28 of the Act:

It is a specific planning policy requirement under Section 28(1C) of the Act that, in making, reviewing, varying or amending a development plan, or a local area plan, with policies or objectives that relate to wind energy developments, the relevant planning authority shall carry out the following:

- (1) Ensure that overall national policy on renewable energy as contained in documents such as the Government's 'White Paper on Energy Policy - Ireland's Transition to a Low Carbon Future', as well as the 'National Renewable Energy Action Plan', the 'Strategy for Renewable Energy' and the 'National Mitigation Plan', is acknowledged and documented in the relevant development plan or local area plan;*
- (2) Indicate how the implementation of the relevant development plan or local area plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts); and*
- (3) Demonstrate detailed compliance with item number (2) above in any proposal by them to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use into their development plan or local area plan. Such a proposal shall be subject to environmental assessment requirements, for example under the SEA and Habitats Directives. It shall also be a material consideration in SEA, when taking into account likely significant effects on climatic factors, in addition to other factors such as landscape and air, if a mandatory setback or variation to a mandatory setback proposed by a planning authority in a development plan or local area plan would create a significant*

limitation or constraint on renewable energy projects, including wind turbines, within the administrative area of the plan.

- (iv) The *Climate Action and Low Carbon (Amendment) Act (2021)* which requires the Government to ‘*pursue and achieve*’ a national climate objective of a ‘*climate resilient ... and climate-neutral economy*’ (net-zero GHG emissions) by the end of 2050, and sets a binding interim target to reduce greenhouse gas emissions by 51% by 2030, to be achieved through, inter alia, annual climate action plans.
- (v) The *Climate Action Plan 2021* which sets a target of 80% for electricity demand generated from renewable sources by 2030, 8GW of which is anticipated to be delivered through onshore wind energy.
- (vi) The *Wind Energy Guidelines*, issued by the Minister under section 28 of the Act, including the:
 - requirement that the development plan ‘*must achieve a reasonable balance between responding to overall Government Policy on renewable energy and 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 for ‘*the assessment of individual wind energy development proposals...within the context of a “plan-led” approach*’;.
 - requirement that development plan should identify ‘*on 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*’; and
 - ‘*step-by-step guide to the analysis of areas suitable for wind energy by the planning authority*’ (or sieve analysis) under section 3.5.
- (vii) The *Spatial Planning and National Roads Guidelines*, issued by the Minister under section 28 of the Act including:

- The requirement to ‘*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
- The provisions for exceptional circumstances to the aforementioned.

(viii) *92/43/EEC The Habitats Directive*;

(ix) *Directive 2001/42/EC* of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment;

(x) The Chief Executive’s reports on submissions on the draft Development Plan and material alterations to the draft Development Plan.

In light of the above, the Office is therefore of the opinion that the Development Plan has not been made in a manner consistent with its recommendations and that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

3. Recommendation to the Minister

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps as to rectify the matter as set out in the draft direction to the planning authority accompanying this notice, that is:

- Indicate, based on relevant and meaningful metrics, how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts);
- Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9);

- c. 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' as 'permitted in principle';
- d. 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;
- e. Replace references to 'Open-to-Consideration' with 'Permitted in Principle' throughout Volume 1 and 4 of the Development Plan consistent with b. and c. above:
- f. Delete material amendments MA 14.20 and 14.21.

Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at plans@opr.ie.

Yours sincerely,



Niall Cussen

Planning Regulator



DRAFT 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 Act 2000, 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 with regard to the Development Plan:
 - a. Indicate, based on relevant and meaningful metrics, how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and

climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts);

- b. Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9.);
- c. 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';
- d. 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;
- e. Replace references to 'Open-to-Consideration' with 'Permitted in Principle' throughout Volume 1 and 4 of the Development Plan consistent with b. and c. above;
- f. Delete material amendments MA 14.20 and 14.21.

STATEMENT OF REASONS

- 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. The Development Plan as made is in not consistent with a requirement contained in Ministerial Guidelines issued under Section 28 of the Act, specifically items 2 and 3 of the Specific Planning Policy Requirements contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* (2017), and the requirements for the planning authority to comply with, and the development plan to be consistent with, the aforementioned Specific Planning Policy Requirement under sections 28(1C) and/or 10(1A) and/or 10(2A)(a) and/or 12(11) read in conjunction with section 12(18).

Specifically the Development Plan:

- a) fails to indicate how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts), and having regard to the binding interim target to reduce greenhouse gas emissions by 51% by 2030 under the *Climate Action and Low Carbon Development (Amendment) Act 2021*, to be achieved through, inter alia, the targets in the *Climate Action Plan 2021* including a target of 80% electricity demand

generated from renewable sources by 2030, the majority of which is anticipated to be delivered by onshore wind (8GW); and

- b) introduces a mandatory 1km setback distance for wind turbines from settlements through the Wind Zoning Methodology which fails to demonstrate detailed compliance with item number (2) of the SPPR and 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. 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 planned 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. 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. 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. 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. 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. The Development Plan as made:

(a) includes a wind energy strategy which is inconsistent with the SPPR in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* (2017) and with a national policy objective of the National Planning Framework, and which fails to have adequate regard to Ministerial guidelines for climate action and renewable energy outlined at (I), (II) and (III), above; and

(b) includes a policy for access to national roads which does not support the achievement of national strategic outcomes of the National Planning Framework and which fails to have regard to Ministerial guidelines for Spatial Planning and National Roads outlined at (V) and (VI), above; and

therefore fails to set out an overall strategy for the proper planning and sustainable development of the area concerned.

- IX. 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.
- X. The Development Plan has not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31 AM.
- XI. In light of the matters set out at I to VIII, above, the Minister is of the opinion that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.
- XII. In light of the matters set out at I to IX, above, the Development Plan is not in compliance with the requirements of the Act

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.