



15th October 2021

For the Attention of: Ms Colette Byrne, Chief Executive

Kilkenny County Council,
County Hall,
John Street,
Kilkenny

Section 31 of the Planning and Development Act 2000, as amended
Notice of Intention to Issue a Direction to Kilkenny County Council on the Kilkenny City and
County Development Plan 2021 - 2027

Dear Colette,

Consequent to a recommendation made to me by the Office of the Planning Regulator (the Office) on 30th September 2021 in connection with the Kilkenny City and County Development Plan 2021 – 2027, as adopted by the elected members of Kilkenny County Council on 3rd September 2021, and pursuant to section 31 of the Planning and Development Act 2000 (as amended) (the Act), I write to give notice of my intention to issue a direction to Kilkenny County Council to take certain measures specified in this notice.

On consideration of the recommendation made to me by the Office of the Planning Regulator, I have formed the opinion that:

- (i) Kilkenny County Council has failed to implement recommendations made to it, as planning authority, by the Office of the Planning Regulator (the Office), in July 2021, under section 31AM of the Act;
- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;



- (iii) The Plan is not consistent with specific planning policy requirements specified in guidelines issued by the Minister under subsection (1) of section 28 of the Act;
- (iv) The Plan, as made, is not in compliance with the requirements of the Act.

A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt of this notice. The reasons for the Direction are set out in the Statement of Reasons section of the attached draft Direction.

PROCESS TO DATE

The Office made a submission to the draft Plan, one element of which was to commend the approach taken by Kilkenny County Council in relation to their draft Wind Energy strategy, which set out a target to meet 100% of electricity needs for County Kilkenny from renewable sources by 2030. In support of this, the Wind Energy Development Strategy identified a total land area of over 50,000 hectares as ‘acceptable in principle’ for wind energy development.

The elected members, having considered the draft Plan and the Chief Executive’s (CE’s) Report on submissions received, resolved to amend the Draft Kilkenny City and County Development Plan 2021 – 2027 on 29th June 2021. The material alterations to the draft Plan were on public display from Wednesday 30th of June to Wednesday 28th of July 2021.

The material alterations included a number of changes to renewable energy policy including:

- Omission of the target to meet 100% of electricity needs for Kilkenny from renewable sources including wind energy, solar energy and bio energy set out in section 11.4 and Objective 11C, and the identification of 201 MW renewable energy to meet this target in section 11.5.1.
- A significant reduction to the total designated areas ‘*acceptable in principle*’ in the ‘wind energy strategy’ for wind energy development from approximately 50,000 ha to 35,000 ha.



The Office wrote to Kilkenny County Council, in relation to the material amendments to Kilkenny City and County Development Plan 2021 - 2027 on 28th July 2021.

The submission made by the Office set out recommendations under four key themes including, core strategy; renewable energy; economic development; and zoning amendments.

The planning authority was advised by the Office that the recommendations related to breaches of policy and failure to address the matters raised prior to adoption of the county development plan could lead the Office to determine that the plan fails to set out an overall strategy for proper planning and sustainable development of the area concerned.

A Chief Executive's report was prepared on the submissions received, including the submission made by the Office. It is noted that your report accepted the majority of recommendations and observations of the Office and recommended changes in response to the issues raised, but that some of these were not accepted by the elected members of the planning authority.

The elected members of Kilkenny County Council resolved to make the Development Plan at a Special Meeting of the Council held on Friday 3rd September 2021.

Kilkenny County Council informed the Office of its decision not to comply with a number of the Office's recommendations on 9th September 2021, in accordance with section 31AM(6).

On 30th September 2021, the Office notified the Minister for Local Government and Planning that the Kilkenny City and County Development Plan 2021-27 had not been made in a manner consistent with the recommendations of the Office and that the Office is of the opinion that the Development Plan fails to set out an overall strategy for proper planning and sustainable development of the area.



SUMMARY OF ISSUES

The recommendations set out by the Office require changes to the Kilkenny City and County Development Plan to ensure consistency with the Specific Planning Policy Requirement contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (July 2017)* issued by the Minister under Section 28 of the Act.

Kilkenny County Council resolved to make the Development Plan without indicating 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 and at material amendment stage significantly reduced the total designated areas '*acceptable in principle*' in the '*wind energy strategy*' for wind development from approximately 50,000 ha to 35,000 ha. The adopted Plan fails to demonstrate that the objective for 100% of electricity demand for the County through renewables by 2030 can be achieved within the policy framework of the Development Plan, and in particular taking account of the significant limitations imposed by the rejection of the OPRs MA Recommendation 3(b).

The limitations on wind farm development in areas '*open for consideration*', including a threshold of not more than 5 turbines or 5MW, the down-grading of areas previously designated as '*acceptable in principle*' in the draft Plan to being only '*open for consideration*' at the material alterations stage means that the adopted Plan substantially and inappropriately restricts opportunities for contributing to the national targets for renewable energy.

DRAFT DIRECTION

Accordingly, having considered the recommendation of the Office, I am issuing a draft direction pursuant to section 31 of the Planning and Development Act 2000 (as amended), to direct Kilkenny County Council with regard to the Kilkenny City and County Development Plan 2021 – 2027.



The Planning Authority is hereby directed to take the following steps with regard to the 'wind energy strategy' within the Development Plan:

- a) Reinstatement of sections 11.4 and 11.5.1 of the draft Development Plan, including the identification of 201 MW renewable energy to meet the objective for the generation of 100% of electricity needs from renewable sources for the county by 2030 consistent with the Climate Action Plan.
- b) Amend the adopted wind energy strategy map (reference Figure 11.4) to ensure consistency with the renewable energy target at (a) above as follows:
 - i. Reinstatement of areas designated at Templeorum/Mullenbeg to 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.
 - ii. Reinstatement of areas designated at Castlebanny to 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.
 - iii. Reinstatement of the 3 no. smaller areas to the south of the county as 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.

Please note that in accordance with Section 31(4) of the Planning and Development Act 2000, those parts of the Kilkenny City and County Development Plan 2021 – 2027 Plan referred to in this notice shall be taken not to have not come into effect, been made or amended.

NEXT STEPS - PROCEDURAL REQUIREMENTS

I wish to draw your attention to the public consultation obligations under section 31 of the Planning and Development Act 2000 (as amended), and the initial requirement as Chief Executive, under section 31(7) to publish notice of the draft Direction no later than 2 weeks after receipt of this notice, stating that the draft direction may be inspected as specified in the notice, for a period of not more than 2 weeks.



The notice must also state that written submissions or observations in respect of the draft direction may be made to the planning authority during the consultation period and that they shall be taken into consideration by me, as Minister, before any final direction.

Also in line with statutory requirements, a Chief Executive's report is to be prepared on the public consultation period under section 31(8), and must be furnished to the Office, the elected members and myself as Minister, no later than 4 weeks after the public consultation process is completed, for further consideration.

The report of the Chief Executive must:-

- (a) summarise the views of any person who made submissions or observations to the planning authority;
- (b) summarise the views of and recommendations (if any) made by the elected members of the planning authority;
- (c) summarise the views of and recommendations (if any) made by the regional assembly;
- (d) make recommendations in relation to the best manner in which to give effect to the draft direction.

In addition, the elected members of the planning authority may make a submission to the Office of the Planning Regulator at any time up to the conclusion of the 2 week public consultation period referred to above and must also send any such submissions to me, as Minister.

The Office will then consider the Chief Executive's report together with any submissions made and will make a further recommendation to me, as Minister, regarding whether the Direction is to be issued with or without minor amendments, or not issued. Where I am in agreement with the further recommendation, I may issue the final direction.



Where the Office is of the opinion that a material amendment to the Draft Direction is required, or further investigation is necessary, or it is necessary for another reason, then the Office may appoint an inspector no later than 3 weeks after receipt of the Chief Executive's report, prior to making a final recommendation to me.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway. Should you have any queries please contact Laura Courtney, Planning Adviser at laura.courtney@housing.gov.ie.

Yours sincerely,

Peter Burke, T.D.,
Minister for Local Government and Planning

Copied to:

- Cathaoirleach, Kilkenny County Council, County Hall, John Street, Kilkenny, R95 A39T.
- Mr. David Kelly, Director, Southern Regional Assembly, Assembly House, Waterford.
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWV4.

**DRAFT DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)
Kilkenny City & County Development Plan 2021-2027**

“Development Plan” means the Kilkenny City & County Development Plan 2021-2027

“Planning Authority” means Kilkenny 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 for Local Government and Planning pursuant to the Housing, Planning and Local Government (Delegation of Ministerial Functions) (No. 2) Order 2017 (S.I. 352 of 2017).

WHEREAS the Minister of State at the Department of 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 (Kilkenny City & County Development Plan 2021-2027) Direction 2021.
- (2) The Planning Authority is hereby directed to take the following steps with regard to the ‘wind energy strategy’ within the Development Plan:
 - a. Reinstate sections 11.4 and 11.5.1 of the draft Development Plan, including the identification of 201 MW renewable energy to meet the objective for the generation of 100% of electricity needs from renewable sources for the county by 2030 consistent with the Climate Action Plan.
 - b. Amend the adopted wind energy strategy map (reference Figure 11.4) to ensure consistency with the renewable energy target at (a) above as follows:

- i. Reinstate areas designated at Templeorum/Mullenbeg to 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.
- ii. Reinstate areas designated at Castlebanny to 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.
- iii. Reinstate the 3 no. smaller areas to the south of the county as 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.

STATEMENT OF REASONS

- I. The Development Plan as made is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically item 2 of the Specific Planning Policy Requirement contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (July 2017)*, which sets out the requirement for the Planning Authority to comply with the aforementioned Specific Planning Policy Requirement under section 28(1C). In particular, the Development Plan fails to identify renewable energy targets (in megawatts) which Kilkenny can contribute in delivering its share of overall Government targets on renewable energy and climate change mitigation over the plan period.

- II. The Development Plan contains conflicting objectives on renewable energy sustainable development and climate action such that the adopted Plan, without providing sufficient compensatory measures, significantly reduced the extent of the areas indicated as 'acceptable in principle' that were identified in the draft Development Plan as being necessary to achieve the target of 201MW required to ensure that 100% of electricity demand for Kilkenny is met from renewable sources by 2030 and to ensure consistency with the climate action plan.

III. The Development Plan has therefore not been made in a manner consistent with the recommendations of the Office of the Planning Regulator under Section 31 AM and fails to set out an overall strategy for the proper planning and sustainable development of the area.

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of October, 2021.