



29<sup>th</sup> August 2022

For the Attention of: Mr. John G McLaughlin, Chief Executive

Donegal County Council,  
County House,  
The Diamond,  
Lifford,  
County Donegal  
F93 Y622

**Section 31 of the Planning and Development Act 2000, as amended**  
**Notice of Intention to Issue a Direction to Donegal County Council on Variation no. 2 of the**  
**Donegal County Development Plan 2018 - 2024**

Dear John,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 12<sup>th</sup> August 2022 in connection with Variation no. 2 of the Donegal County Development Plan 2018-2024, as adopted by the elected members of Donegal County Council on 18<sup>th</sup> July 2022, 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 Donegal 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 (the Office), I have formed the opinion that specifically:

- (i) The Variation 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.



- (ii) The Variation, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area.
- (iii) The Variation is not consistent with National Policy Objectives set out in the National Planning Framework, specifically 55 (NPO 55).
- (iv) The Variation is not consistent with Regional Policy Objectives set out in the The North and Western Regional Assembly Regional Spatial Economic Strategy 2020-2032, specifically 4.17.
- (v) The Variation fails to have regard to Ministerial Guidelines issued under Section 28 of the Act , the Wind Energy Development Guidelines (2006) (the Wind Energy Guidelines).

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 and further detail is set out below.

## **PROCESS TO DATE**

### **Draft Variation**

Variation No. 2 to the Donegal County Development Plan 2018-2024 (the proposed Variation) was on public display from 29<sup>th</sup> April 2022 to 3<sup>rd</sup> June 2022. The proposed Variation comprised amendments to the wind energy policy framework of the current Donegal County Development Plan 2018-2024. The proposed Variation introduced a number of key elements including:

- New policy framework stipulating a setback distance requirement of 10 times the tip height of the wind turbine from residential properties (Policy E-P-23 and Policy E-P-24);



- A wind energy map (Map 8.2.1) which identifies areas of the county designated as “Acceptable in Principle”, “Open for Consideration” and “Not Normally Permissible” for wind energy;
- New policies relating to the three designated areas;
- Background and contextual updates to the legislative framework and guidelines in which windfarm developments must be considered.

The Office of the Planning Regulator (the Office) made a submission to the proposed Variation containing two (2) recommendations and one (1) observation on 3<sup>rd</sup> June 2022 as follows:

Recommendation 1 – Compliance with statutory guidelines:

- i) To provide targets for wind energy development in the county in accordance with SPPR(2) of the *Interim Guidelines*;
- ii) To omit Policy E-P-23 and Policy E-P-24 that introduce a mandatory setback distance of 10 times the tip height of the wind turbine from residential properties.

Recommendation 2 – Sieve Mapping Analysis:

To omit *Lifford-Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns*”, and all “moderately High” and “Moderately Low” landslide susceptibility areas from “Not Normally Permissible” designation.

No material amendments were made to the proposed Variation on foot of public consultation and the elected members of Donegal County Council resolved to make Variation No. 2 to the Donegal County Development Plan 2018-204 at its Plenary Council Meeting on 18<sup>th</sup> July 2022.



### **Section 31AM(6) Notice**

Subsequently you, as Chief Executive, sent a notice letter under section 31(AM)(6) of the Act dated 25<sup>th</sup> July 2022 to the Office advising of the making of the variation and specifying the recommendations of the Office not complied with.

The combined section 13(5)(aa) and the section 31AM(6) notice letter stated that Recommendation 1 and Recommendation 2 had not been complied with and provided the reasons of the planning authority for the decisions not to comply.

### **Section 31AM(8) Notice**

On 12<sup>th</sup> August 2022 the Office notified the Minister that it was the opinion of the OPR that Variation No. 2 to the Donegal County Development Plan 2018– 2024 has not been made in a manner consistent with the recommendations of the Office and that the decision of Donegal County Council to make the variation to the Development Plan results in the making of the variation in a manner that fails to set out an overall strategy for the proper planning and sustainable development of the area concerned.

Subsequently, the Office in their notification letter, recommended that a proposed draft Direction be issued as follows:

(2) The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:

- a) Indicate and incorporate into the Variation of the Development Plan, 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) Omit Policy E-P-23 and Policy E-P-24.

c) Amend map 8.2.1 to change the designation of “Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns” and “Moderately Low” and “Moderately High” landslide susceptibility areas identified as ‘Not Normally Permissible’ to ‘Open-to-Consideration’.

## **DECISION**

Having reviewed all above reports and notification letters, I, as Minister, am of the opinion to issue the Direction to effect recommendation (2)(b) and (c) of the Office and in that regard, I refer you to the Statement of Reasons set out in the enclosed Draft Direction.

I am of the opinion not to include (2)(a) in the Draft Direction for the following reasons:

1. There have been a number of significant and critical developments in relation to climate change and renewable energy to which I have given due consideration to in the context of my decision, namely;
  - i. Through the Climate Action and Low Carbon Development (Amendment) Act 2021 and the National Development Plan 2021 – 2030, the Government has committed to a binding target to reduce greenhouse gas emissions by 51% and increase the share of electricity generated from renewable sources by up to 80% over the decade (2021 – 2030), and to achieving net-zero emissions no later than 2050.
  - ii. The publication of the Climate Action Plan 2021 and the associated Annex of Actions identifies precise and targeted measures to ensure that Ireland achieves a 51% reduction in overall greenhouse gas emissions by 2030 and also to reach net-zero emissions by no later than 2050. The delivery of Action 102 set out in the Annex of Actions, commits to



delivering clear and specific outputs that are required in order for development plans to accurately and proportionately address targets at a local authority level.

- iii. In particular, the commitment to publish a framework to set out targets for onshore renewable electricity development to inform spatial plans will be a significant output to enable the disaggregation of national targets to a scale that can be applied at local authority level. The timeline for the publication of the framework is Q4 2022. It is desirable that such outputs and targets would be available to inform county development plans and that potential for renewables would not be prescribed prematurely, particularly given the life-cycle of development plans, which span six years. This will be applied to development plans when the framework to set regional and local targets for onshore renewable electricity development is available.
- iv. The publication of the Climate Action and Low Carbon Development (Amendment) Act 2021 makes provision for local authorities to prepare statutory Climate Action Plans for their own administrative area within 12 months of the receipt of a request from the Minister for the Department of the Environment, Climate and Communications. A local Climate Action Plan is required to specify the mitigation measures and the adaptation measures to be adopted by the local authority as well as being consistent with the most recent approved climate action plan. Provision to align the Local Authority Climate Action Plans with the planning system is ultimately through Section 10(2)(n) of the Planning and Development Act 2000 (as amended), which requires that a development plan shall include objectives for:
  - the promotion of sustainable settlement and transportation strategies in urban and rural areas including the promotion of measures to —
  - reduce energy demand in response to the likelihood of increases in energy and other costs due to long-term decline in non-renewable resources,



- reduce anthropogenic greenhouse gas emissions and address the necessity of adaptation to climate change, taking account of the local authority climate action plan (within the meaning of section 14B of the Climate Action and Low Carbon Development Act 2015), where such a plan has been made for the area in question; in particular, having regard to location, layout and design of new development.
2. The developments highlighted in Section 1. above supersede those documents listed in Section 3<sup>1</sup> of the Section 28 *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* published in 2017. The developments highlighted above are also referenced in more recent Section 28 Guidelines, *Development Plans Guidelines for Planning Authorities*, issued in July 2022, which provide updated planning policies and objectives with regard to climate action, renewable energy and development plans. Chapter 8 and section 8.1.6 of the Development Plans Guidelines emphasise the role of Local Authority Renewable Energy Strategies to inform development plans. This will be applied to development plans when the framework to set regional and local targets for onshore renewable electricity development is available.
  3. These developments will generate a nationally and regionally integrated capacity assessment for renewable energy that will facilitate co-ordination with adjoining authorities, provide metrics to inform the development of local targets and enable a broader range of potential measures to be applied, on a statutory basis. In this context, I consider that it would not be in accordance with proper planning and sustainable development, that the Donegal County Development Plan 2018-2024 address the issue at this stage in the manner recommended by the Office as this could preclude local scope for climate action, within the framework of updated national policy as outlined in section 1.

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<sup>1</sup> The National Renewable Energy Action Plan 2010 (Irish Government submission to the European Commission); • The Government's Strategy for Renewable Energy 2012 – 2020 (DCENR); • The Government's White Paper on Energy Policy - Ireland's Transition to a Low Carbon Energy Future 2015-2030 (DCENR); and • The Government's National Mitigation Plan, July 2017 (DCCA).



4. Furthermore, in response to the Russian invasion of Ukraine, the European Commission has proposed an immediate joint European action programme, REPowerEU, to terminate the dependence on imported fossil fuels from Russia before 2030 while ensuring more affordable, secure, and clean energy for Europe. Recommendations include that the *“...planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself are considered as being in the overriding public interest and in the interest of public safety and qualify for the most favourable procedure available in their planning and permitting procedures”*. On the acceleration of Europe’s clean energy transition, Member States are to establish “go-to” areas for renewable energy development. Given the ongoing efforts to address both energy security and the Commission’s proposal to terminate the dependence on imported fossil fuels, the inclusion of recommendation 2(a) of the Office in the Draft Direction could preclude such action, which will require the rapid deployment of renewables.

The National Energy Security Framework, published in April 2022, sets out the Government’s response to Ireland’s energy security needs in the context of the war in Ukraine. This Framework identifies a number of potential measures under the planning system that could better support the timely delivery of additional renewable energy sources and the required supporting infrastructure. One such measure identified is the provision of greater regulatory certainty, including timeframes, in relation to decarbonised generation which requires Government policy on relevant aspects of energy supply. These policies are currently being developed, one of which includes a national policy on renewables (solar and wind) as a specific energy type. Consequently, the detail of such a relevant and significant national renewable energy policy will need to be given effect through integration and implementation in the planning system, including the statutory plan-making process and is required to be completed to ensure the correct sequencing of policy formation at regional and local level can then be followed.





In light of the considerations and influencing factors set out above, I consider it is prudent and appropriate to allow for the scheduled and sequential preparation and publication of the relevant nationally and regionally integrated frameworks and plans to inform Variation no. 2 to Donegal County Development Plan 2018-2024, particularly where statutorily provided for, to give the required effect to determining targets and potential measures that can be proportionately and reasonably applied at local authority level.

Furthermore, the resource requirements and efforts related to the preparation of the local authority climate action plans should be prioritised to effectively inform the development plan, having had regard to the most up-to-date national policy and legislation; Ireland's energy security requirements, which include the need for the diversification and rapid deployment of renewables.

In respect of recommendations (2)(b) and (c) of the Office, a copy of this Draft Direction is attached to this letter.

It is my opinion that certain elements of the variation to the Development Plan as made have failed to implement a recommendation made to the planning authority by the Office, fail to set out an overall strategy for the proper planning and sustainable development of the area and are inconsistent with national and regional policy objectives specified in the NPF and RSES. The factors taken into account in forming this opinion are as follows:

- (i) The requirements of sections 10(1), 13(7) and 13(14) and sections 28(1), 28(1A), and 28(1B) 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 - Maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements.

- (iii) The North and Western Regional Assembly Regional Spatial Economic Strategy 2020-2032 including Regional Policy Objective 4.17, which states the following:

*RPO 4.17*

*'To position the region to avail of the emerging global market in renewable energy by: [inter alia] Stimulating the development and deployment of the most advantageous renewable energy systems.'*

- (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’;

- the 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
- a ‘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) 92/43/EEC The Habitats Directive;

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

(ix) The Chief Executive’s reports on submissions on the variation to the Development Plan.

#### **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 Donegal County Council with regard to Variation no. 2 to Donegal County Development Plan 2018 – 2024.

The Planning Authority is hereby directed to take the following steps within the Development Plan as set out in the draft direction to the planning authority accompanying this notice.



(2)b. Omit Policy E-P-23 and Policy E-P-24.

(2)c. Amend map 8.2.1 to change the designation of “*Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns*” and “*Moderately Low*” and “*Moderately High*” landslide susceptibility areas identified as ‘Not Normally Permissible’ to ‘Open-to-Consideration’.

Please note that in accordance with Section 31(4) of the Planning and Development Act 2000, those parts of the variation to Donegal County Development Plan 2018 – 2024 Plan referred to in this notice shall be taken not to have 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.

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.



In accordance with Section 31(9) of the Act, 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, and
- 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.

I wish to also remind you of the recent enactment of the Planning and Development, and Maritime and Valuations (Amendment) Act 2022 affecting Ministerial Directions on development plans and local area plans in the Planning and Development Act, 2000 (as amended) as advised in Circular NRUP 04/202, issued on 27<sup>th</sup> July 2022. Pending the consolidation of the Act on foot



of the amendments, you are asked to take note of the procedural amendments that now apply to the section 31 process as it relates to development plans and variations to plans. For example, section 31(8) requires your report prepared under this subsection to also be furnished to the relevant Regional Assembly.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway. Should you have any queries please contact Killian Harrington, Planning Adviser at [killian.harrington@housing.gov.ie](mailto:killian.harrington@housing.gov.ie).

Yours sincerely,

Peter Burke, T.D.,

Minister for Local Government and Planning

Copied to:

- Cathaoirleach, Donegal County Council, County House, The Diamond, Lifford, Co. Donegal F93 Y622
- Mr. David Minton, Director, Northern and Western Regional Assembly, The Square, Kilcoman, Ballaghaderreen, Co. Roscommon F45 W674
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWW4.

**DIRECTION IN THE MATTER OF SECTION 31**

**OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

**VARIATION NO. 2 TO DONEGAL COUNTY DEVELOPMENT PLAN 2018-2024**

“Development Plan” means the Donegal County Development Plan 2018-2024

“Variation” means Variation No. 2 to the Donegal County Development Plan 2018-2024

“Planning Authority” means Donegal 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 (Variation No. 2 to Donegal County Development Plan 2018-2024) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps with regard to Variation No. 2 to the Development Plan:

- b. Omit Policy E-P-23 and Policy E-P-24.
- c. Amend map 8.2.1 to change the designation of “Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns” and “Moderately Low” and “Moderately High” landslide susceptibility areas identified as ‘Not Normally Permissible’ to ‘Open-to-Consideration’

## **STATEMENT OF REASONS**

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

The Variation to the Donegal County Development Plan 2018-2024 is inconsistent with the policy objectives of the National Planning Framework, specifically NPO 55, which states that it is an objective to ‘promote of renewable energy ... 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(1) and/or 13(7) read in conjunction with section 13(14);

### **II. Pursuant to section 31(1)(ba)(i)**

The Variation to the Donegal County Development Plan 2018-2024 is inconsistent with the policy objectives of the Regional Spatial and Economic Strategy, specifically RPO 4.17, which states that it is an objective ‘To position the region to avail of the emerging global market in renewable energy by: [inter alia] Stimulating the development and deployment of the most advantageous renewable energy systems.’, and the requirements for the planning authority to comply with, and the development plan to be consistent with, the aforementioned Regional Policy Objective under sections 10(1A) and/or 13(7) read in conjunction with section 13(14);



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

The Variation 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) in that the Variation of 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. No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided by the planning authority to explain why those aspects of the guidelines have not been implemented.

Specifically, the Variation as made does not have adequate regard to the step-by-step analysis of areas suitable for wind energy (or sieve analysis) under section 3.5 of the guidelines, specifically in including within the area designated as 'Not Normally Permissible':

- (i) the "Lifford-Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns"; and
- (ii) all "Moderately Low" and "Moderately High" landslide susceptibility areas from that area defined as "Not Normally Permissible.

### **IV. Pursuant to section 31(1)(c) and section 31(1)(b)**

Further, the statement under Section 28(1A)(b) which formed part of the Variation to the Development Plan has not provided adequate evidence based analysis to demonstrate that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (II) and (III), 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. The Office notes that whilst the

2000 Act does not expressly require a statement under s.28 (1A)(b) in respect of a variation to a development plan, the local authority should nonetheless provide adequate reasons or explanations relating to the proper planning and sustainable development of the area as to why it has not been possible to implement certain aspects of section 28 guidelines in respect of the Variation to the development plan;

**V. Pursuant to section 31(1)(b)**

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 is consistent with an overall strategy for the proper planning and sustainable development of the area.

**VI. Pursuant to section 31(1)(a)(i) and (ii)**

The Variation to 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.

**VII. Pursuant to section 31(1)(b)**

The Variation to the Development Plan 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 Month, year