



25<sup>th</sup> October 2022

Mr Peter Burke TD

Minister for Housing, Local Government and Heritage  
Department of Housing, Local Government and Heritage  
Custom House  
Dublin 1  
D01 W6X0

**Re: Notice pursuant to section 31AN(4) of the Planning and Development Act  
2000 (as amended) – Kerry Development Plan 2022 – 2028**

A chara,

I am writing to you pursuant to section 31AN(4) of *the Planning and Development Act 2000* (as amended) (the "Act") in the context of the Kerry Development Plan 2022-2028 (the "Plan"). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Kerry County Council (the "Council") by your office on 12<sup>th</sup> August 2022,
- b) the report of the Chief Executive of the Council dated October 2022 on the submissions and observations made to the planning authority (the "Report"),  
and
- c) nine (9) submissions made directly by elected members of the Council to this Office and considered by this Office pursuant to section 31(10)(a) of the Act.

**Draft Direction**

The draft Direction contained five parts:

- Part 2(a) Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9.);

- Part 2(b) Amend the reinstated map 12.4 of Volume 1 and Map 5 of Volume 4 to change the designation of all areas identified as ‘Open-to-Consideration’ to ‘permitted in principle’;
- Part 2(c) Amend the reinstated map 12.4 of Volume 1 and Map 5 of Volume 4 to designate the following areas as ‘permitted in principle’:
  - (i) those areas of the county identified as ‘areas for further assessment’ in map 6.25 of the Wind Zoning Methodology (Appendix 6 of the Development Plan) and identified as of ‘Low / Medium’ or ‘Medium’ visual sensitivity in the Landscape Review (Appendix 7 of the Development Plan); and
  - (ii) those areas identified as practical resource constraints relating to the 1km buffer zone identified for each settlement in the Wind Zoning Methodology;
- Part 2(d) Replace references to ‘Open-to-Consideration’ with ‘Permitted in Principle’ throughout Volumes 1 and 4 of the Development Plan consistent with a. and b. above; and
- Part 2(e) Delete material amendments MA 14.20 and 14.21.

You will note that in the Report prepared in accordance with section 31(8) of the Act, the Chief Executive recommends that the draft Direction issued by the Minister is given effect as drafted and without amendment.

The Office now recommends, pursuant to section 31AN(4) of the Act, that you issue the attached Direction with minor amendment to the draft direction for additional clarity.

In forming this recommendation, this Office reiterates the submissions made to you in the Notice which issued from this Office to your office on 29<sup>th</sup> July 2022 pursuant to section 31(AM)(8) of the Act.

## Public Consultation on the Draft Direction

The public consultation on the draft Direction took place between 24<sup>th</sup> August and 7<sup>th</sup> September 2022. The Report of the Chief Executive summarised the views of members of the public and prescribed authorities who made submissions to the planning authority.

You might please note the following:

- the Office received nine submissions: seven (7) submissions from individual elected members (Councillors Jackie Healy-Rae, Charlie Farrelly, Marie Moloney, Maura Healy-Rae, Niall Botty O'Callaghan, Cathal Foley and Fionnán Fitzgerald); and two (2) from Councillors Fionnán Fitzgerald and Michael Foley on behalf of Fianna Fáil and Fine Gael Councillors, respectively. All submissions opposed the draft Direction in respect of Part 2(a), (b), (c) and (d), concerning the required amendments to the wind energy development maps and policy;

The reasons outlined in these submissions largely repeat those raised in the section 31AM(6) Notice and relate to the large scale of wind energy development already accommodated in Kerry compared to other counties; the existing concentration of wind energy development in the northern part of the county; and the scale of the increase in land area for wind energy development required by the Direction relative to the previous development plan. Additional reasons related to the lack of scientific analysis of constraints to inform the Direction; community opposition; that the Office never requested the 'Open to Consideration' area be amended to 'Permitted in Principle' in its submissions to the draft Plan; and visual impact on the tourism asset which is a key employer. These submissions are attached to this letter for information purposes;

- one (1) of the submissions from the elected members (Councillor Maura Healy Rae) also opposed the draft Direction in respect of Part 2 (e), concerning the deletion of MA 14.20 and 14.21 relating to policy on access to national roads.

The reasons outlined in the submission repeat those made in the section 31AM(6) Notice and relate to the high proportion of national roads in the county; the imposition of unreasonable restrictions on family members; road safety audit would address safety concerns; no increase in congestion; and no allowance for case-by-case assessment. This submission is attached to this letter for information purposes;

- a total of seven hundred and eighty five (785) submissions were received by the Chief Executive during the consultation period, 755 of which were individual submissions from Kerry Wind Awareness (submitted in eight bundles through the online consultation portal). The Report summarised all submissions received, including those from the public and from prescribed authorities (Transport Infrastructure Ireland, National Transport Authority, Southern Regional Assembly and Department of Housing, Local Government and Heritage). Two submissions did not relate to the matter of the draft Direction and a third made no comment (Cork Airport);
- as set out in the Report, the submissions from members of the public were as follows:
  - Part 2(a) – (d) wind energy – nine (9) submissions supported the draft Direction. The reasons given relate to the role of wind energy in reducing GHG emissions, the need to address energy security and cost, the failure of the development plan to support the transition from fossil fuel to renewable energy, contrary to NPO 55 and the SPPR of the *Interim Guidelines for Planning Authorities on Statutory Plan, Renewable Energy and Climate Change* (2017). Three (3) of the submissions considered the Direction should go further to remove restrictions on wind energy.
  - Part 2(a) – (d) wind energy – twenty (20) submissions opposed the draft Direction. The reasons given, are generally similar to those detailed in the section 31AM(6) notice and relate to the scale of wind energy production in Kerry relative to other counties; the *Wind Energy Development Plan Guidelines for Planning Authorities* (2006) are not fit for purpose; the impact on peatlands, including as a carbon store;

impact on biodiversity and European sites; impact on landscapes; undemocratic; solar is a better solution; wind energy production is inefficient; and wind turbines should not be located near homes and other structures.

- Part 2(a)-(d) wind energy – four (4) submissions were neutral and neither support or oppose the draft Direction, including a submission from the DHLGH Development Applications Units which recommends that a 250m setback be required between the ‘permitted in principle’ zone and SPAs to protect against the disturbance displacement of hen harriers.
  - Part 2(e) access to national roads - three (3) submissions supported the draft Direction, including from TII and the NTA, and from the Green Party.
  - Part 2(e) access to national roads – two (2) submissions opposed the draft Direction. No reasons were given.
- As set out in the Report, the submission from the Southern Regional Assembly states that the draft Direction is aligned with the RSES.

**Part 2(a) Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9.)**

The Office is satisfied that the Chief Executive’s recommendation in respect of Part 2(a) is appropriate as it will reinstate map 12.4 of Volume 1 and map 5 of Volume 2 to that of the draft Plan, which had been materially amended by MA 12.9.

As set out in the section 31(AM)(8) Notice issued to you by this office on 29<sup>th</sup> July 2022, the Chief Executive’s recommendation to the elected members was not to adopt MA 12.9.

The Direction only requires that map 12.4 of Volume 1 and Map 5 of Volume 4 are reinstated. It does not require the deletion of other amendments included under MA 12.9.

As referred to in the CE’s Report, the elected members were ‘*provided with a revised wind zoning map that gives effect to the requirements of the draft Direction. This*

*map has also been made available on the Council's website, as part of the Consultation process*'. For your information, the subject map has been appended to this notice letter, together with the original map 12.4 of the draft Plan and the map 12.4 materially amended by MA 12.9 at material alterations stage.

The revised wind zoning map reinstates map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan insofar as it relates to the original extent of land where wind energy development was indicated as *'open to consideration'*. Those areas indicated as *'Repowering Areas'* in the adopted Plan, which were not amended at material alteration stage, are not shown on the revised wind zoning map for consultation.

However, the *'Repowering Areas'* were not the subject of the draft Direction and are not otherwise referred to in the CE's Report. The omission of the *'Repowering Areas'* would not give effect to any Part of the Direction and would appear to have been omitted from the map in error. In these circumstances, the Office advises that you may wish to clarify in your section 31 Notice to the planning authority that map 12.4 should be updated to include those areas indicated as *'Repowering Areas'* in the adopted Plan, which were not the subject of the draft Direction and which appear to have been omitted in error.

The statement of reasons in the draft Direction relates to the inconsistency of the Development Plan with NPO 55 to *'promote renewable energy use and generation at appropriate locations.....to meet national objectives towards achieving a low carbon economy by 2050'*. The submissions did not demonstrate how the Development Plan, as made, could be considered consistent with NPO 55.

The Office also notes that the submission of the SRA states that Parts 2(a)-(d) of the draft Direction relating to wind energy is aligned with RPO 87 Low Carbon Energy Future, RPO 95 Sustainable Renewable Energy Generation, RPO 96 Integrating Renewable Energy Sources, RPO 99 Renewable Wind Energy and RPO 211 Renewable Energy Generation and Transmission Network of the Regional Spatial and Economic Strategy.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(a).

**Part 2(b) Amend the reinstated map to change the designation of all areas identified as ‘Open-to-Consideration’ to ‘permitted in principle’**

The Office is satisfied that the Chief Executive’s recommendation is appropriate as it amends the reinstated map 12.4 to change the designation of all areas identified as ‘*Open-to-Consideration*’ to ‘*permitted in principle*’ as required under Part 2(b) of the draft Direction.

The Office notes the submission from an elected member that the Office never requested reinstated map 12.4 be amended from ‘*open to consideration*’ to ‘*permitted in principle*’ in its recommendations on the draft Plan and that no reasoning has been given for the application of a less restrictive zoning designation for these areas.

The Minister will note, however, that the draft Plan did not identify any areas of the county where wind energy would be ‘permitted in principle’. Recommendation 7 of the Office’s submission to the draft Plan required the planning authority to re-evaluate the ‘Areas for Further Assessment’ to provide for a total area where wind energy is ‘*permitted in principle*’ commensurate with the area of the county having regard to NPO 55, the SPPR of the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017), the provisions of section 28(1C) of the Act and the section 28 Wind Energy Development Guidelines for Planning Authorities (2006) (‘the Wind Energy Guidelines’).

The reason for the requirement under Recommendation 7 is set out in the preamble to that recommendation. The Office explained that the planning authority’s assessment process for ‘Areas for Further Assessment’ resulted in ‘*an area where wind energy development is ‘open for consideration’, that is fragmented and an extremely limited in extent, and no area where such development is ‘permitted in principle’, contrary to the requirements of the ‘Wind Energy Development Guidelines for Planning Authorities’ (2006).*’

The Office is satisfied, therefore, that the recommendation clearly identified the requirement to re-evaluate areas open to consideration and permitted in principle in accordance with NPO 55, the SPPR of the Interim Guidelines, Section 28(1C) and

the Wind Energy Guidelines, and that the Development Plan has failed to implement a recommendation made to the planning authority by the Office. Furthermore, no or no adequate reasons have been provided by the planning authority to explain why such policies in relation to wind energy cannot be implemented.

The statement of reasons in the draft Direction relates to the failure of the Development Plan to have regard to the Wind Energy Guidelines, 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.

We note that the obligation on the planning authority is to have regard to such guidelines but no or no adequate reasons are provided as to why such policies could not be implemented, and the submissions to the draft Direction do not provide adequate reasons or explanations relating to the proper planning and sustainable development of the area as to why the policies set out in the guidelines could not be implemented.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(b).

#### **Part 2(c) Amend the reinstated map 12.4**

The Office is satisfied that the Chief Executive's recommendation is appropriate as it amends the reinstated map 12.4 to designate the following areas as 'permitted in principle' as required under Part 2(c) of the draft Direction:

- (i) those areas identified as 'areas for further assessment' in map 6.25 of the Wind Zoning Methodology (Appendix 6 of the Development Plan), those areas 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

The Office notes the additional matters raised in the submissions, including lack of scientific analysis of constraints to inform the draft Direction, impacts on peatlands, biodiversity, European sites, and landscapes, views and prospects, with indirect impacts on tourism as an important employer. The Office also notes submissions from several members of the public that the draft Direction does not go far enough to remove restrictions on wind energy development and a submission requesting that Kilgarvin (added as an 'Open to Consideration' area under MA 12.9) be retained.

The '*permitted in principle*' area shown on the '*Reinstated and Amended Map 12.4*' proposed by the CE in response to the draft Direction is based on the planning authority's own Wind Zoning Methodology (Appendix 6 of the Development Plan), which identified wind resource and relevant constraints, and its Landscape Review (Appendix 7 of the Development Plan), which determined the visual sensitivity of the landscape areas on a four point scale from 'Low / Medium' to 'High'.

The Office is satisfied that, in applying the planning authority's own data which is based on scientific analysis, the draft Direction strikes 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, and providing a plan-led context to the assessment of individual wind energy development proposals in accordance with the provisions of the Wind Energy Guidelines. In particular, it has regard to the provisions of section 3.5 of the guidelines to determine '*the most suitable location of wind energy development*' through the application of the landscape sensitivity ratings of the Landscape Review.

The Office considers that any requirement to remove the policy restrictions on wind energy development on lands outside of those referred to in part 2(c)(i) and (ii) would not be consistent with the evidence-base in the planning authority's Wind Zoning Methodology and Landscape Review, which are considered to have had regard to the Wind Energy Guidelines.

The Office acknowledges that the revised area where wind energy development is 'permitted in principle' overlap the following European sites:

- Castlemaine Harbour SAC (site ref. 00343);

- Slieve Mish Mountains SAC (site ref. 002185);
- Lower River Shannon SAC (site ref.002165); and
- Moanveanlagh Bog SAC (site ref.002351).

The Wind Zoning Methodology '*recognises that the Habitats and Birds Directives do not, a priori, exclude wind farm developments in or adjacent to Natura 2000 sites*'. It provides that '*These need to be assessed on a case-by-case basis. Within this context an assessment of the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA, has been undertaken which has resulted in it being included as an Accessible Resource Constraint.*' It further stated '*Both Natura 2000 sites and Natural Heritage areas may be a constraint for wind energy development, this will be required to be assessed in detail at project level. As part of this detailed ecological surveys would be required.*'

The NIR prepared as part of the Appropriate Assessment determined that the Wind Zoning Methodology, as outlined in S5 of Volume 1- Appendices, took Natura 2000 site designations into account as constraints. The NIR also notes that a 250m buffer area from the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) has been included as an Accessible Resource Constraint. Accessible Resource Constraints are excluded from consideration for additional wind farm development, with the exception of repowering proposals (map 6.15 of the NIR refers). This is consistent with the DHLGH DAU's submission on the draft Direction. Accessible Resource Constraints are not affected by the draft Direction.

The submission from DHLGH DAU also recommended that 'permitted in principle' be defined. The Office considers that the term falls to be construed in its ordinary meaning as it would be understood by members of the public and developers and their agents and it is not necessary for the Office to seek to define a term that the planning authority included in its draft plan.

The NIR also notes that catchments particularly vulnerable to water quality deterioration, including those designated under the *S.I. No. 296/2009 European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009*

are not open to consideration for wind energy development. These areas are not affected by the draft Direction.

Regarding potential for adverse impacts on peat soils, the SEA Environmental Report notes that land susceptible to landslides and all peat soils were removed from consideration for wind energy development through the sieve analysis mapping exercise. Furthermore, section 1.15.1 (Volume 6, Development Management Standards & Guidelines) of the adopted Plan requires that the assessment of planning application for a wind energy project must include an assessment of the carbon balance including impact on peat or other carbon sequestering soils.

In relation to indirect effects of wind turbines on the tourism resource of the county, the Office notes that the revised area where wind energy development is '*permitted in principle*' is based on the planning authority's Landscape Review which determined the visual sensitivity of the landscape areas on a four point scale from 'Low / Medium' to 'High'.

Furthermore, there are a range of policy objectives in the adopted Plan to protect the landscape and heritage of the county including section 12.5.4.1.4, which requires consideration of the assimilative capacity of the landscape to absorb wind energy developments, cumulative impacts and impact on sensitive receptors; and objective KCDP 12-19 to facilitate wind energy development at appropriate locations where it can be demonstrated to the satisfaction of the planning authority that there will be no significant adverse impact on residential amenity, on the built and natural environment, or on the visual character of the landscape.

The statement of reasons in the draft Direction relates to the failure of the Development Plan to have regard to the Wind Energy Guidelines, 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 regard to section 3.5 of the guidelines and no or no adequate reasons were provided to explain why such policy could not be implemented.

The submissions to the draft Direction do not provide adequate reasons or explanations relating to the proper planning and sustainable development of the area as to why the policies set out in the guidelines could not be implemented.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(c).

**Part 2(d) Replace references to ‘Open-to-Consideration’ with ‘Permitted in Principle’ throughout Volume 1 and 4 of the Development Plan**

The Chief Executive recommended to implement the draft Direction in full, although no revisions to the text concerned have been published as part of the consultation process. The Office is satisfied, however, that the Chief Executive’s recommendation would give effect to Part 2(d) of the Direction.

The relevant matters raised in the submissions have been addressed, above, in respect of Part 2(a)-(c), having regard to the statement of reasons.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(d).

**Part 2(e) Delete material amendments MA 14.20 and 14.21 (Access to national roads)**

The Office is satisfied that the Chief Executive’s recommendation in respect of Part 2(e) is appropriate as it deletes material amendments MA 14.20 and 14.21 relating to access to national roads.

The Office notes that the submissions from both TII and the NTA reiterate their positions as set out in their submission on the material alteration of the draft Plan and confirm their support for the draft Direction.

The submission from the SRA states that the draft Direction aligns with RPO 153 Capacity of Inter-Urban Road Connections and with RPO 156 State Investment of the RSES.

One submission under section 31(10) was received from an elected member opposing Part 2(e). The Office notes that the reasons cited in the submission are similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice. These reasons have been previously set out above.

As set out in the section 31AM(8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive as summarised in the Report.

The submissions received from the public opposing the draft Direction gave no reasons.

The Office is satisfied, therefore, that no additional matters were raised in those submissions opposing draft Direction.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(e).

### **Recommendation**

In light of the above and for the reasons given in our Notice letter of 29th July 2022, the Office remains of the view, as set out in the 31(AM)(8) notice, that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

Having regard to section 31AN(4)(a) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the direction with minor amendment as identified in red in the attached proposed Direction to make clear that there is no misunderstanding as to the legal status of section 28 guidelines. As noted in the Office's 31AM(8) letter, insofar as some regard may have been had to the Wind Energy Guidelines and the Interim Guidelines, the provisions of those guidelines were misunderstood and 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 contained in the relevant guidelines and did not provide any reasons for not implementing any such policies. 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 Interim Guidelines and therefore why the policies and objectives of the Minister have not been implemented.

As referenced above, the Office also advises that you may wish to clarify in your section 31 Notice to the planning authority that map 12.4 should be updated to include those areas indicated as '*Repowering Areas*' in the adopted Plan, which were not the subject of the draft Direction.

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](mailto:plans@opr.ie).

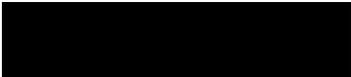
Yours sincerely,



**Niall Cussen**

Planning Regulator

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## Appendix 1

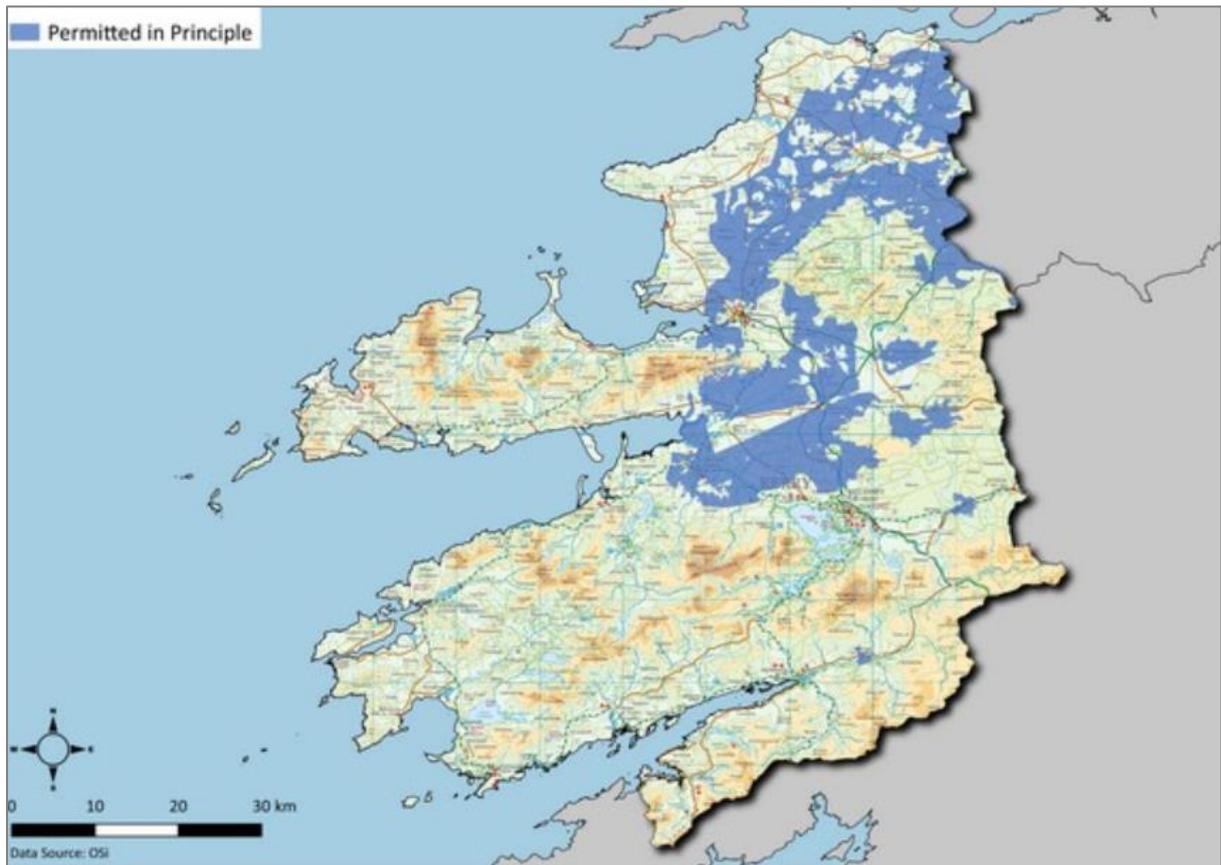


Figure 1: Revised wind zoning map 12.4 published on the Council's website as part of the consultation process on the draft Direction

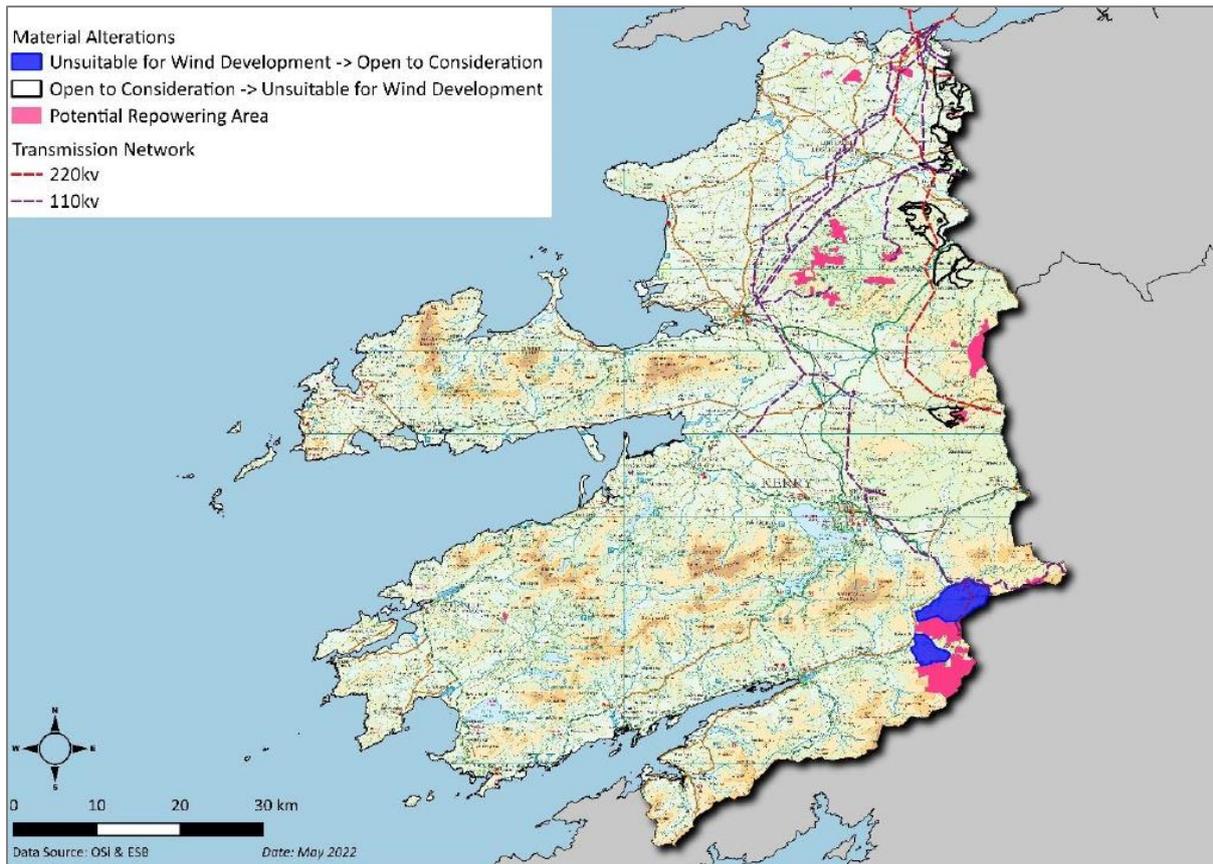


Figure 2: Wind zoning map 12.4 in the Development Plan, as made, subject of MA 12.9.

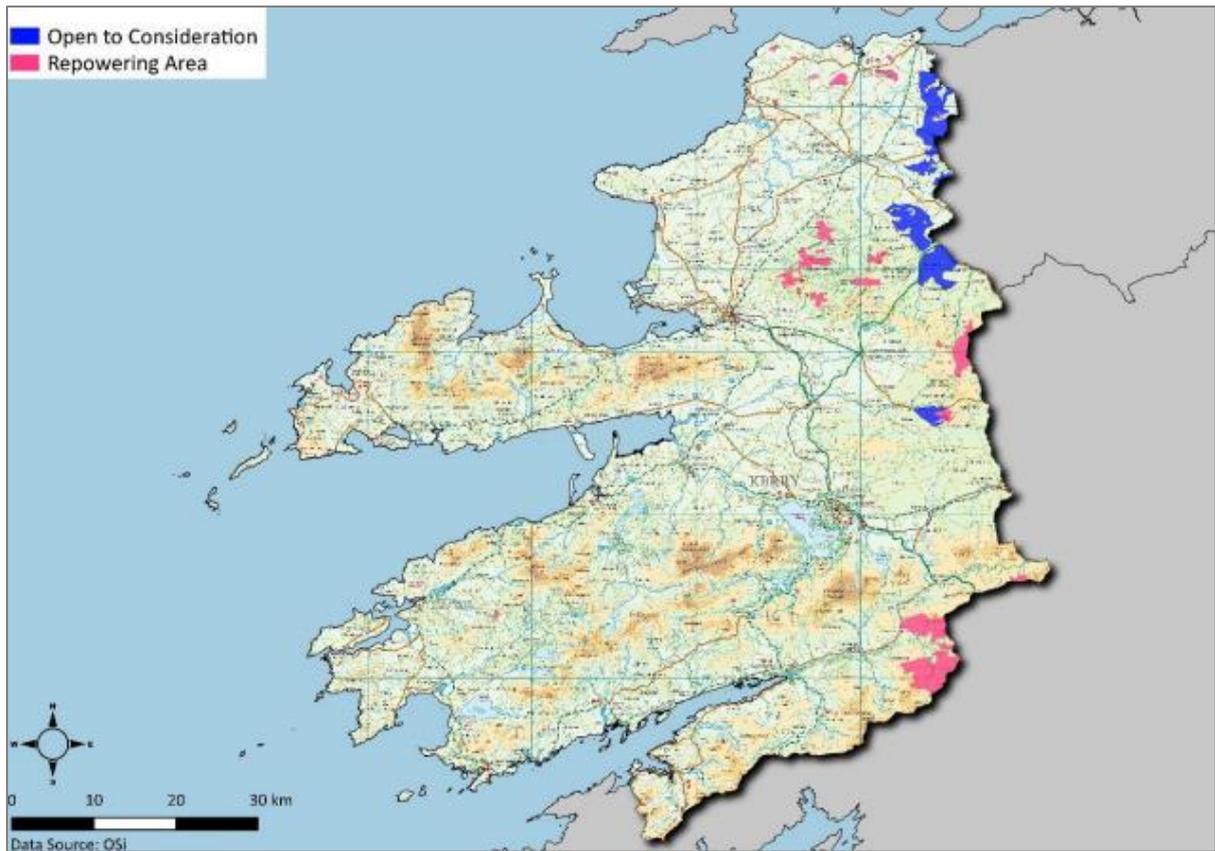


Figure 3: Wind zoning map 12.4 in the draft development plan

**DIRECTION IN THE MATTER OF SECTION 31  
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

**KERRY DEVELOPMENT PLAN 2022 – 2028**

“Development Plan” means the Kerry 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 at the Department of 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), and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AN(4) 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. Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9.);

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

## **STATEMENT OF REASONS**

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

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

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

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

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

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

Specifically, the Development Plan as made, whilst informed by a step-by-step analysis of areas suitable for wind energy (or sieve analysis), the planning authority in conducting the analysis did not have ~~adequate~~ regard to section 3.5 of the guidelines.

Specifically in determining 'the most suitable location for wind energy development' the planning authority did not apply the landscape sensitivity ratings determined by the planning authority in its Landscape Review and provided no or no adequate reasons as to why the outcome of the review could not be implemented.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day DD of MM YYYY.