



5<sup>th</sup> December 2022

For the Attention of: Ms Moira Murrell, Chief Executive

Kerry County Council,  
County Buildings,  
Rathass,  
Tralee,  
County Kerry  
V92 H7VT

**Section 31 of the Planning and Development Act 2000, as amended**  
**Decision to Issue a Direction to Kerry County Council on the**  
**Kerry County Development Plan 2022 - 2028**

Dear Moira,

I am writing to you to inform you of the following in relation to the Section 31 Draft Direction issued to Kerry County Council on 12<sup>th</sup> August 2022, and the subsequent consideration by the Office of the Planning Regulator (the Office) of your report and the nine (9) submissions made directly by elected members to the Office in connection with Kerry County Development Plan 2021 – 2027, as adopted by the elected members of Kerry County Council on 4<sup>th</sup> July 2022.

The Office notified the Minister pursuant to Section 31AN(4) of the Planning and Development Act 2000 (as amended) on 25<sup>th</sup> October 2022 and recommended that I, as Minister, issue the final Direction, as attached to the Notice of Intent dated 12<sup>th</sup> August 2022, with minor amendments to the statement of reasons provided for additional clarity.



## **PROCESS TO DATE**

As you are aware, the Draft Direction consisted of five parts; the reinstatement of map 12.4 to that of the draft Plan, the amendment of said map to change the designation of all areas identified as 'Open to Consideration' to 'Permitted in Principle', the further amendment of said map to include 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 those areas identified as practical resource constraints relating to the 1km buffer zone identified for each settlement in the Wind Zoning Methodology, the replacement of references to 'Open to Consideration' with 'Permitted in Principle' throughout Volumes 1 and 4 of the Development Plan and the deletion of material amendments MA 14.20 and 14.21.

Subsequently, the Office in their notification letter pursuant to Section 31AN(4) of the Planning and Development Act 2000 (as amended), recommended that the proposed final Direction be issued as follows:

- Part (2)a. Reinstatement 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.

### **DECISION**

Having reviewed and considered the following:

- the Office’s notification letter under 31AN(4),
- your report on the draft Direction, and
- the submissions made directly by the elected members of Kerry County Council to the Office,

I, as Minister, am of the opinion to issue the Direction to effect:

- recommendation (2)a i.e. Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9.),
- recommendation (2)e (now (2)b in the final Direction) to delete material amendments MA 14.20 and 14.21, and

in that regard, I refer you to the Statement of Reasons set out in the enclosed Direction.

I am of the opinion not to include recommendations (2)b, (2)c and (2)d issued by the Office under section 31AN(4) in the Direction for the following reasons:



- 1) (2)b - In reviewing this recommendation, consideration was given to the classification as set out in section 3.5 of the Section 28 Wind Energy Guidelines 2006, entitled Step-by-Step Guide to the Analysis of Suitable areas for Wind Energy by the Planning Authority. Step 3 states the following:

*“The process of overlaying wind energy mapping and landscape assessment with the development plan designations will produce a basis for identifying broadly, the areas where wind energy developments would be ‘acceptable in principle’, where they would be ‘open for consideration’, and where they would be ‘not normally permissible’.”*

This classification system indicates that degrees of acceptability are to be reflected in the wind energy areas that could broadly be equated to high, medium and low, in principle. The language used in the recommendation departs from the wording of the classification in the guidelines i.e. requiring the areas to be identified as ‘permitted in principle’ rather than ‘acceptable in principle’.

Taking into account the level of acceptability that applies to ‘Open to Consideration’ i.e. medium level, which has been determined by the Council using the wind zoning methodology, it is not considered that the requisite analysis and environmental assessments have been undertaken to support a change in designation of those areas to effect a higher level of acceptability being applied i.e. ‘Permitted in Principle’. Separately, the language of ‘permitted’ as opposed to ‘acceptable’ constitutes a material consideration which could be interpreted as carrying a more permissive meaning than what the 2006 guidelines allow for.



- 2) (2)c(i) - Further to the assessment under 2(b) above, which also applies to 2(c), in relation to the requirement to designate areas as ‘permitted in principle’, this recommendation requires the introduction of ‘new’ areas to the development plan map 12.4. While listed and identified as ‘areas for further assessment’, the wind zoning methodology concluded that ‘each of the 25 areas have been analysed comprehensively with potential for wind energy identified in 4 of the areas’. The four areas cited are those which were originally included in Map 12.4 of the draft plan. As this conclusion was arrived at after undertaking extensive analysis and assessment, it is not considered that the requisite analysis and environmental assessments have been undertaken to support the requirement to introduce ‘new’ areas into the plan, as recommended.
- 3) (2)c(ii) - The report of the Chief Executive on the Draft Direction, dated 4<sup>th</sup> October 2022, confirmed that in relation to part (c)(ii) of the draft Direction, the Wind Zoning Methodology was revised following the close of public consultations on the draft Plan (6<sup>th</sup> Dec 2021 – 23<sup>rd</sup> Feb 2022). Page 31 refers.

*“As part of this revision the 1km setback around settlements which was identified as a practical resource constraint in the overlay mapping exercise was removed. Therefore part (c)(ii) of the draft Direction was complied with prior to consideration of the CE report on the Draft Plan on April 25<sup>th</sup> / 26<sup>th</sup> /27<sup>th</sup>”.*

I am satisfied that this recommendation has already been given effect as part of the review process.

- 4) (2)d seeks to replace references to ‘Open to Consideration’ with ‘Permitted in Principle’ throughout Volumes 1 and 4 of the Development Plan and therefore the assessment of this recommendation reads as per (2)b and (2)c above.



## **DIRECTION**

Accordingly, Kerry County Council should **TAKE NOTICE** that on 5<sup>th</sup> day of December 2022, I as Minister, have issued a Direction pursuant to Section 31 of the Planning and Development Act 2000 (as amended).

Pursuant to Section 31 (17) of the Planning and Development Act 2000, as amended, this Direction is deemed to have immediate effect and its terms are considered to be incorporated into the plan.

For the purposes of clarification, 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.

A copy of this Direction is attached to this letter.

## **STEPS TO BE TAKEN**

In light of the foregoing Kerry County Council is required, pursuant to Section 31(2) of the Planning and Development Act 2000 (as amended) to comply with this Direction so as to rectify the matter in a manner that, in my opinion, will ensure that the Kerry County Development Plan 2022 - 2028 sets out an overall strategy for proper planning and sustainable development and meets the requirements of the Act.

The Council should ensure that the Direction is available for inspection at its offices and on its website.

My officials remain available to assist you, as necessary, in complying with the foregoing process.



Yours sincerely,

A handwritten signature in blue ink that reads "Peter Burke". The signature is written in a cursive style and is positioned above a horizontal line.

**Peter Burke T.D.,  
Minister of State with responsibility for Local Government and Planning**

Copied to:

- Cathaoirleach, Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry V92 H7VT
- Mr. David Kelly, Director, Southern Regional Assembly, Assembly House, O'Connell Street, Waterford X91 F8PC
- 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)**  
**KERRY COUNTY DEVELOPMENT PLAN 2022-2028**

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

“Planning Authority” means Kerry County Council

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

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



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

The Development Plan does not have 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.

### **III. 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;

**IV. 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’.

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

The Development Plan as made does not have 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 km/h 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 (km/h) apply.

**VI. 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) and (V), 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);


**VII. 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.

**VIII. 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,

A handwritten signature in blue ink, appearing to read 'Peter Burke', is written over a horizontal line.

**Peter Burke T.D.  
Minister of State with responsibility for Local Government and Planning**

Day 5 of December 2022.