



2nd December 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
Decision to Issue a Direction to Donegal County Council on Variation no. 2 of the
Donegal County Development Plan 2018 - 2024**

Dear John,

I am writing to you to inform you of the following in relation to the Section 31 Draft Direction issued to Donegal County Council on 29th August 2022, and the subsequent consideration by the Office of the Planning Regulator (the Office) of your report and the submissions made directly to the Office in connection with Variation no. 2 to the Donegal County Development Plan 2018-2024, as adopted by the elected members of Donegal County Council on 18th July 2022.

The Office notified the Minister for Housing pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended) on 8th November 2022 and recommended that the Minister for Local Government and Planning issue the Direction, as attached to the Notice of Intent dated 29th August 2022, with minor amendments to the draft Direction to bring additional clarity by omitting Policy E-P-23 (1) from the final Direction and to correct a clerical error in the number referencing within the statement of reasons.

PROCESS TO DATE

As you are aware, the Draft Direction consisted of two parts:

- Part 2(b) – Omit Policy E-P-23 and Policy E-P 24; and
- Part 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’



Subsequently, the Office in their notification letter pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended), clarified that in their section 31AM(8) notice letter the Office's concerns in respect of the two policies related only to the proposed setback requirements, under parts (2) and (3) of Policy E-P-23 and under Policy E-P-24 and not in relation to Policy E-P-23 (1) and therefore have recommended that the proposed final Direction be issued as follows (with minor amendments in red):

- a. ~~b.~~ Omit Policy E-P-23 *(2) and (3) and associated endnote* and Policy E-P-24.
- b. ~~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 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 Donegal County Council to the Office,

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

- recommendation (2)b. (now (2)a. i.e. omit Policy E-P-23 (2) and (3) and associated endnote and Policy E-P-24, and
- recommendation (2)c. (now (2)b.) i.e. 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' and

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



DIRECTION

Accordingly, Donegal County Council should **TAKE NOTICE** that on 20th 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 variation to the Development Plan.

A copy of this Direction is attached to this letter.

STEPS TO BE TAKEN

In light of the foregoing Donegal 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 Variation no. 2 to the County Development Plan 2018-2024 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,



Darragh O'Brien, TD,
Minister for Housing, Local Government & Heritage.

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 EWV4.



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 Minister for Housing, Local Government and Heritage is, for the reasons set out in the Statement of Reasons hereto, of the Opinion that:

- i. 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.
- ii. The Variation to the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.
- iii. The Variation to the Donegal County Development Plan 2018-2024 is inconsistent with the policy objectives of the National Planning Framework, specifically NPO 55.
- iv. 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.

- v. The Variation does not have regard to Ministerial Guidelines issued under Section 28 of the Act, specifically the Wind Energy Development Guidelines for Planning Authorities (2006).
- vi. 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.
- vii. 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 (III) in the Statement of Reasons.

The Plan, as made, is not in compliance with the requirements of the Act.

And therefore the Minister is of the opinion that section 31 of the Planning and Development Act 2000 (as amended) apply;

NOW, THEREFORE, in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (as amended), the Minister for Housing, Local Government and Heritage 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:
 - a. Omit Policy E-P-23 (2) and (3) and associated endnote and Policy E-P-24.
 - b. 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 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 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 (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. It is noted 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 official seal,



Minister for Housing, Local Government and Heritage

20th day of December, 2022