



20th December 2023

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

Donegal County Council
County House
The Diamond
Lifford
Co. Donegal
F93 Y622

**Section 31 of the Planning and Development Act 2000 –
Notice of Intention to Issue a Direction to Donegal County Council
regarding the Letterkenny Plan and Local Transport Plan 2023-2029**

Dear John,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 8th December 2023 in connection with the *Letterkenny Plan and Local Transport Plan 2023-2029* (the Local Area Plan) as adopted by the elected members of Donegal County Council on 13th November 2023, and pursuant to section 31 of the Planning and Development Act 2000 (the Act), I write to give notice of my intention to issue a direction to Donegal County Council to take account of certain measures specified in this notice.

Opinion

On consideration of the recommendation made to me by the Office, and on the basis of the information available to me, I have formed the opinion that:

- (i) Donegal County Council, as planning authority, in making the Local Area Plan, has failed to implement recommendations made to it by the Office under section 31AO of the Act;
- (ii) The Local Area Plan is inconsistent with national and regional policy objectives specified in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy for the Northern and Western Region (RSES);
- (iii) The Local Area Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;
- (iv) The Local Area Plan, as made, is not in compliance with the requirements of the Act.

A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt (subject to such modification of that period as may be enabled by section 251 of the Act). The reasons for the Direction are set out in the Statement of



Reasons incorporated in the attached draft Direction and further detail is provided in the Summary of Issues as set out below.

Process to Date

The draft Letterkenny Plan and Local Transport Plan 2023-2029 (the draft Plan) was on public display from 6th January 2023 to 17th February 2023. The Office of the Planning Regulator made a submission to the draft Plan on 17th February 2023, containing sixteen (16) recommendations and two (2) observations which addressed a broad range of issues.

The elected members, having considered the draft Plan and the Chief Executive's Report on submissions received (dated March 2023), decided to amend the draft Plan. The proposed material alterations to the draft Plan were on public display from 11th August 2023 to 8th September 2023. The Office made a submission on 8th September 2023 containing four (4) recommendations and one (1) observation. The Office's recommendations at the Material Alterations stage included, *inter alia*:

- MA Recommendation 1 – Residential Zoning Objectives
- MA Recommendation 2 – School Site
- MA Recommendation 4 – Flood Risk Management

The submission also noted the decision of the planning authority not to comply with certain Recommendations of the Office's submission to the draft Plan, and expressed concern that the extent of land zoned for residential use is significantly in excess of that required to meet housing targets.

The elected members of Donegal County Council adopted the *Letterkenny Plan and Local Transport Plan 2023-2029* on 13th November 2023. Subsequently, the planning authority issued a notice letter under section 31AO(5) of the Act to the Office advising of the making of the Local Area Plan and specifying the recommendations of the Office that were not complied with.

Having reviewed the Chief Executive's reports on the draft Plan and material alterations to the draft Plan, the notice of the making of the Local Area Plan and the reasons set out in the section 31AO(5) notice letter, the Office has concluded that, with the exception of the items below, the recommendations of the Office have been responded to and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context. The outstanding matters, therefore, relate to the following:

- Residential land use zoning – Recommendations 3(ii) and 4; and MA Recommendation 1
- Community and Education land use zoning – MA Recommendation 2
- Flood risk management – MA Recommendation 4



Summary of Issues

OPR Recommendations 3(ii) and 4; and MA Recommendation 1

Having regard to the objectives of the County Donegal Development Plan, in addition to national and regional policy objectives for compact and proportionate growth, and the policy of the Minister as included in guidelines issued under section 28 of the Act, Donegal County Council was recommended to make the Local Area Plan without certain identified residential land use zonings.

The Office has indicated that these zoning objectives are located in peripheral, and/or non-sequential, and/or currently unserviced locations, and were made contrary to your recommendations as Chief Executive and in circumstances whereby the Local Area Plan provides for significantly more residentially zoned land than is projected to be needed to meet Letterkenny's housing land requirements.

Having considered the reasons set out in the section 31AO(5) notice letter submitted, the Office accepted the rationale provided by the elected members for their decisions in a number of cases. However, with respect to lands identified in sections 2(a)(i) and 2(b)(i) to (iii) of the enclosed draft Direction, the Office has advised that no, or no adequate, reasons have been provided to justify the decision of the elected members with regard to the subject lands and the Office has therefore concluded that these zoning objectives are inconsistent with the planning authority's statutory obligations, as detailed in its recommendation to me, as Minister, under section 31AO(7) of the Act, and reflected in the reasons set out in the draft Direction.

OPR MA Recommendation 2

The Office also recommended that the planning authority make the Local Area Plan without proposed material alteration MA44. This related to the zoning of circa 11.6 hectares of land for Community and Education purposes and the Office has indicated that the lands are in a peripheral location with poor accessibility and services contrary to specified local, regional and national policies.

It is further noted that the Department of Education, the National Transport Authority and the Northern and Western Regional Assembly each made submissions to your authority which expressed concerns in relation to this proposed amendment, and that you, as Chief Executive, had recommended that the plan be made without the land use zoning in question.

Notwithstanding the foregoing, the elected members made the plan with the amendment and it was indicated in the section 31AO(5) notice that the lands (c.11.6 ha) were not intended for a school, but for childcare facilities. The Office did not accept this rationale, noting such uses are widely permissible across the zoning matrix and that there are multiple other suitable zoned sites where crèche use is either permitted in principle, or open for consideration. The zoning is considered to be



inconsistent with objectives of the County Donegal Development Plan contrary to the statutory requirements of the Act. Further details are contained in the draft Direction.

OPR MA Recommendation 4

This recommendation required the planning authority to make the Local Area Plan without proposed material alteration MA42 which sought to zone land for General Employment and Commercial purposes at Bunnagee.

The Strategic Flood Risk Assessment which informed the Local Area Plan clearly indicates that the subject lands are located in Flood Zone A and therefore are at an elevated risk of flooding. The applicable zoning objective applied to the lands would facilitate uses that are vulnerable to flood risk, in the absence of a Justification Test, as is required by the Flood Risk Management Guidelines (2009), and is inconsistent with the Development Plan, with which the Local Area Plan must be consistent. Please see the Statement of Reasons contained within the draft Direction for further details.

Decision

On review of the recommendation issued by the Office, corresponding documents and analysis, I, as Minister, am of the opinion to issue a draft Direction and in that regard, I refer you to the Statement of Reasons set out in the enclosed draft Direction and the considerations below.

I, as Minister, consider that the plan as made:

- is not in compliance with the provisions of the Act including:
 - Section 19(2), which requires that the Local Area Plan shall be consistent with the objectives of the Development Plan, its core strategy, and any regional spatial and economic strategy that applies to the area of the plan.
 - Section 27(1), which states a planning authority shall ensure, when making a local area plan, that the plan is consistent with any regional spatial and economic strategy in force for its area.
 - Section 28(1), which requires planning authorities to have regard to ministerial guidelines in the performance of their functions.
- is inconsistent with the objectives of the National Planning Framework and Regional Spatial and Economic Strategy for the Northern and Western Region, including NPO 33, NPO 57, RPO 3.1, RPO 3.2, RPO 3.10, RPO 3.7.20, RPO 3.7.22 and RPO 3.7.23.
- fails to have regard to Ministerial Guidelines issued under Section 28 of the Act, specifically:
 - Development Plans, Guidelines for Planning Authorities (2022)



- The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)

The Local Area Plan has also not been made in a manner consistent with, and has failed to implement, the recommendations of the Office under Section 31AO of the Act.

Having regard to the matters set out above both individually and cumulatively, the Local Area Plan fails to set out an overall strategy for the proper planning and sustainable development of the area and is not in compliance with the requirements of the Act.

Measures to be taken – 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 the *Letterkenny Plan and Local Transport Plan 2023-2029*.

In accordance with section 31AP(1) of the Act, having considered and taken account of the proposed draft direction submitted by the Office, the draft Direction as issued incorporates minor descriptive amendments which are not material in nature and do not alter the substance of the Office's recommended draft direction but provide additional clarity to aid its interpretation.

The draft Direction sets out the following steps for the Planning Authority to take:

(a) Delete the following zoning objective from the adopted plan, i.e. the subject land is unzoned:

(i) PR17 Glencar Scotch and Killyclug – i.e. the subject lands change to unzoned from Primarily Residential.

(b) Reinstate the following zoning objectives and associated text to that of the draft plan:

(i) MA30(B) PR12 Creeve – i.e. the subject lands revert to Local Environment and Established Development from Primarily Residential

(ii) MA31 PR11 Killyclug – i.e. the subject lands revert to Local Environment from Primarily Residential

(iii) MA34 PR2 Castlebane – i.e. the subject lands revert to Local Environment from Primarily Residential

(iv) MA44 Ballymacool – i.e. the subject lands revert to Local Environment from Community and Education



(v) MA42 Bunnagee – i.e. the subject lands revert to Open Space from General Employment and Commercial

and apply all necessary consequential updates to the text of the plan consistent with the foregoing.

Please note that in accordance with Section 31(4)(c) and Section 31(6) of the Act, those parts of the Local Area 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 (*subject to section 251*), 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.

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

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

Yours sincerely,

Kieran O'Donnell TD

Minister of State for Local Government and Planning

Copied to:

- Cathaoirleach, Donegal County Council, County House, The Diamond, Lifford, Co. Donegal, F93 Y622.
- Director, Northern and Western Regional Assembly, The Square, Ballaghaderreen, Co. Roscommon, F45 W674.
- Office of the Planning Regulator, Fourth Floor, Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWV4.

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

Letterkenny Plan and Local Transport Plan 2023-2029

“Local Area Plan” means the Letterkenny Plan and Local Transport Plan 2023-2029

“Planning Authority” means Donegal County Council

“RSES” means the Regional Spatial and Economic Strategy for the Northern and Western Region

The Minister of State at the Department of Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (No.30 of 2000) and the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2023 (S.I. No. 116 of 2023), and consequent to a recommendation made to him by the Office of the Planning Regulator, hereby directs as follows:

(1.) This Direction may be cited as the Planning and Development (Letterkenny Plan and Local Transport Plan 2023-2029) Direction 2023.

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

(a) Delete the following zoning objective from the adopted plan, i.e. the subject land is unzoned:

(i) PR17 Glencar Scotch and Killyclug – i.e. the subject lands change to unzoned from Primarily Residential.

(b) Reinstate the following zoning objectives and associated text to that of the draft plan:

- (i) MA30(B) PR12 Creeve – i.e. the subject lands revert to Local Environment and Established Development from Primarily Residential
- (ii) MA31 PR11 Killyclug – i.e. the subject lands revert to Local Environment from Primarily Residential
- (iii) MA34 PR2 Castlebane – i.e. the subject lands revert to Local Environment from Primarily Residential
- (iv) MA44 Ballymacool – i.e. the subject lands revert to Local Environment from Community and Education
- (v) MA42 Bunnagee – i.e. the subject lands revert to Open Space from General Employment and Commercial

and apply all necessary consequential updates to the text of the plan consistent with the foregoing.

STATEMENT OF REASONS

- I. The Local Area Plan as made includes zoning objectives and material alterations to the draft Local Area Plan, which zone additional residential land in excess of what is required for Letterkenny as determined by the planning authority in the Local Area Plan in accordance with the growth targets for Letterkenny under RPO 3.7.20 and RPO 3.7.23 of the Regional Spatial and Economic Strategy (RSES). These zoning objectives and alterations are located in peripheral and non-sequential locations, some of which are outside the CSO boundary, and would encourage a pattern of development in particular locations which is inconsistent with the objectives of the County Donegal Development Plan 2018-2024 to implement a sequential approach to development (Objective UB-O-2 and Objective CS-

O-12) and RPO 3.7.22, RPO 3.1 and RPO 3.2 of the RSES for compact growth; would undermine the achievement of the RSES 'People and Places' Growth Ambition; and demonstrates that the Planning Authority has failed to have regard to the Development Plans Guidelines for Planning Authorities (2022) issued under section 28 of the Act.

- II. The Local Area Plan as made zones a circa 11.6 ha parcel of land for Community and Education, which zoning objective could accommodate a range of social, community and education uses. The land is located in a peripheral location largely outside the CSO boundary and in an area with poor accessibility. Furthermore, there are multiple other suitable zoned sites closer to the town centre and in areas within safe walking distance of local services and residential areas where such facilities could be provided. The material alteration is therefore inconsistent with the objectives of the County Donegal Development Plan 2018-2024 to implement a sequential approach to development (Objective CS-O-12), to promote sustainable development and transportation strategies in urban and rural areas (Objective CS-O-17), and the locational criteria for new social and community infrastructure/service related developments (Policy CCG-P-1), and would undermine the achievement of the RSES 'People and Places' Growth Ambition.
- III. The Local Area Plan as adopted zones land for vulnerable uses within flood risk zone A which has not been subject to and passed a plan making Justification Test. This zoning objective is inconsistent with the County Donegal Development Plan 2018-2024, in particular objective F-O-2, by not demonstrating a solid evidence base that the proposed land use zoning objective will satisfy the sequential approach to flood risk management. In this regard the Local Area Plan is not consistent with RPO 3.10 of the RSES, and fails to have regard to The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) issued under section 28 of the Act.

- IV. The Local Area 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 31AO of the Act.
- V. In light of the matters set out at I to III above, the Minister is of the opinion that the Local Area Plan as made is inconsistent with the objectives of the Development Plan of the area.
- VI. The Local Area Plan as made is not consistent with the objectives of the RSES contrary to section 19(2) and section 27(1) of the Act.
- VII. The Minister is of the opinion that the Local Area Plan as made is not consistent with objectives of the National Planning Framework, including National Policy Objective 33 and National Policy Objective 57.
- VIII. The Minister is of the opinion that the Local Area Plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area.
- IX. The Local Area Plan is not in compliance with the requirements of the Act.

GIVEN under my hand,

Minister of State for Local Government and Planning

Day of Month, Year.