



23rd May 2024

Ms. Moira Murrell
Chief Executive
Kerry County Council
County Buildings
Tralee
Co.Kerry
V92 H7VT

**Section 31 of the Planning and Development Act 2000 –
Notice of Intention to Issue a Direction to Kerry County Council
regarding the Kenmare Municipal District Local Area Plan 2024-2030**

Dear Moira,

Consequent to a recommendation made by the Office of the Planning Regulator (the Office) on 9th May 2024 in connection with the *Kenmare Municipal District Local Area Plan 2024-2030* (the Local Area Plan) as adopted by the elected members of Kerry County Council on 12th April 2024, 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 Kerry County Council to take account of certain measures specified in this notice.

Opinion

On consideration of the recommendation made by the Office, and on the basis of the information provided to me in the above-mentioned section 31AO(7) notice letter dated 9th May 2024 (and noting the Office's subsequent clarification dated 15th May 2024), I have formed the opinion that:

- (i) Kerry 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 not consistent with national and regional policy objectives specified in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy for the Southern 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 its receipt. 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 *Kenmare Municipal District Local Area Plan 2023-2029* (the draft Plan) was on public display from 31st August 2023 to 3rd November 2023. The Office of the Planning Regulator made a submission to the draft Plan on 3rd November 2023, containing five (5) recommendations which addressed a broad range of issues.

The elected members, having considered the draft Plan and the Chief Executive's report on submissions received, decided to amend the draft Plan. The proposed material alterations were on public display from 1st February 2024 to 1st March 2024. The Office made a submission on 1st March 2024 containing five (5) recommendations.

The elected members of Kerry County Council adopted the *Kenmare Municipal District Local Area Plan 2024-2030* on 12th April 2024. Subsequently, the Chief Executive issued a section 31AO(5) notice letter 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/or 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:

- MA Recommendation 2 – Residential and Mixed Use zonings in Killorglin.
- MA Recommendation 3 – Strategic Residential Reserve zoning in Cahersiveen.
- MA Recommendation 5 – Industrial / Enterprise / Employment zoning in Killorglin.

Summary of Issues

MA Recommendation 2

Having regard to the requirements of specific cited objectives of the Kerry County Development Plan, the RSES for the Southern Region, as well as other relevant policy considerations, MA Recommendation 2 required Kerry County Council to make the Local



Area Plan without Material Alterations 35, 36 and 38 which relate to new residential and mixed use zonings in Killorglin.

The Office has advised that Material Alterations 35 and 38 relate to unserviced lands that do not benefit from connectivity to the foul drainage network or pedestrian footpaths to the town centre. These residential land use zonings leapfrog extensive undeveloped, non-zoned land and zoned residential land closer to the centre of the town and do not apply a sequential approach to zoning.

I am further advised by the Office that more broadly the Local Area Plan has provided capacity to accommodate well in excess of Killorglin's housing target and that these material alterations are not required on the basis of housing demand, and are inconsistent with the core strategy of the Kerry County Development Plan 2022-2028.

Material Alteration 36 relates to the zoning of land for Mixed Use development in a peripheral location to the east of the town inconsistent with the development plan objective to facilitate appropriately scaled improvements to the quantum and quality of retail offer and function in regional towns, and ensure their sustainable development by consolidating, intensifying, and enhancing existing core retail areas, and by directing new retail opportunities into town centres. The Office has also advised that the zoning does not represent an integrated approach to land use and transport.

MA Recommendation 3

This recommendation related to Material Alteration 18 (Site CH-103) which sought to zone land as Strategic Residential Reserve in a peripheral location to the south of Cahersiveen. The land in question is located outside the settlement boundary and is removed from the existing contiguous built-up area of the town, and in circumstances where there is ample zoned land within the Local Area Plan settlement boundary to provide for the future strategic development of the town.

The Office had indicated to the planning authority that this material alteration does not represent a sequential approach to zoning and is inconsistent with the implementation of development plan objectives relating to sustainable development and compact growth.

MA Recommendation 5

MA Recommendation 5 required the planning authority to make the Local Area Plan without Material Alteration 60. This sought to zone land for Industrial / Enterprise / Employment purposes at a remote location at significant remove from Killorglin. The lands are accessed



from a National Road at a point where the maximum speed limit applies and are also at known risk of flooding.

This land use zoning objective was adopted contrary to the advice of the Chief Executive and despite the concerns of a number of prescribed bodies including the National Transport Authority, Office of Public Works and Transport Infrastructure Ireland. The Office had indicated to the Council that this zoning is contrary to national policy and inconsistent with stated objectives of both the Kerry County Development Plan and the Regional Spatial and Economic Strategy for the Southern Region.

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 lands subject of the draft Direction. 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.

Decision

On review of the recommendation issued by the Office, on the basis of the information provided, with 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 Kerry County 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 not consistent with the objectives of the National Planning Framework and the Regional Spatial and Economic Strategy for the Southern Region, including NPO 33, NPO 57, RPO 35, RPO 116 and RPO 151.



- fails to have regard to Ministerial Guidelines issued under section 28 of the Act, specifically
 - Development Plans Guidelines for Planning Authorities (2022)
 - Spatial Planning and National Roads Guidelines for Planning Authorities (2012)
 - 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 Kerry County Council with regard to the *Kenmare Municipal District Local Area Plan 2024-2030*.

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

- (a) Delete the following material alterations from the adopted Local Area Plan such that the subject lands revert to as indicated in the draft Local Area Plan:
 - (i) Material Alteration 35 Site KG-102 – i.e. the subject lands revert to not zoned, from R1 New/Proposed Residential,
 - (ii) Material Alteration 36 Site KG-104 – i.e. the subject lands revert to not zoned, from M1 Mixed Use,
 - (iii) Material Alteration 38 Site KG-103 – i.e. the subject lands revert to not zoned, from R1 New/Proposed Residential,
 - (iv) Material Alteration 18 Site CH-103 – i.e. the subject lands revert to not zoned, from R4 Strategic Residential Reserve,



(v) Material Alteration 60 – i.e. the subject lands revert to not zoned, from C2.1 Industrial/Enterprise/Employment,

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, 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 under section 31(8) of the Act, a Chief Executive's report is to be prepared on any submissions or observations received during the public consultation period, and must be furnished to the Office, the elected members and the 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, pursuant to section 31(10) of the Act, the elected members of the planning authority may make a submission directly 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,

Alan Dillon TD
Minister of State for Local Government and Planning

Copied to:

- Cathaoirleach, Kerry County Council, County Buildings, Tralee, Co. Kerry, V92 H7VT
- Director, Southern Regional Assembly, Assembly House, O'Connell Street, Waterford, X91 F8PC.
- 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)
Kenmare Municipal District Local Area Plan 2024-2030**

“Local Area Plan” means the Kenmare Municipal District Local Area Plan 2024-2030.

“Planning Authority” means Kerry County Council.

“RSES” means the Regional Spatial and Economic Strategy for the Southern 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) (“the Act”) and the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2024 (S.I. No. 234 of 2024), 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 (Kenmare Municipal District Local Area Plan 2024-2030) Direction 2024.
- (2) The Planning Authority is hereby directed to take the following steps with regard to the Local Area Plan:
 - (a) Delete the following material alterations from the adopted Local Area Plan such that the subject lands revert to as indicated in the draft Local Area Plan:
 - (i) Material Alteration 35 Site KG-102 – i.e. the subject lands revert to not zoned, from R1 New/Proposed Residential,
 - (ii) Material Alteration 36 Site KG-104 – i.e. the subject lands revert to not zoned, from M1 Mixed Use,
 - (iii) Material Alteration 38 Site KG-103 – i.e. the subject lands revert to not zoned, from R1 New/Proposed Residential,
 - (iv) Material Alteration 18 Site CH-103 – i.e. the subject lands revert to not zoned, from R4 Strategic Residential Reserve,
 - (v) Material Alteration 60 – i.e. the subject lands revert to not zoned, from C2.1 Industrial/Enterprise/Employment,

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 material alterations to the draft Local Area Plan, which zone additional R1 New/Proposed Residential land in Killorglin inconsistent with the core strategy of the Kerry County Development Plan 2022-2028, and additional R4 Strategic Residential Reserve in Cahersiveen.

These material alterations are located in peripheral and/or non-sequential locations, and/or unserved locations, and/or outside the CSO boundary of Cahersiveen. The material alterations would individually and cumulatively encourage a pattern of development in particular locations which is inconsistent with Objective KCDP 4-1 of the Kerry County Development Plan 2022-2028 and RPO 35 of the RSES to implement compact growth, Objective KCDP 3-6 to zone land for residential purposes in accordance with the tiered approach to zoning, and the policy for sequential zoning (section 6.2.3) under the Kerry County Development Plan 2022-2028, and the planning authority has provided no or no adequate reasons for not applying the policy and objective for sequential zoning contained in the Development Plans Guidelines for Planning Authorities (2022) issued by the Minister under section 28 of the Act.

- II. The Local Area Plan as made includes a material alteration to the draft Local Area Plan, which zones an additional M1 Mixed Use / Opportunity Site in Killorglin. This material alteration is located in a peripheral location, remote from the existing town centre of Killorglin and partly outside the CSO boundary. This material alteration would encourage a pattern of development that is inconsistent with the implementation of Objective KCDP 4-61 of the Kerry County Development Plan 2022-2028 to ensure sustainable development by directing new retail opportunities into town centres and consolidating, intensifying, and enhancing existing core retail areas, and RPO 151 of the RSES for the integration of land use and transportation and optimising sustainable travel integration within settlements.

- III. The Local Area Plan as made includes a material alteration to the draft Local Area Plan, which zones additional C2.1 Industrial / Enterprise / Employment land in an unserviced, remote location, outside the CSO boundary and LAP settlement boundary for Killorglin, and on the N70 national road where the maximum speed limit applies, and where the lands are partially located within flood zone A and B. The material alteration would encourage a pattern of development in a location which does not meet the criteria for designating employment zonings under section 9.6.1 of the of the Kerry County Development Plan 2022-2028 (including NPO 72 of the National Planning Framework), and inconsistent with RPO 151 of the RSES for the integration of land use and transportation and optimising public transport and sustainable travel integration within settlements, Objectives KCDP 9-22, Objective KCDP 14-29, and Objective KCDP 14-30 of the Kerry County Development Plan 2022-2028 to protect the capacity and safety of national roads in compliance with the Spatial Planning and National Roads Guidelines (2012) and does not apply section 2.5 of these guidelines, and RPO 116 of the RSES to avoid inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009), and does not apply these guidelines.
- 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, which is a requirement of section 19(2) of the Act.
- 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 National Policy Objectives 33 and 57 of the National Planning Framework.

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.