

An Bord Pleanála 64 Marlborough Street Dublin 1

Our ref: 220623 Your ref: N/A

Date: 2nd April 2024

Re: Substitute Consent Application for 25 no. deviations from the permitted Meenbog Windfarm development (granted under ABP PA05E.300460) in the townlands of Croaghonagh and Meenbog, County Donegal.

Dear Sir/Madam,

On behalf of our client, Planree Ltd, hereafter referred to as 'the Applicant', MKO have been appointed to prepare and lodge this application for Substitute Consent with An Board Pleanála (the 'Board') in accordance with S177E of the Planning and Development Act 2000 (as amended) in relation 25 no. deviations to the permitted wind farm at Meenbog, Co. Donegal. The development, as per the public notices, constitutes the following:

"Planree Ltd, intend to apply for substitute consent for development of this site, in the townlands of Meenbog and Croaghonagh, Co. Donegal.

Leave to apply for substitute consent in relation to this development was granted by An Bord Pleanála under Section 177D of the Planning and Development Act 2000 (as amended), register reference ABP-314062-22. This application is made pursuant to Section 177E of the Planning and Development Act 2000 (as amended, and as provided for in section 41(12) of the Planning and Development, Maritime and Valuation (Amendment) Act 2022).

The development for which substitute consent is being sought consists of:

Deviations from the wind farm permitted under ABP-300460-17 (amended by ABP-303729-19). The deviations relate to wind farm roads and hardstand areas, peat management measures, borrow pits, site drainage measures, and all ancillary works.

The application for substitute consent is accompanied by a remedial Environmental Impact Assessment Report (rEIAR) and a remedial Natura Impact Statement (rNIS)."

In support of this Substitute Consent Application, 6 copies of each of the following documentation has been included along with this cover letter:

- A duly completed Application Form;
- Copy of the Newspaper Notice, as published in Irish Independent on 2nd April 2024, including 1 no. Original copy;
- > Copy of the Site Notice dated 2nd April 2024, as erected on site;
- **EIA** Portal Confirmation Notice (Portal ID 2024058), included in Appendix 3 of this cover letter;

- Planning Application Drawings, as prepared by MKO (*Please note that the Drainage Drawings are As Built drawings which illustrate the Permitted Development Wind Farm red line boundary),
 - o List of drawings included in Appendix 1 of this cover letter;
- Remedial Environmental Impact Assessment Report (rEIAR):
 - o Including all Appendices
- Remedial Natura Impact Statement (rNIS):
 - o Including all Appendices; and
- > Planning Report, as prepared by MKO, including:
 - Confirmation of Grant of Leave to Apply for Substitute Consent from An Bord Pleanála, as included in Appendix 1 of the Planning Report and Appendix 2 of this cover letter,
- An electronic copy of all the application documentation has also been furnished to An Bord Pleanála, via USB 2 no. copies provided;
- The application fee of €11,280, in the form of a cheque made out to An Bord Pleanála, the fee calculation for which is set out as follows:

Basis of Calculation:

Class 13 Development: Development not coming within any of the of the foregoing classes. Retention Permission Fee: €240, or €30 for each 0.1 hectare of site area, whichever is the greater.

€30 x 0.1ha = €300 x 1ha €300 x 37.6ha = €11,280

Legal Background and Legislative Context:

This comprises an application to An Bord Pleanála for Substitute Consent in respect of deviations carried out to a permitted wind farm development at Meenbog, Co. Donegal, which is currently under construction. An Bord Pleanála ('the Board') granted planning permission via the Strategic Infrastructure Development (SID) process to Planree Ltd ('The Applicant') for a 19-turbine wind farm development in Meenbog, Co. Donegal (ABP Ref: PA05E.300460) on 25th June 2018, subject to 20 no. conditions.

In this case, the permitted wind farm development is partially complete and therefore, substitute consent is being sought under Section 177E only for those elements of the development which have been completed without the benefit of planning permission. The works associated with the permitted wind farm development are not subject to this Substitute Consent application.

The primary reason for Subject Development relates to the need to often make minor deviations to the infrastructure as presented in the planning application drawings for the permitted development in response to actual conditions encountered on the ground, during the construction of such wind farm developments. In large-scale strategic infrastructure and civil engineering projects, some minor deviations from planning-stage designs are commonplace due to the greater level of detail required for the preparation of detailed engineering and construction designs prior to construction, or to adapt to ground conditions encountered on-site. The project engineers recommend and implement minor modifications in order to improve the safety and constructability of the development as and when circumstances, unforeseen at planning level, dictate. These circumstances often do not become apparent until construction has commenced.

Accordingly, an rEIAR has been prepared to describe the impacts of this development and is submitted herewith. Simultaneously, the application documentation also includes a remedial Natura Impact Statement (rNIS) in relation to that part of the Meenbog windfarm deviations that has been carried out.

Notices, Drawings Scales and Documentation

The format and scale of application drawings submitted are consistent with those provided in the previous applications that have been lodged in relation to the Meenbog wind farm development, and which have previously been deemed acceptable by the consenting authority. MKO have had correspondence with Sorcha Skelly in An Bord Pleanála, who has advised that alternative scales are acceptable in this case.

Six paper copies of each document in the application pack, including the rEIAR, and rNIS, are being furnished to the Board, as well as an electronic searchable version of all application documentation, as per the agreement and request of the Board via Sorcha Skelly. Should further soft copies be required, please do not hesitate to contact us.

Recommencement of Works

Donegal County Council commenced section 160 proceedings against Planree on 3 April 2023. The notice of motion sought orders restraining the carrying out of any unauthorised development on the site pending the regularisation of the development through a substitute consent application. The proceedings were heard over 3 days in the High Court on 19-21 March 2024 and judgment has been reserved. Planree Ltd undertook to the court to lodge and pursue to a conclusion, a substitute consent application. The within application is made in that regard. If permitted by the High Court, Planree intends to complete the permitted development while this application for substitute consent is being processed by the Board in respect of the existing deviations from the original permission. Planree will keep the Board informed of its intentions in this regard.

Site Access

In relation to carrying out site inspections of the Meenbog Windfarm development, the applicants can facilitate appropriate health and safety induction as necessary. In this regard we request that the Board contact MKO at info@mkoireland.ie in order to schedule the necessary site induction process.

We trust that the information provided will prove sufficient detail to inform the Board's decision on this matter, however, if the Board requires any additional information, the Applicant will endeavour to provide same and look forward to hearing from the Board further in due course.

Yours faithfully,

Meathern P. Crowe

Meabhann Crowe, Senior Planner, MKO

Appendices:

- **Appendix 1:** Drawing Issue Sheet
- Appendix 2: Copy of Leave to Apply Decision & Extension Request Grant from An Bord Pleanála
- **Appendix 3:** EIA Portal Confirmation

	_Appendix 1
Drawing Issue Sheet	- 11

	_Appendix 2
Copy of Leave to Apply Decision & Extension Request Grant from An Bord Pleanála	_ 11

	Appendix 3
EIA Portal Confirmation	11

	Appendix 1
Drawing Issue Sheet	_ 11



Schedule of Drawings

Drawing No.	Drawing Title	Scale
220623 - 01	Site Location Map	1: 20,000 @A3
220623 – 01a	Site Notice Location Map A	1:2,500 @A3
220623 – 01b	Site Notice Location Map B	1:2,500 @A3
220623 - 01c	Site Notice Location Map C	1:2,500 @A3
220623 - 02	Site Layout Key Plan	1: 20,000 @A3
220623 - 03	Deviation No 1	1:500 @A3
220623 - 04	Deviation No 2	1:1,000 @A3
220623 - 05	Deviation No 3 & 19	1:1,000 @A3
220623 - 06	Deviation No 4	1:1,000 @A3
220623 - 07	Deviation No 5	1:1,000 @A3
220623 - 08	Deviation No 6 & 7	1:1,000 @A3
220623 - 09	Deviation No 8	1:1,000 @A3
220623 - 10	Deviation No 9	1:1,000 @A3
220623 - 11	Deviation No 10	1:1,000 @A3
220623 - 12	Deviation No 11	1:1,000 @A3
220623 - 13	Deviation No 14	1:1,000 @A3
220623 - 14	Deviation No 15	1:1,000 @A3
220623 - 15	Deviation No 16	1:1,000 @A3
220623 - 16	Deviation No 12, 17, 20 & 24	1:1,000 @A1
220623 - 17	Deviation No 20 & 24	1:1,000 @A1
220623 - 18	Deviation No 13, 18 &21	1:1,000 @A3
220623 - 19	Deviation No 22	1:1,000 @A3
220623 - 20	Deviation No 23	1:1,000 @A3
220623 - 21	Deviation No 25	1:1,000 @A3
220623 - 22	Deviation 2 Section Details	1:125 @A1
220623 - 23	Deviation 4 Section Details	1:200 @A1
220623 - 24	Deviation 11 Section Details	1:125 @A1
220623 - 25	Deviation 15 Section Details	1:200 @A1
220623 - 26	Deviation 25 Section Details	1:125 @A1
220623 - 27	Section ThroughSolid Road	1:50 @ A3
220623 - 28	Section ThroughPeat Berm	1:100 @ A3
Drawing No.	Drawing Title	Scale
D801	As Built Drainage Layout Sheet 1 of 6	1:2,500 @A1
D802	As Built Drainage Layout Sheet 2 of 6	1:2,500 @A1
D803	As Built Drainage Layout Sheet 3 of 6	1:2,500 @A1
D804	As Built Drainage Layout Sheet 4 of 6	1:2,500 @A1
D805	As Built Drainage Layout Sheet 5 of 6	1:2,500 @A1
D806	As Built Drainage Layout Sheet 6 of 6	1:2,500 @A1

	_Appendix 2
Copy of Leave to Apply Decision & Extension Request Grant from An Bord Pleanála	



Board Order ABP-314062-22

Planning and Development Acts 2000 to 2022

Planning Authority: Donegal County Council

Application for Leave To Apply For Substitute Consent, by Plannree Limited care of MKO of Tuam Road, Galway.

Development: Alterations to the permitted Meenbog Wind Farm. Meenbog (and surrounding townlands), County Donegal.

Decision

GRANT leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below

016

Reasons and Considerations

Having regard to section 177D of the Planning and Development Act, 2000, as amended, the Board is satisfied that: -

- (a) the development is one where an Environmental Impact Assessment, a determination as to whether Environmental Impact Assessment is required, and an Appropriate Assessment is required, and
- (b) exceptional circumstances do exist by reference, in particular, to the following:
 - (i) The fact that the regularisation of the development would not circumvent the purpose and objectives of the Habitats Directive,
 - (ii) The nature and scale of the subject development,
 - (iii) the ability to carry out an Environmental Impact Assessment and Appropriate Assessment and to provide for public participation has not been substantially impaired,
 - (iv) the submission of a remedial Environmental Impact Assessment and remedial Natura Impact Statement would facilitate an assessment of the potential for the remediation of any signification effects on the environment or adverse effects the integrity of European sites,
 - (v) the limited nature of the actual/likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the development,



- (vi) the extent to which such significant effects, if any, on the environment can be remediated, and
- (vii) the applicant is making reasonable efforts to regularise the planning status of the development.

Having regard to the foregoing, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application and as described in the documentation submitted.

Chris McGarry

Member of An Bord Pleanála duly authorised to authenticate the seal of the Board.

Dated this

2023.

Our Case Number: ABP-318669-23 Your Reference: Planree Limited



MKO Planning & Development Consultants Tuam Road Galway Co. Galway H91 VW84



Date: 1 2 JAN 2024

Re: Request for an Extension of Time for an Application for Substitute Consent for a windfarm.

Meenbog, Co. Donegal.

Dear Sir / Madam.

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2022. A copy of the order is enclosed.

Please note that the final date for the making of an application for substitute consent is the 2nd day of April, 2024.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Yours faithfully,

Miriam Baxter **Executive Officer**

BP100N

Teil Glao Áitiúil Facs

Tel LoCall Fax Láithreán Gréasáin Website Ríomhphost **Email**

(01) 858 8100 1800 275 175 (01) 872 2684 www.pleanala.ie bord@pleanala.ie

Baile Átha Cliath 1 D01 V902

64 Sráid Maoilbhríde 64 Marlborough Street Dublin 1 D01 V902



Board Order ABP-318669-23

Planning and Development Acts 2000 to 2022

Planning Authority: Donegal County Council

Application for an Extension of Time to Apply for Substitute Consent by Planree Limited care of MKO of Tuam Road, Galway pursuant to the determination by An Bord Pleanala on the 13th day of October, 2023, granting the owner/operator leave to apply to An Bord Pleanála for substitute consent.

Development: Alterations to the permitted Meenbog Wind Farm. Meenbog (and surrounding townlands), County Donegal.

Decision

Grant an extension of the period for the making of an application for substitute consent under section 177E (4) of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act 2010, for a further period until the 2nd day of April, 2024, based on the reasons and considerations set out below.

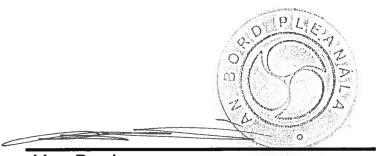
ABP-318669-23

Board Order

Page 1 of 2

Reasons and Considerations

The Board noted the request made for an extension of the period for the making of the application for substitute consent in this instance, and considered that an extension of time until the 2nd day of April, 2024 would be reasonable and appropriate to enable completion of application documentation to the necessary standard.



Liam Bergin

Member of An Bord Pleanála

duly authorised to authenticate
the seal of the Board.

Dated this 17th day of Januar > 2024



Judicial Review Notice

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000, as amended, contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that any application for leave to apply for judicial review must be made within 8 weeks of the date of the decision of the Board, save for decisions made pursuant to a function transferred to the Board under Part XIV of the Planning and Development Act 2000, where any application for leave to apply for judicial review must, as set out in sub-section 50(7), be made within 8 weeks beginning on the date on which notice of the decision of the Board was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred to the Board, was first published). These time periods are subject to any extension which may be allowed by the High Court in accordance with sub-section 50(8).

Section 50A(3) states that leave for judicial review shall not be granted unless the Court is satisfied that (a) there are substantial grounds for contending that the decision is invalid or ought to be quashed and (b) the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the costs of certain judicial review proceedings in the High Court; pursuant to Section 50B(1), Section 50B applies to the following proceedings:

- (a) proceedings in the High Court by way of judicial review, or of seeking leave to apply for judicial review, of—
- (i) any decision or purported decision made or purportedly made,
- (ii) any action taken or purportedly taken,
- (iii) any failure to take any action, pursuant to a statutory provision that gives effect to
 - I. a provision of the EIA Directive 85/337/EEC as amended to which Article 10a (as inserted by Directive 2003/35/EC) of that Directive applies,
 - II. the SEA Directive 2001/42/EC, or
- III. a provision of the IPPC Directive 2008/1/EC to which Article 16 of that Directive applies, or
- IV. Article 6(3) or 6(4) of the Habitats Directive; or
- (b) an appeal (including an appeal by way of case stated) to the Supreme Court from a decision of the High Court in a proceeding referred to in paragraph (a);
- (c) proceedings in the High Court or the Supreme Court for interim or interlocutory relief in relation to a proceeding referred to in paragraph (a) or (b).

The general provision contained in section 50B(2) is that in proceedings to which the section applies each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant, to the extent that the applicant succeeds in obtaining relief, against a respondent or notice party, or both, to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on www.citizeninformation.ie

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.



Fógra faoi Athbhreithniú Breithiúnach

Athbhreithniú breithiúnach ar chinntí an Bhoird Pleanála faoi fhorálacha na nAchtanna um Pleanáil agus Forbairt (arna leasú).

Ní fhéadfaidh duine ar mian leis nó léi agóid a dhéanamh in aghaidh bhailíocht chinneadh de chuid an Bhoird é sin a dhéanamh ach trí athbhreithniú breithiúnach. Tá forálacha in Alt 50, 50A agus 50B den Acht um Pleanáil agus Forbairt 2000, arna leasú, maidir le dúshláin i leith bhailíocht chinneadh an Bhoird.

Ní féidir bailíocht cinnidh arna ghlacadh ag an mBord a cheistiú ach amháin trí iarratas a dhéanamh ar athbhreithniú breithiúnach faoi Ordú 84 de Rialacha na nUaschúirteanna (S.I. Uimh. 15 de 1986). Ceanglaíonn fo-alt 50(6) den Acht um Pleanáil agus Forbairt 2000 go gcaithfear aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithnlú breithiúnach a dhéanamh laistigh de 8 seachtaine ó dháta chinneadh an Bhoird, seachas cinntí a dhéantar de bhun feidhme aistrithe chuig an mBord faoi Chuid XIV den Acht um Pleanáil agus Forbairt 2000, i gcás nach mór aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach, mar atá leagtha amach i bhfo-alt 50(7), a dhéanamh laistigh de 8 seachtaine ag tosú ar an dáta ar ar tugadh fógra faoi chinneadh an Bhoird ar dtús (nó mar a cheanglófar faoin achtú ábhartha, ar aistríodh feidhmeanna faoi chuig an mBord, a foilsíodh den chéad uair). Tá na tréimhsí ama seo faoi réir aon síneadh a fhéadfaidh an Ard-Chúirt a cheadú de réir fho-alt 50(8).

Sonraítear in alt 50A(3) nach ndeonófar cead d'athbhreithníú breithiúnach mura bhfuil an Chúirt sásta (a) go bhfuil forais shubstaintiúla ann chun a áitiú go bhfuil an cinneadh neamhbhailí nó gur chóir é a chur ar neamhní agus (b) go bhfuil leas leordhóthanach ag an iarratasóir san ábhar is ábhar don iarratas nó i gcásanna a bhaineann le measúnú tionchair timpeallachta ar comhlacht é a chomhlíonann critéir shonraithe.

Tá forálacha in alt 50B maidir le costais imeachtaí athbhreithnithe bhreithiúnaigh áirithe san Ard-Chúirt; de bhun Alt 50B(1), tá feidhm ag alt 50B maidir leis na himeachtaí seo a leanas:

- (a) imeachtaí san Ard-Chúirt mar athbhreithniú breithiúnach, nó trí chead a lorg chun iarratas a dhéanamh ar athbhreithniú breithiúnach, ar—
- (i) aon chinneadh nó cinneadh airbheartaithe a rinneadh nó a airbheartaítear a rinneadh,
- (ii) aon ghníomh a rinneadh nó a airbheartaítear a rinneadh,
- (iii) aon mhainneachtain aon ghníomh a dhéanamh, de bhun forála reachtúla a thugann éifeacht
 - I. d'fhoráil de Threoir EIA 85/337/CEE arna leasú lena mbaineann Airteagal 10a (arna cur isteach le Treoir 2003/35/CE) den Treoir sin,
 - II. do Threoir SEA 2001/42/CE, nó
- III. d'fhoráil de Threoir IPPC 2008/1/CE a bhfuil feidhm ag Airteagal 16 den Treoir sin maidir léi, nó
- IV. d'Airteagal 6(3) nó 6(4) den Treoir maidir le Gnáthóga; nó
- (b) achomharc (lena n-áirítear achomharc de chás ráite) chun na Cúirte Uachtaraí i gcoinne breithe ón Ard-Chúirt in imeacht dá dtagraítear i mír (a);
- (c) imeachtaí san Ard-Chúirt nó sa Chúirt Uachtarach le haghaidh faoisimh eatramhach nó idirbhreitheach i ndáil le himeacht dá dtagraítear i mír (a) nó (b).

Is í an fhoráil ghinearálta atá in alt 50B(2) ná go n-íocfaidh gach páirtí in imeachtaí lena mbaineann an t-alt a chostais féin. Féadfaidh an Chúirt, áfach, costais a dhámhachtain in aghaidh aon pháirtí in imthosca sonraithe. Tá foráil ann freisin go ndéanfaidh an Chúirt costais imeachtaí nó cuid de chostais den sórt sin a dhámhachtain d'iarratasóir, a mhéid a éiríonn leis an iarratasóir faoiseamh a fháil, i gcoinne freagróra nó páirtí fógra, nó an dá cheann, a mhéid a chuir an chaingean nó an t-easnamh ar thaobh an fhreagróra nó an pháirtí fógra go páirteach leis an bhfaoiseamh atá á fháil.

Tá eolas ginearálta ar nósanna imeachta athbhreithnithe bhreithiúnaigh ar fáil anseo a leanas, <u>www.citizensinformation.ie</u>.

Séanadh: Mar eolas atá an méid thuas ceaptha. Ní airbheartaíonn sé a bheith ina léirmhíniú ceangailteach ó thaobh dlí ar na forálacha ábhartha agus bheadh sé inmholta do dhaoine atá ag smaoineamh ar chaingean dlí comhairle dlí a lorg.

	_Appendix 3
EIA Portal Confirmation	11

Aine Bourke

From: Housing Eiaportal <EIAportal@housing.gov.ie>

Sent: Tuesday 2 April 2024 08:26

To: Aine Bourke

Subject: EIA Portal Confirmation Notice Portal ID 2024058

Caution: This is an external email and may be malicious. Please take care when clicking links or opening attachments.

Dear Aine,

An EIA Portal notification was received on 02/04/2024 in respect of this proposed application. The information provided has been uploaded to the EIA Portal on 02/04/2024 under EIA Portal ID number 2024058 and is available to view at http://housinggovie.maps.arcgis.com/apps/webappviewer/index.html?id=d7d5a3d48f104ecbb206e7e5f84b71f1.

Portal ID: 2024058

Competent Authority: An Bord Pleanála

Applicant Name: Planree Ltd.

Location: Meenbog Windfarm, in the townlands of Croaghonagh, and

Meenbog, County Donegal

Description: Substitute Consent is sought for deviations from the Wind Farm (permitted under ABP-300460-17 and amended under ABP-303729 -19) relating to roads, hardstand areas, peat management measures, borrow pits, site drainage measures, and all ancilliary works.

Linear Development: No

Date Uploaded to Portal: 02/04/2024

Kindest Regards,

Hugh Wogan,

EIA Portal team

An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta Department of Housing, Local Government and Heritage

Teach an Chustaim, Baile Átha Cliath 1, D01 W6X0 Custom House, Dublin 1, D01 W6X0

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www.gov.ie/housing



