



Development

A ten year permission for the development of a Wind Farm consisting of fourteen (14) No. wind turbines with a rotor diameter of up to 120m and a blade tip height of up to 150m above ground level, two (2) No. permanent meteorological masts, two (2) No. medium voltage substations, one (1) No. high voltage substation, thirteen (13) No. new site entrances comprising of 7 No. new site entrances and 6 No. upgraded site entrances, three (3) No. borrow pits and adjacent repositories, the provision of new and upgraded internal site service roads and surface water management measures, temporary site compounds, all underground cabling and associated infrastructure necessary to construct the development.

Location

Barna (two (2) No. Turbines),
Knocknageeha (one (1) No. Turbine),
Reanasup (two (2) No. turbines),

Lisheen (one (1) No. turbine), Reaboy
(three (3) No. turbines), Ballynahulla
(five (5) No. turbines) and
Tooreengarrive, Killarney, Co. Kerry.

Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/300
Applicant(s)	Silverbirch Renewables Limited
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party v. Decision
Observers	Shaun & Bernie O'Rourke Donal Fitzgerald & Nick Coveney Cynthia Daly Nora Dennehy Ger Knee Denise Fenton Tadghie O'Leary Thomas Fitzpatrick & Others Susan Finn Patrick O'Donoghue (Jnr.) Patrick (Paddy) O'Donoghue Donal Vaughan Norma Guerin Mary O'Sullivan Dan Dennehy Danny Fleming

An Taisce
Birdwatch Ireland
Niall Kelleher MCC
Maura Walsh (IRD Dunhallow)
John Ballinger (Raptor LIFE Project)
B. McDonnell & E. McDonnell
Towercom Ltd.
Mike & Fiona Fleming (c/o Griffin
Project Management)
Dr. Ilse Corkery (Dunhallow
Environment Working Group)
Irish Raptor Study Group
Fred O'Sullivan
Mike & Fiona Fleming

Date of Site Inspection

9th December, 2017

Inspector

Robert Speer

1.0 Introduction

- 1.1. By way of background, the Board's previous decision on ABP Ref. No. PL08.248768 was quashed on judicial review with the judgment of the High Court delivered on 20th day of December, 2019 (*Sliabh Luachra Against Ballydesmond Wind Farm Committee v. An Bord Pleanala [2019] IEHC 888, 2019 No. 63 J.R.*) while the terms of the High Court Order were perfected on 8th June, 2020. In addition to quashing the decision, the High Court ordered that the matter be remitted to the Board with a direction '*to reconsider it and reach a decision in accordance with the Judgement delivered on the 20th day of December, 2019*'. The (remitted) appeal has thus been assigned a new file number i.e. ABP-307661-20.
- 1.2. This report has been prepared in response to a Board Direction issued on 13th October, 2021 with respect to ABP Ref. No. ABP-307661-20 which sought the preparation of an 'addendum / new report' in order to address issues regarding the Appropriate Assessment and Environmental Impact Assessment of the development originally proposed and assessed under ABP Ref. No. PL08.248768, with particular reference to the effects of the development on the hen harrier (other than Turbine Nos. T8 & T9). Consideration is also to be given to any further submissions / observations received from interested parties in response to the notice issued by the Board on 2nd October, 2020 under Section 131 of the Planning and Development Act, 2000, as amended.
- 1.3. The contents of this report should be read in conjunction with the information which accompanied the initial planning application, the grounds of appeal, the submissions received, and my earlier report prepared for ABP Ref. No. PL08.248768.

2.0 Preliminary Considerations

- 2.1. In advance of any reconsideration of the appropriate assessment and environmental impact assessment of the proposed development, I would advise the Board that the planning assessment which informed the now quashed decision for ABP Ref. No. PL08.248768 was determined in the context of the Kerry County Development Plan, 2015. That plan sought to implement the Renewable Energy Strategy for County Kerry, 2012 which advocated a plan-led approach as regards the siting of wind energy developments in accordance with the recommendations of the '*Wind Energy*

Development, Guidelines for Planning Authorities, 2006'. Having studied various environmental, landscape, technical and economic criteria, including the wind speeds and the landscapes of the County on a broad level, the Renewable Energy Strategy identified, in broad strategic terms, three types of wind deployment zones / designations in relation to the development of wind energy projects i.e. '*Strategic Site Search Areas*', '*Open to Consideration*' and '*Unsuitable*' areas (in addition to areas which lack grid infrastructure). Accordingly, during the assessment of ABP Ref. No. PL08.248768, the proposed development site was noted to be located within an area '*Open to Consideration*'.

2.2. However, the Kerry County Development Plan, 2015 has since been replaced by the Kerry County Development Plan, 2022-2028 which was adopted by Kerry County Council on 4th July, 2022. This new statutory plan has introduced revised policy provisions with respect to renewable energy and I would refer the Board in particular to Section 12.5.4.1: '*Wind Energy*' of Chapter 12: '*Energy*'. By way of summation, the Plan (as adopted) has identified certain areas of the county where wind energy developments are '*Open for Consideration*' as well as '*Repower Areas*' (repowering is described as including wind farm upgrades, renewal, repowering or extension to permitted operational duration) with the methodology for the designation of these areas outlined in the '*Wind Zoning Methodology*' included at Appendix 6 of Volume 1 of the Plan. Locations outside of the '*Areas Open to Consideration*' and '*Repower Areas*' are expressly stated as not being deemed suitable for commercial wind farm development because of their overall sensitivity arising from landscape, ecological, recreational and / or cultural and built heritage resources (community based wind projects may be considered in areas not deemed suitable for commercial wind farm development, subject to environmental assessment, including compliance with the requirements of the Habitats Directive. They may be considered in areas outside of those zoned as open to consideration or repower areas that are not subject to constraints identified in the Wind Zoning Methodology).

2.3. At this point, I would refer the Board to the High Court Order issued in respect of *Sliabh Luachra Against Ballydesmond Wind Farm Committee v. An Bord Pleanala* (perfected on 8th June, 2020) which granted an Order of Certiorari '*quashing the decision of the Respondent dated the 27th day of November 2018 bearing the appeal reference number PL08.248768 to grant permission for the proposed development of*

a wind farm and associated works at a location between the villages of Gneeveguilla, County Kerry and Ballydesmond, County Cork. Furthermore, in lieu of directing that an Order of Certiorari do issue, it was also ordered that *'the aforesaid decision dated the 27th day of November 2018 and all records and entries relating thereto be quashed without further Order'*. The Order subsequently stated that *'the matter be remitted to the Respondent with a direction to reconsider it and reach a decision in accordance with the Judgement delivered on the 20th day of December, 2019'*.

- 2.4. Having considered the foregoing, it is my understanding that the High Court has quashed the Board's decision in respect of ABP Ref. No. PL08.248768 in its entirety and remitted the matter back to the Board for reconsideration with the result that the subject appeal must now be considered *'de novo'*. Such an interpretation is of particular significance given that while the Court Order requires a decision to be reached on the remitted matter in accordance with the Judgment delivered on 20th December, 2019 (with the pertinent issues arising from that judgement pertaining to the Appropriate Assessment and Environmental Impact Assessment of the proposed development), the quashing of the previous decision in its totality would, in my opinion, necessitate the assessment of the remitted matter (i.e. ABP Ref. No. ABP-307661-20) from first principles. This would have the effect of requiring ABP Ref. No. ABP-307661-20 to be newly assessed in the context of the current Kerry County Development Plan, 2022-2028 as a material consideration. Therefore, I propose to assess the subject appeal accordingly, although it would be open to the Board to seek legal advice on the matter.

3.0 Planning History

- 3.1. In the interest of completeness, and in order to avoid unnecessary repetition, I would refer the Board to my initial summation of the planning history of the site as set out in Section 5.0 of the inspector's report prepared in respect of ABP Ref. No. PL08.248768. That report should be read in conjunction with this assessment which serves to supplement the relevant planning history of the area by summarising those planning applications received during the intervening period between the determination of ABP Ref. No. PL08.248768 and the assessment of the subject appeal.

3.2. On Site:

- 3.2.1. PA Ref. No. 18339. Was granted on 21st May, 2019 permitting Redfaze Ltd. permission for the construction of a battery storage compound. The proposed works will involve the construction of new palisade fencing, site access track and entrance, bunded concrete plinths, up to 40 No. battery storage units and associated equipment, transformers and all ancillary site works. All at Ballynahulla, Ballydesmond, Co. Kerry.
- 3.2.2. PA Ref. No. 18964 / ABP Ref. No. ABP-303329-18. Was granted on appeal on 7th May, 2019 permitting Eirgrid Plc. permission for the construction of 1 No. +100 Mvar STATCOM transformer, 1 No. auxiliary transformer, 3 No. reactors, and 1 No. outdoor cooling bank, control and valve building (268m²), underground connection to existing ESB substation. It further includes security fencing, security gate, 4 No. 24.2m high lightning masts, permeable surfacing and an internal access road. A temporary contractors' compound is also proposed. The development is an extension to the existing substation. Access is provided via an existing access onto Church Road, accessed via the R577. All at Ballynahulla, Ballydesmond, Co. Kerry.
- 3.2.3. PA Ref. No. 20689. Was granted on 29th October, 2020 permitting Eirgrid Plc. permission for modifications to the previously permitted development (PA Ref. No. 18/964) granted on appeal (ABP Ref. No. ABP-303329-189) within the existing ESB Ballynahulla 22/110kV substation located in the townland of Ballynahulla, Ballydesmond, Co. Kerry. The modifications comprise the construction of 1 No. harmonic filter, 1 No. HV circuit switch breaker (including CT and VT), 1 No. MV disconnect and earth switch, 2 No. additional lamppost lighting. It further includes a retaining wall c. 2.5m high, asphalt (non-permeable) surfacing, a 2m high mesh fence and ancillary site development works. The development will remain an extension to the existing substation. Access to be provided via an existing access onto Church Road, access via the R577. All at ESB Ballynahulla 22/110kV electricity substation, Ballynahulla, Ballydesmond, Co. Kerry.
- 3.2.4. ABP Ref. No. ABP-310086-21. Section 5 referral as to whether the underground electricity grid connections and associated works from the Ballynahulla 220kV substation to the Gneevies 38kV substation is or is not development or is or is not

exempted development. All at Ballynahulla 220kV Substation, Ballynahulla, Ballydesmond, Co. Kerry. No decision to date.

- 3.2.5. ABP Ref. No. ABP-310287-21. Section 5 referral as to whether the underground electricity grid connections and associated works from the Ballynahulla 220kV substation to the Gneeves 38kV substation is or is not development or is or is not exempted development. All at Ballynahulla 220kV Substation, Ballynahulla, Ballydesmond, Co. Kerry. No decision to date.

4.0 Policy and Context

4.1. National Policy

4.1.1. Project Ireland 2040: National Planning Framework, 2018:

The National Planning Framework (NPF) is a long-term strategic planning framework intended to shape the future growth and development of Ireland out to the year 2040. It emphasises the National Climate Policy Position which establishes the national objective of achieving a transition to a competitive, low carbon, climate-resilient and environmentally sustainable economy by 2050. It further states that new energy systems and transmission grids will be necessary for a more distributed, renewables-focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such as wind, wave & solar, and connecting the richest sources of that energy to the major sources of demand.

Chapter 3: '*Effective Regional Development*' includes the following key policy priority for the Southern Region (wherein the subject site is located):

- Harnessing the potential of the region in renewable energy terms across the technological spectrum from wind and solar to biomass and wave energy, focusing in particular on the extensive tracts of publicly owned peat extraction areas in order to enable a managed transition of the local economies of such areas in gaining the economic benefits of greener energy.

Section 5.4: '*Planning and Investment to Support Rural Job Creation*' states the following with respect to energy production:

'Rural areas have significantly contributed to the energy needs of the country and will continue to do so, having a strong role to play in securing a sustainable

renewable energy supply. In planning Ireland's future energy landscape and in transitioning to a low carbon economy, the ability to diversify and adapt to new energy technologies is essential. Innovative and novel renewable solutions have been delivered in rural areas over the last number of years, particularly from solar, wind and biomass energy sources.

In meeting the challenge of transitioning to a low-carbon economy, the location of future national renewable energy generation will, for the most part, need to be accommodated on large tracts of land that are located in a rural setting, while also continuing to protect the integrity of the environment and respecting the needs of people who live in rural areas'.

Within Chapter 9: '*Realising Our Sustainable Future*', National Policy Objective (NPO) 55 seeks to '*Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050*'. The pretext to this objective states that the forthcoming Renewable Electricity Policy and Development Framework will aim to identify strategic areas for the sustainable development of renewable electricity projects of scale, in a sustainable manner, compatible with environmental and cultural heritage, landscape and amenity considerations. The development of the Wind Energy Guidelines and the Renewable Electricity Development Plan will also facilitate informed decision making in relation to onshore renewable energy infrastructure.

National Strategic Outcome 8 informs the '*Transition to a Low Carbon and Climate Resilient Society*' and states that:

- New energy systems and transmission grids will be necessary for a more distributed, more renewables focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such as wind, wave and solar and connecting the richest sources of that energy.
- It also seeks to deliver 40% of our electricity needs from renewable sources by 2020 with a strategic aim to increase renewable deployment in line with EU targets and national policy objectives out to 2030 and beyond.

4.1.2. **National Energy and Climate Plan (NECP) 2021-2030:**

Ireland's first Draft NECP was submitted to the European Commission in December 2018. It took into account energy and climate policies developed up to that point, the levels of demographic and economic growth identified in the NPF, and included all of the climate and energy measures set out in the National Development Plan, 2018-2027. It outlined Ireland's energy and climate policies in detail for the period from 2021 to 2030 and looked onwards to 2050.

The 2019 NECP was prepared to incorporate all planned policies and measures that were identified up to the end of 2019 and which collectively deliver a 30% reduction by 2030 in non-ETS greenhouse gas emissions (from 2005 levels).

Under the Programme for Government, Our Shared Future, Ireland is committed to achieving a 7% annual average reduction in greenhouse gas emissions between 2021 and 2030. The NECP was drafted in line with the current EU effort-sharing approach, before the Government committed to this higher level of ambition, and therefore does not reflect this higher commitment. Ireland is currently developing those policies and measures and intends to integrate the revision of the NECP into the process which will be required for increasing the overall EU contribution under the Paris Agreement.

4.1.3. **Climate Action Plan, 2021:**

The Climate Action Plan, 2021 provides a detailed plan for taking decisive action to achieve a 51% reduction in overall greenhouse gas emissions by 2030 and establishing a path to reach net-zero emissions by no later than 2050, as committed to in the Programme for Government and set out in the Climate Act, 2021. It sets a target of 80% of electricity demand generated from renewable sources by 2030 and anticipates that this will be delivered by up to 8GW for onshore wind, in addition to at least 5GW offshore wind and 1.5-2.5GW solar, of which 500MW of renewables will be delivered through community-based projects. The CAP, 2021 indicates that onshore wind energy will continue to play the largest role in meeting national renewable energy targets over the period to 2030.

4.1.4. **Wind Energy Development, Guidelines for Planning Authorities, 2006:**

Guidance pertaining to wind farm development in Ireland is set out in the '*Wind Energy Development, Guidelines for Planning Authorities*' issued by the Department

of the Environment, Heritage and Local Government in June, 2006. The presumption is in favour of wind farm development in suitable circumstances.

The Guidelines indicate:

- The need for a plan led approach.
- In section 4.3 there is reference to access to the electricity grid and that best practice would suggest having in applications for windfarms information on grid connection including indicative or feasible options but this may not always be possible.
- Noise is another important consideration and is referred to in paragraph 5.6 and account should be taken of the nature and character of nearby surroundings and developments in assessing noise levels and guidance on levels for different locations are outlined.
- Chapter 6 relates to aesthetic considerations in siting and design.
- Regard should be had to profile, numbers, spacing and visual impact and the landscape character.
- Account should be taken of intervisibility of sites and the cumulative impact of developments.

The Guidelines consider that the following influence visual impact:

- Form and characteristics of the landscape;
- Design and colour;
- The existing skyline;
- Layout of turbines, and
- The number and size of turbines and intervisibility of sites.

N.B. An emerging “preferred draft approach” to the ‘*Review of the 2006 Wind Energy Development Guidelines*’ was jointly announced on 13th June 2017 by the Department of Housing, Planning, Community and Local Government (DHPCLG) and the Department of Communications, Climate Action and Environment (DCCA). This updated guidance has yet to be finalised.

4.1.5. Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change, 2017:

These Guidelines were issued under Section 28 of the Planning and Development Act, 2000, as amended. They focus on administrative procedure and do not replace or amend the '*Wind Energy Development, Guidelines for Planning Authorities, 2006*' which remain in place pending the completion of an ongoing review of those Guidelines. Section 28 of the Act requires both planning authorities and An Bord Pleanála to have regard to these interim guidelines and apply any specific planning policy requirements of the interim guidelines in the performance of their functions.

These interim guidelines provide specific guidance on making, reviewing, varying or amending development plan or local area plan policies that relate to renewable energy and, in particular, wind energy development. It is a Specific Planning Policy Requirement (SPPR) of the Guidelines under Section 28(1C) of the Act that, in making, reviewing, varying or amending a development plan, or a local area plan, with policies or objectives that relate to wind energy developments, the relevant planning authority shall carry out the following:

- (1) Ensure that overall national policy on renewable energy as contained in documents such as the Government's 'White Paper on Energy Policy – Ireland's Transition to a Low Carbon Future', as well as the 'National Renewable Energy Action Plan', the 'Strategy for Renewable Energy' and the 'National Mitigation Plan', is acknowledged and documented in the relevant development plan or local area plan;
- (2) Indicate how the implementation of the relevant development or local area plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts); and
- (3) Demonstrate detailed compliance with item number (2) above in any proposal by them to introduce or vary a mandatory setback distance or distance for wind turbines from specified land uses or classes of land use into their development plan or local area plan. Such a proposal shall be subject to environmental assessment requirements, for example under the SEA and Habitats Directives. It shall also be a material consideration in SEA, when

taking into account likely significant effects on climatic factors, in addition to other factors such as landscape and air, if a mandatory setback or variation to a mandatory setback proposed by a planning authority in a development plan or local area plan would create a significant limitation or constraint on renewable energy projects, including wind turbines, within the administrative area of the plan.

4.1.6. **Draft Revised Wind Energy Development Guidelines, 2019:**

These Draft Guidelines primarily focus on addressing a number of key aspects including noise, visual amenity setback, shadow flicker, community consultation obligations, community dividend, and grid connections. They include several Specific Planning Policy Requirements (SPPRs) and, subject to formal adoption of the Guidelines, it is intended that these SPPRs would be applied by planning authorities and An Bord Pleanála in the performance of their functions, as well as having regard to additional matters for consideration in assessing wind energy developments. Notable changes in the draft guidelines when compared with the 2006 wind energy guidelines relate to community engagement, noise limits and minimum separation distances. For example, the application of more stringent noise limits in line with WHO noise standards together with a more robust noise monitoring and reporting system is proposed. In addition, the mandatory minimum 500m setback from a dwelling house is retained but is augmented by a requirement that a setback distance for visual amenity purposes of 4 times the tip height should apply between a wind turbine and the nearest point of the curtilage of any residential property in the vicinity of the proposed development.

4.1.7. **Development Plans, Guidelines for Planning Authorities, 2022:**

The Development Plan Guidelines constitute Ministerial Guidelines under Section 28 of the Planning and Development Act 2000, as amended, and set out national policies and objectives for the preparation, making, variation and implementation of development plans. Chapter 8 of the Guidelines refers to the inclusion of 'Climate Change' as a mandatory objective in development plans in accordance with Section 10(2)(n) of the Act. Section 8.1.6: '*Energy Related Objectives*' subsequently states that the development plan must facilitate energy generation from more sustainable forms of production and that, in terms of energy production, the transition to a low

carbon economy will require a shift from predominantly fossil fuels to predominantly renewable energy sources. Accordingly, pro-active planning for the development and deployment of technologies such as wind, solar, hydro, ocean and bio energy projects to make use of available resources and generate electricity in appropriate locations is required.

4.2. Regional Policy

4.2.1. Regional Spatial & Economic Strategy for the Southern Region (RSES), 2020:

The following Regional Policy Objectives (in part) are of note:

RPO 87: Low Carbon Energy Future:

The RSES is committed to the implementation of the Government's policy under Ireland's Transition to a Low Carbon Energy Future 2015-30 and Climate Action Plan 2019. It is an objective to promote change across business, public and residential sectors to achieve reduced GHG emissions in accordance with current and future national targets, improve energy efficiency and increase the use of renewable energy sources across the key sectors of electricity supply, heating, transport and agriculture.

RPO 88: National Mitigation Plan and National Adaptation Framework:

The RSES is committed to the implementation of the National Mitigation Plan and National Adaptation Framework: Planning for a Climate Resilient Ireland to enable the region transition to a low carbon, climate resilient and environmentally sustainable economy. It is an objective to ensure effective co-ordination of climate action with the Climate Action Regional Offices and local authorities to implement the National Mitigation Plan and the National Adaptation Framework in the development and implementation of long-term solutions and extensive adaptation measures.

RPO 95: Sustainable Renewable Energy Generation:

It is an objective to support implementation of the National Renewable Energy Action Plan (NREAP), and the Offshore Renewable Energy Plan and the implementation of mitigation measures outlined in their

respective SEA and AA and leverage the Region as a leader and innovator in sustainable renewable energy generation

RPO 96: Integrating Renewable Energy Sources:

It is an objective to support the sustainable development, maintenance and upgrading of electricity and gas network grid infrastructure to integrate renewable energy sources and ensure our national and regional energy system remains safe, secure and ready to meet increased demand as the regional economy grows.

RPO 98: Regional Renewable Energy Strategy:

It is an objective to support the development of a Regional Renewable Energy Strategy with relevant stakeholders.

RPO 99: Renewable Wind Energy:

It is an objective to support the sustainable development of renewable wind energy (on shore and off shore) at appropriate locations and related grid infrastructure in the Region in compliance with national Wind Energy Guidelines.

RPO 219: New Energy Infrastructure:

It is an objective to support the sustainable reinforcement and provision of new energy infrastructure by infrastructure providers (subject to appropriate environmental assessment and the planning process) to ensure the energy needs of future population and economic expansion within designated growth areas and across the Region can be delivered in a sustainable and timely manner and that capacity is available at local and regional scale to meet future needs.

RPO 221: Renewable Energy Generation and Transmission Network:

- a) Local Authority City and County Development Plans shall support the sustainable development of renewable energy generation and demand centres such as data centres which can be serviced with a renewable energy source (subject to appropriate environmental assessment and the planning process) to spatially suitable locations to ensure efficient use of the existing transmission network;

- b) The RSES supports strengthened and sustainable local/community renewable energy networks, micro renewable generation, climate smart countryside projects and connections from such initiatives to the grid. The potential for sustainable local/community energy projects and micro generation to both mitigate climate change and to reduce fuel poverty is also supported;
- c) The RSES supports the Southern Region as a Carbon Neutral Energy Region.

4.3. Development Plan

4.3.1. Kerry County Development Plan, 2022-2028:

Chapter 2: Climate Change & Achieving a Sustainable Future:

Section 2.6: Kerry County Development Plan 2022-2028 – Climate Action:

Section 2.6.1: Sustainable Land Use and Resource Efficiency

Section 2.6.2.2: Energy Policy and Planning:

Kerry County Council recognises that the transition to a low carbon economy is an integral part of Ireland's climate change strategy and that renewable energies form a core component of reducing our reliance on fossil fuels. In particular, decarbonisation of the heating and transport sectors are challenges of significance to this plan.

The main sources of renewable energy are the sun (solar energy), wind, moving water (hydropower, wave, and tidal energy), heat below the surface of the earth, (geothermal energy) and biomass (wood, waste, energy crops, and biogas).

National renewable energy targets are acknowledged and to date, Kerry has made a significant contribution towards realising these targets, having regard to wind energy developments already constructed and permitted in the County. Detailed policy in relation to renewable energy including micro generation and community consultation is contained in Chapter 12 of this plan. In addition, the plan facilitates the development of offshore wind energy proposals and associated 'green' industry.

Section 2.6.4: Summary of Mitigation and Adaptation Measures Incorporated into the Plan

Objectives:

KCDP 2-1: Support and implement the UN Sustainable Development Goals (SDGs), and the NPF Strategy and National Policy Objectives (NPOs) on sustainability and the RSES Strategic Statements, as appropriate.

KCDP 2-2: Facilitate and support national climate change objectives contained in the Climate Action Plan 2021 and the actions contained in the KCC Climate Change Adaptation Strategy 2019-2024 and successor strategies, and to consider a variation of this development plan, if necessary, to align with the approach recommended in the guidelines: Development Plans, Guidelines for Planning Authorities.

KCDP 2-17: Ensure the development plan is consistent with the approach to climate action recommended in the Development Plans Guidelines for Planning Authorities (June 2022) or any other relevant guidelines, and vary the Plan as may be required.

Chapter 11: Environment:

Section 11.2: Biodiversity:

Section 11.2.1: European/National Designations

Objectives:

KCDP 11-1: Ensure that the requirements of relevant EU and national legislation, are complied with by the Council in undertaking its functions, including the requirements of the EU Birds and Habitats Directives.

KCDP 11-2: Maintain the nature conservation value and integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs). This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies.

Section 11.6: Landscape:

Section 11.6.2: Landscape Sensitivity

KCDP 11-76: Have regard to any future National Landscape Character Assessment, Regional Landscape Assessments and Landscape Character Map, and

the publication of Section 28 Guidelines on Landscape Character Assessment.

KCDP 11-77: Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

KCDP 11-78: Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

Section 11.6.3: *Landscape Designations*

Chapter 12: Energy:

KCDP 12-1: Support and facilitate the sustainable provision of a reliable energy supply in the County, with emphasis on increasing energy supplies derived from renewable resources whilst seeking to protect and maintain biodiversity, archaeological and built heritage, the landscape and residential amenity and integration of spatial planning and energy planning in the county.

Section 12.5: *Renewable Energy:*

KCDP 12-14: Maximise the development of all renewable energies at appropriate locations in a manner consistent with the proper planning and sustainable development of the County.

KCDP 12-16: Facilitate and promote alternative forms of renewable energy including hydro, micro, solar and off-shore wind energy.

KCDP 12-17: During the lifetime of the Plan, Kerry County Council seeks to prepare a Renewable Energy Strategy for the County inclusive of targets across renewable energy sources, including the potential for offshore renewables, bioenergy, solar etc.

Section 12.5.1: *National Targets and Responding to Climate Change:*

Section 12.5.2.1: *Regional Spatial & Economic Strategy Renewable Energy Policy:*

RPO 98 states that it is an objective to support the development of a Regional Renewable Energy Strategy. Having regard to the significant contribution that Kerry

has made to date in relation to the realisation of wind energy targets, it is imperative that any Regional Strategy takes cognisance of this installed capacity including permitted but not yet constructed developments, when assessing other suitable locations in the wider region.

Section 12.5.3: *Existing Renewable Energy Development:*

Section 12.5.3.1: *The Current Status of Wind Energy Development*

Section 12.5.4.1: *Wind Energy:*

Section 12.5.4.1.1: *Draft Revised Wind Energy Development Guidelines 2019:*

KCDP 12-18: Ensure that projects shall be designed and developed in line with the Draft Revised Wind Energy Development Guidelines (DHPLG, 2019) and any update of these guidelines in terms of siting, layout and environmental assessment.

Section 12.5.4.1.2: *Identification of Wind Development Areas*

Section 12.5.4.1.3: *Wind Energy Policy Areas:*

In line with national guidance, areas of the County have been designated as ‘Open for Consideration’. ‘Repower areas’ have also been identified. The methodology for the designation of these areas is outlined in Wind Zoning Methodology Volume 1, Appendix 6.

Applications for windfarms in these areas will be assessed on a case-by-case basis, subject to viable wind speeds, environmental resources and constraints and cumulative impacts in compliance with Article 6 of the Habitats and EIA Directives.

Areas outside ‘Areas Open to Consideration’ and ‘Repower areas’ are not deemed suitable for commercial wind farm development because of their overall sensitivity arising from landscape, ecological, recreational and or cultural and built heritage resources.

Local areas where communities have developed or are developing proposals for on shore community-based wind projects may be considered in areas not deemed suitable for commercial wind farm development, subject to environmental assessment, including compliance with the requirements of the Habitats Directive. They may be considered in areas outside of those zoned open to consideration or

repower areas that are not subject to constraints as identified in the Wind Zoning Methodology.

Section 12.5.4.1.4: *Open-to-Consideration*:

KCDP 12-19: Facilitate the sustainable development of wind energy development within open-to-consideration areas at appropriate locations where it can be demonstrated to the satisfaction of the planning authority that there will be no significant adverse impact on residential amenity, on the built and natural environment, or on the visual character of the landscape.

Section 12.5.4.1.5: *Separation Distances*

Section 12.5.4.1.6: *Unsuitable for Wind Development*:

These areas are not considered suitable for commercial wind farm development due to visual, environmental or ecological sensitivities or the potential impact on recreational or cultural facilities or on sensitive receptors.

KCDP 12-20: Ensure that commercial wind energy projects will not be considered in areas outside of 'Open-to-Consideration' and 'Repower Areas'.

(*N.B.* The proposed development site is located in an area identified as being 'Unsuitable for Wind Development' by reference to Map 12.4: 'Wind Energy Areas' of the Development Plan as adopted by Kerry County Council on 4th July, 2022).

4.3.2. Ministerial Notice of Intention to issue a Direction to Kerry County Council on the Kerry County Development Plan, 2022-2028 pursuant to Section 31 of the Planning and Development Act, 2000, as amended (dated 12th August, 2022):

Consequent on a recommendation made to the Minister for Local Government and Planning by the Office of the Planning Regulator on 29th July, 2022 in connection with the Kerry County Development Plan, 2022-2028 as adopted by the elected members of that Council on 4th July, 2022, and pursuant to Section 31 of the Planning and Development Act, 2000, as amended, on 12th August, 2022 the Minister gave notice of his intention to issue a direction to Kerry County Council to take certain specified measures.

On consideration of the recommendations made to the Minister by the Office of the Planning regulator, the Minister formed the opinion that:

- (i) 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 31AM.
- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area.
- (iii) The Development Plan is not consistent with National Policy Objectives set out in the National Planning Framework, specifically 55 (NPO 55) and the Wind Energy Development Guidelines (2006) (the Wind Energy Guidelines).
- (iv) The Plan fails to have regard to Ministerial Guidelines issued under Section 28 of the Act. The statement under section 28(1A)(b) attached to the Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the Development Plan Guidelines for Planning Authorities, 2022 and the Wind Energy Development Guidelines (2006) and the Spatial Planning and National Roads Guidelines (2012), because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to section 28(1B)(b).

The Draft Direction (which may be cited as the *Planning and Development (Kerry County Development Plan 2022-2028) Direction 2022*) thus directs the Planning Authority to take the following steps:

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

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;

e) Delete material amendments MA 14.20 and 14.21.

(The Board is advised that Items (a)–(d) are pertinent to wind energy development while Item (e), which refers to national roads, is not relevant to the subject appeal).

N.B. For the purposes of clarity, the Draft Direction does not include Recommendation 2(a) as made by the Office of the Planning Regulator on 29th July, 2022 which sought to require the Planning Authority to take the following step:

- Indicate, based on relevant and meaningful metrics, how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts).

The reasons for the decision of the Minister not to include Recommendation 2(a) in the Draft Direction are set out in the Notice of Intention dated 12th August, 2022.

At this point, I would advise the Board that in accordance with Section 31(4) of the Planning and Development Act, 2000, as amended, those parts of the Kerry County Development Plan, 2022-2028 referred to in the notice shall be taken not to have come into effect, been made or amended.

The Draft Ministerial Direction was placed on public display for a period of two weeks from 24th August, 2022 to 7th September, 2022 during which time written submissions or observations could be made to the Planning Authority by interested parties. All submissions or observations made in respect of the Draft Direction during

the consultation period are to be taken into consideration by the Office of the Planning Regulator before it makes a recommendation to the Minister on the matter.

Following completion of the public consultation obligations under Section 31 of the Act and the receipt of the Chief Executive's report together with any submissions made, the Office of the Planning Regulator will make a further recommendation to the Minister regarding whether the Direction is to be issued with or without amendments, or not issued. Where the Minister agrees with the further recommendation, the final direction may issue. Should the Office of the Planning Regulator be of the opinion that a material amendment to the Draft Direction is required, or further reinvestigation 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 the Minister.

5.0 Responses to the Section 131 Notice issued on 2nd October, 2020

5.1. Applicant's Response

None received.

5.2. Planning Authority's Response

None received.

5.3. Submissions / Observations

5.3.1. B. & E. McDonnell:

- There are concerns that the Board's previous assessment of ABP Ref. No. PL08.248768 overlooked an extremely important aspect of the lifestyle of the red-listed Hen Harrier. While reference was made to the disturbance of birds returning to breed and the possible abandonment / avoidance of the site, no credence was given to the value of the area for birds returning to use the site to roost for at least four months of every winter season. The development site is an extremely important part of the bird's winter migration route and forms an integral part of the life cycle of the species. The impact of not being able to use the site for roosting purposes in the future is potentially catastrophic. If a

bird is unable to roost, the likelihood is that it will leave the area, however, with such limited habitat / sites remaining in the southwest of Ireland, the question arises as to where the species may relocate. With suitable sites getting smaller and more restricted, there are concerns that the number of hen harrier will continue to diminish.

- The impression has been given that the subject lands are only relevant to a couple of breeding birds. While the site is of local importance to birds that remain in the area all year round, any loss of individuals is of significance and serves to highlight the importance of the site for long-distance travelling birds on winter migration to this international winter roost site. Such sites are of considerable importance to the health and safety of overwintering birds with a good food source, shelter and security all contributing to the future breeding of the birds wherever they return to in the following spring.
- The Slieve Luchra area has been acknowledged and documented as one of the best local areas for winter migrating hen harriers.
- Hen harriers are known to arrive to the southwest of Ireland in November in order to overwinter at their communal sites. In this regard, Barna Bog has become a major roost site for this ground roosting species. The birds arrive around dusk and are loyal to their site after spending the day feeding in the development area and in close proximity of the bog (the species has been observed in large groups every night from November to late February).
- During the winter migration, birds from the northern hemisphere (recognisable by their ring tags) have been observed wintering on and around Barna. In support of the foregoing, the Board is advised that observations have recorded the return of these birds to the same site year after year. For example, two birds identified as coming from Scotland were recorded as arriving and overwintering for two consecutive years. Scottish birds have been present on site for two weeks thereby proving their loyalty to the area while other specimens have been recorded as returning to the site over the years.

Winter 2016 / 2017: Best highest count for night per period: 22 No. birds

Winter 2017 / 2018: Best highest count for night per period: 24 No. birds

Winter 2018 / 2019: Best highest count for night per period: 21 No. birds

Winter 2019 / 2020: Best highest count for night per period: 14 No. birds

In reference to the aforementioned figures, there has been an alarming decrease of a third in the 'Best highest count for night per period' in the 2019 / 2020 season. The hen harrier is an extremely sensitive species intolerant of any disturbance and, therefore, there are concerns that the construction and operation of the Scartaglen wind farm (which overlooks the surrounding area) has already impacted on the species.

- There are concerns that the losses already observed are a precursor to North Cork and Kerry losing their populations of hen harrier.
- The Board's earlier assessment failed to grasp the gravity of the situation and did not take into account the many other species which could be impacted by the proposed development, with particular reference to the high flying Liesler's bat which could come into contact with the turbine blades while feeding.

5.3.2. *Donal Vaughan:*

- The Natura Impact Statement states that the Lisheen Bridge, 3.7km downstream of the Reanasup River / River Blackwater confluence, is the upstream limit of Freshwater Pearl Mussel records in the Blackwater River Special Area of Conservation. However, the accompanying survey (*'The Freshwater Pearl Mussel (Margaritifera margaritifera) in the Upper Munster Blackwater River, 2020'*) compiled by Sweeney Consultants has found the upstream limit to be within 1km of the confluence.

In summary, the accompanying survey details that licensed surveying of the Upper Munster Blackwater was carried out in May, 2020 with a total of 31 No. mussels having been found in the Munster Blackwater main channel between Doctor's Hill Bridge and Duncannon Bridge. All live mussels found were between the northeast corner of Lisheen townland and Nohaval Bridge with the most significant finding being a bed of 20 No. mussels at a previously unrecorded location downstream of Lisheen Bridge. The report proceeds to state that although the information presented in the Freshwater Pearl Mussel Munster Blackwater Sub-Basin Management Plan, 2020 shows the overall

population to be quite low, it is suggested that as there is still good physical habitat, and if the water quality could be restored to High Status and silt levels controlled, then the current population, particularly the bed of 20 No. mussels, could regenerate. It is thus stated that contrary to the contents of the NIS, the upstream limit of Freshwater Pearl Mussel has been found to be within 1km of the Reanasup River / River Blackwater confluence. The survey then notes that the Conservation Objectives of the Blackwater SAC identify sedimentation as a major problem for the recruitment of juvenile freshwater pearl mussels and that previous research has identified a 5km aquatic zone downstream of a silt source as being at potentially highest impact from siltation. The report concludes by emphasising that the bed of 20 No. mussels found in the 2020 survey is within 5km of the Reanasup River / River Blackwater confluence.

- Sliabh Luachra is one of the most important wintering and nesting grounds for the Hen Harrier in Europe.
- Both the Freshwater Pearl Mussel and the Hen Harrier are of considerable national importance and form an integral part of Sliabh Luachra.

5.3.3. *Fred O'Sullivan:*

- The Board is requested to give due consideration to the affidavits of Dr. Allan Mee and Darren Reidy (JR63 PL08.248768) with respect to the Hen Harrier and the Freshwater Pearl Mussel respectively, in its assessment of the appeal.

(The remainder of this submission refers to the survey compiled by Sweeney Consultants i.e. '*The Freshwater Pearl Mussel (Margaritifera margaritifera) in the Upper Munster Blackwater River, 2020*', the contents of which have been summarised earlier in this report).

5.3.4. *Towercom Ltd.:*

- The proposed development has the potential to cause significant interference to operators located on the observer's 30m high lattice tower situated at Knocknaboul, Co. Kerry, approximately 2km from the proposed wind farm, for both existing and any future co-located equipment.

- Contrary to the applicant's assertions, no consultations have been held with the observer as an infrastructure provider nor has the applicant provided any material or information to Towercom Ltd. relating to the proposed development.
- The observer's concerns have previously been outlined in submissions on file. Given that the existing telecommunications site at Knockaboul provides critical telecommunications services in the region, it has been necessary to lodge submissions expressing concern as regards potential interference to existing and future operators located on the existing telecommunications support structure.
- The '*Wind Energy Development, Guidelines for Planning Authorities, 2006*' and the '*Draft Revised Wind Energy Development Guidelines, 2019*' both recognise the potential for interference with communications systems. Section 4.9.3 of the Draft Guidelines states:

'Wind turbines, like all electrical equipment, produce electro-magnetic radiation, and this can interfere with broadcast communications. The interference with broadcast communication can often be overcome by the installation of deflectors or repeaters, however, the layout and design of the wind energy development should take into account nearby telecommunications links'.

It is important to highlight the significant potential for the physical interference with the line of sight for existing and future telecommunications at the Knockaboul structure. The proposed wind farm could potentially limit the opportunities for line of sight thereby reducing the observer's ability to facilitate the co-location of multiple operators at its facility in accordance with the '*Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, 1996*' and the Planning Authority's own telecommunications policies.

- The observer's telecommunications structure sends and receives low frequency microwave traffic providing coverage for the local community. It is imperative that this traffic has a clear line of sight which is not impeded by treelines, hilltops, or third-party structures such as wind turbines.

The site at Knocknaboul was specifically selected for its location while the provision of the 30m high tower serves to clear surrounding 'clutter' and provides for an uninterrupted line of sight. The construction of 14 No. wind turbines, if permitted, in such close proximity to the Knocknaboul site has the potential to physically block established lines of sight, while the rotation of the turbine blades may also intermittently cause the transmission of low frequency traffic to drop in and out. Such interference has the potential to impact on national telecommunications operators, broadband service providers, and emergency services networks.

- When the Knocknaboul site was selected it was not anticipated that 14 No. turbines in excess of 150m in height would be situated in such close proximity to the telecommunications tower. Given the height of the turbines and blades, the risk of interference to established lines of sight is extremely high. Furthermore, any interference arising could result in the need for more support structures in the surrounding area to accommodate the transmission routes currently provided by the existing support structure.
- It is considered that the practice for a protocol to be agreed which can require a developer to accept financial responsibility for remedial measures as a result of potential negative impacts on the wind farm, such as interference with radio, television or other telecommunications reception (similar to that proposed in Condition No. 10 of the quashed decision issued in respect of ABP Ref. No PL08.248768), although welcome, would not address the issue of limiting the existing support structure's potential for future transmission links.

5.3.5. *M. & F. Fleming:*

- The Natura Impact Statement states that the Lisheen Bridge, 3.7km downstream of the Reanasup River / River Blackwater confluence, is the upstream limit of Freshwater Pearl Mussel records in the Blackwater River Special Area of Conservation. However, the accompanying survey (*'The Freshwater Pearl Mussel (Margaritifera margaritifera) in the Upper Munster Blackwater River, 2020'*) compiled by Sweeney Consultants has found the upstream limit to be within 1km of the confluence.

- Sliabh Luachra is one of the most important wintering and nesting sites for Hen Harriers in Europe.
- Consideration should be given to Barna Bog's role as a natural carbon sink.
- Both the Freshwater Pearl Mussel and the Hen Harrier are of considerable national importance and form an integral part of Sliabh Luachra.

(The remainder of this submission refers to the survey compiled by Sweeney Consultants i.e. '*The Freshwater Pearl Mussel (Margaritifera margaritifera) in the Upper Munster Blackwater River, 2020*', the contents of which have been summarised elsewhere in this report).

5.4. Further Responses

None.

6.0 Assessment

6.1. From my reading of the file, inspection of the site, assessment of the relevant local, regional and national policies, and in response to the Board's Direction issued on 13th October, 2021 consequent on the judgment of the High Court under *Sliabh Luachra Against Ballydesmond Wind Farm Commmittee v. An Bord Pleanala [2019] IEHC 888, 2019 No. 63 J.R.* to quash the Board's decision on ABP Ref. No. PL08.248768, I conclude that the key issues arising are as follows:

- The principle of the proposed development
- Environmental impact assessment: The hen harrier & the freshwater pearl mussel
- Appropriate Assessment: The hen harrier & the freshwater pearl mussel
- Other issues

These are assessed as follows:

6.2. The Principle of the Proposed Development:

6.2.1. In assessing the principle of the proposed development, I would reiterate my position as set out in Section 2.0: '*Preliminary Considerations*' that although the planning

assessment which informed the now quashed decision for ABP Ref. No. PL08.248768 was undertaken in the context of the Kerry County Development Plan, 2015, that plan has since been replaced by the Kerry County Development Plan, 2022-2028 which was adopted by Kerry County Council on 4th July, 2022. By extension, as the Board's decision under ABP Ref. No. PL08.248768 was quashed in its entirety by order of the High Court, it is my understanding that the remitted matter (i.e. ABP Ref. No. ABP-307661-20) must be assessed from first principles with any such assessment being carried out in the context of the current Kerry County Development Plan, 2022-2028.

6.2.2. The broader provisions of the Kerry County Development Plan, 2022 recognise that the transition to a low carbon economy is an integral part of Ireland's climate change strategy and that renewable energies form a core component of reducing the nation's reliance on fossil fuels. The Plan is generally in favour of the development of renewable energy and states that the County has, in terms of alternative energy, huge potential for the development of wind, solar, biomass, geothermal, hydro and wave energy, with the wave and wind resources among the richest in Europe. In this regard, Objective KCDP 12-1 of the Plan aims to support and facilitate the sustainable provision of a reliable energy supply in the County, with an emphasis on increasing energy supplies derived from renewable resources whilst seeking to protect and maintain biodiversity, archaeological and built heritage, the landscape, residential amenity, and the integration of spatial planning and energy planning in the county. Objective KCDP 12-14 similarly seeks to maximise the development of all renewable energies at appropriate locations in a manner consistent with the proper planning and sustainable development of the county.

6.2.3. In specific reference to the development of wind energy, I would refer the Board to Section 12.5.4.1: '*Wind Energy*' of the Development Plan and, in particular, to Map 12.4: '*Wind Energy Areas*' which has identified certain areas of the county where wind energy developments are '*Open for Consideration*' as well as '*Repower Areas*' (repowering is described as including wind farm upgrades, renewal, repowering or extension to permitted operational duration) with the methodology for the designation of these areas outlined in the '*Wind Zoning Methodology*' included at Appendix 6 of Volume 1 of the Plan. Locations outside of the '*Areas Open to Consideration*' and the '*Repower Areas*' are expressly stated as not being deemed suitable for

commercial wind farm development because of their overall sensitivity arising from landscape, ecological, recreational and / or cultural and built heritage considerations. This prohibition is given effect by Objective KCDP 12-20 which aims to ensure that *'commercial wind energy projects will not be considered in areas outside of 'Open-to-Consideration' and 'Repower Areas'*.

6.2.4. From a review of Map 12.4: *'Wind Energy Areas'* (and the equivalent mapping included as Map 5: *'Wind Zoning'* in Vol. 4 of the Development Plan), it can be ascertained that the proposed development site is located outside of those areas identified as *'Open to Consideration'* and *'Potential Repowering'* and thus falls within an area deemed to be unsuitable for wind energy development by reference to Objective KCDP 12-20 (for the purposes of clarity, the site was previously located in an area *'Open to Consideration'* under the provisions of the Kerry County Development Plan, 2015). In this respect, the appeal site has been deemed unsuitable in principle for the commercial development of wind energy and, therefore, the subject proposal would materially contravene the current Development Plan.

6.2.5. At this point, it is prudent to revert to the *'Wind Zoning Methodology'* included at Appendix 6 of Volume 1 of the Plan with a view to determining the rationale behind the decision to designate the subject lands as *'unsuitable'* for wind energy development. It is stated that the methodology followed has been informed by the step-by-step approach outlined in Section 3.6 of the Draft Revised Wind Energy Development Guidelines, 2019 as well as the Methodology for Local Authority Renewable Energy Strategies (SEAI, 2013). This ordered approach involves a sieve mapping analysis of the key environmental, landscape and technical criteria which must be balanced in order to identify the most suitable locations for wind energy development. In analysing the available information, it can be determined that the subject lands were excluded from the *'open to consideration'* and *'repowering'* areas due to a number of *'Practical Resource Constraints'* which had the effect of rendering the site as *de facto* unsuitable for wind energy development. These can be summarised as follows:

6.2.6. *Hen Harrier Areas:*

The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161) is partly located within Co. Kerry and has been designated as such under the E.U. Birds Directive due to the area being of special conservation interest for the Hen Harrier. In this regard, it is stated that due to the Hen Harrier population decline within the SPA (and nationally) since designation, and to the substantial number of existing and permitted wind turbines in the SPA, the decision has been made to exclude the SPA from consideration for additional wind farm development, save for repowering proposals. Furthermore, given a scientific understanding which indicates a disturbance displacement effect for hen harriers of 250m from operating wind turbines, a buffer zone of 250m has been introduced as extending from the boundary of the Stack's to Mullaghareirk Mountains, West Limerick and Mount Eagle SPA wherein proposals for new wind energy development have been similarly excluded given the potential for Hen Harrier displacement and other impacts (please refer to Map 6.15 of the '*Wind Zoning Methodology*').

6.2.7. Regrettably, the scale of the mapping shown on Map 6.15 does not allow for a detailed identification of the appeal site relative to either the SPA or the newly introduced buffer zone, however, it would appear from mapping of the Special Protection Area available from the National Parks and Wildlife Service that Turbine Nos. T9, T10 & T12 and associated access tracks & infrastructure will be within 250m of the SPA and thus will fall within the exclusion zone. In this respect, I would clarify that while the applicant has submitted that the aforementioned turbines are in excess of 250m from the SPA (as stated in Section 4.2.3 of the NIS), I would consider that the rationale for the imposition of the buffer in the first instance (i.e. the potential for Hen Harrier disturbance / displacement) would require excluding the entirety of an individual turbine. In effect, although the turbine support structure may lie beyond the 250m buffer, the rotating blades at up to 60m in length would seem to extend in part into the exclusion buffer zone.

6.2.8. *Sensitive Catchments & Water Framework Directive: Freshwater Pearl Mussel Catchments:*

There are 6 No. catchments designated in Co. Kerry under the European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations, 2009 in response to the presence of significant pearl mussel populations. The conservation status of these populations is poor and it is important that measures are taken to rectify the situation. The pressures which the pearl mussel populations are currently experiencing have been linked primarily to sedimentation and, therefore, given the risk of sediment generation associated with wind farm development, it has been determined that ecologically these catchments are not suitable for wind energy development.

6.2.9. From a review of Map 6.18: '*Freshwater Pearl Mussel Catchments*' of the 'Wind Zoning Methodology' in tandem with Map No. 8: '*Blackwater River SAC Conservation Objectives Freshwater Pearl Mussel*' (as appended to the Conservation Objectives for the Blackwater River Special Area of Conservation prepared by the National Parks and Wildlife Service), it can be confirmed that the entirety of the proposed development site lies within the Munster Blackwater catchment and thus has been designated as unsuitable for wind energy development.

6.2.10. *Soils & Geology: Peat Soils:*

It is stated that habitat loss and fragmentation can have consequences for peatland biodiversity conservation with changes coming about when one habitat type is removed and replaced by another or when land use activities cause degradation of the quality of the habitat and species composition. In addition, reference is made to the significant role of peatlands as carbon sinks with the Climate Action Plan, 2021 identifying peat as being the largest store of carbon in the Irish landscape. It is further noted that the construction of wind turbines on peatlands can result in the desiccation of the peat soil thereby upsetting the carbon accumulation process, leading to an increase in the amount of carbon dioxide released to the atmosphere.

6.2.11. Having regard to the increased risk associated with peat desiccation and the resultant loss of carbon sinks, the Planning Authority has determined that these types of soils are not suitable for wind energy development and that it would be

appropriate to rule out such areas at planning policy stage in order to strategically guide development to more appropriate lands.

6.2.12. Although the scale of the mapping shown on Map 6.22: '*Peat Soils*' of the Wind Zoning Methodology does not allow for a detailed identification of the appeal site relative to the peatland areas, I would advise the Board that the designation of these areas derives from the National Soils Database available from the Environmental Protection Agency. In this regard, having reviewed the mapping in tandem with the identification of peat soils contained in the National Soils Database, it can be confirmed that most of the proposed development site overlies peat soil which serves to render it as unsuitable for wind energy development.

6.2.13. *Soils & Geology: Geological Heritage Sites:*

The Geological Survey of Ireland has identified various County Geological Sites in order to ensure their conservation and while Co. Kerry's geological heritage sites have not yet been audited, buffer zones have been applied to potential sites of interest by the GSI. Although these '*County Geological Sites*' have no statutory protection, they have been included in the Development Plan wherein it is an objective to seek the preservation of important features of geological interest and to maintain the conservation value of those features of geological interest and protect them from inappropriate development. On the basis that wind farm development may affect these sites, they have been included as a constraint to wind energy development.

6.2.14. From a review of Map No. 6.24: '*Geological Heritage Sites*' of the Wind Zoning Methodology in conjunction with the geological heritage mapping available from the GSI, it can be confirmed that the northernmost extent of the proposed development (including Turbine No. T12) lies within the identified buffer of a county geological site. This would appear to relate to a site known as 'Ballydesmond' in Co. Cork which extends over the townlands of Kingwilliamstown / Ballydesmond into Co. Kerry and is described as a quarry that exhibits the best example in the country of tundra frost polygons formed during the last glaciation. Accordingly, part of the proposed development site has been designated as unsuitable for wind energy development due to the need to preserve a county geological site.

- 6.2.15. On the basis of the foregoing, it is clear that the proposed development site has been deemed to be unsuitable for wind energy development for a number of reasons. The Wind Zoning Methodology details how a series of '*Practical Resource Constraints*' (Settlements, Lakes & Elevated Areas) and '*Accessible Resource Constraints*' (Kerry Airport, Areas of Prime Special Amenity, Archaeology, UNESCO World Heritage Sites, Hen Harrier Areas, Other Ecologically Important Areas, Catchments & Water Framework Directive, and Soils & Geology) were used as part of a sieve mapping analysis of the key environmental, landscape and technical criteria in order to identify the most suitable locations for wind energy development. It was subsequently determined that the development of wind energy in the areas shown on Map Nos. 6.11 - 6.24 would not be acceptable with the results shown in a sieve overlay on Map No. 6.25. The effect of this approach is that all or part of the appeal site has been deemed to be unsuitable in principle for commercial wind farm development.
- 6.2.16. Following additional analysis of the '*Areas for Further Assessment*' shown on Map No. 6.25, including consideration of the cumulative visual impact of existing wind farms and the visual sensitivity of areas to wind energy development, as well as further material amendments to the then Draft County Development Plan, the Planning Authority subsequently adopted the Kerry County Development Plan, 2022-2028 on 4th July, 2022 with its associated wind energy policy provisions, including Map 12.4: '*Wind Energy Areas*'.
- 6.2.17. However, on 12th August, 2022 Kerry County Council received notification from the Minister for Housing, Local Government and Heritage of his intention to issue a Direction pursuant to Section 31 of the Planning and Development Act, 2000 (as amended), consequent to a recommendation made to him by the Office of the Planning Regulator under Section 31 AM(8) of the Act. The accompanying Draft Direction seeks to direct the Planning Authority to take a series of actions which will have the effect of amending certain policy provisions in the Development Plan with respect to the development of wind energy including the associated mapping shown on Map 12.4 of Volume 1 and Map 5 of Volume 4. In accordance with Section 31(4) of the Act, those parts of the Kerry County Development Plan, 2022-2028 referred to in the notice are to be taken as not having come into effect, been made or amended.

- 6.2.18. Having reviewed the Ministerial Notice of Intention and the accompanying Draft Ministerial Direction (noting that the Draft Direction was placed on public display for a period of two weeks from 24th August, 2022 to 7th September, 2022 and that following completion of the public consultation obligations under Section 31 of the Act and the receipt of the Chief Executive's report together with any submissions received, the Office of the Planning Regulator will make a further recommendation to the Minister, and where the Minister agrees with the further recommendation, the final direction may issue, subject to certain procedural considerations), it is my opinion that the Draft Direction does not give rise to any implications as regards the proposed development. In this respect, I would advise the Board that the designation of the subject site as an area 'unsuitable' for commercial wind energy development will be unaffected by the amendments mooted in the Draft Direction (although the Board may wish to defer further consideration of the appeal pending a final decision by the Minister on whether to issue a Direction, with or without amendment).
- 6.2.19. Therefore, as the proposed development site is located in an area which has been designated as unsuitable for wind energy development, the submitted proposal would contravene Objective KCDP 12-20 of the Development Plan which aims to ensure that '*commercial wind energy projects will not be considered in areas outside of 'Open-to-Consideration' and 'Repower Areas'*' (N.B. Any replacement of the reference to '*Open-to-Consideration*' with '*Permitted in Principle*' throughout Volumes 1 & 4 of the Development Plan, including Objective KCDP 12-20, in accordance with Item (d) of the Draft Ministerial Direction will not change the designation of the subject lands as 'unsuitable').
- 6.2.20. For the purposes of completeness, it is prudent at this stage of my assessment to consider whether any of the factors set out in the Wind Zoning Methodology which contributed to the designation of the subject site as being unsuitable for wind energy development should be reviewed in the context of the conclusions reached within the judgment of the High Court under *Sliabh Luachra Against Ballydesmond Wind Farm Committee v. An Bord Pleanála [2019] IEHC 888, 2019 No. 63 J.R.* More specifically, the question arises as to whether the site location within a Freshwater Pearl Mussel Catchment and its situation overlying peat soils should be held as constraints to the proposed development given that the judgement of the High Court was satisfied that both factors had been given due consideration in the Board's

determination of ABP Ref. No. PL08.248768 (with the quashed approval having been subject to a number of conditions that required the implementation of certain mitigation measures as regards environmental considerations, including water quality).

6.2.21. With respect to the potential impact of the proposed development on the freshwater pearl mussel and the site location within the identified Munster Blackwater Freshwater Pearl Mussel Catchment, Para. 108 of the High Court Judgement concluded that the complaints by the Sliabh Luachra Against Ballydesmond Wind Farm Committee in relation to Appropriate Assessment insofar as the freshwater pearl mussel was concerned had not been made out. In addition, with respect to Environmental Impact Assessment, Para. 116 of the judgement states that *“having regard to my finding that precise and definite conclusions have been reached as to the absence of adverse impacts on the freshwater pearl mussel, it must follow, in my view, that, for the purposes of EIA, this amounts, in substance, to a finding that there will be no direct or indirect effects on the mussel”*. Therefore, it could be suggested that the site location within a Freshwater Pearl Mussel Catchment would not, in itself, pose a barrier to consideration being given to proposals for the development of wind energy in such locations.

6.2.22. In relation to the site location in an area characterised by ‘Peat Soils’, this should be distinguished from the identification of ‘Landslide Susceptibility’ as a constraint in the Wind Zoning Methodology (which does not apply to the subject lands). Although the issue of peat spillage / landslide and the need to protect surrounding watercourses from contamination & sedimentation etc. were deemed by the High Court to have been satisfactorily addressed in the assessment of ABP Ref. No. PL08.248768, it should be noted that the ‘Peat Soils’ constraint derives from the potential impact on peatland biodiversity arising from the increased risk associated with peat desiccation and the resultant loss of carbon sinks. In this regard, the likely impact of the proposed works will invariably include the direct loss / disturbance of certain habitats and species from within the footprint of the construction and it is of particular relevance to note that all of the proposed turbines, with the exception of Turbine Nos. T1, T10, T11 & T12, will be located in or adjacent to peat habitats where the impacts on cutover bog and / or wet heath, and upland blanket bog / cutover bog in the case of Turbine Nos. T6 & T7, have been evaluated as being ‘Moderate,

‘Negative’ & ‘Long-Term’. It should also be acknowledged that the proposed construction works could potentially impact on adjacent peatland habitats in the vicinity of same due to the presence of drains within those areas of cutover / blanket bog proposed for excavation. Therefore, notwithstanding my previous assessment under ABP Ref. No. PL08.248768 that the construction of the proposed development would inevitably impact to some degree on existing habitats and flora and that the loss of these areas would not be of significance in a wider context, the identification of ‘Peat Soils’ as a constraint in the Wind Zoning Methodology serves to afford a greater degree of protection to these areas thereby rendering the subject site as unsuitable for wind energy development.

6.2.23. While neither the presence of freshwater pearl mussel nor peat soils were previously considered as warranting the refusal of the proposed development under ABP Ref. No. PL08.248768, subject to the implementation of suitable mitigation measures, both of these issues have since been identified as constraints which serve to inform the unsuitability of the application site for wind energy development. The ‘Wind Zoning Methodology’ included at Appendix 6 of Volume 1 of the recently adopted Kerry County Development Plan, 2022-2028 represents the most up-to-date analysis of the wider county in terms of its suitability for wind energy development and serves to inform the policy position of the Planning Authority. It is only reasonable that this policy document should inform the assessment of the remitted appeal. In this regard, it is of further relevance to note that the designation of the development site will be unaffected by the Ministerial Notice of Intention and the accompanying Draft Direction while neither the Office of the Planning Regulator nor the Minister have raised any concerns as regards the ‘unsuitability’ of the subject lands for commercial wind energy development.

6.2.24. Therefore, in view of the foregoing, it is my opinion that as the appeal site has been designated as being unsuitable in principle for the development of commercial wind energy, the subject proposal would materially contravene the current Development Plan and should be refused permission accordingly.

6.3. Environmental Impact Assessment: The Hen Harrier & The Freshwater Pearl Mussel:

6.3.1. *The Hen Harrier:*

From a review of the judgment of the High Court issued in respect of *Sliabh Luachra Against Ballydesmond Wind Farm Committee v. An Bord Pleanála*, it can be confirmed that the decision for ABP Ref. No. PL08.248768 was quashed on the grounds that there was insufficient evidence to conclude that an Environmental Impact Assessment had been completed in respect of the effects of the development on the hen harrier. More specifically, it was determined that while it may be possible to form the view that the development (other than Turbine Nos. T8 and T9) would not have an effect on the hen harrier, the assessment was silent in relation to the effects on the hen harrier in respect of those elements of the development other than Turbine Nos. T8 and T9. Accordingly, it was considered that the inspector's report did not rule out the possibility that such effects might occur and thus it was concluded that there was insufficient evidence that an EIA had been completed in respect of the effects of the development (other than Turbines T8 and T9) on the hen harrier (the Board is advised that there is a crossover in the judgement between what was said about the hen harrier in the context of EIA and in the context of Appropriate Assessment).

6.3.2. Therefore, in order to remedy the deficiencies identified in the original EIA, it is necessary to further consider the potential impacts on the hen harrier in the context of the development as a whole (as distinct from any interpretation confining said assessment to the consideration of Turbine Nos. T8 and T9 only).

6.3.3. At this point I would reiterate the contents of my previous assessment wherein it was identified that the likely potential impacts on bird populations, including hen harrier, within the site area would typically include:

- The disturbance of bird communities within the site and the surrounding area which may lead to the desertion of nest sites during the breeding season or avoidance of the site by new and returning birds for breeding purposes.
- The direct loss of habitat from the construction of the turbine bases and hardstanding areas etc.

- The indirect habitat loss through site development works near the turbine locations and on access tracks to the site which may reduce the extent of suitable habitat locations for wintering and breeding birds.
- The risk of collisions with turbine blades.

6.3.4. In this regard, I would refer again the Board to Section 5.6.5.1 of the EIS which focuses on the following potential impacts on hen harrier consequent on the proposed development:

- *Disturbance of nesting birds:*

6.3.5. There is an acknowledgement that breeding hen harriers could be disturbed if turbines were to be constructed in close proximity to nesting territory due to the nature of the construction activities and increased human activity in the area, although it should be noted that the research referenced in relation to the breeding success of hen harrier having regard to the distance of nest sites from wind turbines has seemingly produced somewhat mixed results. However, the EIS has accepted that it is possible breeding hen harriers within 500m of a turbine could be disturbed by construction works whilst any such impacts would be increasingly likely within 300m of the nearest turbines.

6.3.6. It has been submitted that no evidence of breeding hen harriers was recorded either on site or within a 5km hinterland during surveying conducted between 2013 & 2015. While the timing and methodology of this survey work has been questioned by the Irish Raptor Study Group, which has suggested that it is highly likely that breeding hen harriers were not detected due to alleged deficiencies, in the absence of any evidence to the contrary, I am amenable to accepting the data as presented in the EIS and I do not propose to speculate on the historical breeding patterns, if any, of hen harriers in the area during that surveying period.

6.3.7. However, both the 2016 and 2017 bird surveys submitted have confirmed the presence of one territorial pair of hen harriers within the Barna Bog area, approximately 700m northwest of the nearest proposed turbine, which successfully raised two juveniles (while the Irish Raptor Study Group has disputed these figures by asserting that 2 No. breeding pairs were recorded in the Barna area in 2017, the judgement of the High Court was that this was not material in the context of the identification of the impacts of the development given that the potential for adverse

impacts was the same whether dealing with one or more pairs of hen harrier). This particular area is also known to have previously supported nesting pairs of hen harrier whilst it is of further relevance to note that no pairs of hen harrier were found within The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area within 2km of the proposed turbines during the course of the 2016 & 2017 surveys. In this respect I would advise the Board that although the reasons for the nesting of hen harrier further south beyond the boundary of Special Protection Area are perhaps unclear, it could be reasonably speculated that the lands at Barna offer a comparatively more suitable habitat for nesting / breeding activities. In this regard, it is unclear as to whether the recently recorded nesting habits of hen harrier in the Barna area are in any way related to the recent development of the Cordal Wind Farm located further north within the confines of the SPA.

- 6.3.8. Notably, the submission received from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs has asserted that Barna Bog provides habitat for Annex I listed bird species (hen harrier and short-eared owl) for which there is an obligation under Article 4 of the EU Birds Directive to strive to protect their habitats outside of protected areas. It further states that hen harriers will be displaced from using hunting habitat within 250m of operational wind turbines. The Department further recommends the omission of Turbine Nos. T8 & T9 for a number of reasons, including the fact that these turbines will be located within 1km of the SPA in an area used regularly by hunting hen harriers which may breed in the nearby SPA and that the loss of hunting habitat due to disturbance / displacement and mortality attributable to collision are significant risks which cannot be ruled out. The Department further disagrees with the conclusion of no adverse effects on the SPA (as stated in the NIS) and is of the opinion that reasonable scientific doubt remains in relation to Turbine Nos. T8 and T9.

- *Disturbance to prey availability:*

- 6.3.9. It has been stated that the availability of prey for hunting hen harriers could potentially be reduced as a result of habitat loss following construction or through disturbance during the construction phase. In this regard, it has been noted that 3 No. bird species (Meadow Pipit, Skylark & Starling), which have previously been

recorded as making up a substantial proportion of the hen harrier's diet as part of a study in Northern Ireland, have been recorded breeding on site.

- 6.3.10. In assessing the impact of the proposed development on the availability of prey, I would suggest at the outset that cognisance should be taken of the fact that the hen harrier is a bird of prey that favours small birds and mammals in general as opposed to exclusively hunting the aforementioned species. Indeed, the EIS acknowledges that the presence of other prey species at the subject location may influence dietary habits and, by way of example, it references the presence of voles in the area which are absent from the Northern Ireland study (with the result that voles could potentially form a proportionately larger component of a hen harrier's diet at the subject location thereby lessening the pressure on avian prey species). It has also been submitted that there is evidence from other projects that prey species such as meadow pipit and skylark (both of which are known to be present on the subject site) have been seen to breed within operational wind farms thereby suggesting that such species (and possibly others) become habituated to wind turbines etc.
- 6.3.11. In support of the finding in the EIS that there is unlikely to be any significant disturbance of prey species during construction works, subject to the implementation of appropriate mitigation measures, I would refer the Board to the mitigation measures set out in Section 5.8 of the EIS, Section 6.2 of the Natura Impact Statement, and Section 8 of the Bird Assessment.
- 6.3.12. It is of particular relevance to note that the construction of the turbines and access roads will be carried out outside of the main bird breeding season as much as possible while the removal of trees and hedgerows will be undertaken outside of the nesting and breeding season for birds and wildlife (from 1st March to 31st August) in line with the requirements of Section 40 of the Wildlife Act, 1976, as amended (unless the site qualifies for an exemption under the Acts, and such is agreed with the National Parks and Wildlife Service). The potential for the disturbance of fauna (including prey species) will be also reduced by limiting the hours of construction.
- 6.3.13. With respect to non-volant mammals (which will likely also include some prey species), it is proposed to maintain a minimum separation distance of 25m between construction works and any active mammal dwellings identified within the impact area of the proposed development. It is also anticipated that the retention of areas /

habitats of high conservation interest and features such as scrub will reduce the impact on common mammal species within the site (ecologically sensitive / 'no-go' areas are to be fenced off to ensure no encroachment into known mammal habitats).

6.3.14. Additional measures that will reduce the disturbance of prey species (including any loss of habitat) include limiting land clearance and soil stripping to within the footprint of the works area, minimising habitat loss arising from the construction of access roads & areas of hardstanding (such as through the upgrading of existing access roads), avoiding the placement / storage of excavated spoil / material on wet heath habitat and blanket bog, and ensuring that all plant / equipment is maintained within the works area with no off-road vehicular activity. The planned implementation of a programme of replanting will also serve to remediate any habitat loss for prey species.

6.3.15. More generally, any direct habitat loss affecting prey species consequent on the construction of the proposed development will be limited in scope, particularly in light of the wider extent of undisturbed lands in the vicinity, while any disturbance impacts attributable to the construction activities (e.g. noise) will be of a short-term and temporary nature.

6.3.16. In relation to any concerns as regards the disturbance of prey species during operation of the turbines, I would reiterate that there is evidence from other projects that species such as meadow pipit and skylark have been seen to breed within operational wind farms thereby implying that they (and possibly other species) become habituated to wind turbines.

- *Mortality due to collision with turbines:*

6.3.17. During the operational phase of the development, the proposed turbines could potentially pose a risk of collision, however, it has been submitted that hen harriers are well-known to fly at lower elevations (below 10m in height) when hunting and that flights at higher elevations will usually occur when the birds are returning to the nest, performing display flights, or simply when flying from one location to another. It has also been acknowledged that juvenile hen harriers are initially quite clumsy and unskilled in the air and thus would be at greater risk of collision. In response to these concerns, the applicant has stated that whilst no detailed breakdown of flight heights is available for the 2013-2015 studies, the majority of those sightings of hen harrier

involved hunting birds below 10m in height i.e. below the proposed minimum rotor heights. Similarly, the majority of hen harrier flying activity recorded within both the application site and the study area in 2016 was below 30m in height. Accordingly, it has been asserted that the risk of adult hen harriers colliding with the proposed turbines is considered to be low, although the collision risk for juvenile birds from a nest within 500m of a turbine could be much higher. By way of mitigation, the applicant has sought to emphasise that 3 No. turbines which were originally proposed within the Barna Bog area were omitted from the submitted scheme in order to avoid the disturbance of the traditional hen harrier roost in that area whilst the use of 'white lights' on the turbines will be avoided as these can attract night flying birds such as migrants (*N.B.* Any lighting of the turbines will be required to be agreed with the Irish Aviation Authority). In addition, it should be noted that the associated cabling on site will be undergrounded thereby avoiding any risk of collision.

- 6.3.18. Notably, with respect to collision risk, the submission received from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs has specifically stated that there is evidence in recent years of hen harrier mortality within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area due to collisions with turbine blades and thus the previous risk of collision may have been underestimated.
- 6.3.19. It is in the context of the evidence of a recently active breeding site (as supported by the 2016 & 2017 bird surveys undertaken by the applicant) in Barna Bog approximately 700m northwest of the nearest proposed turbine, the notable concentrations of hen harrier activity recorded within the Barna / Barna Bog area in the vicinity of Turbine Nos. T8 & T9, and the concerns raised by the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, that reasonable scientific doubt arises as to the collision risk posed by Turbine Nos. T8 & T9. In this regard, it is accepted that the Barna area would appear to be of considerable importance to hen harrier locally due to its suitability for both breeding and foraging activities and, therefore, the levels of activity recorded would warrant the omission of Turbine Nos. T8 & T9 with a view to avoiding any adverse impact on the species.
- 6.3.20. With respect to the collision risk posed by the remainder of the proposed development, although recent hen harrier activity both within the development site

and its immediate surrounds has generally been concentrated within the Barna area proximate to Turbine Nos. T8 & T9 (the omission of which has been recommended), notable levels of activity have also been recorded in the Reaboy area in the vicinity of Turbine Nos. T5, T6 & T7 with only occasional and intermittent observances elsewhere in the study area in the vicinity of the Ballinahulla and Lisheen turbines.

6.3.21. In assessing the collision risk posed to hen harrier within the Reaboy area, it should be noted that while this area recorded the greatest frequency of the species second only to Barna / Barna Bog, the overall number of occurrences is low when taken in context. It is of further relevance to note that the bulk of the activity in Reaboy has been observed to occur outside the confines of the application site and, more specifically, beyond the 250m displacement radius advised by the Department. The application of such a displacement factor has formed a key consideration in the development of the current wind energy policy contained in the recently adopted Kerry County Development Plan, 2022-2028 and the associated identification of those areas potentially suitable for wind energy development pursuant to the 'Wind Zoning Methodology' included at Appendix 6 of Volume 1 of that Plan. Moreover, it has been derived from a scientific understanding which indicates a disturbance / displacement effect for hen harriers of 250m from operating wind turbines, which would correspond with the advice of the Department. In this regard, cognisance should be taken of the fact that neither the Office of the Planning Regulator in its recommendation to the Minister for Local Government and Planning nor the Draft Direction subsequently issued by the Minister to Kerry County Council has raised any concerns as regards the application of a 250m displacement buffer as part the Development Plan's Wind Zoning Methodology. This would lend credence to the scientific understanding that there would be a reasonable expectation that the displacement of hen harrier at distances greater than 250m from operational turbines will not occur (thereby tallying with the submission received from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs). Therefore, by extension, if the vast majority of recorded hen harrier flights (as per the 2016 bird survey) are in excess of 250m from any of the proposed turbine locations in the Reaboy area, it is my opinion that any risk of collision to the species would be minimal and would not adversely affect the integrity of the Stack's to Mullaghareirk Mountains, West

Limerick and Mount Eagle SPA in view of the site's Conservation Objectives given there is no reasonable scientific doubt as to the absence of such effects.

6.3.22. In reference to the collision risk posed by the remaining turbines, the even less frequent and intermittent observances of hen harrier activity in the Ballinahulla and Lisheen areas would, in my opinion, proportionately reduce the likelihood of bird fatalities due to collisions to a negligible minimum. Notwithstanding the foregoing, I would draw the Board's attention to my earlier analysis that the rotating blades of Turbine Nos. T9, T10 & T12 in Ballinahulla would seem to extend in part into the 250m exclusionary buffer zone (introduced due to the potential for hen harrier disturbance / displacement) from the SPA which has informed the wind strategy in the current Development Plan. In the event, the Board does not accept that Turbine Nos. T10 & T12 would not adversely affect the integrity of the European site in view of the site's Conservation Objectives, it may wish to consider the omission of those turbines (as well as Turbine Nos. T8 & T9 as already recommended) by way of condition in the event of a grant of permission.

6.3.23. In reference to the possibility that recently fledged juveniles could collide with wind turbines due to young birds being quite clumsy and unskilled in the first two to three weeks following fledging, I would reiterate that no evidence of breeding hen harriers was recorded either on site or within a 5km hinterland during surveys conducted between 2013 & 2015. Furthermore, the omission of Turbine Nos. T8 & T9 should serve to provide sufficient separation so as to mitigate the risk of collision with respect to the territorial pair of hen harriers observed within the Barna Bog area in the 2016 and 2017 bird surveys, approximately 700m northwest of the nearest proposed turbine, which successfully raised two juveniles (noting the reference to an additional pairing by the Irish Raptor Study Group).

- *Site avoidance by foraging harriers (habitat loss):*

6.3.24. On the basis of the bird surveys conducted on site (including the survey undertaken in 2017 as appended to the grounds of appeal), it has been established that the proposed development site is used as a foraging area by hen harriers during the breeding season. However, whilst the extent of site avoidance / displacement of hen harriers from hunting / foraging areas consequent on the development of wind turbines has previously been studied on a number of occasions, the results of these

studies is somewhat mixed given that hen harriers have been recorded avoiding wind turbines up to a distance of at least 250m whereas in other instances birds have passed / hunted within 50-100m of turbines. Nevertheless, on the basis of observations recorded on site and studies from elsewhere, the applicant has submitted that hen harriers will likely continue to hunt within the proposed development site following construction of the wind farm (although it is possible that there may be some degree of turbine avoidance by hunting birds) and that any impact on the species will be minimal. Notably, this conclusion has been rejected by the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs which has advised that hen harriers will be displaced from using hunting habitat within 250m of operational wind turbines (which would seem to correspond with the UK study referenced in the EIS).

- 6.3.25. From a review of the available information, it is apparent that the Barna / Barna Bog area is suited to hen harrier breeding and foraging activities and that the proposed development of Turbine Nos. T8 & T9 within same would be likely to have an unacceptable environmental impact on hen harrier in the locality given the consequential loss / disturbance of suitable habitat and the potential risk of collision. Moreover, for the purposes of appropriate assessment, and having regard to the precautionary principle, it is my opinion that it cannot be definitively established that the development of turbines (Nos. T8 & T9) within the Barna area would not have an adverse impact on hen harrier. Accordingly, in the event of a grant of permission, I would recommend the omission of Turbine Nos. T8 & T9.
- 6.3.26. With respect to the remainder of the proposed development (i.e. excluding Turbine Nos. T8 & T9), I would reiterate my earlier comments that hen harrier activity outside of the Barna area is comparatively low and that most of this has been recorded in the Reaboy area. Moreover, the bulk of the activity in Reaboy has been shown to occur outside the confines of the application site and beyond the 250m displacement radius advised by the Department (with the application of such a 250m displacement buffer as part the Wind Zoning Methodology which has informed the Kerry County Development Plan, 2022-2028 having seemingly been accepted by the Office of the Planning Regulator). Furthermore, in the 2016 & 2017 bird surveys, it is evident that the remainder of the wider development site at Ballinahulla and Lisheen (including those areas encompassing the sweep of the turbine blades) is not regularly

frequented by hen harrier for hunting or foraging purposes and thus any loss of suitable habitat or site avoidance will be negligible (the Board is again advised that Turbine Nos. T10 & T12 will extend into the 250m exclusion buffer from the SPA which has informed the wind strategy in the current Development Plan and that these turbines could be omitted should the Board not be satisfied that they would not adversely affect the integrity of the European site).

- *Impact on the Hen Harrier: Conclusions:*

6.3.27. Having reviewed the available information, in my opinion, there would appear to be clear evidence of a recently active breeding site (as supported by the 2016 & 2017 bird surveys undertaken by the applicant) within Barna Bog located approximately 700m northwest of the nearest proposed turbine which would seem to be supported by the notable concentrations of hen harrier activity recorded within the Barna / Barna Bog area of the application site / study area in the vicinity of Proposed Turbine Nos. T8 & T9. This would seem to suggest that the Barna area is of considerable importance to hen harrier locally due to its suitability for both breeding and foraging activities. It is of further relevance to note that the recently observed territorial pair of hen harrier may have opted to nest in the Barna area (as opposed to elsewhere within the nearby Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area) given the overall suitability of the habitat available. In addition, the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs has sought to emphasise the site location adjacent to the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and has further stressed that Turbine Nos. T8 & T9 are within an area used regularly by hunting hen harriers which may breed in the nearby SPA and thus the loss of hunting habitat due to disturbance / displacement consequent on the development of Turbine Nos. T8 & T9 could potentially impact on other hen harriers within the SPA (seemingly notwithstanding that the 2016 & 2017 survey works did not record any territorial hen harrier behaviour within a 2km hinterland of the proposed turbines within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area).

6.3.28. Therefore, given the inclusion of the hen harrier within Annex I of the E.U. Birds Directive and the protection afforded to same, the overall suitability of the Barna / Barna Bog area for hen harrier breeding and foraging activities as established by

historical records and more recent survey work, the proximity of the Barna lands to the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area, and the availability / potential usage of the said lands by hen harrier from within the SPA, I am inclined to conclude that the Barna area is of local importance to hen harrier and that the proposed development of Turbine Nos. T8 & T9 within same would be likely to have an unacceptable environmental impact on hen harrier in the locality given the consequential loss / disturbance of suitable habitat and the potential risk of collision. Moreover, for the purposes of appropriate assessment, and having regard to the precautionary principle, it is my opinion that it cannot be definitively established that the development of turbines (Nos. T8 & T9) within the Barna area would not have an adverse impact on hen harrier. Accordingly, in the event of a grant of permission, I would recommend the omission of Turbine Nos. T8 & T9.

6.3.29. With respect to the remainder of the proposed development (i.e. excluding Turbine Nos. T8 & T9), having considered the available information, including the historical records of hen harrier activity both on site and in the wider study area and the proximity of same to the intended siting of the proposed turbines, I would concur with the contents of the EIS that, subject to the implementation of the mitigation measures where required, the proposed development will be unlikely to result in any significant adverse impact on that species.

6.3.30. *The Freshwater Pearl Mussel:*

Within the environmental impact assessment undertaken for ABP Ref. No. PL08.248768, it was acknowledged that the Freshwater Pearl Mussel (*Margaritifera margaritifera*) is found within the Blackwater River downstream of the study area with the Blackwater River (Cork / Waterford) Special Area of Conservation having been designated to include for the protection of same. While the survey work undertaken as part of the Ecological Impact Assessment submitted with the planning application did not record any Freshwater Pearl Mussel in the watercourses within the proposed development site (seemingly as a result of the small size of the streams not being conducive to the species), it was noted that the closest previously recorded incidence of Freshwater Pearl Mussel was located downstream of the site at Lisheen Bridge in 2004 (c. 2.3km directly southeast of the subject site). Regrettably, when surveying was carried out at Lisheen Bridge on 3rd September, 2013 in order to

ascertain the continued presence of FPM at this location, animal (cattle) activity within the river upstream of the survey point served to limit visibility, although a subsequent survey on 25th September, 2013 identified a single Freshwater Pearl Mussel c. 20m upstream of the bridge. However, within the '*Silverbirch Windfarm – Pearl Mussel (Margaritifera margaritifera) Impact Assessment and Review of Proposed Mitigation Measures (Munster Blackwater Catchment) Explanatory Addendum, 2017*' appended to the grounds of appeal (Appendix 5), it has been stated that whilst the nearest previously recorded FPMs in the River Blackwater were at / near Lisheen Bridge, a population of 21 No. FPMs was observed close to Scrahan in 2013, approximately 2.6km (hydrologically) downstream of the site boundary (moderately closer to the proposed development site than those recorded at Lisheen Bridge).

6.3.31. Several of the submissions made in response to the Section 131 Notice issued by the Board on 2nd October, 2020 have sought to dispute the applicant's assertion as regards the upstream limit of known freshwater pearl mussel populations / records within the Blackwater River. In this respect, I would refer the Board to the report compiled by Sweeney Consultants and titled '*The Freshwater Pearl Mussel (Margaritifera margaritifera) in the Upper Munster Blackwater River, 2020*' which accompanied those submissions and claims that the upstream limit has been found to be within 1km of the Reanasup River / River Blackwater confluence. In summary, it has been submitted that further surveying of the Upper Munster Blackwater completed in May, 2020 recorded a total of 31 No. mussels within the Munster Blackwater main channel between Doctor's Hill Bridge and Duncannon Bridge (approximately 7.4km due north and 6.7km due south of the Reanasup River / River Blackwater confluence respectively). It is subsequently stated that all live mussels found were located between the north-eastern corner of Lisheen townland (which is approximately 1.6km due north of Lisheen Bridge and seemingly corresponding with the upstream limit of freshwater pearl mussels recorded in 2020 as shown in Figure 2: '*Freshwater Pearl Mussel distribution in the Upper Munster Blackwater*' of the report) and Nohaval Bridge with the most significant finding being a bed of 20 No. mussels at a previously unrecorded location downstream of Lisheen Bridge. The report proceeds to state that although the information presented in the Freshwater Pearl Mussel Munster Blackwater Sub-Basin Management Plan, 2020 shows the

overall population to be quite low, it is suggested that as there is still good physical habitat, and if the water quality could be restored to High Status and silt levels controlled, then the current population, particularly the bed of 20 No. mussels, could regenerate. The survey then notes that the Conservation Objectives for the Blackwater SAC identify sedimentation as a major problem for the recruitment of juvenile freshwater pearl mussels and that previous research has identified a 5km aquatic zone downstream of a silt source as being at potentially highest impact from siltation. In this regard, it has been emphasised that the upstream limit of Freshwater Pearl Mussel has been found to be within 1km of the Reanasup River / River Blackwater confluence while the bed of 20 No. mussels found in the 2020 survey is also within 5km of the confluence.

6.3.32. From a review of the available information, there would appear to be a degree of consensus between the applicant and the observers that not only are freshwater pearl mussel present within the River Blackwater downstream of the development site, but that populations have been recorded in recent years within the main channel at locations between the Reanasup River / River Blackwater confluence and Lisheen Bridge. However, a divergence of opinion arises as to the precise locations of the recorded populations and their hydrological proximity to the proposed development site. In this regard, it is regrettable that the report prepared by Sweeney Consultants in support of the observers' submissions does not identify the exact location of any newly recorded freshwater pearl mussel populations with a view to sustaining the assertion that they have been observed within 1km of the Reanasup River / River Blackwater confluence (although I would acknowledge the sensitivity of any such locational data). Instead, the report places an emphasis on a 'previously unrecorded' bed of 20 No. mussels downstream of Lisheen Bridge despite the '*Silverbirch Windfarm – Pearl Mussel (*Margaritifera margaritifera*) Impact Assessment and Review of Proposed Mitigation Measures (Munster Blackwater Catchment) Explanatory Addendum, 2017*' appended to the grounds of appeal having already taken cognisance of a population of 21 No. FPMs previously observed further upstream close to Scrahan in 2013 i.e. at a location closer to the Reanasup River / River Blackwater confluence than the bed of 20 No. mussels downstream of Lisheen Bridge. However, it is possible that the observers' reference to the upstream limit of freshwater pearl mussel records being within 1km of the Reanasup River / River

Blackwater confluence may correlate with historical records pertaining to Scrahan as identified by the applicant (c. 1km due south of the confluence and c. 1.6km downstream hydrologically) although this would cause for a degree of speculation.

6.3.33. The essence of the new information provided in the most recent round of third-party observations on file is that the upstream limit of freshwater pearl mussel records is further north and hydrologically closer to the development site than was previously assessed under ABP Ref. No. PL08.248768 (possibly c. 600m closer).

6.3.34. At this point, I would refer the Board to my assessment of ABP Ref. No. PL08.248768 wherein it is acknowledged that given the susceptibility of FPM to changes in water quality, the species' need for very high quality rivers with clean river beds and waters with very low levels of nutrients, and as the FPM population in the Munster Blackwater was at an unfavourable Conservation Status, it is clear that any further deterioration in surface water quality within tributaries / watercourses draining to the River Blackwater consequent on the proposed development could potentially have a significant indirect impact on the Freshwater Pearl Mussel (and other downstream aquatic species and habitats). Consideration is then given to the potentially negative impacts during the construction and operational stages of the proposed development on the wider aquatic environment and fisheries as set out in the EIS as well as the mitigation measures intended to address same.

6.3.35. Within the judgment of the High Court for *Sliabh Luachra Against Ballydesmond Wind Farm Committee v. An Bord Pleanála*, it was held that the inspector's report prepared in respect of ABP Ref. No. PL08.248768 had '*sufficiently identified the aspects of the development which have the potential to adversely affect the freshwater pearl mussel in the Blackwater SAC*' and that as precise and definite conclusions had been reached as to the absence of adverse impacts on the freshwater pearl mussel, it followed, for the purposes of EIA, to a finding that there would be no direct or indirect effects on the mussel (Para. 116). That judgement noted the various mitigation measures proposed in the EIS as supplemented by the grounds of appeal and was specific in referring to Condition No. 2 as imposed by the Board which required that all of the environmental, construction and ecological mitigation measures (including a Surface Water Management Plan) set out in the EIS, the NIS and the other particulars submitted with the application be implemented. In this regard, reference was made to the EIS having stated that best

practice pollution control measures were to be employed during the construction phase to prevent the transport of deleterious substances to the Blackwater SAC and that the “*release of suspended solids to all surface waters will be controlled by interception (E.G. Silt Traps) and management of site runoff. Any surface water runoff must be treated to ensure that it is free from suspended solids, oil or any other polluting materials*”. Within the judgment, it was accepted that the foregoing passage amounts to a “*zero silt requirement*” equivalent in its effect to the express condition contained in the decision of the Board in *People Over Wind v. An Bord Pleanála [2014] IEHC 487*. It was further noted that Condition No. 2 as then imposed by the Board went significantly beyond the standard or “generic” condition requiring that all environmental and ecological mitigation measures be implemented by specifically addressing the mitigation measures in respect of the freshwater pearl mussel set out in the ‘*Silverbirch Windfarm – Pearl Mussel (Margaritifera margaritifera) Impact Assessment and Review of Proposed Mitigation Measures (Munster Blackwater Catchment) Explanatory Addendum, 2017*’ appended to the grounds of appeal.

- 6.3.36. Having considered the available information, in the absence of additional and more precise locational data, it is not possible to verify whether the observers’ reference to the upstream limit of freshwater pearl mussel corresponds with that previously recorded at Scrahan, however, I would reiterate that the essence of the new information provided in the most recent round of third-party submissions is that the upstream limit of freshwater pearl mussel records is further north and hydrologically closer to the development site than was assessed under ABP Ref. No. PL08.248768. In this respect, it remains my opinion that the risk of a detrimental impact on downstream water quality and the consequences of same on aquatic ecological considerations can be satisfactorily mitigated both through the nature / design of the works proposed and the implementation of an appropriate programme of pollution control measures which are linked to good construction and site management best practice. The various measures proposed have been held by the High Court as amounting to a “zero silt requirement” equivalent and, therefore, their implementation will ensure that the risk of a detrimental impact on downstream water quality and the consequences of same on aquatic ecological considerations can be satisfactorily mitigated.

6.3.37. Should the Board consider it necessary, it may wish to consider the imposition of a condition which expressly requires the implementation of measures to ensure that surface water run-off is controlled such that no silt or other pollutants enter watercourses i.e. a 'zero silt requirement'.

6.4. **Appropriate Assessment: The Hen Harrier & The Freshwater Pearl Mussel:**

6.4.1. *The Hen Harrier:*

In order to avoid unnecessary repetition, I would refer the Board to the environmental impact assessment and the appropriate assessment previously undertaken as part of ABP Ref. No. PL08.248768 as well as the EIA included as part of this addendum report. In this regard, I would reiterate my opinion that given the inclusion of the hen harrier within Annex I of the E.U. Birds Directive and the protection afforded to same, the overall suitability of the Barna / Barna Bog area for hen harrier breeding and foraging activities as established by historical records and more recent survey work, and the proximity of the Barna lands to the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area, and the availability / potential usage of the said lands by hen harrier from within the SPA, I am inclined to conclude that the Barna area is of local importance to hen harrier and that the proposed development of Turbine Nos. T8 & T9 within same would be likely to have an unacceptable environmental impact on hen harrier in the locality given the consequential loss / disturbance of suitable habitat and the potential risk of collision. Therefore, for the purposes of appropriate assessment, and having regard to the precautionary principle, it is my opinion that it cannot be definitively established that the development of Turbines Nos. T8 & T9 within the Barna area would not have an adverse impact on hen harrier. Accordingly, in order to ensure that the proposed development will not adversely affect the integrity of the SPA or undermine / conflict with the Conservation Objectives applicable to same, I would recommend the omission of Turbine Nos. T8 & T9 by way of mitigation.

6.4.2. With regard to the remainder of the proposed development (i.e. excluding Turbine Nos. T8 & T9), having considered the available information, including the historical records of hen harrier activity both on site and in the wider study and the proximity of same to the intended siting of the proposed turbines, I would concur with the findings of the NIS and would accept that the implementation of best practice and adherence

to the mitigation measures (where required) set out in the NIS will serve to avoid any impact on the hen harrier thereby ensuring no significant adverse effects on the conservation objectives of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA.

6.4.3. *The Freshwater Pearl Mussel:*

In the interests of conciseness, and in order to avoid unnecessary repetition, I would refer the Board to the environmental impact assessment and the appropriate assessment previously undertaken as part of ABP Ref. No. PL08.248768 as well as the EIA included as part of this addendum report. By way of further clarity, I would reiterate that several of the submissions received in response to the Board's Section 131 notification have asserted that the upstream limit of freshwater pearl mussel records is further north and hydrologically closer to the development site than was previously assessed under ABP Ref. No. PL08.248768.

6.4.4. The adequacy of the appropriate assessment undertaken for ABP Ref. No. PL08.248768 with respect to freshwater pearl mussel within the Blackwater River (Cork / Waterford) Special Area of Conservation was considered at length in the judgment of the High Court for *Sliabh Luachra Against Ballydesmond Wind Farm Committee v. An Bord Pleanala*. By way of summation, that judgment was satisfied that the (previous) inspector's report had sufficiently identified the aspects of the development which have the potential to adversely affect the freshwater pearl mussel in the Blackwater SAC. It proceeds to state that the Board is entitled to rely on other documents submitted in the course of the appeal if it was sufficiently clear to a reasonable observer carrying out a reasonable enquiry that the material contained in those documents actually formed part of the reasoning relied on for the purposes of making the relevant decision. Reference is then made to the very extensive material placed before the Board in relation to the Blackwater SAC and the freshwater pearl mussel in particular with the EIS detailing various best practice pollution control measures to be employed during the construction phase to prevent the transport of deleterious substances to the Blackwater SAC. In this regard, I would reiterate to the Board that the various measures proposed, including the Surface Water Management Plan as read in conjunction with the '*Silverbirch Windfarm – Pearl Mussel (Margaritifera margaritifera) Impact Assessment and Review of Proposed Mitigation Measures (Munster Blackwater Catchment)*

Explanatory Addendum, 2017' appended to the grounds of appeal, have been held by the High Court as amounting to a "zero silt requirement" equivalent "as a consequence of the commitment made by the applicant that any surface water run-off must be treated to ensure that it is free from suspended solids oils or any other polluting material. Furthermore, there are a suite of very specific measures which the applicant is required to take in this case which are very clearly designed to ensure that sediment is not released into any watercourse. Very specific measures are to be put in place which are designed to protect the freshwater pearl mussel". Therefore, it was considered that the implementation of the mitigation measures proposed would ensure that the proposed development would not have an adverse impact on the freshwater pearl mussel in the Blackwater SAC. The judgment of the High Court thus held that a satisfactory appropriate assessment as regards the potential impact of the proposed development on the Blackwater River (Cork / Waterford) Special Area of Conservation had been completed and that precise and definite conclusions had reached as to the absence of adverse impacts on the freshwater pearl mussel.

- 6.4.5. In common with the addendum to the environmental impact assessment contained in Section 6.3 of this report, the essence of the additional information provided by the third-party observers in response to the Section 131 Notice issued by the Board on 2nd October, 2020 is that the upstream limit of freshwater pearl mussel records is further north and hydrologically closer to the development site than was assessed under ABP Ref. No. PL08.248768. In this regard, I would reiterate that as the various measures proposed have been held by the High Court as amounting to a "zero silt requirement" equivalent, the implementation of those measures will ensure that there will be no adverse impact on the freshwater pearl mussel within the Blackwater SAC.
- 6.4.6. Similar to my conclusions as regards EIA, should the Board consider it necessary, it may wish to consider the imposition of a condition which expressly requires the implementation of such measures as to ensure that surface water run-off is controlled such that no silt or other pollutants enter watercourses i.e. a 'zero silt requirement'.

6.5. Other Issues

6.5.1. Impact on Telecommunications:

Further concerns have been raised by an observer as regards the potential for the proposed development to cause significant interference to existing and future operators located at its 30m high lattice tower situated at Knocknaboul, Co. Kerry, (approximately 2km from the site) as well as the possibility of undermining any future co-location of service providers at this support structure. Although these matters were not considered in the judgment of the High Court for *Sliabh Luachra Against Ballydesmond Wind Farm Committee v. An Bord Pleanala*, the notice to interested parties issued by the Board on 2nd October, 2020 under Section 131 of the Planning and Development Act, 2000, as amended, invited ‘*any further general submissions / observations*’ on the planning application the subject of this appeal.

6.5.2. In my opinion, the aforementioned issues were already given due consideration in the assessment of ABP Ref. No. PL08.248768 wherein it was noted that the EIS has acknowledged that radio, television and microwave transmissions could potentially be affected by individual wind turbines or larger wind farm developments. In that assessment it was further noted that the applicant has entered into a Protocol Agreement with ‘2rn’ (a communication network operator in Ireland whose responsibilities include the distribution and transmission of the programme services of RTE Radio and Television, TV3, TG4 & Today FM) whereby it has given an undertaking to cover the cost of rectifying any degradation in signal quality associated with the proposed wind farm development. In addition, the applicant has indicated that the proposed turbine blades will be of a fibreglass composite construction thereby minimising the potential for scattering effects to television signals whilst no objections to the subject proposal were received from the various telecommunications operators contacted as part of the pre-planning consultation process undertaken during the preparation of the EIS.

6.5.3. By way of further mitigation, as has been acknowledged in the observer’s latest submission, it was previously recommended that a condition be attached to any decision to grant permission requiring the developer to agree a protocol for assessing any impact on radio or television or other telecommunications reception in the area and to remedy any interference according to a methodology to be agreed in

writing with the planning authority, following consultation with other relevant authorities and prior to commissioning of the turbines.

6.5.4. On the basis of the foregoing, and subject to the implementation of suitable mitigation and monitoring measures (noting that interference with broadcast communication can often be overcome by the installation of deflectors or repeaters and that in instances where electromagnetic interference may be difficult to predict, conditions may require the developer to consult with the service provider concerned and undertake remedial works to rectify any interference cause), I remain amenable to accepting the conclusion drawn in the EIS that the proposed development is not likely to have a significant impact on telecommunications signals in the surrounding area.

6.5.5. **Impact on Bat Species:**

Concerns with respect to the potential impact of the proposed development on bat species were considered in my previous assessment of ABP Ref. No. PL08.248768 wherein it was determined that in light of the proposal to install bat boxes in order to encourage roosting and to create new habitat through the planting of treelines along newly created access roads, in addition to the mitigation measures detailed in the EIS, with particular reference to the completion of a pre-construction bat survey and the implementation of those measures set out in the 'Guidelines for the Treatment of Bats during the Construction of National Road Schemes', I was satisfied that the overall impact of the proposed development on bat activity at the site location would be within acceptable limits.

6.5.6. Moreover, the potential collision risk posed to the high-flying Leisler's bat during the operation of the turbines was acknowledged as part of that assessment (with the possibility noted that the species could commute through the site), however, it remains my opinion that the significance and likelihood of any such impact is most probably low, particularly as the overall quality of the habitat on site has been deemed to be sub-optimal for bats while there was no recording of the Leisler's bat on site during the bat surveys.

7.0 Recommendation

7.1. Having regard to the foregoing, I recommend that permission be refused for the proposed development for the reasons and considerations set out below:

8.0 Reasons and Considerations

1. The Kerry County Development Plan, 2022-2028 identifies the proposed development site as being located in an area 'Unsuitable for Wind Development' by reference to Map 12.4: 'Wind Energy Areas' with the related policy set out in Objective KCDP 12-20 which seeks to ensure that commercial wind energy projects will not be considered in areas outside of 'Open-to-Consideration' and 'Repower Areas'. Having regard to the analysis undertaken within the 'Wind Zoning Methodology' included at Appendix 6 of Volume 1 of the Development Plan, this designation is considered reasonable and consistent with national policy as set out in the Wind Energy Development, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in 2006. The proposed development would, therefore, be contrary to the policy provisions set out in the County Development Plan and would be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

26th September, 2022