



An
Bord
Pleanála

Inspector's Report ABP314600-22

Development	Construction of a wind turbine with a hub height of 81m, and overall tip height of 149.38m with an electrical rating of 4.2MW together with hardstanding areas, and on-site 20kV substation, underground electrical cabling and all associated works.
Location	Cornacahan and Cunlin, Killybegs, County Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	2251214.
Applicant	Cathal Boyle.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant	Cathal Boyle.
Observer	Brid Murphy.
Date of Site Inspection	10 th November, 2022.
Inspector	Paul Caprani.

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1.0 Introduction

ABP314600-22 relates to a first party appeal against the decision of Donegal County Council to grant planning permission for the construction of a single wind turbine with an overall tip height of 149.38 metres together with a wind turbine foundation hardstanding and assembly area, a 20kV substation, an underground electrical cable and ancillary works at a site approximately 3.6 kilometres north of the town of Killybegs in south-west Donegal. Donegal County Council refused planning permission for a single reason which argued that the proposed development is contrary to Policy EP-12 that new wind energy developments can only be considered within areas identified as being 'open for consideration' in the development plan and that the proposed development, being located outside this area and being located within 10 times the tip height of residential properties in the vicinity, would materially contravene the development plan and would adversely impact on residential amenities.

2.0 Site Location and Description

- 2.1. The appeal site is located in the townlands of Cornacahan and Cunlin, Killybegs, County Donegal. The site is accessed via the Conlin Road, a local road which runs north-westwards from the town. The site for the proposed windfarm is located on the western side of the road within an area of planted conifer forest. It is located approximately 350 metres inland from the road in question. The proposed turbine is to be located on lands approximately 140 metres above Ordnance Datum. There are three turbines, c400 meters to the south and south west of the site. An electricity substation is also located further south west. These turbines are accessed via a local road to the south of the site in the townland of Derryreel West.
- 2.2. There are a cluster of dwellings and farmyards located along the access road to the west of the site the closest of which is located approximately 750 metres south east from the subject site. Other dwellings to the north-east of the site are located over a kilometre away. There are no dwellings located in closer proximity than a kilometre to the west and north-west of the site. The site area is 4.9 hectares. There are two

operational windfarms within 10 kilometres of the proposed project. The three turbines referred to above at Cornacahan Hill c.400 metres to the south of the site, and a separate wind farm of six turbines, located in the townland of Meenachullalan 3.5 kilometres to the north-west of the site.

3.0 Proposed Development

3.1. Planning permission is sought for the following on the subject site.

- The construction of a single Enercon E138 wind turbine with a hub height of 81 metres and an overall tip height of 149.38 metres. The wind turbine has an electrical rating output of 4.2 megawatts.
- The installation of a hardstanding area for the wind turbine.
- The installation of circuit cables which will run in underground trenches (c.1.2 metres in depth) from the wind turbine to the proposed substation building to be located 790 metres to the south of the site in the townland of Derryreel West.

3.2. The proposed substation building will have a gross floor area of 53 square metres and will be c.5 metres in height and will be surrounded by stockproof fencing. A new internal access track will run from the Conlin Road to the west of the site to the proposed windfarm hardstanding. The proposed project will have a 30-year lifespan. The planning report submitted with the application indicates that the project was selected by ESB to be processed for a grid connection offer under the Enduring Connection Policy (ECP2.1) in 2020. The approved grid connection route for the project will involve the construction of a substation on the proposed development site which will connect to an existing 20kV windfarm substation c.300 metres to the south of the proposed substation which is already being connected to the Killybegs 38kV ESB substation. In terms of haulage routes, it is expected that the turbine will be imported into Ireland at the Killybegs Port. The proposed access haulage route to the site is indicated in Figure 3.7 of the Planning and Environmental Report submitted. The haulage route will run along the Regional Road R263 before accessing wider local roads to the west and north of the site and approaching the proposed windfarm site along the Conlin Road from the north.

4.0 Planning Authority Decision

Donegal County Council issued notification to refuse planning permission for a single reason which is set out in full below.

- 1. It is the policy of the Council (Policy E-P-12) Donegal County Development Plan 2018 – 2024 (as varied) that appropriate new wind energy developments can be considered within the areas identified as “open for consideration” on the wind energy map 8.2.1. Objective E-O-6 states that wind energy developments do not adversely impact upon the existing residential amenities of residential properties and other centres of human habitation (as defined in Paragraph 6.6 Wind Energy, Appendix 3 Development Guidelines and Technical Standards, Part B Objectives and Policies of the Plan)”. Part B Appendix 3, Section 6.5 of the Development Plan and Technical Standards of the County Donegal Development Plan 2018 – 2024 (as varied) precludes windfarms being located within 10 times the tip height of the proposed turbines from residential properties.*

As the proposed development is located outside an area “open to consideration” and located within 10 times the tip height of the proposed turbine to residential properties, it is considered that to permit the proposed development would materially contravene the aforementioned objective E-O-6 and policy provisions of the County Development Plan 2018 – 2024 (as varied) and would thereby be contrary to the proper planning and sustainable development of the area.

4.1. Documentation Submitted with the Planning Application

- 4.1.1. The following documentation was submitted on behalf of the applicant as part of the planning application.

An Environmental and Planning Report. It sets out details of the site and the proposed development and the planning policy context as it relates to wind energy and renewable energy in general. It also details the construction management plan to be implemented during the erection of the turbines, a landscape visual

assessment, a noise assessment and shadow flicker assessment as well as a flood risk assessment. A series of mitigation measures are also provided throughout the report to reduce any potential impacts on the receiving environment.

- Appendix 1 of the report also includes a decommissioning and reinstatement report which sets out details of the infrastructure removal and the reinstatement techniques to be used for site access roads, turbine foundations, drainage and reseeded of the site. It is estimated that the decommissioning would take approximately 5 months but could be undertaken in a lesser period of time should decommissioning of various aspects of the proposal take place simultaneously.
- Appendix 2 of the report includes a screening for appropriate assessment. This assessment concluded that there will be no direct or indirect impacts on any European sites.
- Appendix 3 contains a landscape and visual assessment including photomontages. The visual impact is assessed from 10 separate vantage points in the vicinity of the site.
- Appendix 4 contains a shadow flicker assessment. The modelling results indicated that shadow flicker may be experienced at receptive locations. However, these dwellings and sensitive receptors are located greater than 500 metres from the proposed development and therefore the expected level of shadow flicker will not exceed the limits set out in the Wind Energy Development Guidelines for Planning Authorities of 2006. Nevertheless, a shadow flicker shutdown system will be installed in order to futureproof against any potential shadow impact.
- Appendix 5 contains details of the ESB Enduring Connection Policy.
- Appendix 6 contains details of the turbine specification for the site.

A separate Environmental Impact Assessment Screening Report was submitted. It notes that the project does not fall within the mandatory EIA requirements. The proposed development is also assessed under Schedule 7 of the Planning and Development Regulations for Sub-threshold Criteria. When assessed against the criteria specified in Schedule 7, the assessment concluded that the project does not

have the potential to have significant effects on the environment and therefore an EIAR is not required.

4.2. **Planning Authority's Decision**

- 4.2.1. The application was lodged with Donegal County Council on the 15th July, 2022. Letters of consent from two landowners in the area were submitted with the application.
- 4.2.2. A report from the Roads Design Office states that the proposed development does not affect the progression of any national, current road project.
- 4.2.3. A report from the Building Control Section states that all works must comply with relevant Building Regulations and Building Control Regulations.
- 4.2.4. A report from the Department of Defence sets out a number of requirements in respect of obstacle lighting to be installed on the turbine should planning permission be granted.
- 4.2.5. A report from the Irish Aviation Authority also stipulated standards in relation to lighting and requires that the authority be notified at least 30 days before the commencement of works on site.
- 4.2.6. A number of letters of objections were received from third parties which raised concerns particularly in relation to residential and amenity with specific reference to shadow flicker, noise and construction access arrangements.
- 4.2.7. The planner's report sets out details of the site location and description and the proposed development as well as concerns raised in the third-party appeals. Details of the planning history and policy context relating to the site. The report also assesses the documentation submitted with the application before assessing the proposed development in accordance with the proper planning and sustainable development of the area. It notes that the turbine is located in an area designated as 'not normally permissible' and is located within 700 metres of the nearest inhabited dwelling. Reference is made to Policy ED-P-12 which seeks to direct appropriate new wind energy developments within areas identified as being 'open to consideration' in the Wind Energy Map (Map 8.2.1 of the Development Plan). Reference is also made to Section 6 of Part B of Appendix 3 of the Development

Guidelines and Technical Standards which includes the provision that a setback distance of 10 times the tip height of proposed turbines, residential properties and other centres of human habitation should be adhered to. The nearest dwelling of the turbine is noted to be 700 metres distance and therefore contravenes this requirement. The proposed development therefore cannot comply with Objective E-O-6 of the Technical Standard. On this basis, refusal is recommended. In terms of siting and design reference is made to the photomontages submitted and it is considered that the receiving landscape can accommodate the proposed development.

- 4.2.8. In terms of residential amenity, it is noted that as the turbine does not meet the required separation distance from sensitive residential properties (10 times the tip height setback from residential properties), the proposed development will adversely impact on residential amenity and therefore refusal is recommended. No specific concerns are raised in respect of access and public health. The report also agrees that the proposed development can be screened out for the purposes of appropriate assessment and environmental impact assessment. It is noted that if planning permission is granted a development contribution charge of €54,865 would be required.
- 4.2.9. On the basis of the above the report concludes that the proposed development would be injurious to the amenities of the area and has the potential to create an undesirable precedent for similar forms of development therefore it is recommended that planning permission be refused for the single reason set out above.

5.0 Planning History

- 5.1. According to the planning report submitted with the application reference is made to 2 relevant applications on the subject site.
- 5.2. Under Reg. Ref. 1950132 planning permission was refused for the construction of 1 wind turbine with an overall tip height of 124.5 metres by Donegal County Council in 2019. It was refused on the basis that there was a lacuna in windfarm policy in the Donegal County Council Development Plan on foot of a recent successful High Court action which resulted in the removal of a significant part of the development plan in relation to wind energy.

5.3. This decision was the subject of a first party appeal under ABP304198-19¹. The Board in accordance with the inspector's recommendation, overturned the decision of Donegal County Council and granted planning permission for the proposed development subject to 12 conditions.

6.0 Grounds of Appeal

6.1. The decision was the subject of a first party appeal submitted by the applicant on the 9th September, 2022. The grounds of appeal are set out below.

- It should be noted that a current grant of planning permission was issued by An Bord Pleanála in respect of a previous application (ABP 304198). The purpose of the current application is to seek an increase in height from 68 metres to 81 metres and a rotor diameter increase of 115 to 138 metres. The change in turbine design is predicated on further in-depth studies and it has transpired that the extant turbine model permitted by the Board, under the previous application and appeal is not fit for purpose given the undulating nature of the surrounding landscape. There is a need for additional height in the tower to mitigate against high levels of turbulence impacting on the turbine. On this basis the turbine manufacturers have recommended the larger turbine model.
- With reference to Section 8.2.1 of the County Development Plan it is stated that the proposed turbine location is located in an area categorised as “acceptable for augmentation”. It is argued that this particular category which represents augmentation and improvements of existing windfarms would be applicable to the current application. The proposed development will utilise the existing ESB network grid infrastructure which was developed for the existing three turbine windfarm to the south. Similarly, the proposed development will also utilise the existing upgraded local road network to the north and west of the site.
- Reference is also made to the Wind Energy Development Guidelines of 2006 which state that turbines should be located 500 metres from the nearest

¹ This file was not attached to the current file before the Board.

dwelling. The actual distance from the nearest dwelling is over 700 metres, which exceeds the 500 metre separation distance and also exceeds the requirement of 4 times the tip height of the turbine (597 metres).

- The first party appeal goes on respond to the two individual third-party observations submitted to the Planning Authority both of which objected to the proposed development.
- It notes that any reference to the existing three turbine windfarm to the south of the site is a separate development and therefore not relevant to the current application.
- In relation to concerns in respect of shadow flicker, a detailed shadow flicker assessment was compiled and submitted with the application (submitted as Appendix 3 of the Grounds of Appeal). The model results indicated that no shadow flicker receptors would exceed the 30 minutes per day or 30 hours per year standard set out in the Wind Energy Development Guidelines for Planning Authorities 2006. All sensitive receptors are located greater than 500 metres from the proposed turbine location. Nevertheless, the turbine will be equipped with a shadow flicker shutdown function to futureproof and negate against any potential shadow flicker impacts.
- In respect of noise, the turbine proposed will use best current engineering practices in terms of noise suppression. A pre-construction noise study and a post-construction noise study will also be completed to ensure that the noise resulting from the single turbine is within acceptable and within noise limits. Again, reference is made to the fact that in general noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres. It is noted that the strict separation distances set out by Donegal County Council in the original adoption of the Development Plan in 2018 was challenged in the High Court and the ruling threw out the standards set out in the original Development Plan and therefore, it is suggested that the separation distances for wind energy development set out in the 2006 Guidelines should be adhered to in this instance.

- On the basis of the above, it is recommended that An Bord Pleanála overturn the decision of the Planning Authority and grant planning permission for the proposed development.

7.0 Appeal Responses

7.1. Response from Donegal County Council

- 7.1.1. Donegal County Council reiterate that the proposed development is located outside an area “open to consideration” and located within 10 times the tip height of the proposed turbine to residential properties. It is considered that, to permit the proposed development would merely contravene the aforementioned objective E-O-6 and the policies and provisions of the County Donegal Development Plan 2018 – 2024 (as varied) and would therefore be contrary to the proper planning and sustainable development of the area.
- 7.1.2. The response goes on to note that the variation of the County Development Plan 2018 – 2024 with regard to wind energy policies has been commenced and it remains the position of the Planning Authority that there are significant deficiencies in the policy framework pending the formal adoption of the variation. This together with the pending adoption of the Wind Energy Guidelines 2019, prompts the Planning Authority to consider the current proposal to be premature and contrary to proper planning as policy in relation to windfarms is not in place. The application was assessed under the policy as included within the variation of the development plan that was in force at the time (24th August, 2022). On Monday 29th August, 2022 the Minister issued a notice of intention to issue a Direction to the Council under Section 31 of the Planning and Development Act 2000. The contents of the notice are summarised the response. As the variation to the development plan is currently within a period of public consultation, the final wind energy policies for the county are not yet in place. The proposed site was determined to be in an area not normally permissible and within the 10 times tip height of the nearest dwelling. For these reasons planning permission was refused. Any further matters raised in the appeal have been previously addressed in the planner’s report.

7.2. Observation

- 7.2.1. A single observation was received in respect of the proposed development from Brid Murphy a resident of Cunlin to the south of the subject site.
- 7.2.2. This observation expresses concerns that the overall tip height of the proposed turbine at 149.38 metres is within 10 times the tip height at the observer's home in Cunlin which will exacerbate existing noise when taken in consideration with the three operating wind turbines. This will impact on the appellant's amenity.
- 7.2.3. The existing turbines cause shadow flicker during the summer months so a 4th turbine will exacerbate this annoyance. When the observer looked for planning permission for own home on similar lands to the subject site 15 years ago, she was refused on the grounds that the peatland is preserved. However, this appears not to apply when it comes to wind energy development.
- 7.2.4. Another concern relates to the road usage during the construction period. The small local roads will be used to transport heavy machinery to the site because it is the shortest route from the main Killybegs Road. This will create significant disturbance and annoyance.
- 7.2.5. By way of conclusion the observer questions whether the existing turbines are compliant with noise standard regulations. The Board are requested to take the above concerns into consideration when adjudicating on the planning application and appeal.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Donegal County Development Plan 2018 – 2024 (as varied).
- 8.2. The policies and objectives contained in the development plan in respect of wind energy has been the subject of an on-going dispute and it appears from the information obtained from the Donegal website and from the office of the OPR, that issues in respect of windfarm policies within the County have yet to be resolved.

- 8.3. The original plan as adopted set out development guidelines and technical standards for wind energy developments and these are outlined in Section 6 of Part 3 to Appendix B of the Plan which lists additional locations where wind energy projects must not be located including “(c) *areas identified as locations where windfarm development would not be acceptable as identified on Map 8.2.1 of the Plan*” and “(f) *areas within a setback distance of 10 times the tip height of proposed turbines from residential properties and other centres of human habitation*”. A centre of human habitation is defined in the Plan to include schools, hospitals, churches, residential buildings or buildings used for public assembly.
- 8.4. On foot of a High Court Order (Record No. 2018/533 JR between Planree Limited and Donegal County Council) dated 5th November, 2018 and the publication of the Draft Wind Energy Guidelines on 12th December, 2019, certain provisions of the development plan, comprising of Section 6.5(c) and (f) of Wind Energy Standards at Part B: Appendix 3 “Development Guidelines and Technical Standards” and Map 8.2.1, were ordered to be deleted and/or removed from the development plan. The development plan since then the development plan policy in respect of windfarm development was to be read in light of this Court Order pending any possible future variation of same. The Planning Authority gave notice that it intends preparing a variation to the development plan regarding wind energy.
- 8.5. A variation to the above wind energy strategy was made at a plenary Council meeting of the 18th July, 2022. The changes set out in the variation are set out on the Donegal County Council website. In short, the plenary changes included Map 8.2.1 entitled “Wind Energy Designated Areas” which indicate areas that are ‘acceptable in principle’, ‘open to consideration’ and ‘not normally permissible’ for windfarm development. The area in which the proposed windfarm is to be located is located in an area which is considered to be ‘not normally permissible’. Furthermore, the variation continues to include the statement that “*Donegal County Council believes that the 10 times tip height is a fair setback distance for modern day turbines which are of a size and scale not envisaged when the original Wind Energy Guidelines were published in 2006. Turbines are now approximately 160 metres with the potential for even greater heights. Extensive public consultation has shown that the 10 times tip setback policy is favoured by the vast majority of people of Donegal who would be affected by these turbines*”.

- 8.6. As mentioned above, the variation was made on the 18th July, 2022. Pursuant to the decision to adopt a variation which did not accept the recommendations made by the Office of the Planning Regulator, the Minister for Local Government and Planning issued a notice of intention to issue a Ministerial Direction to the Council under Section 31 of the Planning and Development Act 2000. This notice of intention specifically related to measures inter alia to omit Policy EP3 and EP24 of the development plan and to amend Map 8.2.1 to change the designation of the Lifford/Stranolar Municipal District Areas at risk of landslides and associated environmental and ecological concerns and moderately low and moderately high landslide susceptibility areas identified as 'not normally permissible' to 'open to consideration'.
- 8.7. A key point in the notice of intention to issue a Direction relates to Policy EP24. This policy states that it is the policy of the Council that windfarm development must ensure a setback distance for noise and shadow flicker purposes of 10 times the tip height of proposed turbines from the nearest part of the curtilage of residential properties and other centres of human habitation.
- 8.8. It appears therefore, that this policy of Donegal County Council as at the time of writing this report, is currently in abeyance pending the outcome of the Direction from the Minister.
- 8.9. Other aspects of the amended plan which appear not to be subject of a direction includes:
- 8.10. Policy E-O-1 which seeks to develop the sustainably and diverse and secure renewable energy supply to meet the demands and capitalise on the county's competitive locational advantage.
- 8.11. Objective E-O-7 seeks to secure the maximum potential for wind energy resources of the Planning Authority's areas commensurate with supporting development that is consistent with the proper planning and sustainable development of the area.
- 8.12. The subject site is located in an area designated as being an area of moderate scenic amenity.

8.13. National Policy

Project Ireland 2040 – National Planning Framework

The National Planning Framework (NPF) is the Government's high-level strategic plan shaping the future growth and development of Ireland to the year 2040 and is underpinned by the National Development Plan 2018-2027. Chapter 3 of the Framework addresses 'effective regional development' and includes the following policy priorities for the subject Northern and Western region:

- 'harnessing the potential of the region in renewable energy terms across the technological spectrum from wind and solar to biomass and wave energy'.

Under the heading 'Planning and Investment to Support Rural Job Creation', the following is stated within the NPF with regards 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'.

National Policy Objective (NPO) 55 seeks to '*promote renewable energy generation at appropriate locations within the built and natural environment to meet objectives towards a low carbon economy by 2050*'. The pretext to this NPO states that '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 informing the 'transition to sustainable energy' 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 energy 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.

National Energy and Climate Plan (NECP) 2021-2030

This first draft of the NECP takes into account energy and climate policies developed to date, the levels of demographic and economic growth identified in the NPF and includes all of the climate and energy measures set out in the National Development Plan 2018-2027.

Climate Action Plan 2019

The Climate Action Plan 2019 seeks to realise a 30% reduction in greenhouse gas emissions and increase reliance on renewables from 30% to 70%, thereby adding 12GW of renewable energy capacity by 2030, whilst also phasing out reliance on fossil fuels. This Action Plan sets out a major programme of change in order to achieve a net zero carbon energy system objective for Ireland, while also reflecting Ireland’s commitment to achieving 2030 sustainable development goals. According to the Plan, increasing onshore and offshore wind capacity are the most economical options for electricity production based on the marginal abatement cost curve. To meet the required level of emissions reduction by 2030, Ireland will need up to 8.2GW in total of increased onshore wind capacity. Under the action item ‘Regulatory Streamlining of Renewables and Grid Development’, the Plan identifies the publishing of updated planning guidelines for onshore wind in 2019. In terms of land use, the Action Plan outlines that the management of land affects how much carbon is emitted to or removed from the atmosphere.

Wind Energy Development Guidelines (2006)

The Wind Energy Development Guidelines 2006 provide statutory guidance for wind energy development, including consideration of environmental issues, such as noise and shadow flicker, design, siting, spatial extent and scale, cumulative effect and spacing, as well as the layout and height of wind turbines having regard to the

landscape and other sensitivities. The Guidelines indicate the need for a plan-led approach to wind energy development.

Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)

These interim guidelines were issued under Section 28 of the Planning and Development Act 2000, as amended. They do not currently replace or amend the Wind Energy Development Guidelines 2006, which remain in place pending the completion of ongoing review. 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.

The interim guidelines provide specific guidance on making, reviewing, varying and amending the wind energy policies or objectives of a Development Plan or a Local Area Plan. A planning authority shall acknowledge and document specific national strategy relating to energy policy, indicate how the implementation of a Development Plan or a Local Area Plan over its effective period would contribute to realising overall national targets on renewable energy and climate change mitigation. Furthermore, the planning authority is required to demonstrate detailed compliance with the above in any proposal in a Development Plan or a Local Area Plan to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use. This approach is reaffirmed in the Departmental Circular PL5/2017.

Wind Energy Guidelines 2006

These guidelines still constitute the official strategy guidance on wind farms under the provision of Section 28 of the Planning and Development Act 2000 (as amended).

The guidelines set out advice in relation to the design, siting, spatial extent, and height of turbines in various landscape character types. Appendix 4 provides details in relation to best practice for wind farm development on peatlands and flatland areas. Guidance is also provided on matters such as noise, shadow flicker, natural

heritage, archaeology, architectural heritage, ground conditions, aircraft safety, wind take and potential cumulative effects.

In terms of noise, a lower fixed rate limit of 45 dB(A) or a maximum increase at 5 dB(A) above background noise at nearby noise sensitive locations is considered to be appropriate to provide protection to wind energy neighbours. However, in very quiet areas the use of a margin of 5dB(A) above the background noise level at nearby noise sensitive properties may unduly restrict wind energy developments which have wider national and global benefits. In low noise environments where the background noise is less than 30dB(A) it is recommended that the daytime level of LA_{90 10 mins} of the Wind Energy Development Noise be limited to an absolute level with the range of 35 to 40 dB(A).

The guidelines state that noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres.

In relation to shadow flicker, it is recommended that at neighbouring offices and dwellings within 500 metres shadow flicker should not exceed 30 hours per year or 30 minutes per day.

Draft Wind Energy Development Guidelines 2019

The current Departmental approach is to address a number of key aspects of the 2006 Guidelines, including sound or noise, visual amenity setback, shadow flicker, consultation obligations, community dividend and grid connections. Consultation on the draft Guidelines ended in February 2020.

The draft guidelines identify Specific Planning Policy Requirements (SPPR), 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.

8.14. Regional Policy

Regional Spatial & Economic Strategy for the Northern and Western Regional Assembly

The Regional Spatial and Economic Strategy (RSES) provides a 12-year high-level development framework for the Northern and Western Region that supports the implementation of the National Planning Framework (NPF) and the relevant economic policies and objectives of Government. The Strategy recognises the success of the region in the provision of renewable energy from hydropower and onshore wind energy, with wind turbines a new feature in the region's landscapes.

9.0 Planning Assessment

I have read the entire contents of the file, visited the subject site and its surroundings, have had regard to the Planning Authority's reasons for refusal and the appellant's rebuttal of these reasons and I have also had regard to the issues raised in the observations on file. I consider the pertinent issues in determining the current application and appeal before the Board are as follows:

- Principle of Development
- Precedent Decisions
- Development Plan Policy
- Shadow Flicker
- Noise
- Visual Impact
- Appropriate Assessment
- EIA Screening
- Material Contravention of the Development Plan

Each of these issues will be dealt with in turn.

9.1. Principle of Development

- 9.1.1. Planning permission is sought for a single turbine on the subject site with an overall tip height of just less than 150 metres together with the turbine foundations,

hardstanding and assembly areas and an on-site 20kV substation and underground electrical cable.

- 9.1.2. There are a wealth of report and guidelines which sets out targets, policies and objectives which seek to reduce dependence on fossil fuels while also seeking to encourage an expand the development of renewable energy. Some of the policies and documents are referred to previously in Section 8 of my report. Perhaps the most important national policy document entitled Climate Change Action Plan 2021 which sets out a road map for taking decisive action to halve our greenhouse gas emissions by 2030 and to reach net zero emissions by 2050. It emphasises the need to act now to build a cleaner, greener economy and society. The most important measures set out in the Climate Action Plan is to increase the proportion of renewable energy by up to 80% by 2030. These legally binding objectives are set out in the Climate Action and Low Carbon Development (Amendment) Act of 2021. The plan envisages the rapid build out of renewable generation capacity, particularly in relation to wind and solar power generation. Chapter 10 of the Plan highlights the importance of mobilising private sector investment in the transition to a low carbon economy.
- 9.1.3. In addition to this, the National Planning Framework also highlights similar targets of achieving a transition to a competitive low carbon climate resilient and environmentally sustainable economy by 2050. NPO1 seeks to enhance the competitiveness of rural areas by supporting innovation and diversification of the rural economy into new sectors and services including those addressing climate change and sustainability. NPO55 seeks to promote renewable energy at appropriate locations within built and natural environments in order to meet national objectives towards achieving a low carbon economy by 2050.
- 9.1.4. It is clear from above that national policy acknowledges that significant increases in wind energy capacity will be required to meet mandatory targets set out in the National Plans referred to above on climate change. The proposed turbine with a maximum output of 4.2 megawatts will (albeit to a modest extent), assist in delivering and building upon the renewable energy resource available in Ireland and will assist in the progress to a low carbon economy reducing dependence on fossil fuels. The provision of such renewable energy is all the more important in light of the recent geopolitical events in Russia and Ukraine which has undermined the supply of fossil

fuels and made European economies more reliant than ever on the need to fast track and expand renewable energy projects. Notwithstanding the concerns set out in the planner's report which is dealt with in more detail under a separate heading below, the Donegal County Council Development Plan, including the variation as made at the plenary Council meeting of 18th July, 2022 also acknowledges the need to deliver renewable energy infrastructure. Policy E-O-1 seeks to develop sustainably a diverse and secure renewable energy supply to meet the demands and capitalise on the county's competitive locational advantage. Objective E-O-7 seeks to secure the maximum potential for wind energy resources of the Planning Authority's area commensurate with supporting development that is consistent with proper planning and sustainable development of the area. It is reasonable to conclude therefore, subject to qualitative safeguards that the development of a wind turbine on the subject site is in accordance with national and local objectives with the overall goal of reducing reliance on fossil fuels and promoting and developing more sustainable forms of renewable energy within the State.

9.2. Precedent Decisions

- 9.2.1. As referred to in the section 5 above, the Board thought it appropriate and in accordance with the proper planning and sustainable development of the area, to grant planning permission for a similar, albeit slightly smaller, turbine on the subject site. The decision of the Board to grant planning permission was taken notwithstanding the fact that Donegal County Council refused planning permission for the development. There is therefore in my view a relevant precedent in terms of planning which would support the view that the development of a wind turbine at this location would be acceptable. The applicant has indicated in the grounds of appeal that on foot of more in-depth studies which was carried out by the turbine suppliers, that the original application granted by the Board which permitted a turbine with a hub height of 68 metres, was not fit for purpose giving the undulating nature of the landscape. It is stated that an additional height and wider blades were required to mitigate against the high levels of turbulence anticipated at the site. It is on this basis that the current application was made. Issues in relation to the increase in height of the turbine are dealt with in more detail below. It is sufficient to state in this section of the report however that the Board quite recently (July 2019), under the provisions of the same development plan granted planning permission for a development of a

similar nature on the subject site. And this in my view provides a relevant precedent in determining the current application before the Board.

9.3. **Development Plan Policy**

- 9.3.1. The single reason for refusal issued by the Planning Authority is primarily predicated on the policies and provisions contained in the development plan. The two main concerns issued by the Planning Authority is that the proposed development is located outside an area “open for consideration” and is located within 10 times the tip height of the proposed turbine to residential properties. This reason for refusal differs somewhat from Donegal County Council’s reason for refusal under ABP304198-19 which was primarily predicated on the basis that there was an absence of updated Government Wind Energy Guidelines and there is a lacuna in wind energy policy within the Council on foot of a successful High Court action (referred to above).
- 9.3.2. As already highlighted above in the section on development plan policy, statutory policy in respect of windfarm development is currently in abeyance notwithstanding the fact that Donegal County Council adopted a variation to the windfarm section of the development plan at the plenary Council meeting of 18th July, 2022. A subsequent letter from the Office of the Planning Regulator (subsequent to the variation of the plan made at the plenary session) contains notice of intention to issue a Ministerial Direction to Donegal County Council in respect of the variation of the plan. On consideration of the recommendation by the Office of the Planning Regulator. The Minister on 29th of August issued a Direction to the Council which inter alia stated the following:
- The variation has not been made in a manner consistent with and has failed to implement the recommendations of the Planning Regulator under Section 31AM.
 - It is considered that the variation as made fails to meet the overall strategy for the proper planning and sustainable development of the area.
 - The variation is not consistent with national policy objectives set out in either the National Planning Framework or the Regional Policy Objectives or Ministerial Guidelines set out under Section 28 of the Act. On this basis it is reasonable to conclude that there is no formally adopted Wind Policy Guidelines for Donegal presently.

- 9.3.3. The policy set out in the variation which maintains the requirement to ensure that no residential properties are to be located within 10 times the tip height of the proposed turbine therefore is not a statutory objective at present as it is the subject of a Ministerial Directive under the provisions of Section 31 of the Planning and Development Act 2000. The specific measures contained in the Directive seeks to omit Policy E-P-23 and Policy E-P-24 which sets out the setback distance of 10 times the tip height of the proposed turbines from the nearest part of the curtilage of any residential properties or other centres of human habitation.
- 9.3.4. It is my considered opinion, having regard to the Ministerial Directive referred to above, that the Board could set aside this requirement pending the adoption of statutory policies adopted by the Minister. Furthermore, the principle of the windfarm development on the subject site has been established through a previous grant of planning permission by the Board. In addition, in the absence of specific technical and spatial policy set out in the local development plan, there is a comprehensive range of guidance and policy objectives at national, regional and local level² generally in relation to windfarm developments and while certain aspects of the development plan have been deleted and removed, this does not imply that there is a complete vacuum of lacuna in policy which precludes the Board from determining the application before it in accordance with the proper planning and sustainable development of the area. I would also refer to the judicial review proceedings taken by Element Power versus An Bord Pleanála 2016/920JR (IEHC550). Under this application (Reg. Ref. 09PA0041) An Bord Pleanála issued notification to refuse planning permission for a windfarm straddling the border of Kildare and Meath County Council for 3 separate reasons; the first of which referred to the absence of any wind energy strategy with a spatial dimension or wind energy strategy at local levels for Kildare and County Meath. In its judgement the Court held that there was no provision within the Planning and Development Act which empowered the Board to reject the proposed development on the basis it would be premature pending the adoption of national or local strategies. The Courts therefore ruled in relation to this

² General policy goals contained in the Development Plan such as E-O-1 and E-O-7, which generally support the provision of wind energy, have not been altered by the original High Court Judgement or the adopted variation in the Council Plenary Session.

application that there was no such policy vacuum at national or local level from precluding the Board from granting planning permission and it was not a relevant consideration and not a valid reason for declining permission. This judgement in my view is directly relevant to the case currently before the Board.

- 9.3.5. On the basis of the above I consider that the Board could set aside the reason for refusal issued by Donegal County Council in relation to the contravention of the development plan.

9.4. **Shadow Flicker**

- 9.4.1. The observation submitted argues that the proposed development would exacerbate shadow flicker which, according to the observer, already occurs in respect of the three turbines located to the west of the subject site. While it is acknowledged that the turbine in question is of a greater height than the existing turbines to the east of the observer's dwelling, the separation distance between the observer's dwelling and the proposed turbine is greater. The nearest existing turbine is located c.465 metres to the west of the nearest dwelling, while the proposed turbine to the north of the site is over 700 metres away. Furthermore, the applicant has carried out extensive shadow flicker modelling which indicates that the proposal would not have a significant or material impact on sensitive receptors in the vicinity with regard to shadow flicker and the proposal would comply with the requirements of the 2006 Guidelines. Perhaps most importantly the applicant in the grounds of appeal has stipulated that the turbine will be equipped with a shadow flicker shutdown function to ensure that no shadow flicker occurs at the nearest sensitive receptors. I consider that this issue can therefore adequately be dealt with by way of condition. It is reasonable to conclude therefore that the proposed development will not give rise to any additional or cumulative impacts in respect of shadow flicker.

9.5. **Noise**

- 9.5.1. With regard to the issue of noise, I would consider it highly unlikely that the provision of an additional turbine over 700 metres from the nearest sensitive receptor would give rise to any material cumulative impacts in terms of noise. Having inspected the site when the windfarm was operational, I noted that noise generation from the nearest turbines c.450 metres from the subject site did not give rise to any discernible noise generation. I fully acknowledge that noise may become a potential

issue under various wind regime scenarios which were not experienced during my site inspection. However, the proposed turbine located over 700 metres from the nearest noise sensitive receptor is very unlikely to give rise to any significant or material additional noise generation. This fact is acknowledged in the 2006 Windfarm Guidelines where it is noted that “in general noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres”. As already referred to above the separation distance between the proposed turbine and the observer’s dwelling is considerably in excess of this 500 metre limit.

9.6. Visual Impact

- 9.6.1. As referred to above, there is an extant permission for a turbine on the subject site. The proposed development before the Board seeks to increase the hub height of the turbine by 13 metres and the tip height by approximately 35 metres. As mentioned already, the site is located in an area designated as being of “moderate scenic amenity”. This is the lowest designation in terms of visual sensitivity. The development plan identifies these areas as having capacity to absorb existing development. Furthermore, there are three existing turbines present to the immediate south of the proposed development. I note that Section 6.3 of the Wind Energy Guidelines provided guidance on the siting and location of the turbines and the positive effect of forestry in assisting the assimilation of turbines. The application was accompanied by a landscape and visual impact assessment. It reasonably concludes in my opinion that the provision of a single turbine development is not considered to give rise to any significant landscape or visual impacts. I further note that a similar conclusion was reached in the previous inspector’s report in respect of ABP304198-19. I refer the Board to the photomontages submitted also while the longer rotary blades are discernible, it is not considered that the proposed development would be visually incongruous in the area, particularly having regard to the proximity of existing turbines and it is reasonable to conclude notwithstanding the increase in hub height and blade length, that the proposed development would not have any significant adverse impacts on the visual amenities of the area. Furthermore, I note that the Planning Authority did not cite visual impact as a reason for refusing the proposed development. I note that the planner’s report states that *“having regard to the location within the undulating and rocky hillside and the*

proximity of excessive turbines, it is considered that the receiving landscape can accommodate the development". I consider therefore the Board can reasonably conclude that the proposed development will not adversely impact on the visual amenities of the area.

9.7. **Appropriate Assessment**

- 9.7.1. An appropriate assessment screening report was submitted with the application and is appended as Appendix 2 of the Environmental and Planning Report. It reasonably concludes in my opinion that the proposed development will have no direct or indirect impact on a European site. Having regard to the fact that the proposed development represents an almost identical development in terms of construction to that already granted by the Board under ABP304198 and that the former application was the subject of an appropriate assessment undertaken by both the inspector and the Board, which concluded that no appropriate assessment issues arise, it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. I would consider it reasonable to conclude that the Board can adopt a similar conclusion in respect of the current application before it.

9.8. **EIA Screening**

- 9.8.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact can, therefore, be excluded at preliminary examination and a screening determination is not required.

9.9. **Material Contravention of the Development Plan**

- 9.9.1. It is noted that the Planning Authority's single reason for refusal argued that the proposed development would materially contravene Objective E-O-6 and the policies and provisions contained in the County Donegal Development Plan 2018 – 2024 (as varied) and would therefore be contrary to the proper planning and sustainable development of the area
- 9.9.2. As referred to in my assessment above it is apparent that wind policy objectives and guidelines contained in the current development plan are subject to a Ministerial Direction under Section 31 of the Planning and Development Act 2000. It is my

considered view therefore that the argument put forward by the Planning Authority that the proposed development materially contravenes objectives and policy provisions contained in the development plan is premature. Furthermore, I consider that it can be reasonably argued that the proposed development is (a) of strategic and national importance, (b) that there are conflicting objectives in the development plan or the objectives are not clearly stated having particular regard to the currently Ministerial Direction issued under Section 31 of the Act and that (c) permission for the proposed development can be granted having regard to regional planning guidelines for the areas and guidelines under Section 28 of the Act. The Board therefore in my view could conclude that the proposal meets the criteria set out under Section 37(2)(b)(i), (ii) and (iii) of the Act.

10.0 Conclusion and Recommendation

- 10.1. Having regard to the information submitted with the appeal together with the separation distance between the proposed development and existing residential dwellings together with the extant permission for a turbine on the subject site and national, regional and local policy which seeks to encourage renewable energy infrastructure, it is considered that the proposed development is acceptable at the location in question and in accordance with the proper planning and sustainable development of the area.
- 10.2. I recommend that planning permission be granted for the proposed development based on the reasons and considerations set out below and the following conditions.

11.0 Reasons and Considerations

Having regard to national policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions of greenhouses gases, the Wind Energy Development Guidelines for Planning Authorities 2006, the provisions of the Donegal County Development Plan 2018-2024 and the character of the landscape along with the history of the site and the distance to existing residential development, it is considered that the proposed development, subject to compliance with the conditions set out below, would be acceptable in terms of impact on the visual amenities and landscape character of the area, would not

seriously injure the amenities of property in the vicinity, would not be prejudicial to public health and be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be ten years from the date of this order.

Reason: Having regard to the nature and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years

3. This permission shall be for a period of 30 years from the date of the commissioning of the wind turbines. The wind turbines and related ancillary structures shall then be decommissioned and removed unless, prior to the end of the period, planning permission shall have been granted for their continuance for a further period.

Reason: To enable the relevant planning authority to review the operation of the wind farm in light of the circumstances then prevailing.

4. The operation of the proposed development, by itself or in combination with any other permitted wind energy development, shall not result in noise levels, when measured externally at nearby noise sensitive locations, which exceed,-
- (a) between the hours of 0700 and 2300,
 - (i) the greater of 5 dB(A) $L_{90,10min}$ above background noise levels, or 45 dB(A) $L_{90,10min}$, at wind speeds of 7 metres per second or greater, and
 - (ii) 40 dB(A) $L_{90,10min}$ at all other wind speeds,
 - (b) 43 dB(A) $L_{90,10min}$ at all other times

where wind speeds are measured at 10 metres above ground level.

Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority a noise compliance monitoring programme for the subject development, including any mitigation measures such as the de-rating of the turbine. All noise measurements shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with Respect to Community Response," as amended by ISO Recommendations R 1996-1. The results of the initial noise compliance monitoring shall be submitted to, and agreed in writing with, the planning authority within six months of commissioning of the turbine.

Reason: In the interest of residential amenity.

5. (1) Shadow flicker arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors.

- (2) The proposed development shall be fitted with appropriate equipment and software to control shadow flicker in accordance with the above requirement. Details of these control measures shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.
- (3) A report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority, indicating compliance with the above shadow flicker requirements at dwellings. Within 12 months of commissioning of the proposed turbine, this report shall be submitted to, and agreed in writing with, the planning authority. The developer shall outline proposed measures to address any recorded non-compliances, controlling turbine rotation if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

Reason: In the interest of residential amenity.

6. Details of any aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Prior to commissioning of the turbine, the developer shall inform the planning authority, the Irish Aviation Authority and the Department of Defence of the as constructed tip heights and co-ordinates of the turbines.

Reason: In the interest of air traffic safety.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

8. Water supply, and surface water attenuation and disposal, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. On full or partial decommissioning of the turbine or if the turbine ceases operation for a period of more than one year, the mast and the turbine concerned shall be removed and all decommissioned structures shall be removed, and foundations removed or covered with soil to facilitate re-vegetation, within three months of decommissioning.

Reason: To ensure satisfactory reinstatement of the site upon cessation of the project.

10. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: In the interest of traffic safety and the proper planning and sustainable development of the area.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

**Paul Caprani,
Senior Planning Inspector.**

28th November, 2022.