



An
Bord
Pleanála

Inspector's Report ABP-314662-22

Development

Construction of a wind turbine with an operational lifespan of 30 years from commissioning, with a tip height of approximately 150 metres, control building, upgrading of site entrance, site access road (approximately 195 metres), hardstand areas, underground cabling and all associated site works

Location

Multins, Bruckless, Killybegs, Co. Donegal.

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

2251213

Applicant(s)

Protricity Limited.

Type of Application

Permission.

Planning Authority Decision

Refuse

Type of Appeal

First / Third Party

Appellant(s)

Protricity Limited

Observer(s)

None.

Date of Site Inspection

10th November 2022

Inspector

Paul Caprani

Contents

1.0 Introduction	5
2.0 Site Location and Description.....	5
3.0 Proposed Development	5
4.0 Planning Authority Decision	6
4.1. Decision.....	6
4.2. Documentation Submitted with the Planning Application	7
4.7. Planning Authority Reports.....	8
5.0 Planning History.....	9
6.0 Policy Context.....	10
6.1. National Policy	10
6.2. Regional Policy	13
6.3. Development Plan.....	13
6.14. Natural Heritage Designations	15
6.15. EIA Screening.....	15
7.0 The Appeal.....	16
7.1. Grounds of Appeal	16
7.2. Planning Authority Response	18
7.3. Observations	19
8.0 Planning Assessment	20
8.2. Development Plan Policy.....	21
8.11. Material Contravention of the Development Plan.....	27
9.0 Appropriate Assessment	27
1.0 Conclusion and Recommendation	32

2.0 Reasons and Considerations 32

3.0 Conditions 32

1.0 Introduction

ABP 314662 relates to a first party appeal against the decision of Donegal Co. Council to refuse planning permission for the construction of a single wind turbine in the townland of Multins approximately 6km north east of the town of Killybegs in south-west Donegal. Permission was refused for two reasons; the first of which stated that the proposal was contrary to the policies and provisions contained in the County Donegal Development Plan, being in an area that is 'not open for consideration' in the plan and that the proposal would adversely impact on the residential amenities of the area. The second reason for refusal stated that the proposed development would adversely impact on the visual amenities of the area. No letters of objections opposing the development are contained on file.

2.0 Site Location and Description

- 2.1. The site on which the proposed turbine is to be located comprises of a large field which comprises primarily of peatland that is used for rough pasture. It is relatively flat, with a gentle upward slope from south to north and is surrounded by low hedgerows. The proposed turbine is located at the northern end of the field, in proximity to a stand of conifer woodland located along the northern boundary of the field. The site is accessed via a local road the L-5515-1 which runs northwards from the N56. Access to the turbine is to be obtained from an existing agricultural entrance on the road. The turbine is to be located approximately 250m inland from the access road at an elevation of approximately 100 m AOD. There are no dwellings within 600m of the proposed turbine. The Corkermore Windfarm (comprising of 5 turbines with 100m tip height) is located 3.5 to 5 km to the north-east of the site.

3.0 Proposed Development

- 3.1. Planning permission is sought for the erection of a single turbine with a hub height of 81m and a tip height of 150m. It will also involve an upgrade of the site entrance and upgrading of 75 m of existing track and the construction of 120m of new track. A new hardstanding area and underground electrical cabling linking the turbine to the existing 38kV station at Killybegs is also proposed. The proposed will also require a temporary construction compound and some modification to the access road to

facilitate delivery of the turbine. Further details of the turbine model to be considered for installation is set out in Table 2-1 of the Environmental Report submitted with the application. Further details of the proposal are also set out in section 2.21 of the report.

4.0 Planning Authority Decision

4.1. Decision

Donegal County Council refused planning permission for the proposed turbine for two reasons which is set out in full below:

1. It is a policy of the Council (Policy E-P-12, County Donegal Development Plan 2018-2024 (as varied)) that appropriate new wind energy developments can be considered within the areas identified as '*open to 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 at Para. 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 Guidelines and Technical Standards of the County Development Plan 2018-2024 (as varied) precludes wind turbines being located within ten times the tip height of the proposed turbine from residential properties.
As the proposed development is located outside of an area '*open to consideration*' and located within ten 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 Donegal Development Plan 2018-2024 (as varied) and would thereby be contrary to the proper planning and sustainable development of the area.
2. Policy NH-P-7 of the County Donegal Development Plan 2018-2024 (as varied) states that '*within areas of High Scenic Amenity and Moderate Scenic Amenity, as identified on Map 7.1.1, and subject to the other objectives and policies of this Plan, it is the Policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the*

character and amenity designation of the landscape'. Having regard to the scale of the proposed turbine in the context of the open and unspoilt nature of the receiving environment, where long views of the site are affordable from public road networks to the south and in an absence of landforms to facilitate assimilation, it is the opinion of the Planning Authority that the proposed development has the potential to result in an unwelcome visual intrusion in the upland rural area, which would be contrary to the provisions of the aforementioned Policy and furthermore contrary to the proper planning and sustainable development of the area.

4.2. **Documentation Submitted with the Planning Application**

4.3. The application was accompanied by the following documentation.

4.4. **An Environmental Report.** This Report assesses the potential impact of the proposed development on human beings, landscape and visual amenity, traffic and transport, soils, geology and hydrogeology, water and biodiversity, and archaeological heritage. It concludes that there will be a permanent loss of a modest area of blanket bog. The loss of a small area of this habitat will not adversely affect the conservation status of the surrounding ecological resource. Any disturbance to fauna will be short term and will not be significant.

4.5. **A Screening Report for Appropriate Assessment** was also submitted. A total of 11 Natura 2000 sites were identified within a 15 km radius of the proposed development (6 SAC's and 5 SPA's), the closest of which is 5.8km to the north east (Lough Nillan Bog SAC and SPA). Of the 11 sites identified only one site Lough Nillan Bog SPA, was screened in for a stage 2 Appropriate Assessment. It was screened in on the basis that the proposed project is within the foraging range for the Greenland White -fronted Goose. It notes however that this species is confined to roughly 80 regular sites in Ireland and Britain. Because of their high levels of fidelity, there is limited potential to colonise new areas. Notwithstanding this, collision impacts with inappropriately located wind energy developments are identified as a potential threat. The subject site is not known to be used by Greenland White fronted geese. Alternative potential feeding grounds exist within the wider environment including Lough Tamur 7.4 km away. The risk of displacement during the construction phase is therefore considered to be very low to negligible. No flight

paths for the Greenland White fronted geese have been recorded in the vicinity of the site. No cumulative effects are identified; aside from low-intensity agriculture, no other known plans or projects occur in the immediate vicinity of the site. It is noted that there are 11 windfarms within 22.5 km of the site (67 turbines). The screening report concluded that there is a finding of no significant effects therefore a stage II AA is not required.

4.6. The planning application was also accompanied by a planning consent letter was also submitted by the owner of the lands in question.

4.7. **Planning Authority Reports**

- A report from the Building Control Office states that all building works must be carried out in accordance with the Building Control Regulations.
- A report from the National Roads Design Office states that the proposal does not affect the progression of any current National Road.
- A Report for the Irish Aviation Authority (IAA), states that there is no objection subject to standard conditions. Similar type conditions concerning lighting etc were also requested to be attached in the case that Planning Permission was granted in a submission by the Department of Defence.

4.8. The planner's report sets out details of the site location and description and the proposed development. It also notes the contents of the internal report received in respect of the application. Details of the planning history (none applicable) and policy context relating to the site are also set out. The report also assesses the documentation submitted with the application (including the Environmental Report) 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". Reference is made to the new variation to the plan in respect of the Wind Energy Policy Framework to the CDDP adopted by the Council at the plenary meeting on the 18/07/2022. Reference is made to Map 8.21 and the new adopted policies in the Plan. Reference is made to Policy ED-P-12 which seeks to direct appropriate new wind energy developments within areas identified as open to consideration in the wind energy map. 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 to the turbine is noted to be 650 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.

- 4.9. In terms of siting and design reference is made to policy NH-P-7. It is noted that the landscape comprises of open upland terrain. There are no immediate or obvious landforms that would facilitate the integration of a single 150m high turbine. The subject site is considered visually isolated and therefore inappropriate. It constitutes an obtrusive, haphazard, and overly dominant form of development.
- 4.10. In terms of residential amenity, it is noted that as the turbine does to 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. In terms of access, details of the haul route have not been specified in the documentation submitted. No concerns have been raised in respect of public health.
- 4.11. 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 €2,000 would be required.
- 4.12. 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 and on this basis, it is recommended that planning permission be refused for the reasons set out above.

5.0 Planning History

No history files are attached, and the planners report makes no reference to any relevant planning history pertaining to the site.

6.0 Policy Context

6.1. National Policy

Project Ireland 2040 – National Planning Framework

6.2. 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’.

6.3. 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

- 6.4. 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

- 6.5. 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.

In December 2013, the Minister for Housing and Planning announced a public consultation process with respect to a focused review of the 2006 Guidelines and a 'preferred draft approach' to the review was announced in June 2017.

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.

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.

6.6. 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.

6.7. Development Plan

6.8. The site is governed by the policies and provisions contained in the Donegal County Development Plan 2018 – 2024 (as varied).

6.9. 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 counties have yet to be resolved.

6.10. 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 and 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.

- 6.11. On foot of a High Court Order (Record No. 2018/533JR 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 is to be read in light of this order pending any possible future variation of same and the Planning Authority intends preparing a variation to the development plan regarding wind energy.
- 6.12. 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 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. The subject site appears to be located in an area where windfarms are not normally permissible. 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”*.
- 6.13. 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 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’.

- 6.14. 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.
- 6.15. It appears therefore that this policy of Donegal County Council as at the time of writing this report is currently in abeyance pending the direction from the Minister. The subject site is located in an area designated as being an area of moderate scenic amenity.
- 6.16. Other aspects of the amended plan which appear not to be subject of a direction includes 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.
- 6.17. 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.

6.18. **Natural Heritage Designations**

There are no designated European Site with the vicinity of the appeal site. The nearest European Site is Lough Nillan Bog SAC and SPA which is situated c5.8 km from the subject site.

6.19. **EIA Screening**

The Environmental Report submitted with the application included an Environmental Screening Report (see section 1.2 and Table 1-1 of the of report). It concludes that no significant impacts were identified. Having regard to the limited nature and scale of the proposed development which involves the provision of a single turbine, 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 environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Appeal

The decision of Donegal Co. Council to refuse planning permission for the proposed development was the subject of a first part appeal on behalf of the applicant by Harley Planning Consultants Ltd. The grounds of appeal are outlined below:

7.1. Grounds of Appeal

- The appeal commences by making reference the government policy which acknowledges the valuable input that the wind turbine can make to government targets of reducing the country's dependence on fossil fuels through the development of an alternative renewable energy strategy.
- The planning authority in its first reason for refusal, made reference to the fact that the wind turbine is located within an area designated as being “not normally permissible”. This is acknowledged in the grounds of appeal. It is stated that the planning authority have identified areas considered not normally permissible for wind turbines on the basis of a step-by-step ‘sieve mapping analysis’. The applicant has submitted a detailed and comprehensive evidence in the Appropriate Assessment Screening Report and an Environmental Report which examined the environmental, landscape and technical criteria upon which it can be concluded that the location of the proposed development “does not fully meet the intent of the not normally permissible designation”. In identifying areas which are suitable and considered not to be suitable for wind farm development, a total of 16 spatial data layers were used in the exercise undertaken by the council. It is significant that areas designated as being of moderate scenic amenity is not included in the spatial data layers considered. Two of the data layers included (a) landslide susceptibility assessment and (b) Freshwater Pearl Mussel. These are assessed in more detail in the grounds of appeal.
- In respect of the landslide susceptibility assessment, it is stated that a site-specific peat land slide risk assessment was carried out for the proposed development. Based on the field surveys, the analysis included peat depth probing and peat strength measurements. The proposed development avoids the deeper peat completely. The risk of a peat landslide is considered to be

negligible, and monitoring will be carried out during the construction phase to ensure that peat slippage does not occur.

- The Ministerial Direction of August 29th 2022, directed the Planning Authority under S31 of the Act to amend Map 8.2.1 where areas designated to be of 'moderately low' to 'moderately high' landslide susceptibility areas identified as 'not normally permissible' to 'open for consideration'. Thus, in terms of landslide vulnerability, the fundamental basis for the first reason for refusal no longer holds and the development should be located in an area which is 'open for consideration'.
- With regard to the threat to the Freshwater Pearl Mussel (FWPM), details of the water quality of the streams and rivers in the vicinity of the site are set out. The Oily River c.1km to the south-east is designated as being of good status and is assigned as not being 'at risk'. The Environmental Report states that there is no suitable habitat for the Freshwater Pearl Mussel, it is proposed to incorporate detailed avoidance, reduction and mitigation measures during construction to eliminate harmful sedimentation which could affect the FWPM. Thus, the development will not constitute a threat to the FWPM and therefore the site in which the development is located should not be considered as an area as being 'not normally permissible'.
- With regard to the residential amenity impacts, the mandatory set back distances in the variation of the development plan (10 times the tip height of the wind turbine from the nearest residential property) does not adhere to the Ministerial Direction or Wind Energy Guidelines (2006) or the Draft Guidelines (2019). It is suggested that the implementation of the standard which requires a tip height of 10 times distance from the residential property amounts essentially to a prohibition of new windfarm developments within the county. In this instance the nearest residential dwelling is c.650 m from the proposed turbine, this is in excess of 4 times the turbine height as recommended in the national guidelines.
- The second reason for refusal relates to visual amenity where it is stated that the proposal would be contrary to policy NH-P-7. It is noted that the subject site is located in an area designated as being of moderate scenic amenity, the lowest designation identified in the development plan. The plan notes that these areas have the capacity to absorb additional development that is suitably located, sited

and designed to comply with all other objectives and policies contained in the development plan. Chapter 4 of the Environmental Report submitted with the planning application sets out an assessment of the landscape and the visual impact arising from the proposed development. It is suggested that the planners visual impact assessment is based on the photograph taken from a local secondary road to the south of the site (the L5515-1). It is suggested that this is not an important public viewpoint as the road in question is now heavily trafficked or used by the public. The appellant presented in chapter 4 of the Environmental Report, a range of photomontages from important viewpoints to determine the visual impact of the wind turbine. It is suggested that the photomontages demonstrate that the turbine will be seen in the context of commercial forestry, housing and overhead service lines all of which will help integrate the proposal into this area of 'moderate scenic importance'. The Zone of Theoretical Visibility (ZTV) which was carried out as part of the environmental report concluded that the visual impact will be largely contained within a 5Km containment area of the turbine.

- Finally, the grounds of appeal argue that, based on the spatial data layers used to determine whether lands are not normally permissible or open for consideration for windfarm development, three criteria are particularly relevant (peat bogs, Natura 2000 sites and geological heritage sites).

It is suggested that the proposed development meets the criteria set out and thus the site should be considered to be located in an area which is open for consideration for windfarm development.

Attached to the appeal submission is the Publication entitled "Introduction and Explanation of the Scope of the Proposed Variation to the Development Plan 2018-2014 (As Varied) in respect of a Wind Energy Policy Framework. (Appendix B). The Ministerial Direction made under Section 31 is also attached as Appendix C.

7.2. Planning Authority Response

The response sets out the two reasons for refusal is by the planning authority and 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 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 of making the decision. 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.

The second reason for refusal makes reference to the visual intrusion which was noted from several viewpoints as submitted on the photomontage, and not solely from the adjacent roadway as suggested in the grounds of appeal. For this reason, the proposal is considered to be contrary to Policy NH-P-7 of the Plan.

Any further matters raised in the appeal have been previously addressed in the planner's report.

7.3. Observations

- No Observations were submitted

7.4. EIA Screening

- 7.4.1. 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.

7.5. Environmental Designations

The site is not located within, contiguous or proximate to a Natura 2000 Site. The nearest Natural 2000 sites (The Lough Nillan Bog SAC and SPA are located are their closest point 5.8 Km form the subject site.

8.0 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. I consider the pertinent issues in determining the current application and appeal before the Board are as follows:

- Principle of Development
- Development Plan Policy
- Visual Impact
- Appropriate Assessment

Each of these issues will be dealt with in turn.

8.1. Principle of Development

- 8.1.1. Planning permission is sought for a single turbine on the subject site with an overall tip height of 150 metres together with the turbine foundations, hardstanding and assembly areas to link in with an existing 38kV substation at Killybegs.
- 8.1.2. There are a wealth of reports and guidelines which set out targets, policies and objectives all of 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 set out in Section 6 of my report. Perhaps the most important national policy document entitled 'Climate Change Action Plan 2021' produces 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.
- 8.1.3. In addition to this, the National Planning Framework also highlights similar targets of achieving a transition to a competitive low carbon climate resilient, environmental and 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 to meet national objectives towards achieving a low carbon economy by 2050. 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 in respect of climate change. The proposed turbine will have a maximum output of less than 5MW and this will assist, (albeit to a modest extent) 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.

- 8.1.4. 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 separate headings 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.

8.2. **Development Plan Policy**

- 8.3. The first reason for refusal made reference to Policy E-P-12 whereby it is the policy of the Council to direct new windfarm developments into areas identified as 'open for consideration'. Reference is also made to Part B Appendix 3 of Section 6.5 of the Development Guidelines and Technical Standards of the County Development Plan

2018-2024 which precludes wind turbines being located within ten times the tip height of the proposed turbine from residential properties.

8.3.1. As already highlighted above in the section on development plan policy, local 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 for the Minister to issue a Ministerial Direction to Donegal County Council in respect of the variation of the plan. On consideration of the recommendation made to the Minister by the Office of the Planning Regulator, it is considered that:

- The variation has not been made in a manner consistent with and has failed to implement the recommendations of the Planning Regulator under Section 31(AM).
- 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.

8.3.2. On this basis it is reasonable to conclude that there is no formally adopted Wind Policy Guidelines for Donegal presently. The variation as adopted in the plenary session of July 18th 2002 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.

8.3.3. 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 have also been requested to be omitted in the Ministerial Direction. It is my considered opinion having regard to the Ministerial

Directive that the Board could set aside this specific requirement pending the adoption of statutory policies adopted by the Minister.

- 8.3.4. Furthermore, in the absence of specific local policy, there is a comprehensive range of guidance and policy objectives on national, regional and local level 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 or 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 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.
- 8.3.5. The appellant in the grounds of the appeal makes reference to (and attaches a copy) of the explanation and rationale used by Donegal Co Council in determining which areas are ‘open for consideration’ and which areas are ‘normally not permissible’ for windfarm development. It involves the application of spatial data under various environmental factors in the form of a sieve analysis. A total of 25 criteria were applied; including areas of landslide susceptibility. Interestingly, even in areas where there was a low probability landslide susceptibility, it was included as an area being ‘not normally permissible’. One of the requirements under Section 2(c) of the Ministerial Direction was to:
- 8.3.6. *Amend map 8.2.1 to change the designation of “Lifford -Stranorlar 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’.

- 8.3.7. According to the appellant, the subject site was designated as being ‘not normally permissible’ on the basis of landslide susceptibility¹. As this is the subject of review as per the Ministerial Direction, it would in my opinion further undermine the rationale for the Planning Authority’s refusal. In addition, the Environmental Report submitted provided a relatively detailed peat slide risk assessment (see section 6.4.4 of report pp. 88-95). It concluded that due to the location of the turbine foundation away from the deeper areas of peat, the potential for peat slide is negligible.
- 8.3.8. With regard to the threats to the Freshwater Pearl Mussel, this was also an environmental factor taken into account in the council’s spatial data sieve analysis. However, I am satisfied, that notwithstanding the fact that the site is located within an FWPM catchment, it is sufficiently separated from a surface waterbody so as to pose a threat to the FWPM. There are a number of streams to the south of the proposed turbine base, these streams discharge into the Oily River, a FWPM catchment area. Section 7.4 of the Environmental Report sets out a detailed suite of mitigation measures to minimise the release of silt laden surface waters into the streams that feed into the Oily River. On this basis, I consider that planning permission should not be precluded on the basis that the proposed development could adversely impact on the habitat of the FWPM.
- 8.3.9. Thus, arising from my assessment 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 policies and provisions contained in the development plan, including the variations adopted at the plenary session of July 18th last.

8.4. **Visual Amenity Issues**

- 8.5. The second reason for refusal specifically made reference to Policy NH-P-7 which states that in areas of high scenic amenity and moderate scenic amenity as identified in Map 7.1.1 and subject to the other objectives and policies of this plan, where it is the policy of the council to facilitate development of a nature, location and scale that allows development to integrate within and reflect the character and amenity

¹ It is not possible to be unequivocal with regard to whether the subject site is within an area susceptible to landslides due to the scale of the map presented.

designation of the landscape. The reason for refusal goes on to state that the turbine would be located within an landscape that is open and unspoilt in nature and where long views are affordable from public road networks which makes assimilation of the structure difficult. As such it is considered that the proposed development would result in an unwelcome visual intrusion in an upland rural area.

- 8.6. I would make the following points in respect of the visual impact of the proposed development. I would acknowledge that the landscape can be described as open and for the most part unspoilt as reflected in the planning authority's reason for refusal. From vantage points, particularly to the south of the site, the wide expansive views of the site would make the turbine a dominant and somewhat incongruous feature within the landscape. This is reflected in the photo's attached to my report.
- 8.7. Notwithstanding these points, the need to provide additional renewable energy within the State in order to address the ever more pressing issue of climate change which recent international reports suggest is accelerating at an unprecedented rate together with the potential shorter-term problems of energy supply from fossil derived fuels, make the need for provide renewable energy generation all the more acute and immediate. This in turn requires planning policy to adapt and incorporate flexible and less pertinacious policy objectives in respect wind turbine development, given the wider climate change /energy supply context. This is not to suggest that there can be a 'free for all' in terms of locating turbines throughout the County. There are undoubtedly designated areas of particular scenic importance throughout the County, where turbines would not be considered acceptable from a visual amenity perspective. However, the Board will be aware that the turbine is located in an area designated as being of Moderate Scenic Amenity, which is the lowest class of scenic amenity contained within the plan. This in turn suggests that such designated areas have the greatest capacity in visual terms to accommodate development of the nature proposed. From a visual perspective therefore, there are no lands within the County which are considered more robust or more suitable to accommodate development such as that proposed, than the lands on which the proposed turbine is to be located. It should also be noted that there are no designated scenic views in the direction of the lands which are earmarked to accommodate the proposed development. Having regard to the urgent need to provide development of this nature, particularly along the west coast, where maximum benefit can be obtained

from the wind regime, a less resolute interpretation of the landscape designations in the development plan is, in my view, required.

- 8.8. Furthermore, I would generally agree with the first party appellant that turbines by their very nature are intrusive features on the landscape and the open and exposed nature of the landscape is only characteristic of certain viewpoints within the surrounding area. The vantage points which encompasses the most open and exposed views of the lands on which the wind turbine will constitute a dominant feature is the local road to the south west of the site. It should be noted that from vantage points along this local road, the turbines associated with the Corkamore Windfarm are readily visible. c.3.5km to the north east. It is also apparent from Figure 4.3 of the Environmental Report submitted with the application, that there are relatively few areas all of which are modest in size, concentrated to the south of the windfarm site where only the Multins Turbine and no other turbines are visible. This might also suggest that the landscape in which the proposed turbine is to be located is not as unspoilt and pristine as suggested in the reason for refusal.
- 8.9. I reiterate that, having inspected the site, the major visual impact arising from the turbine will be from the local road to the south west. I note that this vantage point was not included in the photomontages submitted. I consider the visual impact from vantage points along this road would be significant and profound. Notwithstanding this conclusion, I also note that the visual impact from vantages along other roadways in the vicinity to the north and east, would be less grievous, in spite the fact that that they are in close proximity to the proposed turbine. This is mainly due to the intervening terrain which is elevated and will restrict views from vantage points along these roads on the whole, to truncated views of the rotary blades only. This is aptly illustrated in viewpoint 4 and viewpoint 5 of the photomontage's submitted.
- 8.10. In conclusion therefore, I consider that the visual impacts may not be as significant or profound as that suggested in the planning authority's reason for refusal. Furthermore, and having particular regard to my arguments in respect the lacuna in windfarm policy provision referred to above, I consider that the planning authority could take a more compromising and flexible approach to permitting such development on lands designated as being the least sensitive in landscape terms, particularly having regard to the need to provide such important renewable energy infrastructure, especially in the short term. The Board therefore in my view, could

also consider setting aside the second reason for refusal issued by the planning authority.

8.11. Material Contravention of the Development Plan

8.12. 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

8.13. 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 (c) that 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, were it minded to overturn the decision of the planning authority and grant permission for the turbine.

9.0 Appropriate Assessment

9.1.1. Article 6(3) of the Habitats Directive requires that any plan or project not directly connected with, or necessary to, the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

The application site is not located within or adjacent to a Natura 2000 site. The application was accompanied by a Screening Report for Appropriate Assessment. The report notes that there are 11 Natura 2000 Sites with a 15 km radius of the site.

These are set out and assessed in the Table below:

Natura 2000 Site	Distance form Appeal Site	Screened Assessment	In / Out
Lough Nillan Bog SAC (Site Code 000165)	5.8km NE	There are no pathways connected between the project site and the SAC in question - hydrological or otherwise	Out
Meenaguse/Ardbane Bog SAC (Site Code 000172)	13.4km NE	There are no pathways connected between the project site and the SAC in question - hydrological or otherwise	Out
Slieve Tooley/Tormore Island/Loughros Beg Bay (SAC site code 000190)	7.5km NW	There are no pathways connected between the project site and the SAC in question - hydrological or otherwise	Out
St Johns Point SAC (site code 000191)	8.7km South	There are no pathways connected between the project site and the SAC in question - hydrological or otherwise	Out
West of Ardara/Maas Road SAC (site code 000197)	8.3 km north	There are no pathways connected between the project site and the SAC in question - hydrological or otherwise	Out
Donegal Bay (Murvagh) SAC (site code 000133)	13.2 km SE	There are no pathways connected between the project site and the SAC in question - hydrological or otherwise	
Lough Nillan Bog SPA (Site Code 004110)	5.8 km NE	I note that the screening for Appropriate assessment screened this SPA in for the purposes of a stage 2 AA, on the basis that there is a <i>'possibility for disturbance related effects for the Greenland White-fronted Goose'</i> . However,	Out

		<p>information contained in the study submitted with the application indicates that the nearest historical foraging ground and feeding site is Tamur Lough which is located within the confines of the SPA in question and it located over 7 km form the subject site. The species has a high level of fidelity to existing sites for foraging and feeding purposes and while the development site does provide a potential foraging habitat, it is not known to be used by Greenland fronted geese. Furthermore, potential feeding grounds exist within the wider environment. Ornithological surveys of flight paths for the White -fronted Geese, carried out as part of the AA screening and the ecological assessment and the surveys did not reveal any flight paths within the vicinity of the site. Any flight paths of the Geese in question are likely, according to the studies undertaken, to be between the Nillan Bog SPA and the Sheskinmore SPA further north. For this reason and notwithstanding the conclusions reached in the screening assessment carried out in the AA Screening Report, I would conclude that the proposal will not have any impact on the Greenland White-fronted goose or any other species of conservation interest associated with the Lough Nillan Bog SPA. For these reasons I would disagree with the conclusion in the AA Screening Report and would 'screen out' the site for the purposes of the Stage 2 AA.</p>	
Inishduff SPA (site Code 0004115)	13.5km SW	The development site does not provide significant supporting habitat for any of the SCI species for which the SPA was designated. Therefore, no potential for indirect impacts on the SPA	No

		population will occur as a result of disturbance /displacement or collision risk were identified.	
West Donegal Coast SPA (Site Code 004150)	11km NW	The development site does not provide significant supporting habitat for any of the SCI species for which the SPA was designated. Therefore, no potential for indirect impacts on the SPA population will occur as a result of disturbance /displacement or collision risk were identified.	No
Donegal Bay SPA (Site code 004151)	11 km SE	The development site does not provide significant supporting habitat for any of the SCI species for which the SPA was designated. Therefore, no potential for indirect impacts on the SPA population will occur as a result of disturbance /displacement or collision risk were identified.	No
Sheskinmore Lough SPA (site code 004090)	12 km North	The development site does not provide significant supporting habitat for any of the SCI species for which the SPA was designated. Therefore, no potential for indirect impacts on the SPA population will occur as a result of disturbance /displacement or collision risk were identified.	No

Appropriate Assessment Conclusions

- 9.2. I consider that the conclusion, reached in the Screening Report for Appropriate Assessment which ‘screened in’ the Lough Nillan Bog SPA for the purposes of further assessment is based on an abundance of caution. The closest foraging ground and feeding site to the subject site is Tamur Lough which is located in excess of 5 km from the subject site. Furthermore, while the development site does provide a potential foraging habitat, it is not known to be used by Greenland fronted geese, as such it is reasonable to conclude that the construction of a wind turbine at this location will in no way affect the habitat of the Greenland White -fronted goose. Ornithological surveys of flight paths for the White -fronted Geese, carried out as part of the AA screening and the ecological assessment and the surveys did not reveal

any flight paths within the vicinity of the site. Any flight paths of the Geese in question are likely, according to the studies undertaken, to be between the Nillan Bog SPA and the Sheskinmore SPA further north. For this reason, and notwithstanding the conclusions reached in the screening assessment carried out in the AA Screening Report, I would conclude that the proposal will not have any impact on the Greenland White-fronted goose or any other species of conservation interest associated with the Lough Nillan Bog SPA. There is, based on the information submitted, no reasonable scientific doubt in respect of this conclusion. I note that a similar conclusion was reached in the appropriate assessment screening report prepared by Donegal County Council. Section 4.0 concluded *that the planning authority has determined that further assessment of the proposed development is not required as it can be excluded on the basis of objective scientific information that the proposed development individually are in combination with other plans/projects will not have a significant effect on a European site - Lough Nillan Bog SPA or SAC.*

- 9.3. With regard to cumulative impacts, I have concluded above that the proposed development will have no impact on Natura 2000 sites in the vicinity. As no impact will arise from the proposal before the Board, it will not in any way contribute to cumulative impacts. Thus, it can be concluded that no cumulative impacts arise.
- 9.4. Therefore, the proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on European Site Lough Nillan Bog SPA (Site Code; 004110) or any other European site, in view of the site's Conservation Objectives. This determination is based on the fact that the distance between the proposed development and the Natura 2000 sites results in a lack of any meaningful ecological connections to those sites having regard to the fact the Greenland White-fronted Goose, or any other species does not frequent the site for foraging or other purposes.

10. Conclusion and Recommendation

- 9.1. Having regard to the information submitted with the appeal together with the separation distance between the proposed development and existing residential dwellings 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.
- 9.2. I recommend that planning permission be granted for the proposed development based on the reasons and considerations set out below and the following conditions.

10.0 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.

11.0 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) L90,10min above background noise levels, or 45 dB(A) L90,10min, at wind speeds of 7 metres per second or greater, and

(ii) 40 dB(A) L90,10min at all other wind speeds,

(b) 43 dB(A) L90,10min 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, waste water treatment 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.