

Planning Statement

Cummeennabuddoge Wind Farm

Cummeennabuddoge Wind DAC

September 2024

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Executive Summary

This Planning Statement has been prepared on behalf of Cummeennabuddoge Wind Designated Activity Company (DAC) 'the Applicant' to accompany an application for consent to An Bord Pleanála ('the Board') under Section 37E of the Planning and Development Act 2000 (PDA) to develop a wind farm on land at Clydaghroe and Cummeennabuddoge (CMBG), Clonkeen, County Kerry (the 'Proposed Development').

A small section of the Proposed Development related to the connection to the electricity network extends into County Cork.

The Proposed Development consists of 17 wind turbines with a tip height of between 199.5 to 200 metres (m), and associated infrastructure including hardstandings, cabling and access roads. The Proposed Development also consists of a 110kv grid connection to Ballyvouskill.

Having previously be zoned as 'Open to Consideration' for wind energy in the Kerry County Development Plan, it is accepted that the Proposed Development Site no longer benefits from a supportive designation for wind energy in the Kerry County Council Development Plan 2022 – 2028 (KCDP).

However, this change in designation was down to the implementation of a broadbrush zoning methodology that screened out the entire of the Clydagh Valley due to, amongst other things, the risk of nutrient pollution of Lough Leane. This is despite wind energy developments being successfully constructed in the Valley with no associated drop in water quality and the available evidence implicating agriculture and waste water discharges.

The Applicant submits that the broadbrush approach used in designating the land in the wind energy map which also included the presence of peat soils, the location in the River basin Management Plan Blue Dot Programme, site elevation and landslide susceptibility do not reflect the site conditions. The Board should therefore adopt an evidenced based approach and consider the site's suitability to wind farm development.

The Applicant contends that this development qualifies as being of overriding public interest in terms of EU Renewable Energy Directive III and Regulation EU 2022/2577, which must carry significant weight with the Board. It is noted that this EU legislation post-dates the Kerry County Development Plan 2022-2028.

EU legislation therefore presents strong policy support for renewable energy development at a European level, to which we submit the Board should apply considerable weight to when determining this planning application in making its decision. This position is supported by the Carrownagowan Windfarm Leave to Appeal Judgement which found in favour of that development on those grounds.

The need to accelerate renewable energy development is also recognised at a National level by the Climate Action Plan 2023 and 2024 as well as the National Energy Security Framework. Both of which were implemented after the current KCDP.

In relation to national wind energy policy, the Board is obligated under s.15 of the *Climate Action and Low Carbon Development Act 2015* to act, as far as practicable, in a manner 'consistent' with the Climate Action Plan in particular.

However, the Board has no such equivalent obligation in relation to the County Development Plan. The only requirement is that the Board has certain matters to which it must “have regard” (section 37G(1) Planning and Development Act 2000), including that “the Board shall consider”...“the provisions of the development plan or plans for the area” in accordance with s.37G(2)(c).

The Proposed Development is sited on land that was the subject of a previous wind farm which was refused at Appeal in 2011 Ref 10/75 and ABP-236593). The Applicant contends that the reasoning behind this decision was flawed and a wind farm in this location does not pose the risks to water quality that formed the basis of Kerry County Council's decision.

Nonetheless the Applicant has taken the issues raised into account in the design of the Proposed Development and in the development of mitigation measures.

The potential impacts of the Proposed Development were determined through the EIA process. The Scope of EIA was determined, and EIA consultation was undertaken in 2021 to obtain input on the scope of the EIA from, Kerry and Cork County Councils and other relevant consultees.

The EIA has determined that, following the implementation measures, the only significant residual effects relate to landscape effects on the KCC Visually Sensitive Area in the area partially overlapping with the Paps Archaeological Landscape.

However, these effects are localised to the site itself and its immediate vicinity. The surrounding context, vast scale and undulating nature of the receiving landscape is such that the landscape will accommodate the Proposed Development without leading to unacceptable levels of adverse effects on the overall landscape setting or visual amenity.

No other significant effects have been identified in the EIAR.

It is noted that visual or landscape impact did not form part of the reasons for refusal on this site under 10/75 and ABP-236593. This is supported by the Landscape Character Assessment undertaken to establish the previous wind zoning policy as part of the previous County Development Plan, which determined that this location in the Upper Clydagh Valley has capacity to absorb wind energy development that other locations do not.

Due to the limited environmental impact, the overriding public interest in respect of the need to accelerate renewable energy deployment and the fact that the Proposed Development would be in compliance with National, regional and local policies (were it not for the current zoning), the Applicant submits that the Board should grant permission for the Proposed Development.



1 Introduction

This Planning Statement has been prepared on behalf of Cummeennabuddoge Wind Designated Activity Company (DAC) 'the Applicant' to accompany an application for consent to An Bord Pleanála ('the Board') under Section 37E of the Planning and Development Act 2000 (PDA) to develop a wind farm on land at Clydaghroe and Cummeennabuddoge (CMBG), Clonkeen, County Kerry (the 'Proposed Development').

A small section of the Proposed Development related to the connection to the electricity network extends into County Cork.

The determination of the Proposed Development as Strategic Infrastructure Development (SID) was confirmed by the Board through the serving of a notice under Section 37B of the PDA on 22 August 2024.

The Proposed Development consists of 17 wind turbines with a tip height of between 199.5 to 200 metres (m), and associated infrastructure including hardstandings, cabling and access roads. The Proposed Development also consists of a 110kv grid connection to IBallyvouskill.

The Proposed Development has been subject to an Environmental Impact Assessment (EIA) and an EIA Report has been prepared in accordance with the requirements of EIA Directive 2011/92/EU (as amended by Directive 2014/52/EU).

A detailed description of the Proposed Development can be found in Chapter 4: 'Description of Development' in Volume 2 of the EIA Report with a summary of the key components provided in Appendix A to this Statement.

It is proposed that the wind farm will have an operational life of 35 years, at the end of which it will be decommissioned¹.

In accordance with Section 37CC of the PDA, the Applicant sought the Opinion of the Board in respect of design flexibility in terms of the following:

- Turbine total tip height;
- Turbine rotor diameter; and
- Turbine hub height.

The parameters within which the turbine specification will fall are as follows:

- A total tip height in the range of 199.5m minimum to 200m maximum inclusive;
- Hub height in the range of 118m minimum to 125.5m maximum inclusive; and
- Rotor diameter in the range of 149m minimum to 163m maximum inclusive.

On 22 August 2024, the Board issued their opinion that the details or groups of details of the Proposed Development pursuant to the above points may be confirmed after the proposed application has been made.

¹ Alternatively, the wind farm could be repowered. This would require a new planning application.

Depending on which turbine within the range is installed; each turbine will be capable of generating 6.0MegaWatts (MW) to 7.2MW, with an overall anticipated installed capacity of between 102MW and 122.4MW inclusive (for the purposes of assessing the likely benefits).

The following are addressed in this Planning Statement:

- Description of the Proposed Development
- Site Zoning and Reasons for Approval
- Policy Context;
- Planning History
- Planning Assessment;
- Environmental factors;
- Consultation with stakeholders and community engagement; and
- Conclusion.

1.1 The Applicant

The shareholders of the Applicant are FuturEnergy Ireland (FEI) and SSE Renewables. Both companies have been involved in building and operating wind farm projects in Ireland over the past 10 years and are currently working in a co-development arrangement to reduce carbon emissions and contribute to national and international climate change targets.

FEI is a joint venture company owned on a 50:50 basis by Coillte CGA and ESB. This business combines the State's strongest assets and expertise in onshore renewable energy development on behalf of the people of Ireland.

As one of the largest dedicated developers of onshore wind in Ireland, FEI's mission is to maximise the potential of national resources and accelerate Ireland's transformation to a low carbon energy economy.

The aim of FEI is to materially help the country deliver on its green energy targets, achieving net zero emissions by 2050, as set out in the Government's Climate Action Plan and legislated for under the Climate Action and Low Carbon Development (Amendment) Act 2021. In this regard, FEI is looking to actively drive Ireland's transition to a low carbon economy by developing 1GW of wind energy projects by 2030.

FEI is dedicated to developing best-in-class, commercially successful wind farms while maximising the support from local communities. Its wind farm projects have the potential to play a fundamental role in a green economy by creating jobs in rural areas and growing a green industrial sector, while also funding local development for host communities.

SSE Renewables is a leading developer, owner and operator of renewable energy in Ireland with a vision to make renewable energy the foundation of a zero-carbon world. The renewable electricity generated at wind farms operated by SSE Renewables across Ireland powers SSE Airtricity, Ireland's largest provider of 100% green energy.

The company's onshore portfolio in Ireland comprises 29 windfarms producing nearly 700MW of renewable generation, including Ireland's largest wind farm the 174 MW Galway Wind Park.

2 Description of Proposed Development

The Proposed Development consists of 17 turbines with a tip height between 199.5m and 200m above ground level (AGL), a permanent meteorological met mast with a height of 110m (AGL) and associated infrastructure.

The associated infrastructure includes to the following:

- One 110kV permanent electrical substation including a control building with welfare facilities, electrical plant and equipment, security fencing, underground cabling, wastewater holding tank and ancillary structures and associated works;
- Underground electrical and communication cabling connecting the wind turbines to the proposed on site substation and associated ancillary works;
- 110kV Underground cabling from the new 110kV permanent electrical substation to the existing 220/110kV Ballyvouskill Substation to facilitate export of electricity to the National Electricity Grid;
- Erection of 1 no. Meteorological Mast of 110 metres above existing ground level for the measuring of meteorological conditions, including a lightning rod which will extend above the mast;
- New permanent access tracks and permanent upgrades to existing tracks and site access;
- Four borrow pits;
- Six permanent peat repository areas;
- Permanent placement of peat along sections of site access roads within the restrictions outlined in Technical Appendix 10-3 peat management plan for the site;
- Construction of 3 no. temporary construction compounds and associated ancillary infrastructure including temporary site offices, staff facilities and car-parking areas, all to be removed at the end of the construction phase;
- Permanent and temporary Site drainage;
- Keyhole forestry felling to accommodate the construction and operation of the proposed development;
- Upgrading of existing site entrance at the local access road adjacent to the N22, Healthy and safety signage, information signage, and direction signage;
- All other associated site development works including necessary earthworks to facilitate the construction and operation of the Proposed Development;

A full description of the Proposed Development can be found in Chapter 4: Description of Development of Volume 2 of the EIA Report.

The Proposed Development is located on land at Clydaghroe and Cummeenabuddoge, Clonkeen, almost entirely within County Kerry, although a proportion of the grid connection cabling is proposed within County Cork.

The land use within the Proposed Development is commercial forestry with a proportion of the grid route passing through farmland.

The nearest settlements are Ballyvourney and Millstreet (both in County Cork) located approximately 5km south of and 7km north east of the Site respectively.

The topography of the Proposed Development Site inclines from a low point of approximately 300m Above Ordnance Datum (AOD) in the southeast boundary of the Proposed Development Site to approximately 520m AOD along the north western boundary.

It is proposed to connect to the national electricity grid via a 110kV underground cable from the proposed onsite substation to the existing Ballyvouskill 220/110kV substation. The grid connection cabling route from the proposed on-site substation will measure approximately 3.5km in length. The grid connection cabling route forms part of the Proposed Development and is included in the consent application.

Access to the site, for construction and operation (including Heavy Goods Vehicles (HGV) and abnormal loads (such as turbine blades)) will be via the existing Coillte site entrance currently used for forestry operations, in the west of the site, off a local access road which in turn is accessed from the N22 National Road N22.

The proposed turbine delivery route is from Ringaskiddy Port, County Cork, onto the N28, N40, N22, and then onto the local road to the Site entrance (NGR W 14106 81485)..

Localised temporary works along the turbine delivery route in County Cork to facilitate the delivery of turbine components (namely temporary street furniture removal and vegetation clearance) will be required. As an associated development these works have been assessed as part of the EIA but are not included in the consent application. These works will be subject to a separate consenting process.



3 Site Zoning

3.1 Introduction

It is accepted that the Proposed Development Site no longer benefits from a supportive designation for wind energy in the Kerry County Council Development Plan 2022 – 2028 (KCDP)².

However, it was previously designated for wind in the two previous County Development Plans for Kerry County Council, which indicates that the site was previously considered suitable for wind energy.

This change in designation was not due to any change in environmental conditions or in response to any incident, but the implementation of a new Wind Zoning Methodology for the current KCDP that resulted a significant reduction in the land considered suitable for wind development across the County from c. 77,000 hectares (ha) to 6,000 hectares (ha).

The limited 'Open to Consideration' areas are now shown on the relevant map within the KCDP.³

The Applicant contends that this process is flawed in that:

- It does not comply with the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (Dept. of Housing, Planning, Community and Local Government (DHPLG 2017));
- It failed to follow standing Guidance (the Wind Energy Development Guidelines (2006⁴) (WEDG, DHPLG, 2006) or the draft guidance (the Revised Wind Energy Development Guidelines (RDWEDG, DHPLG 2019⁵)) the methodology itself purported to; "...have cognizance of..."⁶;
- It is not evidence based and is subjective in places; and
- It applies a blanket approach to environmental constraints, applying constraints at a gross level which are only appropriate to consider at a site-specific level.

This position was presented to Kerry County Council in response in response to the consultation on the draft version of the plan and⁷ is included with this Statement as Appendix A.

² <https://cdp.kerrycoco.ie/>

³ Map 12.4: Wind Energy Areas, Section 12.5.4.1 KCDP

⁴ <https://www.gov.ie/en/publication/f449e-wind-energy-development-guidelines-2006/>

⁵ <https://www.gov.ie/en/publication/9d0f66-draft-revised-wind-energy-development-guidelines-december-2019/>

⁶ KCDP Appendix 1 Section 6: Wind Zoning Methodology P49, Introduction.

⁷ FuturEnergy Ireland made [submission KE-C1-113](https://consult.kerrycoco.ie/en/node/5/submissions?chapter=All&topic=All&author=%5B%5D=921&urn) in relation to the draft KCDP 2022 - 2028 on 21st February 2022.
<https://consult.kerrycoco.ie/en/node/5/submissions?chapter=All&topic=All&author=%5B%5D=921&urn>

It is also noted that the Office of the Planning Regulator wrote to Kerry County Council in connection with its approach to Zoning following its assessment of the draft Plan citing; "...clear breaches of the relevant legislative provisions, of the national or regional policy framework and/or of the policy of Government, as set out in the Ministerial guidelines under section 28."

This section states that:

"In order to assist planning authorities to identify key areas where there are wind energy resources capable of exploitation in a manner consistent with proper planning and sustainable development, a step-by-step approach is proposed in the Draft Revised Wind Energy Development Guidelines (DHPLG, 2019). This ordered approach involves a sieve mapping analysis of the key environmental, landscape and technical criteria which must be balanced in order to identify the most suitable location for wind energy development. Areas have therefore been derived following a comprehensive analysis, the details of which are included in Volume 1, Appendix 6 (Wind Zoning Methodology).

Impact on the landscape was considered as part of the Wind Zoning Methodology to determine the sensitivity and capacity of landscapes to absorb wind development without significantly undermining the quality and integrity of the landscape in question. "

Kerry County Council developed a bespoke methodology that followed a step by step process that purported to; "have cognizance of"⁸ the Revised Wind Energy Development Guidelines (RDWEDG, DHPLG 2019⁹), however, it is noted that Kerry County Council's approach deviated significantly from the approach in the guidance.

Appendix 1 Section 6 of the KCDP describes the methodology as having the following steps:

- Step 1 Areas of wind potential having regard to wind speeds and the national grid;
- Step 2 Overlay mapping of wind energy constraints:

They then made [submission KE-C3-MA-35](https://consult.kerrycoco.ie/en/node/1508/submissions?chapter=All&author%5B%5D=921&urn) in relation to Proposed Material Alterations to the Draft KCDP 2022-2028 on 16th June 2022.

<https://consult.kerrycoco.ie/en/node/1508/submissions?chapter=All&author%5B%5D=921&urn>

They finally made [submission KE-C5-MD-20](https://consult.kerrycoco.ie/en/node/1783/submissions?theme=All&author%5B%5D=921&urn) in relation to the Draft Ministerial Direction on the KCDP 2022 – 2028, on 7th September 2022.

<https://consult.kerrycoco.ie/en/node/1783/submissions?theme=All&author%5B%5D=921&urn>

All three submissions made clear to the Council, based on the results of GIS analysis, the effects of the Council's own policy in effectively excluding wind energy from consideration in Kerry. The Department of the Environment, Climate and Communications and the Office of the Planning Regulator expressed similar concerns. Similar GIS analysis was undertaken by ESB, SSE, EDF, Ørsted and Energia; all reputable and knowledgeable companies who made the same point.

⁸ KCDP Appendix 1 Section 6: Wind Zoning Methodology P49, Introduction.

⁹ <https://www.gov.ie/en/publication/9d0f66-draft-revised-wind-energy-development-guidelines-december-2019/>

- Settlements;
 - Lakes;
 - Elevated Areas;
 - Kerry Airport;
 - Areas of Prime Special Amenity;
 - Archaeology;
 - UNESCO World Heritage Site;
 - Hen Harrier Areas;
 - Other Ecologically Important Areas;
 - Catchments & Water Framework Directive; and
 - Soils & Geology.
- Step 3 Undertake an analysis of cumulative impact of wind energy developments include a zone of theoretic visibility analysis.;
 - Step 4 Analyse the areas not subject to constraints, including the sensitivity of the landscapes in these areas to wind energy development; and
 - Step 5 Overlay Steps 1-4 to ascertain areas 'acceptable in principle' or 'open for consideration' for wind energy development.

Step 2 applied a combined overlay of the following mapping layers:

- Natura 2000 Sites;
- Natural Heritage Areas (NHA);
- Settlements;
- Elevated areas over 500m above sea level;
- An exclusion zone related to the flight path associated with Kerry Airport;
- Areas of Rural Prime Special Amenity identified in the Kerry County Development Plan 2015-2021;
- Archaeological Landscapes;
- UNESCO World Heritage Site;
- Hen Harrier Areas;
- Nature Reserves,
- Killarney National Park;
- Freshwater Pearl Mussel Catchments;
- Lough Leane Catchment;
- Areas for Action identified in the River Basin Management Plan 2018-2021
- Areas falling under the 'Blue Dot Catchments Programme'¹⁰
- Peat Soils;
- Landslide Susceptibility; and

¹⁰ A collaborative programme being delivered by a range of agencies as a means of focusing attention and resources towards the protection and restoration of high status objective waters.

- Geological Heritage Sites.

The impact on landscape (Step 3) was only assessed for those areas not already excluded on the basis of the mapping constraints already applied initially in terms of 'cumulative effect based solely on the theoretical numbers of turbines visible'¹¹. This identified 27 'Areas for Further Assessment'

These areas were then assessed individually (Step 4) on the basis of:

- Size of Area;
- Existing Electricity Infrastructure;
- Population density; and
- Landscape Sensitivity.

This process further excluded 23 of the areas completely with only small parts of four of the areas identified as having the potential for wind energy.

3.1.1 Section 12.5.4.1.3 Kerry County Development Plan –Wind Energy Policy Areas

This Section states that:

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

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

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

3.2 Effect of Current Zoning

In overlaying the mapping constraints as part of Step 2 of Wind Zoning methodology, the following blanket constraints were applied to the Proposed Development Site:

- Presence of the Lough Leane Catchment;
- The presence of areas identified as falling under the 'Blue Dot Catchments Programme'; and
- The presence of peat soils.

¹¹ It is noted that this approach itself does not follow the guidance applicable to assessing the cumulative effect (Guidelines for Landscape and Visual Impact Assessment (LVIA), 3rd edition) of wind farms and utilized a bare earth Zone of Theoretical Visibility (ZTV) which takes no account of screening.

Application of these constraints excluded the entire Proposed Development Site from the 'Open to Consideration' designation.

No other type of industry is excluded from consideration in the Development Plan based on these criteria. No constraints were placed in the Development Plan on agriculture or on urban development in Killarney Town, notwithstanding that agriculture and waste water are the two principal sources of nutrients in Lough Leane (see Section 4.5 below)

3.3 Conclusion

It is acknowledged that the KCDP policies pertaining to the designation have now been adopted and the Board must have regard to the KCDP. However, this can be outweighed by national policy that supports renewable energy development.

The removal from designation of 92% of wind designations from the KCDP was based on the application of high-level restrictive constraints mapping exercise, that does not match the approach recommended by either the current WEDG 2006 Guidelines or the proposed 2019 RDWEDG.

This has the effect of excluding potentially viable areas for wind energy development including the Proposed Development Site without allowing for site specific conditions, detailed assessment of impacts through an EIA process, minimisation of potential impacts through careful design and application of mitigation measures to prevent significant impacts, while the designations purport to implement national policy, they appear to overly restrict wind energy.

If the site specific conditions of the Proposed Development site are properly considered, it is submitted that site is particularly suitable for wind energy development, as set out in Chapter 5 of this document.

For clarity, in its adoption of the KCDP, the Council had been made fully aware of the effects of its proposed policy in submissions made to it over the course of the public consultation and was adopted anyway, in full knowledge that it would significantly restrict commercial-scale wind energy under that Plan.

The Minister, in his Direction, made minimal changes, and none that had any practicable effect.

This is set in the context of the Russian invasion of Ukraine and resulting energy supply concerns, combined with Ireland's heavy dependence on imported energy (80% in 2021)¹², which is inherently insecure, and which in turn makes it imperative that renewable, indigenous energy use is increased. This constitutes a matter of national interest and is equally an issue of strategic economic and social importance to the State.

In illustration of the critical and strategic nature of this matter, the EU responded to the energy emergency by the adoption of *EU Regulation 2022/2577 Laying Down a*

¹² SEAI Energy in Ireland - 2022 Report <https://www.seai.ie/publications/Energy-in-Ireland-2022.pdf>

Framework to Accelerate the Deployment of Renewable Energy.¹³ This is an emergency Regulation.

Its purpose is to accelerate the development of renewable energy in the energy crisis, much of which is now reflected in the Renewable Energy Directive III (RED III).¹⁴

It is emphasised that both the EU Regulation and RED III came into force after the adoption of the Kerry Development Plan and the significant emphasis placed on renewable energy in that legislation was not taken into account under the Kerry Development Plan.

The Regulation¹⁵ states that:

"Renewable energy plants, including ... wind energy, are crucial to fight climate change and pollution, reduce energy prices, decrease the Union's dependence on fossil fuels and ensure the Union's security of supply."

Article 3 of the Regulation provides that renewable power shall be **presumed** to be of **overriding public interest (IROPI) and serving public health and safety** when **balancing legal interests in the individual case**, including in the planning and permitting process.¹⁶

While that applies in the context of the EU Habitats/Birds/Water Framework Directives, it is illustrative of the strategic importance of renewable energy generally, and wind energy in particular to the EU, and equally to Ireland as a member State.

As this legislation post-dates the adoption of the KCDP, the Board may consider the restrictive wind energy development plan policies to be somewhat out of date.

The Applicant submits that the broadbrush approach used in designating the land in the wind energy map do not reflect the site conditions. The Board must therefore adopt an evidenced based approach and consider the site's suitability to wind farm development.

¹³ The Regulation came into force on 30th December 2022; originally valid for 18 months and has been amended and extended by Regulation (EU) 2024/223 following a review by the EU Commission. This was approximately 6 months after the adoption of the Kerry Development Plan.

¹⁴ The amending Directive EU/2023/2413 entered into force on 20th November 2023, which was over a year after the adoption of the Kerry County Development Plan.

¹⁵ The Regulation is now no longer in force in part but only to the extent that RED III has come into force, so as to avoid duplication; its additional emergency provisions over and above those of RED III remain in force until 30th June 2025.

4 Balancing Planning Policies

4.1 Introduction

In order to assist the Board in their decision, the Applicant has obtained Counsel's Opinion on the manner and/or extent to which An Bord Pleanála is required consider and/or place weight on:

- Policies in the applicable County Development Plan(s) that designate land as not being appropriate for wind energy development; and
- Policies that support renewable energy development at a local, regional, and international level and balancing of the same.

This Opinion is attached as Appendix B to this Statement.

As noted in the opinion, the Board has the power under s.37G(6) PDA to grant planning permission, even if the proposed development materially contravenes the County Development Plan.

It is submitted that, even if the Board determines the Proposed Development would materially contravene the KCDP, then planning permission should still be granted.

The Proposed Development is in accordance with proper planning and sustainable development. This is because National and European policy, including the Climate Action Plan 2024 in particular (as illustrated by the Accelerating Renewable Energy Taskforce Implementation Plan), should be given more weight than the County Development Plan in all the particular circumstances of this case.

In circumstances of the broadbrush, restrictive approach on commercial wind energy in County Kerry, it is submitted that this planning rationale is outweighed by other considerations such as site specific considerations and national and European policy that post-dates the adoption of the KCDP.

In deciding the weight to be applied to the wind energy designations, it is instructive to reflect on the respective obligations of the Board in respect of certain national policy and the County Development Plan.

In relation to national wind energy policy, the Board is obligated under s.15 of the *Climate Action and Low Carbon Development Act 2015* to act, as far as practicable, in a manner 'consistent' with the Climate Action Plan in particular.

However, the Board has no such equivalent obligation in relation to the County Development Plan. The only requirement is that the Board has certain matters to which it must "have regard" (section 37G(1) PDA), including that "the Board shall consider"...*"the provisions of the development plan or plans for the area"* in accordance with s.37G(2)(c) PDA.

Clearly, the requirement to be consistent with one matter is a higher standard than the "have regard" standard.

It is therefore concluded that the necessity of being consistent with national wind energy policy can take precedence over the consideration of a County Development Plan.

4.2 Site Specific Factors Supporting this Application

This is an appropriate case for granting planning permission using an evidence based approach to the site, principally because of the especial suitability of this site for wind energy development, from a variety of perspectives.

From a planning perspective, the suitability of the site has been set out in this Planning Statement, as follows:

1. The site location and characteristics are eminently suitable (See Section 5 below);
2. The need is so high, in terms of climate change and the energy crisis, and the urgency of having secure renewable power sources;
3. The designation of very limited land for commercial wind energy in the KCDP, by applying a broadbrush approach;
4. To fail to exercise its powers to do so in Kerry would mean mechanically applying a very broadbrush approach, without taking into account an evidence based site specific approach in a County with excellent wind resources at a time when it could not be more urgent;
5. The site characteristics have not changed from an environmental, landscape and planning however the wind energy zoning has changed from the previous favourable wind energy zoning;
6. The planning history demonstrates that wind developments within the Clydagh Valley have been ongoing without any associated deterioration in water quality between activity in the Clydagh Valley including felling and the water quality in Lough Leane, , strongly supports the conclusions in the hydrology chapter that there will not any significant effects on hydrology (see chapter X of the EIAR for further details).

In summary, in light of the excellent wind resource, the secluded nature of the site, the completed planning history, the absence of residual environmental concerns, the well-understood and long-successful nature of the mitigation, the previous zoning, compliance with Ministerial Guidelines, the imperatives of national and regional environmental and energy supply policies, and the duties imposed on the Board by s.15 of the *Climate Change and Low Carbon Development Act 2015*, we submit that planning permission should be granted, rather than mechanically following the very broadbrush approach taken in the KCDP wind energy map.

4.3 Section 143 Matters

It is noted that the criteria under S.37(2)(b) PDA are **not applicable** to this SID application, however the Board is required to have regard to the matters in section 143 of the PDA including:

(a) the policies and objectives for the time being of the Government, a State authority, the Minister, planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns or other areas, whether urban or rural,

(b) the national interest and any effect the performance of the Board's functions may have on issues of strategic economic or social importance to the State, and

(c) the National Planning Framework and any regional spatial and economic strategy for the time being in force." Furthermore the Board must determine the application accordance with the proper planning and sustainable development of the area.

These matters are examined in Table 12-1 overleaf as they apply to the development the subject of this application.

The above is the Applicant's opinion of the matter. It is hoped that the Board will carefully form its own view. In doing so, it must be acknowledged that to mechanically follow the approach taken to wind designation in the KCDPKerry County Development Plan, in terms of planning merit, would be to not consider the site specific conditions. Furthermore the Board must perform its duties in a manner consistent with the National Climate Change Policy, Wind Energy and Energy Security Policies, and the duties of the Board under the *Climate Action & Low Carbon Development Act 2015*.

It is reiterated that, in our view, the Board should consider the site specific context rather than rely on the wind designations in coming to its decision. Furthermore it must consider such critical matters as national renewable energy provision, the national interest, and the requirement that the Board make its decision consistent with the national approach to such matters.

It is the unavoidable conclusion of all the above that the Board is obliged to make its planning decision based on planning merit.

To this end, the Board is free to use its powers under section 37G(6) PDA if it is minded to grant permission. The site specific aspects are addressed in greater detail in Chapter 12 of this document.

It is emphasised to that end that the EU Regulation 2022/2577 *Laying Down a Framework to Accelerate the Deployment of Renewable Energy*, EU RED III, the Climate Action Plan 2024, and the draft revision of the National Planning Framework, all came into being subsequent to the Kerry Development Plan, which for that reason could not have taken those documents or the policies set out in them into account.

Finally, in the context of all the above, this excellent site deserves to be examined closely, so that it can readily be seen that there are no genuine obstacles to a grant of planning permission in environmental or planning terms, and strong and compelling reasons why a grant of permission should be given serious consideration.

Combined with the need for the Board to make its, as far as practicable, decision consistent with CAP 2024, and the excellent nature of the site for such development, the application of the section 143 PDA criteria and proper planning and sustainable development, all indicate that a grant of permission would be appropriate.



Table 1: The Criteria under s.143 of the Planning and Development Act 2000

Provision for Grant in Material Contravention	Basis for a Grant of Permission if Applying the S. 143 Criteria (if this were applicable)
Section 143(b) strategic or national importance	<p>The scale of the proposed development at between 102MW and 122.4MW is highly strategic in regional terms in the Munster area.</p> <p>At 35% of Ireland's power currently, and with plans to more than double this within six years, onshore wind is one of Ireland's most critical national industries. Its nature involves a multiplicity of dispersed wind farms on a national basis, which is the opposite to centralised power generation. In that essential context, every substantial wind farm, collectively, is of strategic and vital national importance.</p>
Section 143(a)(ii) objectives in the development plan or the objectives are not clearly stated	<p>Several policies and objectives of the Development Plan provide that support is to be given to wind energy development in County Kerry. This appears to largely conflict with the provision which has actually been made, as provided for in Map 12.4 of the KCDP.</p> <p>S.12.5.4.1-CDP: policy to support, in principle and in appropriate locations, the sustainable development of wind energy resources in County Kerry. This policy appears to conflict the inappropriate approach taken to wind designation, resulting in the effect that zero provision has in fact been made.</p> <p>The actual designation provided for is equally in conflict with Objective KCDP 12-19, which is to facilitate the sustainable development of wind energy within Open to Consideration Areas, given that it is not in any way possible to develop wind energy within these locations.</p>
Section 143(c) RSES	<p>Permission should be granted in light of Regional Policy Objective 99 – Renewable Wind Energy: "It is an objective to support the sustainable development of renewable wind energy (on shore and off shore) in appropriate locations and related grid infrastructure in the Region in compliance with national Wind Energy Guidelines." Regional Policy Objective 100 is also relevant.</p>
Section 1437(a) s. 28 Wind Energy Guidelines	<p>The proposed development is in complete accordance with the s.28 Wind Energy Guidelines (2006). S.1.2, the Policy Context, is noted, which states that the "...development of renewable energy sources...are priorities, nationally and at European level, on both environmental and energy policy grounds." This has become all the more forceful a rationale for the development of Irish wind energy sources now.</p> <p>For the avoidance of doubt, the draft revised Guidelines (2019), which have not been adopted, can also be complied with.</p>
section 143(a) statutory obligations KCC and the Board	<p>S.15 of the Climate Action and Low Carbon Development Act 2015 requires that relevant bodies, such as An Bord Pleanála, are required to perform their duties, in a manner consistent with:</p> <p>a) the most recent approved climate action plan,</p>

Provision for Grant in Material Contravention	Basis for a Grant of Permission if Applying the S. 143 Criteria (if this were applicable)
	<p>b) the most recent approved national long term climate action strategy</p> <p>c) The most recent approved national adaptation framework and approved sectoral adaptation plans,</p> <p>d) the furtherance of the national climate objective, and</p> <p>e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.</p> <p>The failure to designate any practicable area for wind energy is poor planning in light of regional, national and EU policy. The Board needs to be cognisant of that in coming to its decision. Two wrongs do not make a right.</p>
<p>Section 143(a)</p> <p>government policy</p> <p>– wind energy and climate</p>	<p>The importance of wind energy development in the Government's response to climate change is set out in numerous policies, particularly in CAP-24, which requires:</p> <ul style="list-style-type: none"> • 80% of electricity demand from renewable energy by 2030; • 6 GW of onshore wind by 2025; • 9 GW onshore wind by 2030; • Alignment of the planning system to support accelerated renewable energy development, supported by national policy to inform regional and local planning policies, noting that Development Plans are obliged to set out objectives to facilitate energy infrastructure; • In line with the emerging EU frameworks, ensure that renewable energy generation is considered to be in the overriding public interest; and • all relevant public bodies take on carry out their functions to support the achievement of the 80% RE target. <p>It is noted that both CAP-23 and CAP-24 was adopted after the Kerry Development Plan, so it could not take account of them.</p> <p>A grant of permission for Cummeennabuddoge Wind Farm would align with all these policies, and a refusal would conflict with them.</p>
<p>Section 143(a)</p> <p>government policy</p> <p>– wind energy and security of energy supply</p>	<p>Similarly, wind energy will have the greatest part to play in Ireland's energy independence.</p>

4.4 Policy Conflict

Where there is a conflict between various matters to which the Board is obliged to have regard to and to consider – here between the KCDP policies that seek to incorporate national policies and objectives, with the local wind designations.

It is in principle open to the Board to prefer one over another, while the Board is weighing planning merit in the balance, and in the interests of proper planning and sustainable development.

The almost complete exclusion of commercial wind in the Kerry County Development Plan does not appear to be supported in planning terms with the KCDP provisions that seek to promote wind energy development and incorporate such national policies, the national interest, and issues of strategic economic and social importance to the State.

Notwithstanding favourable policies and objectives in relation to renewable energy and wind energy in the Development Plan itself, particularly that in relation to Areas Open for Consideration, the broadbrush restrictive approach to the wind designations in the majority of the County, indicates that these objectives are conflicting and the Board should adopt a site specific approach.

The challenge to develop circa 4,500 MW more onshore wind energy by 2030 is simply enormous. That target will be very difficult to achieve. It requires the doubling of current onshore wind energy provision. It takes approximately ten years to bring a wind farm to fruition. There are only six years left to double our wind energy capacity.

It is reiterated that the challenge is enormous. It will hinder the achievement of this goal if the Board were to consider that the majority of a County is excluded from all commercial wind energy development

In all the circumstances it is submitted that the wind designations in the Development Plan must be significantly outweighed by National and Regional policy in the Board's coming to its decision.

The conflict between the KCDP policies that seek to incorporate national policy, the national interest, issues of strategic economic or social importance to the State, the National Planning Framework, and the Southern Regional Spatial and Economic Strategy, on the one hand, and on the other hand, the wind designation policy expressed in the KCDP 2022 – 2028 means the Board should adopt a site specific evidenced based approach to its assessment.

The Development Plan does have policies and objectives supportive of wind energy.

Table 2: Summary of Wind Energy in National, Regional and Local Policies

Policies, Objectives and Other Matters in Favour of Wind Energy	Policy Excluding Wind Energy
National energy policy National energy security policy National climate change policy Climate Action Plan 202 The National Planning Framework	wind designations in the KCDP 2022 – 2028 (the policies set out in ss.12.1 and 12.5 as applied)

Policies, Objectives and Other Matters in Favour of Wind Energy	Policy Excluding Wind Energy
<p>The national interest</p> <p>Issues of strategic economic & social importance to State</p> <p>The Southern Regional Spatial and Economic Strategy</p> <p>Sections 12.1 and 12.5 of the Kerry KCDP, and Objectives 12-1 and 12-14 to 12-20 of the Plan</p>	

For the reasons set out above, the Board should adopt an evidenced based approach and consider the underlying planning rationale for the absence of a favourable designation.

We have set out in this planning statement why such site specific considerations actually indicate that planning permission should be granted. A grant of planning permission is further supported by national policy, the national interest, and matters of strategic economic and social importance to the State.

Significant weight should be applied to these supportive national interests and policies, particularly as many post-date the adoption of the KCDP.

4.4.1 Section 15 of the Climate Action and Low Carbon Development Act 2015

Section 15 of the *Climate Action & Low Carbon Development Act 2015* requires a relevant body¹⁷, in so far as practicable, to perform its functions in a manner consistent with:

- the most recent approved climate action plan;
- the most recent approved national long term climate action strategy;
- the most recent approved national adaptation framework and approved sectoral adaptation plans;
- the furtherance of the national climate objective; and
- the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

This applies to An Bord Pleanála.

¹⁷ In the *Climate Change and Low Carbon Development Act 2015*, 'relevant body' includes a public body, which is defined in s.15 of that Act as having the same meaning as the Freedom of Information Act 2014, and which in in Section 6(1) of the latter Act includes an entity established by or under any enactment (other than the *Companies Acts*). This encompasses Local Authorities and An Bord Pleanála.

4.5 Environmental Considerations

4.5.1 Lough Leane Catchment

The sensitivity of the Lough Leane catchment was recognised in undertaking the assessment with the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC – including River Clydagh and River Flesk given a sensitivity of Extremely High and Lough Leane itself (24km from the Proposed Development Site) given a sensitivity of High. The major watercourses draining the Proposed Development Site were similarly identified as has having a 'High' sensitivity.

Lough Leane itself is recognised as a nutrient sensitive area. The lough is also known to have been subject to eutrophication and algal blooms. One such occurrence in 1997 raised concerns over anthropogenic pressures within the upstream catchments discharging to the lough.

A study¹⁸ (EPA, 2003) was commissioned to investigate the potential causes, sources and drivers of this bloom and overall degradation of water quality. The study indicated that septic tanks were calculated to contribute 12% of total phosphorous, while agriculture contributed 47%. By comparison, 3% of the total phosphorous loading was attributable to the forestry sector.

In addition to a review of water quality data held by statutory bodies, project specific independent water quality monitoring was undertaken to provide baseline water quality standards of water features within, and downstream from, the Site prior to any development.

Sampling was undertaken at 12 locations (see Figure 11-3, Vol 3 EIA Report) including locations that capture the discharge from the Proposed Development site and locations further down the catchment including close to the discharge point into Lough Leane.

Sampling took place between February and October 2021 in order to capture a overview of seasonal variance in water quality across a range of temperatures and rainfall events, including winter storm events (characterised by prolonged periods of precipitation), and short intense convective downpours during summer months.

During the baseline sampling, commercial forestry operations continued within the Proposed Development site with 14 no. compartments, equating to approximately 107 ha, felled during 2021.

The results highlighted the influence of seasonality on the background concentrations, with higher concentrations recorded over winter months for the pollutants at the majority of the monitoring locations.

¹⁸ Environmental Protection Agency (2003) Lough Leane Catchment Monitoring & Management Systems – Final Report Available at:
https://epawebapp.epa.ie/licences/lic_eDMS/090151b2802f4f96.pdf.

This suggests that existing concentrations are influenced by reduced quality runoff entrained in seasonal rainfall runoff, rather than rainfall runoff offering improved dilution of particular sources of pollution (including forestry felling).

The key potential water quality impacts as a result of the Proposed Development were identified as construction activities including felling, earthworks and construction of hardstandings with the felling of trees in particular having the potential to release sediment bound nutrients.

The approach to the assessment is precautionous and intended to address the submissions made during consultation in relation to the potential effect of the Proposed Development on the water environment, which have previously centred on the contention that historic algae bloom events in Lough Leane were related to forestry in the catchment.

As described above historical data has shown this contention to be incorrect and further reinforced by the fact that approximately 57 ha of the proposed felling area was felled as part of ongoing commercial operations during the period of design evolution and environmental assessments including the period when water quality data was being gathered without any deterioration in water quality.

Kerry County Council's policy in respect of development within the Lough Leane catchment appears contradictory in that the Wind Zoning Methodology that was used to generate the 'Open-to-Consideration' Areas¹⁹ excludes the entire catchment from wind development on the basis of;

"...the potential for the release of sedimentary phosphorus arising from wind development this catchment is considered to be unsuitable for wind development."

Regarding the Lough Leane catchment, no substantiation for this position is given and it is even recognised that the submission received from the Development Applications Unit of the Department of Housing, Local Government and Heritage the impact on Lough Leane during the summer of 2018 was; *"...attributed to probable lack of dilution and flushing of wastewater discharges during the summer peak"*.

The stated policy in respect of areas Open-to Consideration states that that Council policy is to:

"Ensure that any wind energy proposals within the Lough Leane catchment or other water quality sensitive catchments, demonstrate that they have been designed in a manner which prevents any risk of peat, soil and rock slippage or erosion and which provides for ongoing protection / improvement of water quality and the maintenance of natural hydrological processes. Proposals which would increase flood risk or bankside erosion downstream will not be permitted."
(KCDP Section 12.5.4.1.4)

This then implies that wind development within the catchment is permissible under the KCDP subject to suitable controls. This approach refers to "any" wind energy proposals which appears to include commercial wind energy.

¹⁹ KCDP Volume 1: Appendices Section 6

However, this approach conflicts with objective 12-20 that states that; "...commercial wind energy projects will not be considered in areas outside of 'Open-to-Consideration'. It is the Applicant's position that the Proposed Development does not present a significant risk of further nutrient loading into the Lough Leane catchment and is therefore in compliance with this part of the KCDP.

It is noted that no other types of development are prohibited in the Lough Leane catchment in the KCDP including those more likely to result in nutrient pressure on the Lough.

There is precedent for similar development in the upper Lough Leane catchment, with the Board taking a different view of the potential impact as evidenced by the following decisions.

The Decision of An Bord Pleanála under ABP-238677

This related to an Appeal against refusal for a one-turbine extension to Coomacheo Wind Farm (KCC- 10/1302).

The Planning Authority refused permission because a; "...significant pollution risk to the water quality of [the SAC and Lough Leane] would arise from a variety of sources notwithstanding the mitigation proposals set out in the planning application"; this included risk of nutrient release.

The Inspector concluded (as did the Board by extension, in accepting his recommendation) that; "...subject to the conditions set out below it is considered that the proposed development will not endanger water quality in the adjoining SAC" and recommended a grant of permission, which the Board accepted granting permission in June 2011.

The Decision of An Bord Pleanála under ABP-317406

This application was for part of the grid connection serving the permitted Knocknamork Wind Farm. It was accompanied by an EIAR and NIS encompassing the entirety of the development proposed.

The Planning Authority again on this occasion refused permission on the grounds of water quality and Lough Leane (KCC-22/816).

Following an in-depth examination of the matter by the Inspector, the Board granted permission on 23rd January 2024 in accordance with her recommendation and adopted the examination of EIA and AA undertaken by the Inspector in doing so. In particular she found at paragraph 7.5.31 that:

"I note those mitigation measures proposed which I consider are appropriate to prevent an increase in sedimentation in the surface waters. The proposed mitigation measures in relation to construction and protection of water quality are well established and in line with best practice development and the protection of water courses. I also consider that the proposed construction methodologies and details supplied are sufficiently comprehensive to remove any lack of clarity regarding the potential for adverse effects to arise."

The Decision of An Bord Pleanála under ABP-317889

The proposed development under was for entrance works to serve Inchamore Wind Farm (in Kerry); an EIAR and NIS of the entire wind farm project (which was in County Cork), including its grid connection, was presented in support of the application.

The Planning Authority refused permission (KCC-23/646) for two reasons. The first reason related to access; the second related to water quality and the potential impact on the Killarney National Park, MacGillycuddy Reeks and Caragh River Catchment SAC.

The reason for refusal was general in nature, as were the complaints set out in the report of the Council Ecologist and in the Planner's Report.

Both reports referred to the sensitivity of Lough Leane and the previous difficulties with nutrient enrichment, indicating in what might be said to be a vague manner that they were not satisfied as to the proposal, although there was very little detail of what their specific concerns were.

However, on appeal, and following a comprehensive assessment by the Inspector, and in accordance with her recommendation, the Board granted permission on 15 February 2024.

The Inspector was quite satisfied as to the mitigation measures proposed, and the Board may in coming to its decision adopted the assessments undertaken by the Inspector in respect of EIA and AA, both of which examined in detail the matter of water quality.

It is noted in this respect that the grid connection for the overall project is also substantially within the Clydagh River catchment and this was assessed on a cumulative basis.

4.5.2 Blue Dot Programme

Appendix 1 Section 6 includes the presence of the Blue Dot Catchment Programme as a constraint because:

"The scale and associated works with wind energy development pose a risk to the implementation of the River Basin Management Plans and restoration of high status waters. In order to avoid this risk, such waters are considered to be a constraint to wind energy development."

No evidence or justification for this position is given and the programme itself is not intended to act as a prohibition on any kind of development with its stated objectives being:

1. Agree a vision for the protection and restoration of high status waters in Ireland.
2. Determine what constitutes a Blue Dot water body / site / catchment, and agree on a spatial network of high status waters in Ireland.
3. Agree branding for high status / blue dot waters.
4. Prepare a communications and engagement plan.
5. Establish pilot projects for community engagement and action.

6. Work together with the Department of Housing Planning and Local Government to establish appropriate planning guidance for the protection of Blue Dot waters²⁰.
7. Influence national schemes and programmes which can prioritise the protection and restoration of Blue Dot waters.
8. Assist in improving the exchange of information within and between local and public authorities and with Government Departments.
9. Consider areas where further research is required.
10. Review proposals for site specific measures for high status objective water bodies from LAWPROs work programme and the LIFE IP (if successful).
11. Contribute to the development of a long term strategy for high status waters.

The Blue Dot catchment programme area includes the River Flesk catchment 020 Environmental Protection Agency (EPA) river basin sub catchment in which the western half of the Proposed Development lies.

This sub catchment already carries a 'High' status but is identified as being at risk of not meeting its Water Framework Directive (WFD) objectives by 2027.

This is due to significant hydromorphology pressures including sediment / siltation pollution and alteration to the physical environment. Significant pressures may be subcategorised into channelization, embankment, dams, barriers, weirs, locks, culverts, land drainage, overgrazing and bank erosion.

This is specifically addressed in Chapter 11: Hydrology, Water Quality and Flood Risk with the Proposed Development designed to minimise these types of impacts and further mitigation measures enacted such that no significant impact effects can be demonstrated.

The Applicant contends that the presence of the Blue Dot programme is not a reasonable constraint and that the Applicant's approach to the pressures underlying the designation of the Blue Dot programme in this location demonstrates the appropriateness of a site specific approach over a blanket prohibition on one type of development.

4.5.3 Peat Soils

Appendix 1 Section 6 includes the presence of peat soils as a constraint because:

"...of the increased risk associated with peat desiccation and the resultant loss of carbon sinks, it is considered that these types of soils are not considered suitable for wind energy development in Kerry."

In determining the presence of peat soils, KCC have applied mapping from the EPA National Soils Database as a blanket constraint in the absence of any further site specific assessment.

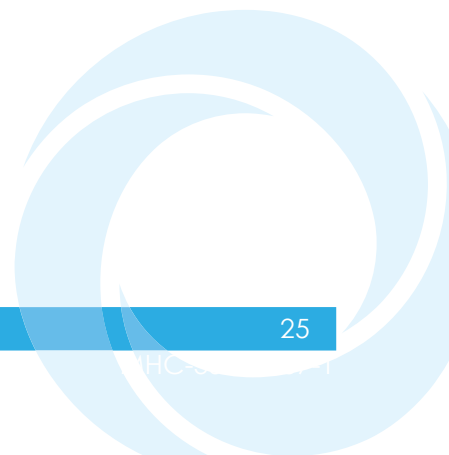
²⁰ It should be noted that this action is still outstanding and is listed as a action with a timescale to be confirmed in the draft Water Action Plan 2024 A River Basin Management Plan for Ireland of May 2024:

This mapping was used as the basis of the assessment presented in Chapter 10: Soils, Geology and Hydrogeology of the EIA Report but followed up with a much more detailed site specific assessment that included peat depth determination and condition assessment.

This allowed the Proposed Development to be designed in such a way that minimises the impact on peat. Application of the mitigation measures in the Chapter means that the Proposed Development is concluded to avoid significant effects on peat.

Loss of any carbon sink is considered to be managed by the restoration detailed in the Peat Management Plan (PMP, Technical Appendix 10-1 of the EIA Report) and offset through the generation of renewable electricity (see Chapter 12: Air and Climate of the EIA Report).

The Applicant contends that this site specific approach is more valid than a blanket prohibition which if applied universally would not allow wind development in most upland areas.



5 Justification for the Proposed Development

5.1 Site Suitability

A comprehensive site selection process was undertaken with the site was ultimately selected for the Proposed Development on the basis of:

- A viable connection to the electricity grid in close proximity to the Site;
- Favourable wind speed;
- The topography of the site having the potential to restrict visibility and limit impacts on landscape and visual receptors; and
- A review of the planning history indicating that a design could be developed that did not significantly affect the qualifying features of the nearby Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (SAC) or the water quality in the Loch Leane catchment.

Details of the site selection process is presented in Chapter 3: of the EIA Report: '*Design Evolution and Consideration of Alternatives* of the EIA Report.

In addition to the above the Proposed Development Site is considered suitable as:

- The current use of the site as commercial forestry means that there is limited sensitive habitat on site, which minimises potential impact and offers potential for biodiversity enhancement;
- The is limited presence of protected species or birds that might be sensitive to windfarm developments allowing the Proposed Development to proceed with minimal mitigation needed to avoid significant impacts and opportunities for improving habitat for some of those species present (Kerry slug)
- It is not located within a designated Archaeological Landscape and no National Monuments are present in the vicinity;
- It is generally remote from dwellings allowing any noise or shadow flicker nuisance to be easily mitigated;
- There is limited peat present on site and a low risk of peat landslide;
- It can avail of ready transport access from Ringaskiddy port to the site entrance on National roads;
- Water quality can be managed to a high standard, using good standard construction management measures; and
- The Proposed Development site benefitted from a positive zoning for wind energy from 2003 to 2015, and nothing material has changed within the valley or its surrounds since that time.

5.1 International Obligations

In short, international agreements are increasingly becoming more stringent in terms of the cuts to greenhouse gases that are required, and in increasingly shorter timeframes.

This emphasises the urgency of renewable energy development generally and wind farm development in particular to decarbonise the electricity, transport and heating sectors, and to significantly increase energy security.

Whilst always considered a matter requiring action, it is clear that the urgency of that action has increased since the publication of the KCDP.

5.2 Compliance with EU Law

EU Climate and Energy law and policy are aligned in respect of renewable energy provision, in that both are highly dependent on a high level of development of such projects throughout the European Union. Both sets of policies are highly supportive of renewable energy projects. To that end, both require a level of change in energy provision that is far-reaching.

EU Climate Law has set very ambitious goals in terms of renewable energy. The difference in energy security policy is principally in its urgency and focus on delivery, and swift delivery of projects in light of current and imminent threat.

The EU is placing a very significant emphasis on the deployment on renewable energy reflected in the legally binding requirement to prioritise the permitting of these projects.

The Proposed Development qualifies as being of overriding public interest in terms of RED III and Regulation EU 2022/2577, which must carry significant weight with the Board. It is noted that this EU legislation post-dates the Kerry County Development Plan 2022-2028.

EU legislation therefore presents strong policy support for renewable energy development at a European level, to which we submit the Board should apply considerable weight to when determining this planning application in making its decision.

5.3 Compliance with National Policy

National Energy Security and National Climate Change policies are wholly aligned in respect of wind energy, which is the best performing measure to deliver both security of energy supply and climate change mitigation. The motivation to deliver significant levels of onshore wind energy development is strongly supported by the proposals of the National Planning Framework and especially by the detailed and targeted measures set out in CAP 24.

In particular, the Accelerating Renewable Energy Implementation Plan is designed to address the requirements of the planning system in terms of the delivery of RED III including current shortcomings in the delivery of wind energy at local level.

These proposals, targets and measures will bring about and are intended to be about significant change in the permitting procedures for onshore wind and it is submitted that these are matters that should be given weight by An Bord Pleanála in coming to its decision.

Energy security and climate change are compelling the urgent development of significant levels of renewable energy, in order to remove fossil fuels from use, and achieve nett zero Carbon emissions by 2050. National policy requires the greatest share of this contribution to be from wind energy. This will require the doubling of onshore wind

by 2030 from just over 4,000 MW currently, to 9,000 MW.²¹ Every wind farm is now essential to meeting this target.

This project will make a significant contribution to those goals.

5.4 Compliance with Regional Policies

The policies and objectives of the RSES reflect National Policy and are very much supportive of wind energy development in recognising the significant contribution wind energy makes to meeting national energy demand. The RSES provides that opportunities for wind energy development should be harnessed.

In summary, the RSES supports wind energy development, and it is considered that the Proposed Development falls within the scope of its policies and objectives.

5.5 Compliance with Local Policies

The Applicant's position is that the Proposed Development is in compliance with the policies of KCDP and Cork County Development Plan (CCDP), aside from the site designation in the wind energy plan.

We have set out above that the Board should not mechanically follow the broadbrush approach taken in that plan. The policy evaluation has been conducted on this basis, with the Applicant's view that the Proposed Development is capable of being consented in compliance with the relevant requirements of the KCDP.

²¹ National policy is addressed in Chapter 6 of this Planning Statement.

6 Policy Context

The following policies are considered applicable to the Proposed Development

6.1 International Agreements

International agreements on climate change have influenced European and Irish climate change policies and legislation over many years. Concern at EU and national levels about both climate change and energy security have now driven specific and binding change at a rate faster than the requirements of international agreements. Those agreements remain heavily influential, nonetheless.

The **Paris Agreement** (2015)²² commits to limiting the rise in global temperature to well below 2°C, and to pursue efforts to limit it to 1.5°C compared to pre-industrial levels. This would avoid the worst impacts of climate change, including more frequent and severe droughts, heatwaves and rainfall.

A report published by UN Framework Convention on Change²³ makes clear that the combined commitments of 193 Parties to the Paris Agreement could result in around 2.5°C of warming by the end of the century.

The most recent report from the Intergovernmental Panel on Climate Change²⁴ indicates that GHG emissions will need to be cut by 43% by 2030, relative to 2019 levels. This is critical to meeting the goal of 1.5 C. By contrast, current commitments will actually increase emissions by 10.6% by 2030, compared to 2010 levels.

It is clear, therefore, that current action plans are inadequate and further effort is needed to

Aside from removal of fossil fuels from electricity production in favour of renewable power generation, solutions will require the removal of fossil fuels from heating and transport as far as practicable which will in turn require a high level of electrification. For this reason future reliance on renewable-generated electricity will be very high. Essentially, a high level of wind energy is both necessary and urgent. This is increasingly recognised internationally, including at COP28, the latest United Nations Climate Change Conference.

6.1.1 COP28: the United Nations Climate Change Conference 2023

COP28, the United Nations Climate Change Conference, was held in Dubai in December 2023.²⁵

²² <https://unfccc.int/process-and-meetings/the-paris-agreement>

²³ *Nationally Determined Contributions under the Paris Agreement*, UN Secretariat, October 2022, [FCCC/PA/CMA/2022/4 \(unfccc.int\)](https://unfccc.int/PA/CMA/2022/4)

²⁴ IPCC Sixth Assessment Report, April 2022, [Sixth Assessment Report — IPCC](https://www.ipcc.ch/report/sixth-assessment-report/)

²⁵ <https://unfccc.int/cop28>

It set four pillars by which to assess the key outcomes of global climate action:

- i. Fast-tracking a just, orderly, and equitable energy transition;
- ii. Fixing climate finance;
- iii. Focusing on people, lives and livelihoods; and
- iv. Underpinning everything with full inclusivity.

The Conference marked the conclusion of the first Global Stocktake²⁶ of world efforts to address climate change under the Paris Agreement. The Stocktake affirmed we are not on track to meet the Paris Agreement goal to limit global warming to 1.5°C and the window for meaningful change is closing quickly. The stocktake included a 'Call for Action' including a tripling of renewable energy production.

6.2 EU Energy and Climate Law and Policy

EU Law and Policy, as they apply to wind energy development, are set out below, as follows:

- a) Energy security
- b) Climate change
- c) Revised Renewable Energy Directive (RED III)
- d) EU Regulation 2022/2577 Laying Down a Framework to Accelerate the Deployment of Renewable Energy
- e) EU Regulation 2024/223 amending Regulation (EU) 2022/2577

6.2.1 EU Energy Security Policy

Following the invasion of Ukraine by Russia in February 2022, the EU published **"Repower EU: Joint European Action for more affordable, secure and sustainable energy"** in March 2022. It is intended to accelerate the deployment of renewable energy.

It is a "plan to make Europe independent from Russian fossil fuels well before 2030, starting with gas, in light of Russia's invasion of Ukraine."

At the launch of Repower EU, Commission President Ursula von der Leyen stated that we;

"...must become independent from Russian oil, coal and gas. We simply cannot rely on a supplier who explicitly threatens us. We need to act now to mitigate the impact of rising energy prices, diversify our gas supply for next winter and accelerate the clean energy transition. The quicker we switch to renewables and hydrogen, combined with more energy efficiency, the quicker we will be truly independent and master our energy system."

Executive Vice-President for the European Green Deal, Frans Timmermans said:

"It is time we tackle our vulnerabilities and rapidly become more independent in our energy choices. Let's dash into renewable energy at lightning speed. Renewables are a cheap, clean, and potentially endless source of energy and

²⁶ <https://unfccc.int/topics/global-stocktake>

instead of funding the fossil fuel industry elsewhere, they create jobs here. Putin's war in Ukraine demonstrates the urgency of accelerating our clean energy transition."

6.2.2 EU Regulation on a European Climate Law 2021

The European Commission published the **European Green Deal** in December 2019, which sets out the means for achieving climate neutrality.

This has been set into law by the **EU Regulation on a European Climate Law**²⁷ requires the EU to achieve climate neutrality by 2050. It has an interim requirement to reduce greenhouse gas emissions by 55% by 2030, compared to 1990 levels.

This is also the commitment made by the EU to the Secretariat of the UN Convention on Climate Change under the **Paris Agreement**.

Climate neutrality by 2050 means achieving net zero greenhouse gas emissions for the EU as a whole by cutting emissions, investing in green technologies and protecting the natural environment.

The **Fit for 55 Package** is a set of legislative proposals to achieve these goals.

6.2.3 EU Renewable Energy Directive III

The recast **Renewable Energy Directive III**²⁸ entered into force on 2020th November 2023.

Whilst RED II had set a binding overall Union target to reach a share of at least 32% of energy from renewable sources in the Union's gross final consumption of energy by 2030. RED III increases this target to 42.5 %. Additionally, the Directive obliges EU Member States to;

"...collectively endeavour to increase the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 to 45 %" (Article 3, paragraph 1).

The associated recital (Recital 5) provides useful context:

"The REPowerEU Plan set out in the Commission communication of 18 May 2022 (the 'REPowerEU Plan') aims to make the Union independent from Russian fossil fuels well before 2030. That communication provides for the front-loading of wind and solar energy, increasing the average deployment rate of such energy as well as for additional renewable energy capacity by 2030 to accommodate the higher production of renewable fuels of non-biological origin. It also invited the co-legislators to consider establishing a higher or earlier target for the increased share of renewable energy in the energy mix. In that context, it is appropriate to increase the overall Union renewable energy target to 42,5% in

²⁷ [Regulation - 2021/1119 - EN - EUR-Lex \(europa.eu\)](#) Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30th June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999.

²⁸ [DIRECTIVE \(EU\) 2018/2001 on the promotion of the use of energy from renewable sources \(recast\)](#)

order to significantly accelerate the current pace of deployment of renewable energy, thereby accelerating the phase-out of the Union's dependence on Russian fossil fuels by increasing the availability of affordable, secure and sustainable energy in the Union. Beyond that mandatory level, Member States should endeavour to collectively achieve an overall Union renewable energy target of 45 % in line with the REPowerEU Plan."

Article 16 (f) is considered as being of particular relevance:

"By 21 February 2024, until climate neutrality is achieved, Member States shall ensure that, in the permit-granting procedure, the planning, construction and operation of renewable energy plants"..." are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in individual cases.."

This Article goes on to state that:

"Member States may, in duly justified and specific circumstances, restrict the application of this Article to certain parts of their territory, to certain types of technology or to projects with certain technical characteristics in accordance with the priorities set out in their integrated national energy and climate plans submitted pursuant to Articles 3 and 14 of Regulation (EU) 2018/1999".

It should be noted that Ireland's integrated National Energy and Climate Plan 2021-2030 July 2024²⁹ produced in accordance with those Articles contains no such restriction.

RED III was adopted after the Kerry County Development Plan and was therefore not taken account of.

6.2.4 Regulation EU 2022/2577 Laying Down a Framework to Accelerate the Deployment of Renewable Energy

This EU Regulation³⁰ was brought in in response to the war in Ukraine and the severe contingent effects of restrictions in gas supply. It took direct effect in Ireland and all Member States.

This was an emergency Regulation. Its purpose was to accelerate the deployment of renewable energy in an energy crisis. It focussed on the granting of development permits. It generally reflected the main terms of Renewable Energy Directive III but had further provisions not included in the Directive.

The Regulation recognises that:

"Renewable energy can significantly contribute to counter Russia's weaponisation of energy by strengthening the Union's security of supply, reducing volatility in the market and lowering energy prices."

²⁹ <https://www.gov.ie/en/publication/a856a-national-energy-and-climate-plan-necp-2021-2030/>

³⁰ eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02022R2577-20240701 (consolidated Regulation amended by Regulation 2024/223)

In Addition:

“One of the temporary measures consists of the introduction of a rebuttable presumption that renewable energy projects are of overriding public interest and serving public health and safety for the purposes of the relevant Union environmental legislation, except where there is clear evidence that those projects have major adverse effects on the environment which cannot be mitigated or compensated for.”

The Regulation had been proposed as a temporary and emergency measure for a period of 18 months, at which point RED III would be in force, which is the case.

The Regulation applied to wind energy, among other renewable energy sources, in providing for a rebuttable presumption that renewable energy projects are of; “overriding public interest and serving public health and safety” for the purposes of the relevant EU environmental legislation. This provision is closely reflected to the requirements of Article 16f of RED III.

The Regulation goes on to say that; “Renewable energy plants, including...wind energy, are crucial to fight climate change and pollution, reduce energy prices, decrease the Union’s dependence on fossil fuels and ensure the Union’s security of supply.”

In Article 3 of the Regulation, states that:

“Member States shall ensure, at least for projects which are recognised as being of overriding public interest, that in the planning and permit-granting process, the construction and operation of plants and installations for the production of energy from renewable sources and the related grid infrastructure development are given priority when balancing legal interests in the individual case.”

Regulation EU 2022/2577 was adopted following the adoption of the Kerry County Development Plan.

6.2.5 EU Regulation 2024/223 Amending Regulation (EU) 2022/2577 Laying Down a Framework to Accelerate the Deployment of Renewable Energy

This Regulation extends the application of certain provisions of EU Regulation 2022/2578, which would otherwise have ceased to apply in June 2024. Those provisions³¹ are now in force until 30th June 2025.

Regulation (EU) 2022/2577 had provided in Article 8 that the Commission was required to undertake a review of the operation of the Regulation, and that the Commission could propose the prolongation of the Regulation based on that review.

³¹ Articles 1, 2(1), 3(2), 3a 5(1), 6 and 8 are retained.

The review was undertaken. The Commission concluded that the application of Regulation (EU) 2022/2577 had a positive impact on the acceleration of the deployment of renewable energy in the Union.

The effect of this new amending Regulation is to retain the emergency provisions not contained in RED III. Other provisions now mirrored in RED III have not had their application extended in order to avoid duplication.

It applies to all permit-granting processes having a starting date within the period of its application and therefore applies to the Proposed Development. Again, it was adopted after the KCDP was adopted.

6.2.6 Carrownagowan Leave to Appeal Judgment [2024 IEHC 549]

The public interest of renewable energy developments was recognised by Humphreys J in his judgment dismissing a proposed appeal against a prior High Court judgment.

The judgment relates to the Carrownagowan wind farm and the judge held at paragraphs 86 to 89:

“On the other hand, however, many projects and renewable energy projects in particular have an inherent urgency. As an example of what I mean by a legally cognisable signpost for the court, European law has changed in recent times to require the most expeditious procedure available in national law for litigation relating to renewable energy: art. 16(6) of directive 2018/2001 as amended by directive 2023/2413, with a transposition date of 1st July 2024. Practice Direction HC126 with effect from 24th June 2024 endeavours to reflect that priority. The amending directive also provides in certain circumstances for a presumption in favour of such projects where impacts on European sites might otherwise preclude development...

Such recent developments in EU law are potentially of significance in that they provide a form of answer for the hitherto problematic clash between arguments regarding the need to address the climate emergency versus the need to give effect to previously established European environmental law regardless of the nature of the project. In Toole v. Minister for Housing (No. 2) [2023] IEHC 317, [2023] 6 JIC 1603 (Unreported, High Court, 16th June 2023) paras. 16 to 21, I effectively came down in favour of the latter, but recent legal developments might require a reassessment of that. Such developments must adjust the public interest calculus somewhat against endless litigation and appeals in relation to renewable energy projects, without of course taking from the need to afford any consent decisions in relation to such projects at least one level of effective legal scrutiny.

88. Thus, the statutorily-supported policy in favour of expeditious and overriding provision of renewable energy can't be dismissed as irrelevant in this context. In the light of the foregoing legal developments I would endorse the thrust of the notice party's submission on this theme: “48 Finally, the Carrownagowan Wind Farm, which is the subject matter of these proceedings, is an important piece strategic infrastructure development, which, upon completion, will provide significant renewable energy in line with local, regional, national and EU policy, which seeks to promote a reduction in greenhouse gas emissions.

By way of example, as is noted on page 10 of the government policy document Investing in the Transition to a Low-Carbon and Climate-Resilient Society 2018 – 2027, Project Ireland 2040:

'The 2014 National Policy Position on Climate Action and Low-Carbon Development establishes the fundamental national objective of achieving transition to a competitive, low- carbon, climate-resilient and environmentally sustainable economy by 2050.'

50 Further, under the Climate Action and Low Carbon Development (Amendment) Act 2021 Ireland is committed to reducing its greenhouse emissions by 51% by 2030. A key target in the Government's Climate Action Plan 2023 (which has been retained in the Climate Action Plan 2024) is to increase the proportion of renewable electricity to up to 80% by 2030, with a target of 9 GW from onshore wind by 2030. Delay in the Carrownagowan Wind Farm becoming operational by reason of these proceedings has the potential to impact on the delivery of Ireland's renewable energy targets.

51 It is submitted that the development of low carbon projects such as that at issue in these proceedings is in the public interest, which is another factor militating against the grant of a certificate in this instance."

89. Turning to a second aspect of the public interest, there has already been considerable delay, and further delay would risk unfair prejudice to the notice parties...."

The context for assessing public interest was in the context of deciding whether to grant leave to appeal. Although the context for this application relates to determining an SID application, it is submitted that the same matters should be taken into account in determining the application.

The strong policy and legal support for renewable energy development at a European and national level are in the public interest and should weigh heavily in favour of granting planning permission.

6.3 National Policies

National policy and guidance, as they apply to wind energy development, are set out below as follows:

- a. National planning policy and guidance
- b. National climate and energy policies

6.3.1 National Planning Policy and Guidance

This incorporates:

- i. Project Ireland 2040
- ii. Wind Energy Planning Guidelines, published by the Department of Environment, Heritage and Local Government (2006)

Project Ireland 2040

Project Ireland 2040 is the government's long-term strategy for economic, environmental and social development.

It comprises:

- a) the National Planning Framework (2018) and
- b) the National Development Plan 2021 – 2030.

Project Ireland 2040 – the National Development Plan

The National Development Plan sets out the investment required to support the national Planning Framework. In particular, it sets out provision for the Renewable Energy Support Scheme, and reiterates the goal of 80% renewable electricity by 2030, including up to 8 MW³² of onshore wind power.

The National Planning Framework

The National Planning Framework sets out the approach to be taken to development in Ireland. In particular, it acknowledges that a shift is required in electricity provision to predominantly renewable energy sources.

It provides strong support for renewable energy development generally and wind energy in particular, both on- and off-shore. A key future planning and development and place-making policy priority for the Southern Region includes harnessing the potential of the region in renewable energy terms.

In relation to energy production generally, the National Planning Framework acknowledges that:

“...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.”

The National Planning Framework also acknowledges the necessity of enhancing energy security through further reductions in dependence on fossil fuels, moving towards wind and other renewable sources.

In particular, **National Policy Objective 55** seeks to promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.

National Strategic Outcome 8 provides for the transition to a low carbon and climate resilient society. This acknowledges a “more renewables focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such as wind...” Specifically in relation to Green Energy it seeks to deliver “...40% of our electricity needs from renewable sources by 2020 with a strategic aim to increase renewable deployment in line with EU targets and national policy objectives out to 2030 and beyond.”

³² Now updated to 9 GW.

The Draft First Revision to the National Planning Framework

The Draft First Revision to the National Planning Framework (July 2024)³³ has been published. It sets out policy and targets in considerably more detailed terms than before, tying in renewable energy policy in particular. The following draft National Policy Objectives are relevant:

National Policy Objective 62

In co-operation with relevant Departments in Northern Ireland, strengthen all-island energy infrastructure and interconnection capacity, including distribution and transmission networks to enhance security of electricity supply, and explore the potential for strategic cooperation on offshore wind energy development.

National Policy Objective 63

In co-operation with relevant Departments in Northern Ireland, develop a stable, innovative and secure digital communications and services infrastructure on an all-island basis.

National Policy Objective 66

In co-operation with the United Kingdom Government and devolved Governments of Northern Ireland, Scotland and Wales, Ireland will support mutually beneficial policy development and activity in the areas of spatial and infrastructure planning and other related sphere.

National Policy Objective 67

The planning system will be responsive to our national environmental challenges and ensure that development occurs within environmental limits, having regard to the medium and longer-term requirements of all relevant environmental and climate legislation and the sustainable management of our natural capital.

National Policy Objective 68

Support the circular and bio economy including in particular through greater efficiency in land and materials management, promoting the sustainable re-use of existing buildings and structures while conserving cultural and natural heritage, the greater use of renewable resources and by reducing the rate of land use change from urban sprawl and new development.

National Policy Objective 69

Support the growth and development of efficient district heating, electrification of heating, and utilisation of geothermal energy.

National Policy Objective 70

Reduce our carbon footprint by integrating climate action into the planning system in support of national targets for climate policy mitigation and adaptation objectives, as well as targets for greenhouse gas emissions reductions as expressed in the most recently adopted carbon budgets.

³³ <https://www.npf.ie/consultation-on-the-first-revision-to-the-national-planning-framework/draft-revised-national-planning-framework/> Consultation closed 12th September 2024.

National Policy Objective 71

Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a zero carbon economy by 2050.

National Policy Objective 73

Support an all-island approach to the delivery of renewable electricity through interconnection of the transmission grid.

National Policy Objective 74

Support the co-location of renewable technologies with other supporting technologies and complementary land uses, including agriculture, amenity, forestry and opportunities to enhance biodiversity and promote heritage assets, at appropriate locations which are determined based upon the best available scientific evidence in line with EU and national legislative frameworks.

National Policy Objective 75

Each Regional Assembly must plan, through their Regional Spatial and Economic Strategy, for the delivery of the regional renewable electricity capacity allocations indicated for onshore wind and solar reflected in [Table 2] below, and identify allocations for each of the local authorities, based on the best available scientific evidence and in accordance with legislative requirements, in order to meet the overall national target.

Table 3: NPF: Regional Renewable Electricity Capacity Allocations

Region	Energised capacity 2023 (MW)	Additional Renewable Power Capacity Allocations (MW)	Total % of National Share in 2030	Energised Capacity 2023 (MW)	Additional Renewable Power Capacity Allocations (MW)	Total % of National Share in 2030
	Onshore Wind			Solar PV		
Eastern and Midlands	284	1,966	25%	306	3,294	45%
Northern and Western	1,761	1,389	35%	0.3	959	12%
Southern	2,622	978 ³⁴	40%	138	3,302	43%
Total	4,667	4,333³⁵		445	7,555	

³⁴ It is considered highly likely that Kerry County Council will be obliged to positively revise the current wind designations and that is a further reason to give little to no weight to the designations as currently set out.

³⁵ It is noted that the total of 9,000 MW of onshore wind allows no headroom for meeting the target of the same amount.

National Policy Objective 76

Local Authorities shall plan for the delivery of Target Power Capacity (MW) allocations consistent with the relevant Regional Spatial and Economic Strategy, through their City and County Development Plans.

The National Planning Framework (2018) was supportive of wind energy development; however, the draft revised Framework is notably more specific in its application, in particular, the requirement that Local Authorities provide in their County Development Plans for a specific quantum of wind energy. It shows the direction of travel of national policy since the adoption of KCDP, and indeed may be adopted national policy when the Board determines this planning application.

Wind Farm Planning Guidelines, 2006

The Wind Energy Planning Guidelines 2006 were issued by the Minister for the Environment, Heritage and Local Government under Section 28 of the *Planning and Development Act 2000*, and the Board is required to have regard to them in its decision-making.

The Guidelines set out environmental requirements for wind energy development in Ireland under a variety of headings. Notwithstanding the passage of some considerable time since the publication of the Guidelines, the guidance provided is still in general very relevant. This is addressed under the various topics addressed in the Environmental Impact Assessment Report.

The Proposed Development has also adhered to parts of the draft revised 2019 guidelines insofar as they represent widely accepted best practice.

6.3.1 National Climate Change and Energy Policies

The more important aspects of Ireland's proposed approach to climate change and energy are as follows:

1. the *Climate Action & Low Carbon Development Act 2015*, and
2. the Climate Action Plan.

Further details of Government policy are set out in the National Energy & Climate Plan 2021-2030³⁶ and the National Mitigation Plan (2021)³⁷.

Climate Action and Low Carbon Development Act 2015

The *Climate Action and Low Carbon Development Act 2015*³⁸ provides for a transition to a low carbon economy by 2050.

It commits to 2030 and 2050 targets for reducing greenhouse gas emissions, and it provides the governance framework for doing so. It requires:

- Net zero greenhouse gas emissions by 2050,
- A reduction in greenhouse gas emissions of 51% by 2030, relative to 2018 levels,

³⁶ <https://www.gov.ie/en/publication/0015c-irelands-national-energy-climate-plan-2021-2030/>

³⁷ <https://www.gov.ie/en/publication/48d4e-national-mitigation-plan/>

³⁸ As amended by the *Climate and Low Carbon Development (Amendment) Act 2021*.

- An annual update to the Climate Action Plan, which must include a *Roadmap of Actions* for implementation, and which must be consistent with the Carbon Budget Programme
- A *National long-term Climate Action Strategy* at least every five years,
- A *National Adaptation Framework*³⁹, setting out adaptation measures in different sectors and by local authorities to reduce vulnerability to climate change,
- A *Sectoral Adaptation Plan*, complying with the National Adaptation Framework,
- A system of 5-year carbon budgets, to allocate emissions ceilings to relevant sectors⁴⁰,
- Local authorities to develop five-year Climate Action Plans.

In undertaking its duties, the Government must have regard to matters such as value for money, scientific and technical advice, climate justice, economic competitiveness, the change, and a just transition.

Importantly, and as discussed in Chapter 3 of this document, Section 15 of the *Climate Action & Low Carbon Development Act 2015* now requires that:

“(1) A relevant body shall, in so far as practicable, perform its functions in a manner consistent with—

- (a) the most recent approved climate action plan,*
- (b) the most recent approved national long term climate action strategy,*
- (c) the most recent approved national adaptation framework and approved sectoral adaptation plans,*
- (d) the furtherance of the national climate objective, and*
- (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State..”*

This has the effect that An Bord Pleanála must make its planning decision, in so far as is practicable, in a manner that is consistent with National Climate Change policies, including the Climate Action Plan.

This is a considerable strengthening of the more general requirement, which is to “have regard to” National policies.

³⁹ Published in 2018, and updated in 2021 <https://www.gov.ie/en/publication/fbe331-national-adaptation-framework/>; due to be updated under CAP24

⁴⁰ Sectoral Emissions Ceilings were agreed in 2022. <https://www.gov.ie/en/press-release/dab6d-government-announces-sectoral-emissions-ceilings-setting-ireland-on-a-pathway-to-turn-the-tide-on-climate-change/#:~:text=The%20Climate%20Action%20Plan%202021,in%20the%20Climate%20Act%202021.> [This is with the exception of the Land-Use, Land-Use Change and Forestry sector, which was deferred for 18 months to allow for the completion of the Land-Use Strategy.]

Climate Action Plan

A Climate Emergency was declared by the Oireachtas in 2019. Accordingly, the *Climate Action Plan 2021*⁴¹ stated that urgent action is needed to stop production of greenhouse gas emissions.

The Climate Action Plan is the framework through which the Government will meet the emissions targets envisaged in the *Climate Action and Low Carbon Development (Amendment) Act 2021*, which requires Ireland to achieve a 51% reduction in emissions by 2030, relative to 2018 levels, and net-zero emissions by 2050.

The Climate Action Plan affects almost every sector of the economy in reducing greenhouse gas emissions. It seeks 80% of Ireland's electricity to be produced by renewable energy by 2030, and principally from wind energy. This figure is currently 35% (2021)⁴².

The *Climate Action Plan 2024*⁴³ retains the key targets of the Climate Action Plan 2023, updating Ireland's ongoing Climate Action Plan, as follows:

- 80% of electricity from renewable energy by 2030, and 50% by 2025;
- 6,000 MW of onshore wind, and up to 5,000 MW of solar by 2025;
- 9,000 MW onshore wind (from a current base of just over 4,000 MW), 8,000 MW solar, and at least 5,000 MW of offshore wind by 2030;
- Provide for greater alignment between local plans and renewable energy targets at national (and regional) levels, taking into account regional targets once established and the revised National Planning Framework; and
- All relevant public bodies to carry out their functions to support the achievement of renewable electricity targets.

This then acts a significant policy driver in support of the Proposed Development. It was also adopted after the KCDP was adopted.

National Energy Security Policy

The National Energy Security Framework (2022)⁴⁴ responded to Ireland's energy security concerns arising from the war in Ukraine. It is aligned to the REPowerEU Plan, which was the EU Commission's response to the war.

The Framework addresses increased energy demands as the economy grew post-pandemic, combined with the Russian invasion of Ukraine and the associated sanctions on Russia, and the new challenges for the security of energy supplies in Europe. Combining these factors, there were dramatic increases in the price of gas, electricity and oil, in Ireland and across Europe in 2022.

The Framework sets out how energy security is made more certain, and how it will increase energy efficiency, and indigenous renewable energy use.

⁴¹ <https://www.gov.ie/en/publication/6223e-climate-action-plan-2021/>

⁴² <https://www.epa.ie/our-services/monitoring--assessment/climate-change/ghg/energy/>

⁴³ <https://www.gov.ie/en/publication/79659-climate-action-plan-2024/>

⁴⁴ <https://www.gov.ie/en/publication/ea9e4-national-energy-security-framework/>

In particular, the Framework aims to accelerate new wind and solar projects. It aims to replace fossil fuels with renewables – the use of gas, oil and coal in Ireland is to be replaced with wind energy and solar energy. This is a key part of reducing Ireland's reliance on imported fossil fuels.

The *Summary of Responses to the National Energy Security Framework (2022)*⁴⁵, published by the Department of the Environment, Climate & Communications, provided greater detail on the operation of the Framework as follows:

Response 25: Align all elements of the planning system to fully support accelerated renewable energy development

New renewable energy generation including solar, onshore wind and offshore wind projects require timely connections to the electricity grid. The system for allocating and delivering these connections must be designed and resourced to operate efficiently. Policy should prioritise projects with the highest chance of early delivery and greatest impact on carbon emissions through the connection arrangements and the Renewable Electricity Support Scheme.

Response 26: Review grid connection arrangements for renewable electricity projects and the development of system services to accelerate the growth in renewable electricity

As outlined in EirGrid's Shaping Our Electricity Future Roadmap, increased levels of renewable power requires the electricity network and associated systems to be reinforced and expanded. Power has to be transmitted from the new sources of generation to the centres of demand, so as to enable a rapid switch from replacing fossil fuels with renewable technologies. Operating the grid with higher levels of renewables requires additional system services and flexibilities.

Greater regulatory certainty is to be provided, including timeframes, in relation to decarbonised generation:

- through clearly articulated, formal Government policy on relevant aspects of energy supply
- by ensuring that the local planning policy framework fully supports the national objectives
- by ensuring An Bord Pleanála and the Maritime Area Regulatory Authority have sufficient and appropriate expert resources to meet the State's needs in this area, and
- by establishing a specific division of the High Court to deal with planning and environment cases to deal with these cases, where they arise, as expeditiously as possible.

⁴⁵ <https://www.gov.ie/pdf/?file=https://assets.gov.ie/221400/6ab0823e-8ad5-4894-87b2-b1fdb3bf6318.pdf#page=null>

6.3.2 Accelerating Renewable Energy Implementation Plan

The establishment of the Accelerating Renewable Energy Taskforce is a key measure of the Climate Action Plan 2023. Its role is to coordinate and fast-track the development of onshore renewable power and associated infrastructure.

Its work is considered vital to ensure early delivery of 80% renewable electricity by 2030 in order to meet both climate and energy security goals. The Terms of Reference for the Taskforce acknowledge that;

"...a major acceleration and increase in onshore wind and solar PV generation, along with a hitherto unseen level of electricity network upgrades and construction, will be required."

Fast-track permitting is specifically required and that also aligns with our responsibilities under RED III.

The Accelerating Renewable Energy Taskforce is chaired by the Assistant Secretary for Renewable Electricity, Hydrogen, and Grid, in the Department of the Environment, Climate and Communications. Its membership comprises representatives from Government Departments and State Bodies with responsibilities related to the delivery of renewable electricity generation projects. The member organisations are:

- The Department of the Environment, Climate and Communications;
- The Department of Public Expenditure, National Development Plan Delivery and Reform;
- The Department of Housing, Local Government and Heritage;
- The Department of Enterprise, Trade and Employment;
- The Commission for Regulation of Utilities;
- EirGrid;
- ESB Networks;
- the Sustainable Energy Authority of Ireland;
- NewERA (National Treasury and Management Agency); and
- the Ireland Strategic Investment Fund.

The Accelerating Renewable Energy Taskforce has identified the three pillars of renewables delivery:

- Planning and Reporting;
- Grid and Storage; and
- Route to Market.
- Its objectives include the following in relation to planning:
 - Planning Legislation and Regulation Working Group
 - Identify and ensure legal compliance of EU Regulations / Directives relating to spatial planning and associated permitting (including two-year permitting timeline and other matters, e.g., mapping of renewable acceleration areas).
 - Planning Policy Working Group
 - Ensure that the statutory planning policy hierarchy supports the delivery of the national renewable electricity targets for onshore wind and solar PV and effectively translates the national targets for same to the regional and local development plan tiers.

- Delivery and Reporting Working Group
 - Develop the single point of contact role for all relevant permitting systems as per Renewable Energy Directive requirement. The WG also aims to identify permitting data required to be collected from other workstreams to be analysed and reported on. The group also looks to identify any challenges of the process of data flows, monitor and collect data and provide recommendations as appropriate.

The Planning Legislation and Regulation Working Group has identified the following objectives:

- PLRO01 Ensure the planning code is compliant with RED III.
- PLRO02 Identify, review, and propose solutions within the planning code to the implementation of EU policies aimed at accelerating deployment of onshore renewable electricity projects, including those identified by other working groups, noting that any resolution must ensure compliance with both RE Regulation/Directive and EU environmental assessment Directives.
- PLRO03 Consider options within the planning code for improved data collection to assist with planning for renewable energy delivery targets set out in RED III.

The following objectives have been identified by the Planning Policy Working Group:

- PPO01 Establish regional targets for onshore wind and solar onshore in the first revision of the National Planning Framework.
- PPO02 Issue revised draft Wind Energy Development Guidelines / National Planning Statement.
- PPO03 Publish Renewable Electricity Spatial Policy Framework White Paper.
- PPO04 Publish the Regional Roadmap for Regional Assemblies to provide a methodology for regional capacity targets to be included in RSES.
- PPO05 Publish a revised Methodology for Local Authority Renewable Energy Strategies.
- PPO06 Develop a GIS Platform that supports the onshore renewable electricity spatial planning at national, regional, and local levels.
- PPO07 Having regard to Article 15b of RED III, identify potential and available land necessary for RE development to meet the 2030 renewable energy target; and identify any gaps.
- PPO08 Monitor and report on variations to RSES and CDPs in line with revised Planning Framework in respect of regional and local renewable electricity targets.
- PPO09 Having regard to Article 15c of RED III, identify potential renewable acceleration areas for consideration by competent authorities.

The following objectives have been identified by the Delivery and Reporting Working Group:

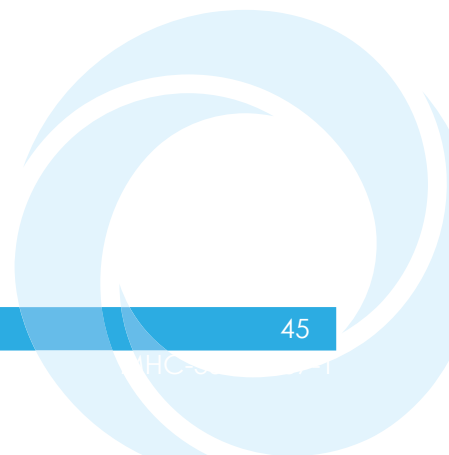
- DLRO01 Agree an Irish position on RED III of Article 16 of RED II / III, which includes a clear definition of the scope and structure of the full single point of contact function, including where the duty to “ensure deadlines for permit-granting procedure are met” lies.
- DLRO02 Develop full single point of contact function as per RED requirements. Increased remit of a single point of contact as per RED III. As per agreement on

milestone 1 (Irish interpretation different to EU norm). Including the set-up of all elements of the SPC function.

- DLRO03 Identification of data required to be collected for permitting to be analysed and reported on. Prioritisation to be put in place to be added here in reformatting.
- DLRO04 Establishment of clear data sharing agreement and protocol across all relevant bodies, with any required secondary legislation in place.
- DLRO05 Collection of data and Monitoring. Supply relevant data to Enforcement function.
- DLRO06 KPI reporting to liaise with Strategic Oversight function.
- DLRO07 Agree process and responsibility of actioning bottlenecks and recommendations within consenting system.

There are further objectives in relation to the Grid Pillar and Route to Market and Finance Implementation Plans. A delivery plan identifies time schedules for each element of the Implementation Plan.

The Implementation Plan addresses barriers to early delivery, in particular in the area of planning and permitting and the urgent need to align County Development Plans with national climate and electricity targets as well as the planning and delivery of the electricity network. It is evident from the tasks of the Planning Implementation Pillar, and PP05 – PP09 in particular, that the situation in relation to the Kerry County Council wind energy designations is likely to be revised.



6.4 Regional Spatial & Economic Strategy for the Southern Region 2020

The policies of the Regional Spatial & Economic Strategy (RSES) of the Southern Regional Assembly 2020 are noted. The RSES sets out the strategic regional development framework for the Southern Region. It implements the National Planning Framework at regional level. The RSES is supportive of wind energy and associated infrastructure in principle.

The RSES acknowledges that wind;

"...energy is currently the largest contributor of renewable energy and it has the potential to achieve between 11-16GW of onshore wind and 30GW of offshore wind by 2050 (SEAI, 2016). The sector can make a significant contribution to meeting national energy demands while attaining our energy and emissions targets for 2020 and beyond."

The RSES;

"...recognises and supports the many opportunities for wind as a major source of renewable energy." It states that opportunities "for both commercial and community wind energy projects should be harnessed, having regard to the requirements of DoHPLG Guidelines on Wind Energy. Wind Energy technology has an important role in delivering value and clean electricity for Ireland."

Regional Policy Objective 95 – Sustainable Renewable Energy Generation

It is an objective to support implementation of the National Renewable Energy Action Plan (NREAP), and the Offshore Renewable Energy Plan and the implementation of mitigation measures outlined in their respective SEA and AA and leverage the Region as a leader and innovator in sustainable renewable energy generation.

Regional Policy Objective 96 – Integrating Renewable Energy Sources

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

Regional Policy Objective 98 – Regional Renewable Energy Strategy

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

Regional Policy Objective 99 – Renewable Wind Energy

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

Regional Policy Objective 100 – Indigenous Renewable Energy Production and Grid Injection

It is an objective to support the integration of indigenous renewable energy production and grid injection.

Regional Policy Objective 101 International Hub for Energy Innovation

It is an objective to support continued innovation and research in the energy sector and to develop a role as an international hub for energy innovation.

Regional Policy Objective 102 Energy Research Funding

It is an objective to support initiatives for energy research funding within our Region to accelerate diversification away from fossil fuels to green energy, including the potential of wind, wave, solar, biomass, biofuels, biogas and hydrogen in the Region.

Regional Policy Objective 103 – Interconnection Infrastructure

It is an objective to support the sustainable development of interconnection infrastructure, in particular the potential for the sustainable development of an international connection between Ireland and France in the Region.

The RSES sets out that:

“There is significant potential to use renewable energy across the Region to achieve climate change emission reduction targets. With costs actively driven down by innovation in solar, onshore and offshore wind in particular, the renewable industry is increasingly cost competitive. The RSES supports renewable industries and requirements for transmission and distribution infrastructure.”

6.5 County Development Plan Policies

The proposed development is principally located in County Kerry. The site adjoins County Cork, where the grid connection is located. Each Development Plan is addressed below.

6.5.1 Kerry County Development Plan 2022 – 2028

The KCDP sets out policies that are supportive of renewable energy. These are set out below.

Renewable Energy Policies of the Kerry County Development Plan 2022 – 2028

The policies relevant to renewable energy, as set out in the County Development Plan, are set out below.

Section 12.1 Kerry County Development Plan – Energy

The energy policies of the Council are set out in Section 12 of KCDP In relation to renewable energy, the following is stated in Section 12.1:

“It is the policy of the Council to support and provide for the sustainable development of indigenous energy resources, with an emphasis on renewable energy supplies, in the interests of economic progress and the proper planning and sustainable development of the county.

The Council supports the development of a safe, secure and reliable supply of electricity...

The County has, in terms of alternative energy, huge potential for the development of wind, solar, biomass, geothermal, hydro and wave energy.

In ensuring energy and growth are integrated, the Council will support the emerging climate action policy to align energy planning with spatial planning"

The objective of the planning authority in relation to energy is set out in Section 12.1 of the Development Plan.

Objective KCDP 12-1

It is an objective of the Council to:

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

Section 12.5 Kerry County Development Plan –Renewable Energy

The Renewable Energy policies of the Planning Authority are set out in Section 12.5 of the Development Plan, which states the following:

"Access to secure, clean and affordable energy is essential for the future economic and social development of the county. The Council will continue to support and facilitate the sustainable development of the renewable energy sector in line with the strategic goals set out by the Department of Communications, Climate Action and the Environment whilst balancing the need for new development with the protection of the environmental, cultural and heritage assets of the county."

Objective KCDP 12-14

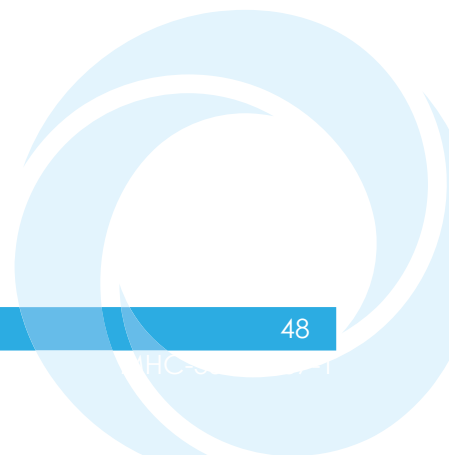
It is an objective of the Council to:

"Maximise the development of all renewable energies at appropriate locations in a manner consistent with the proper planning and sustainable development of the County."

Objective KCDP 12-17

It is an objective of the Council to:

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



Section 12.5.1 Kerry County Development Plan –National Targets and Responding to Climate Change

This section states that:

"It is estimated that the Kerry County Development Plan provides the framework for approximately 389 MW of additional renewable energy to be potentially generated over the lifetime of the plan from the following sources⁴⁶:"

- Hydroelectricity 6 MW;
- Solar 373 MW; and
- Bioenergy 10 MW.

Section 12.5.2.2 Kerry County Development Plan – Energy – Methodology for Local Authority Renewable Energy Strategies (LARES), SEAI 2013

This methodology aims to facilitate consistency of approach in the preparation of a Local Authority Renewable Energy Strategy (LARES), and to assist local authorities in developing robust, co-ordinated and sustainable strategies in accordance with national and European obligations.

The LARES has informed the preparation of this chapter.

The Draft Revised Wind Energy Development Guidelines 2019 (DHPLG) have been used to identify areas suitable for wind development and to inform wind energy policy⁴⁷.

Section 12.5.4 Kerry County Development Plan –Renewable Energy Policy

Kerry has seen significant development in terms of RE. With the resources that are available in the county, subject to the principles of proper planning and sustainable development, there is potential for additional development, but development is also subject to constraints.

Section 12.5.4 Kerry County Development Plan – Wind Energy

It is the policy of the Council to support, in principle and in appropriate locations, the sustainable development of wind energy resources in County Kerry. This policy document builds upon previous policies in place to develop an updated tool for identifying potentially suitable locations for wind energy development and to guide future assessment of wind energy planning applications in the County.

⁴⁶ It is noted that provision for any addition generation of wind power is not provided for. This is despite the nominal policy (KCDP 12-18) allowing for its development.

⁴⁷ It is noted that Kerry County Council's LARES methodology resulted in no appropriate areas being zoned for wind energy development.

Wind. Objective KCDP 12-18

It is an objective of the Council to:

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

Section 12.5.4.1.1 Kerry County Development Plan –Draft Revised Wind Energy Guidelines 2019 (DHPLG)

These Guidelines apply to planning applications and considerations for future wind energy development proposals.

The Specific Planning Policy Requirements (SPPR) as set out in the Draft Revised Wind Energy Development Guidelines have been reflected in the policies in this chapter in relation to wind energy development.

Section 12.5.4.1.4 Kerry County Development Plan –Open to Consideration

Having regard to County Kerry's current contribution to the provision of wind energy generation capacity in the State, the scale of this contribution and the scale of permitted, but not as yet constructed development, it is considered that the capacity of certain areas in the County to facilitate additional wind energy developments has been reached.

Wind energy development in areas 'open to consideration' may be appropriate, depending on the character of the landscape and the potential impact of the proposed development. The capacity of these areas has limits and the cumulative impact of wind development in these areas will be monitored.

The detailed policies of the Council in relation to wind energy development are set out as follows:

- *Ensure that applications for wind development are accompanied by a technical assessment in relation to the slope stability, landslide susceptibility of the development site and the proposed project.*
- *Ensure that all proposals for wind energy development (including the grid connection) have regard to the cumulative effect of the development on the environment in conjunction with the entire development and other existing/permitted developments in the area.*
- *Ensure that all proposals demonstrate conformity with existing and approved wind farms to avoid visual clutter and demonstrate how they had regard to potential cumulative effects, where appropriate.*
- *Ensure that all applications have regard to the impact on existing built environment, particularly neighbouring residential properties and other sensitive amenity areas.*
12. Energy Kerry County Development Plan 2022-2028
- *Ensure that the development of wind turbines comprise a setback distance as detailed in the Draft Revised Wind Energy Development Guidelines 2019 (DHPLG).*

- Ensure that noise restriction limits are consistent with those as included in the Draft Revised Wind Energy Development Guidelines 2019 (DHPLG)⁴⁸.
- Ensure that no neighbouring property experiences the occurrence of shadow flicker and in accordance with the Draft Revised Wind Energy Development Guidelines 2019 (DHPLG).
- Ensure that all applications have regard to the impact of any proposal for wind energy development on surrounding tourism and recreational related activities.
- Ensure that all applications are in compliance with Article 6 Habitats Directive, EIA Directive and Water Framework Directive. Where applicable this should be informed by at least 2 years of annual (breeding and wintering) bird survey undertaken to best practices guidelines in addition to early engagement with statutory and non-statutory holders of ecological data, including with the Irish Hen Harrier Winter Survey.
- Ensure that proposals within sensitive water catchments must demonstrate compatibility with the objectives of the Water Framework Directive having due regard to possible impacts on high status objectives waterbodies and non-annexed freshwater habitats and species including extant (non-designated) populations of Freshwater Pearl Mussel.
- Ensure that any application proposed in an area known to support the White-Tailed Sea Eagle is informed by at least two years of ornithological survey (breeding and winter) by a suitably qualified expert and if applicable, the ornithological impact assessment takes into account the results of ongoing monitoring of existing renewable energy infrastructure in the area and should include mitigation to prevent eagle mortality as agreed for the existing Grousemount Wind Farm.
- Ensure that any wind energy proposals within the Lough Leane catchment or other water quality sensitive catchments, demonstrate that they have been designed in a manner which prevents any risk of peat, soil and rock slippage or erosion and which provides for ongoing protection / improvement of water quality and the maintenance of natural hydrological processes. Proposals which would increase flood risk or bankside erosion downstream will not be permitted.
- Ensure that proposals which cannot avoid adverse impacts on Natura 2000 Sites (SPA's and SAC's) or adjoining areas and locations affecting Natura 2000 site integrity, including habitats of significant value for Lesser Horseshoe Bats associated with Natura 2000 sites in the vicinity, and other sites and locations of significant ecological value, will not be permitted.

⁴⁸ An independent group of internationally recognised expert acousticians, all members of the UK Institute of Acoustics, have submitted and made publicly available a joint consultation response to the 2019 draft revised Guidelines, highlighting their significant concerns regarding "technical errors, ambiguities and inconsistencies", having identified 309 technical errors and concerns in the treatment of noise in the draft revised Guidelines.

https://tneigroup-com.stackstaging.com/wp-content/uploads/2022/05/WEDG-_consultation-joint-response-R0.pdf

- Ensure that all proposals within/in proximity to known visually sensitive areas/designated views and prospects are subject to a Landscape Visual Impact Assessment (LVIA) undertaken to best practices guidelines. Where applicable the LVIA should include possible visual impacts on 19 archaeological landscapes identified in Section 8.3.2 of the County Development Plan notably No. 13 The Paps and No.15 Mangerton/Cumeenduvassig/ Bausheen/Slaght/Knockeens.
- Ensure that, at a minimum, turbines shall be set-back a distance equalling the blade tip height of the turbine from national roads and railways. Set-back from other roads will be site specific and determined at application stage.

Wind Energy Development Objective KCDP 12-19

It is an objective of the Council to:

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

Section 12.5.4.1.5 Kerry County Development Plan –Separation Distances

There are a significant number of one-off houses in all rural areas throughout the County...In identifying sites and in the disposition of turbines, development proposals must carefully consider potential impacts on residential amenity, and any minimum setbacks as specified in the wind energy guidelines.

Section 12.5.4.1.6 Kerry County Development Plan –Unsuitable for Wind Development

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

Wind Energy Projects Objective KCDP 12-20

It is an objective of the Council to:

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

Section 12.5.5 Kerry County Development Plan –Community Consultation and Community Benefit

In order to offset any potential impact of a renewable energy development on the community it is the policy of Kerry County Council to seek the developers to provide support to local communities by providing resources for Community Benefit Funds. It is considered reasonable that renewable energy developments contribute to the community within a 20 km radius of the development site within the county, at a rate of €2/MWh.

It is the policy of the council to:

- Require that developers of proposed large-scale renewable energy projects carry out community consultation in accordance with best practice and to commence the consultation at the commencement of project planning.

- Ensure that all community benefits are distributed to projects in support of the
- community within a 20km radius, of the site, within the county only.

Kerry County Development Plan –Development Management Standards and Guidelines

Section 1.15.1 of Volume 6 of the KCDP provides as follows:

“Wind Energy

When assessing planning applications for wind energy developments the Council will have regard to; the Wind Energy Development: Guidelines for Planning Authorities DEHLG (2006) and Draft Wind Energy Development Guidelines for Planning Authorities, DHPLG, (2019) and any amendments to the Guidelines which may be made; and the Local Authority Renewable Energy Strategy, Chapter 12 of the County Development Plan.

In addition to the above, the following considerations will be taken into account by the Council in relation to any planning application:

- Site selection in a designated wind energy policy area
- Set back distances in relation to residential properties
- Impact on the residential amenities of the area
- Impact on the visual amenities of the area
- Scale and layout of the project, any cumulative effects due to other projects and the extent to which the impacts are visible across the local landscape
- Visual impact of the proposal with respect to protected views, scenic routes and sensitive landscapes
- Impact on nature conservation, ecology, soil, hydrology, groundwater, archaeology, built heritage and public rights of way
- Impact on ground conditions and geology
- Consideration of falling distance plus an additional flashover distance from wind turbines to overhead transmission lines
- Impact of development on the road network in the area; and
- Impact on human health in relation to noise disturbance (including consistency with the World Health Organisations 2018 Environmental Noise Guidelines for the European Region), shadow flicker and air quality.
- Lifecycle Assessment of the wind farm particularly in relation to emission of GHG
- to include, if applicable, loss from LULUCF further to the proposed development.

This list is not exhaustive, and the Council may consider other requirements on a case-by-case basis with planning applications should the need arise. With respect to wind energy developments, the Planning Authority will require the following:

- That the developer consult with the Planning Authority during the site selection process to identify considerations particular to the proposed site which would indicate its suitability or otherwise for a specific type of renewable energy development.
- That the developer consult with other relevant statutory agencies that could assist in identifying environmental sensitivities and relevant considerations such as the Department of Housing, Local Government, Department of Environment,

Climate and Communications, Department of Agriculture, Food and Marine, The Forestry Service, the Irish Aviation Authority, National Parks and Wildlife Service, Inland Fisheries Ireland and other appropriate statutory and non-statutory bodies.

- *Details of consultations with the electricity transmission operators (EirGrid & ESB Networks) regarding the nature and location of a proposed grid connection as part of pre-planning consultation.*
- *A construction and environmental management plan as part of the planning application.*
- *A Landslide susceptibility and risk assessment, to ensure all factors contributing to slope stability are identified and addressed appropriately.*
- *Sub threshold EIAR for wind energy developments that are likely to have a significant effect on the environment.*
- *Appropriate Assessment Screening Report and where applicable a Natura Impact Statement.*
- *Ornithological (bird) survey (winter and breeding) for at least 2 years prior to a planning application being made. As part of this, the Irish Hen Harrier Survey (IHHWS) should be consulted with in relation to Hen Harrier Winter Roost locations.*
- *Assessment of the carbon balance of the proposed development, particularly any development on or potentially impacting on peat or other carbon rich or sequestering soils.*
- *Engagement with active public consultation with the local community in advance of and in addition to the statutory public consultation required as part of the planning application process.*
- *Preparation of a Community Report to form part of the planning application – (details of what a Community Report entails can be found in the Draft Wind Energy Development Guidelines 2019).*
- *A detailed plan outlining how the developer intends decommissioning the infrastructure within and serving the site and the reinstatement of the lands.*

A development bond shall be paid by the developer to the Planning Authority to ensure all works specified in a grant of permission are carried out. The bond will be calculated at a rate of €10,000 per Mega Watt (index linked). A higher bond may be applied where the planning authority is of the opinion that the extent of works carry an increased risk. A separate bond shall be paid to the Council to secure the reinstatement of public roads that may be damaged by the transport of materials and infrastructure to the site.

Any development shall be subject to the payment of development contributions in accordance with the adopted Development Contribution Scheme. Where specific costs arise, an additional special contribution may be imposed under Section 48 (2)I of the Planning and Development Act 2000."

Kerry County Development Plan – Built and Cultural Heritage Policies

Chapter 8 of the KCDP sets out the policies and objectives of the Council in relation to built and cultural heritage. Archaeological heritage is addressed, including recorded monuments and archaeological landscapes.

The following policies are considered applicable to the Proposed Development:

- KCDP 8-24 (ii) Ensure that proposed development (due to location, size, or nature) which may have implications for the archaeological heritage of the county will be subject to an Archaeological Assessment (including Underwater Archaeological Impact Assessment) which may lead to further subsequent archaeological mitigation – buffer zones/exclusion zones, monitoring, pre-development archaeological testing, archaeological excavation and/or refusal of planning permission. This includes areas close to archaeological monuments, development sites which are extensive in area (half hectare or more) or length (1km or more) or include potential impacts on underwater cultural heritage and development that requires an Environmental Impact Assessment.
- KCDP 8-27 Ensure that development (including forestry, renewable energy developments and extractive industries) within the vicinity of a recorded monument, zone of archaeological potential or archaeological landscape does not detract from the setting of the feature and is sited and designed appropriately and sympathetically with the character of the monument/feature/ landscape and its setting.
- KCDP 8-28 Ensure the active protection of the 19 identified, significant archaeological landscapes outlined in Volume 3 with particular emphasis on the landscape settings, views to and from the landscapes and monument/feature inter-visibility within these landscapes.

Kerry County Development Plan –Landscape Policies

Section 11.6 of the KCDP sets out the policies of the Council that relate to landscape. There are two landscape designations for the county, being Visually Sensitive Areas, and Rural General. Policies in relation to Views & Prospects are set out. Landscape designations are presented in Map O of Volume 4 of the KCDP.

The following Policies are considered applicable to the Proposed Development:

- KCDP 11-78 Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.
- KCDP 11-79 Preserve the views and prospects as defined on Maps contained in Volume 4.
- KCDP 11-81 Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.

Kerry County Development Plan – Biodiversity Policies

It is a stated aim of the KCDP to; “...*protect and enhance biodiversity*”.

The following policies are considered of relevance to the Proposed Development:

- Policy KCDP 2-10 Support integrated nature-based solutions and biodiversity to climate change challenges and also initiatives aimed at increasing soil carbon retention, sequestration, and storage;
- KCDP 2-15 Promote awareness of the value of restored peatlands in storing carbon and mitigating climate change and promote and support efforts to both prevent further degradation of peatlands and to restore already degraded peatlands;

- KCDP 11-2 Maintain the nature conservation value and integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs). This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies;
- KCDP 11-3 Work with all stakeholders in order to conserve, manage and where possible enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County;
- KCDP 11-12 Support the protection of the biodiversity and tourism-value of Killarney National Park by proactively engaging with all stakeholders to tackle Rhododendron infestation and combating illegal fires.

Kerry County Development Plan – Noise and Air Quality Policies

The following policy is considered of relevance to the Proposed Development:

- KCDP 11-36 Ensure that any application with the potential to create noise nuisance is appropriately assessed and that suitable measures to mitigate any nuisance are proposed and implemented.

Kerry County Development Plan – Land Use and Flood Risk Management Policies

The following policy is considered of relevance to the Proposed Development:

- KCDP 11-69 Ensure that developments in upland areas provide sufficient storm water attenuation to avoid the occurrence of river erosion or flooding downstream subject to hydrological and ground/peat stability assessments.

6.5.2 Cork County Development Plan 2022 – 2028

As the Proposed Development extends into Country Cork for the grid connection to Ballyvouskill substation, the CCDP is considered a relevant consideration in the determination of the application.

Section 8.15.1 of the Cork Development Plan recognises renewable energy including wind energy are particularly important to the rural economy of County Cork.

Section 13.5.3:

Achieving 70% renewable electricity by 2030 will involve phasing out coal and peat-fired electricity generation plants, increasing our renewable electricity, reinforcing our grid (including greater interconnection to allow electricity to flow between Ireland and other countries), and putting systems in place to manage intermittent sources of power, especially from wind.

Section 13.5.3: provides that achieving 70% renewable electricity by 2030 will involve increasing our renewable electricity and reinforcing our grid, among other measures.

Section 13.5.4:

It is important therefore that Cork County sets out its ambitions with regard to renewable energy in this context and shows its ability to help contribute to achieving these national targets in consultation with local communities and businesses.

Section 13.6.1:

Wind Energy is the largest generator of renewable energy in Ireland, providing 28% of Ireland's electricity in 2018. Wind contributed 85% of all electricity produced from renewable resources in 2018.

Section 13.6.2:

In 2020, installed wind capacity reached 3,700 MW within the Republic of Ireland. Cork County currently has 38 commissioned wind farms with capacity of 603MW, equivalent to approximately 16% of the national capacity. However, if Ireland is to meet our renewable energy target then we need to double capacity nationally over the next ten years. On a pro rata basis, that could see capacity in Cork expand to 1,100MW. At present they are valid but unimplemented permissions in the county for a further 200MW of wind power.

Objective ET 13-2 Renewable Energy

a) Support Ireland's renewable energy commitments as outlined in Government Energy and Climate Change policies by facilitating the development of renewable energy sources such as wind, solar, geothermal, hydro and bio-energy and energy storage at suitable locations within the county where such development has satisfactorily demonstrated that it will not have adverse impacts on the surrounding environment (including water quality), landscape, biodiversity or amenities.

b) Support and facilitate renewable energy proposals that bring about a direct socio-economic benefit to the local community. The Council will engage with local communities and stakeholders in energy and encourage developers to consult with local communities to identify how they can invest in/gain from significant renewable energy development...

Objective ET 13-4: Wind Energy provides that:

in order to facilitate increased levels of renewable energy production consistent with national targets on renewable energy and climate change mitigation as set out in the National Energy and Climate Plan 2021-2030, the Climate Action Plan 2021, and any updates to these targets, and in accordance with Ministerial Guidelines on Wind Energy Development, the Council will support further development of on-shore wind energy projects including the upgrading, repowering or expansion of existing infrastructure, at appropriate locations within the county in line with the Wind Energy Strategy and objectives detailed in this chapter and other objectives of this plan in relation to climate change, biodiversity, landscape, heritage, water management and environment etc.

Although the elements of the Proposed Development within County Cork only consist of subsurface cabling and associated infrastructure with no electricity generation equipment; it should be noted that the Proposed Development Site does lie within an area designated as 'Open to Consideration' in terms of Policy ET 13-5 and ET 13-7.

ET 13-5: Wind Energy Projects states:

"b) On-shore wind energy projects should focus on areas considered 'Acceptable in Principle' and 'Areas Open to Consideration' and

generally avoid “Normally Discouraged” areas as well as sites and locations of ecological sensitivity”

ET 13-7: Open to Consideration states:

“Commercial wind energy development is open to consideration in these areas where proposals can avoid adverse impacts on:

- Residential amenity particularly in respect of noise, shadow flicker and visual impact;*
- Urban areas and Metropolitan/Town Green Belts;*
- Natura 2000 Sites (SPA's and SAC's), Natural Heritage Areas (NHA's), proposed Natural Heritage Areas and other sites and locations of significant ecological value.*
- Architectural and archaeological heritage;*
- Visual quality of the landscape and the degree to which impacts are highly visible over wider areas.*

In planning such development, consideration should also be given to the cumulative impacts of such proposals.”

Section 13.7 of the CCDP states:

“All planning applications for wind energy development should include a comprehensive assessment of the potential impacts of the proposed development on the receiving environment and landscape. The Planning Authority will require the following criteria to be covered by prospective applicants;

- The requirement for Environmental assessments (EIA, AA etc.).*
- Community engagement and participation aspects of the proposal.*
- Grid Connection. In particular grid connections with the potential to impact on the strategic function of the national road network should be discussed and agreed with Transport infrastructure Ireland and should use alternative available routes where feasible in the first instance.*
- Geology and ground conditions, including peat stability; and management plans to deal with any potential material impact. Reference should be made to the National Landslide Susceptibility Map to confirm ground conditions are suitable stable for project;*
- Site drainage, water storage and hydrological effects such as water supply and quality and watercourse crossings; management plans to deal with any potential material impact on watercourses; the hydrological table; flood risk including mitigation measures;*
- Landscape and visual impact assessment, including the size, scale and layout and the degree to which the wind energy project is visible over certain areas and in certain views;*
- Visual impact of ancillary development, such as grid connection and access roads;*
- Potential impact of the project on natural heritage, to include direct and indirect effects on protected sites or species, on habitats of ecological sensitivity and biodiversity value and ,where necessary, management plans to deal with the satisfactory co-existence of the wind energy development and the particular species/habitat identified;*

- *Potential impact of the project on the built heritage including archaeological and architectural heritage;*
- *Consideration of carbon emissions balance is demonstrated when the development of wind energy developments requires peat extraction.*
- *Local environmental impacts including noise, shadow flicker, electromagnetic interference, etc.;*
- *Adequacy of local access road network to facilitate construction of the project and transportation of large machinery and turbine parts to site, including a traffic management plan;*
- *Information on any cumulative effects due to other projects, including effects on natural heritage and visual effects;*
- *Information on the location of quarries to be used or borrow pits proposed during the construction phase and associated remedial works thereafter;*
- *Disposal or elimination of waste/surplus material from construction/site clearance, particularly significant for peatland sites; and*
- *Decommissioning considerations.*

Objective ET 13-10:

Development in line with Best Practice Ensure that wind energy developments in County Cork are undertaken in observance with best industry practices, and with full engagement of communities potentially impacted by the development. In accordance with the Code of Practice 'Good Practice for Wind Energy Development Guidelines 2016', wind energy development operators are required to put in place an effective complaints procedure in relation to all aspects of wind energy development projects, where members of the public can bring any concerns they have about operational difficulties, including noise and nuisance to the attention of the wind energy development operator.

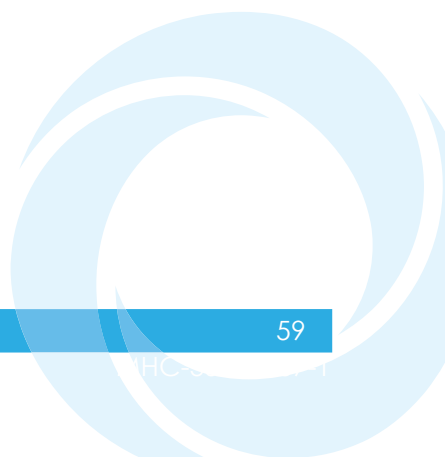
Objective ET 13-11: Public Consultation and Community Support

(a) Require wind energy developers to carry out active public consultation with the local community in advance of and in addition to the statutory public consultation required as part of the planning application process.

(b) Applications for large scale wind energy development require a 'Community Report' with the planning application documents detailing the full extent of community and wider public engagement.

All of these points have been addressed as part of the EIA insofar as they are relevant to the infrastructure proposed within the County Cork boundary.

The Proposed Development is considered compliant with the relevant requirements of the CCDP.



7 Planning History

7.1 Development Planning

This section summarises the planning history of the site in the strategic planning context.

The Clydagh Valley was designated as suitable for wind energy for many years. No relevant site constraint has changed since then.

Six turbines were permitted in the County Kerry area of the Clydagh Valley over that period, five of which have been constructed and are operational.

7.1.1 Kerry County Development Plan 2003

The Clydagh Valley was first designated for wind energy development in the Kerry County Development Plan 2003 – 2009.

7.1.2 Kerry County Development Plan 2009

The Clydagh Valley was redesignated for wind energy in the 2009 – 2015 County Development Plan.

7.1.3 Kerry Renewable Energy Strategy 2012

For the first time, the landscape character of the County was examined in terms of suitability for wind energy. The landscape character study concluded that the eastern end of the Upper Clydagh Valley would be suitable for wind energy development, being the location of the proposed development.

Table 7.4 of the 2012 Renewable Energy Strategy addressed the Landscape Character Areas in the County, and their capacity to absorb wind energy development. Landscape Character Area 36 was the Upper Clydagh River and the Derrynasaggart Mountains, which contains this site. This area was described as "Mountains, Mountain Moorland, Transitional Marginal Land". It was stated that this area *"would have landscape capacity but it forms part of the Lough Leane catchment so therefore not being zoned."*

The rationale for dezoning the Clydagh Valley for wind energy, being related to the water quality in Lough Leane, was inappropriate and unnecessary then and is equally inappropriate and unnecessary today. This is addressed in Chapter 11 of this document.

Having been designated for wind development in both the 2003 and 2009 County Development Plans, the area was found to be suitable for wind power through the Landscape Characterisation Study.

7.1.4 Landscape Character Assessment prepared for the Renewable Energy Strategy 2012 & Adopted/Proposed Archaeological Landscapes

The 2012 Renewable Energy Strategy was based on an in-depth Landscape Character Assessment which also incorporated assessment of Archaeological Landscapes.⁴¹

The remoteness, seclusion and absence of human activity in Landscape Character Area 36 was evident.

In particular, the quality of the landscape was seen to be affected by the amount of planted forestry in the area, particularly on the southern side of the Clydagh Valley (the development site). The northern side has been less affected, and The Paps Mountains is of a higher quality.

The Development Capacity Summary indicates that it:

"...is considered that there would be some landscape capacity in this area. This area would include lands east of the N22 in the Clydagh River Valley, to the south of the river...The N22 Killarney-Cork Road has a view & prospect towards the mountains, wind farm development on the ridge of ground between the viewpoint and The Paps would detract from this view, and for this reason a small area to the east of the N22 is not considered to have capacity. This area is not being zoned for windfarm development as there is an ecological sensitivity, The Lough Leane Catchment."

The methodology applied to determine suitability for wind energy development was thorough and logical from a broad environmental perspective, incorporating visual and landscape priorities and Archaeological Landscapes, as well as ecological factors.

7.2 Development Management

7.2.1 Proposed Development Site

The planning applications addressed below are on or adjacent to the proposed site, and where permission was granted, the developments have been successfully constructed without any concern arising in relation to water quality in the River Clydagh or Lough Leane.

10/75 and ABP-236593 – Airtricity

The application was made to KCC in January 2010 for a windfarm consisting of 20 wind turbines, sub-station, borrow pits, and ancillary development located on the Proposed Development Site. Planning permission was refused by KCC in March 2010 on the basis of:

- a) Risk to water quality due to siltation as a result of the nature and scale of the development in a sensitive location;
- b) Lack of adequate effluent disposal arrangements; and
- c) Absence of pre-development archaeological assessment

Despite these reasons being given, KCC planner's report did state that points b) and c) could have been dealt with through a request for further information. It is noted that no account was made of the details of the application such as design, and mitigation measures and was based purely on the nature and location of the development.

This is despite the development being located in an area Open to Consideration for wind energy at the time.

Airtricity appealed the decision to An Bord Pleanála with the appeal refused with the Inspector concurring with the Planning Authority on the matter of potential impact on water quality only agreeing with KCC's submission that; *"mitigation measures are rarely if ever 100% effective..."* and *"any major incident could have a profound impact"*.

This contention is considered to be flawed as the wind industry has been constructing windfarm in upland potentially sensitive areas without environmental harm and there is every reason to assume that mitigation would be 100% effective.

KCC conflates the issue of siltation and phosphorus release. Siltation can arise from sudden major incidents (such as landslip) whereas elevated phosphorus is a slow release process leaching from soils.

Their reason for KCC's concern with respect to phosphorus related to the impact of Lough Leane primarily due to sedimentary-based phosphorous arising from remote sub-catchments due to land erosion or similar sources.

This is despite available evidence implicating downstream activities such as agriculture and septic tank discharges.

The Inspectors concern related to mitigation measures being unable to contain 'major incidents' and having a profound impact without taking into account the planning authority's flawed reasoning relating to phosphorus impact or the distance to Lough Leane itself.

Nonetheless, the Applicant has taken these issues into consideration as evidenced in the earlier text of this report, Chapters 10: Soils, Geology and Hydrogeology, Chapter 11: Hydrology, Water Quality and Flood Risk, Chapter 17: Risks and Major Accidents and the Appendices associated with those Chapters.

In terms the position that mitigation measures are not suitably effective, this position is refutable in that mitigation measures have proven to be effective throughout Ireland as well as within the Clydagh Valley over the past 30 years. Over 4,500 MW of wind energy have been successfully constructed in Ireland to date with no associated deterioration in water quality.

In particular, Coomacheo Wind Farm (CCC-03/1997) has been successfully constructed within the Clydagh Valley, most of which were constructed in forestry, and without incident.

7.2.2 Adjacent Planning History – Kerry County Council

Five turbines have been constructed adjacent to the Proposed Development Site, as have a substation, grid connections and site access roads. No concern has ever arisen in relation to their environmental effects.

It is noted that these turbines are at a higher elevation than those proposed here, which will be less exposed at a lower elevation within the almost-enclosed valley. The permitted turbines in Kerry are under 04/3152, 06/1680 (duration of permission extended under 06/91680), 07/306, and 10/1302 & ABP-238677.

KCC-10/1302 and ABP-238677 – John Creedon

Following a decision to refuse permission by the Planning Authority because of water quality in Lough Leane, permission was granted by An Bord Pleanála for a one-turbine extension to a three-turbine wind farm.

KCC refused permission because a; "...significant pollution risk to the water quality of [the SAC and Lough Leane] would arise from a variety of sources notwithstanding the mitigation proposals set out in the planning application"; this included risk of nutrient release.

An Bord Pleanála granted permission on appeal. In coming to its decision, the Board had regard to the nature of the development as;

"...the proposed development would not endanger water quality in the River Clydagh (River Flesk/Lough Leane SAC catchment), would not adversely affect the ecology of any sites forming part of the 'Natura 2000' network, would not be visually obtrusive or unduly detrimental to the landscape character of the area, would not give rise to significant risk of peat slide..."

KCC-99/1490 and ABP-121160 – Future Wind Partnership

This was an application for 17 wind turbines and sub-station by Future Wind Partnership (fore-runner of Airtricity) adjacent to the subject site. Permission was granted by KCC in August 2000, but refused on appeal because of visual amenity in a secondary special amenity area. This area was not zoned for wind energy at that time. No concern arose in relation to water quality.

KCC-03/3493 and ABP-206863 – John Creedon

This application was withdrawn at appeal stage, following a grant of permission in May 2004 for two wind turbines. Queries arose relating to possible pockets of deep peat and to access roads. The area had been zoned for wind energy by this time.

KCC-04/3152 – John Creedon

Permission was granted to John Creedon for two wind turbines at Clydaghroe, Clonkeen, County Kerry. The Clydagh Valley had been zoned for wind energy development in the 2003 Kerry County Development Plan. These turbines have been constructed and are operational.

KCC-06/1680 – Tadhg O Criodain

Permission was granted for two wind turbines and a control house at Cummeennabuddoge and Clydaghroe, Cloonkeen Co Kerry. The site was zoned as Open to Consideration for wind energy development. This development has been constructed, and operates as Clydaghroe Wind Farm.

KCC-06/91680 – Tadhg O Criodain

Grant of extension of duration of permission for 06/1680.

KCC-06/4894 – Airtricity Developments (Ireland) Ltd and Coillte Teo

Permission was granted for a sub-station, previously permitted at an adjacent location by Cork County Council under planning register reference number 06/10251. This sub-station has been constructed, and is operated under the name of Garrow Sub-station.

KCC-07/306 – John Creedon

Permission was granted for one wind turbine, which has been constructed and is operational.

KCC-10/465 – Tadgh O Criodain

Grant of permission for a substation to serve the two wind turbines previously granted under planning register reference number 06/1680.

KCC-10/1023 – ESB

Permission granted to alter and extend existing the 110 kV station at Cummeennabuddoge, Killaha, Co Kerry.

KCC-EX386 and ABP-RL3351 – SSE Renewables Ireland Ltd

A question was referred to Kerry County Council and An Bord Pleanála as to whether the carrying out of remedial works in the vicinity of three wind turbines at Coomacheo Wind Farm in the townlands of Clydaghrone and Clonkeen, County Kerry, would constitute development or exempted development.

An Bord Pleanála determined that the repair works came within the scope of exempted development under section 4(1)(h) of the *Planning and Development Act* 2000. Other ancillary works came under the provisions of the exemptions provided at Classes 16 and 17 of Part 1 of Schedule 2, and Class 3 of Part 3 of Schedule 2 to the *Planning and Development Regulations* 2001. Ground re-grading works in the vicinity of Turbine number T9 was development and not exempted development.

KCC-22/816 and ABP-317406 – part Grid Connection Knocknamork

This application was for part of the grid connection serving the permitted Knocknamork Wind Farm. It was accompanied by an EIAR and NIS encompassing the entirety of the development proposed.

The Planning Authority again on this occasion refused permission on the grounds of water quality and Lough Leane.

Following an in-depth examination of the matter by the Inspector, the Board granted permission on 23rd January 2024 in accordance with her recommendation and adopted the examination of EIA and AA undertaken by the Inspector in doing so. In particular she found at paragraph 7.5.31 that:

"I note those mitigation measures proposed which I consider are appropriate to prevent an increase in sedimentation in the surface waters. The proposed mitigation measures in relation to construction and protection of water quality are well established and in line with best practice development and the protection of water courses. I also consider that the proposed construction methodologies and details supplied are sufficiently comprehensive to remove any lack of clarity regarding the potential for adverse effects to arise."

KCC-23/646 and ABP-317889 – Inchamore Wind Farm Entrance Works

This development was for entrance works to serve Inchamore Wind Farm (in Kerry); an EIAR and NIS of the entire wind farm project (which was in County Cork), including its grid connection, was presented in support of the application.

The Planning Authority refused permission for two reasons. The first reason related to access; the second related to water quality and the potential impact on the Killarney National Park, MacGillycuddy Reeks and Caragh River Catchment SAC. The reason for

refusal was general in nature, as were the complaints set out in the report of the Council Ecologist and in the Planner's Report. Both reports referred to the sensitivity of Lough Leane and the previous difficulties with nutrient enrichment, indicating in what might be said to be a vague manner that they were not satisfied as to the proposal, although there was very little detail of what their specific concerns were.

However, on appeal, and following a comprehensive assessment by the Inspector, and in accordance with her recommendation, the Board granted permission on 15th February 2024. The Inspector was quite satisfied as to the mitigation measures proposed, and the Board in coming to its decision adopted the assessments undertaken by the Inspector in respect of EIA and AA, both of which examined in detail the matter of water quality.

It is noted in this respect that the grid connection for the overall project is also substantially within the Clydagh River catchment and this was assessed on a cumulative basis.

Mullaghanish

Numerous permissions⁴⁹ have been granted for development of a transmission station, including a mast of circa 225 m high, and associated development at Mullaghanish, which is at 649 m elevation.

Other Wind Energy Development within the Lough Leane Catchment, County Kerry

02/1241 – Coillte Teo and SWS Services Co-Op – 17 wind turbines at Inchee and Lettercannon, Coomagearlahy, Kilgarvan – granted; operational.

7.2.3 Adjacent Planning History - Cork County Council

CCC-99/0616 and ABP-111211 – Gillian Kelly

The following permissions all relate to Gneeves Wind Farm: 99/0616, 03/6585, 04/0188, 04/1355, 08/5636, 13/4566 and 13/5717.

Following withdrawal of the appeal, permission was granted by the Planning Authority for a 15.6 MW wind farm incorporating 13 turbines and a control building at Gneeves, Co. Cork.

CCC-03/6585 – SWS Energy Services

Permission was granted for modifications to wind farm permitted under 99/0616 to include increasing the turbine height from 44m to 65m, at Gneeves, Millstreet, Co. Cork.

⁴⁹ 91/213 (radio station and mast), 94/325 (extend mast to 178 m), 98/982 (palisadefence), 00/2474 (replace 170 m mast with 220 m), 07/1965 (replace 170 m mast with 220 m), 12/467 (continuation of use of 220 m mast), 12/606 (extension of building, new substation building), 19/1260 (fuel tank storage building); all granted by Kerry County Council; none appealed

CCC-04/188 – SWS Group

Permission was granted for an extension to wind farm (permitted under 99/0616) to consist of four wind turbines (hub height 65m, blade tip 91m) at Gneevs, Millstreet, Co. Cork.

CCC-04/1355 – SWS Energy Services

Permission was granted for a change in access route for wind farm permitted under N/99/0616 at Gneevs, Caherdowney, Co. Cork.

CCC-08/5636 – SWS Natural Resources Ltd

An extension of duration of permission was granted for the 13-turbine wind farm permitted under no. N/99/0616 and modified under 03/6585.

CCC-13/4566 – SWS Energy Ltd

A further extension of duration of permission was granted for the 13-turbine wind farm permitted under no. 99/0616 and modified under 03/6585, which duration had previously been extended under 08/5636.

CCC-13/5717 – SWS Energy Ltd

Permission was granted for a 3-turbine extension to the existing Gneevs Wind Farm (permitted under 99/0616, 03/6585, 04/0188, 04/1355, 08/5636, 13/4566). The proposed turbines having a maximum tip height of 91m. A borrow pit and ancillary development were also included. All at Gneevs, near Millstreet, Co. Cork.

CCC-03/1997 – Coomacheo Wind Farm

This permission was granted to Airtricity Development Ltd & Coillte Teo for 13 turbines and a 110 kV substation.

Related applications include:

- CCC-06/10251 – alterations to substation – Coillte Teo & Airtricity Developments Ireland Ltd – granted
- CCC-07/4177 – borrow pits – Airtricity Ltd – granted
- CCC-08/5636 – Extension of Duration of Permission – SWS Natural Resources
- CCC-10/4887 – Enerco Energy Ltd – 90 MW pumped hydro energy storage – refused

CCC-06/10251 – Airtricity Developments Ireland Ltd and Coillte Teo

Permission granted for alterations to 110 kV substation at Coomacheo, Millstreet, Co. Cork.

CCC-07/10105 – Curragh Mountain Wind Farm

Permission was granted for 8 turbines and a substation.

CCC-D/205/15 and ABP-RL3346 – SSE Renewables

A question was referred to the Planning Authority and the Board, as to whether or not the carrying out of remedial works to 15 wind turbines at Coomacheo Wind Farm,

Coomacheo, Curracahill and Ardrivale, Millstreet, Co. Cork, is or is not development or exempted development. An Bord Pleanála found that repair works would come within the scope of exempted development under section 4(1)(h) of the Planning and Development Act, 2000. Other ancillary works came under the provisions of the exemptions provided at Classes 16 and 17 of Part 1 and Class 3 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001.

CCC-07/4177 – Airtricity

Permission was granted for three borrow pits for the provision of stone for site road construction within the adjoining Coomacheo wind farm, at Curracahill, Caherdowney, Ardrivale, Co. Cork.

CCC-19/4972 – Knocknamork Renewable Energy Development

Permission was granted for 7 wind turbines, a solar array, 38 kV substation, and battery storage. Visual impact from the proposed Macroom Bypass was queried.

CCC-22/5791 – Knocknamork

Permission granted for modifications to Knocknamork Wind Farm and Solar Array.

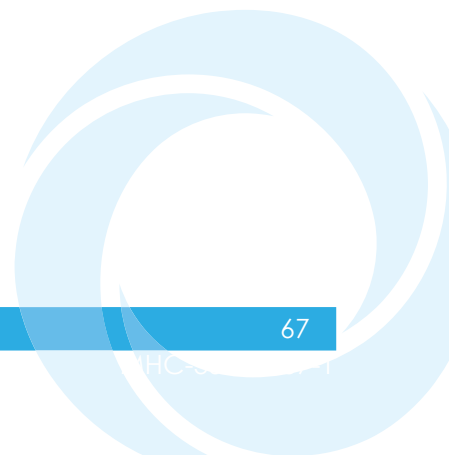
7.3 Conclusions in Relation to Planning History

The extensive history of development of wind farms in Ireland over the past 30 years indicates that the day-to-day management of water quality in construction, including on forested sites, can be implemented to address any concerns arising.

In particular, in the Clydagh Valley, wind farms and their infrastructure have been constructed and are operational in the Clydagh Valley in both in Counties Kerry and Cork. No concerns have been identified in relation to water quality management under normal construction conditions at this location.

In relation to Cork County Council, environmental considerations have been the principal matters of interest in relation to the planning history, and it is noted that such concerns are not limited by County boundaries.

Planning applications have been numerous, the assessments have been detailed, and they appear to have been uneventful. The more interesting aspect of the Cork planning history relates to those wind farms that are located within the Clydagh Valley, where grants of planning permission issued without significant concern, and where they have been in operation for many years at this point, without any of the concerns raised on the Kerry side having come to pass.



8 Environmental Factors

8.1 Environmental Impact Assessment

The potential impacts of the Proposed Development were determined through the EIA process. The Scope of EIA was determined through an informal EIA consultation was undertaken in 2021 to obtain input on the scope of the EIA from, Kerry and Cork County Councils and other relevant consultees.

This consultation was accompanied by a Scope of Works which described the development, the proposed EIA methodology and key area to be 'scoped in' or 'scoped out' of any further assessment.

A comprehensive assessment of the environmental impact is presented in Volume 2 of the EIA Report and Summarised in the NTS in terms of the following:

Key environmental factors are addressed below:

- Population and Human Health;
- Landscape and visual and impact;
- Traffic and access;
- Biodiversity;
- Ornithology;
- Soils, geology and hydrogeology;
- Hydrology, water quality and flood risk;
- Air and climate
- noise
- cultural and archaeological heritage
- shadow flicker
- Material assets (including telecommunications and aviation); and
- Risks and major accidents.

The EIA Report also describes effect of the above issues on sensitive receptor in combination with each other and cumulatively with other developments. The EIA Report also concludes that the significance of the effects identified will be the same for all permutations within the range.

A summary of the design process is also included in Volume 2 of the EIA Report. This includes a description of how the design has been changed in response in order to minimise environmental impact ('embedded mitigation').

Additional mitigation measures to further reduce the impact of the Proposed Development are also described with the with the final impact determined taking these measures into account ('residual effects').

The EIA has determined that, following the implementation measures, the only significant residual effects relate to landscape effects on the KCC Visually Sensitive Area in the area partially overlapping with the Paps Archaeological Landscape. No other significant effects have been identified.

An NIS also accompanies the Application presenting the determination of the potential impact of the Proposed Development on site designated under the Habitats Directive⁵⁰. A brief summary of the key findings of the assessments are presented below.

8.2 Population and Health

This assessment determines the potential socio-economic effects of the Proposed Development on the surrounding area, with regards to local residents, tourism, and recreation.

The chapter takes into consideration the results of other assessments in the EIA Report which have relevance to health, namely: soils; water; air quality; noise; shadow flicker; and landscape. A comprehensive assessment of potential for negative health effects associated these factors both in isolation and in combination is considered negligible.

Socio-economic effects are considered to be beneficial and include employment opportunities and increased spend on local services. Approximately 218 jobs would be created during the construction phase.

8.3 Landscape and Visual Impact

The potential impact on landscape and visual receptor has been assessed as part of the EIA and reported in Chapter 6: Landscape and Visual.

The site lies within an area designated by Kerry County Council as a Visually Sensitive Area (VSA). This area is extensive (see Figure 6-1a, Volume 2 of the EIA Report) extending from the site itself to beyond 30km to the west with additional areas extending from 20km to the north.

Windfarms are already present within the area covered by the VSA including Clydaghróe immediately to the south of the Proposed Development Site and a cluster of windfarms c. 10km south west of the Proposed Development Site including Inchincoosh, Kilgarven, Follgreana, Midas, and Coolknoohil amongst others.

The area of the VSA to the immediate south of the Proposed Development Site is also identified as suitable for repowering in the KCDP (Section 12.5.4.1).

The KCDP does not completely exclude wind development in VSAs and makes provision for such development in the applicable policies for developments in areas 'Open for Consideration' (Section 12.5.4.1.4):

"Ensure that all proposals within/in proximity to known visually sensitive areas/designated views and prospects are subject to a Landscape Visual Impact Assessment (LVIA) undertaken to best practices guidelines."

The Landscape Character Assessment for the Upper Clydaghróe River and Derrynasaggart Mountains (2012)⁵¹ in which the Proposed Development Site is located, states that; "wind farm development on the ridge of ground between the viewpoint and The Paps would detract from this view, and for this reason a small area to the east of the N22 is

⁵⁰ EC Council Directive 92/43/EEC

⁵¹ <http://docstore.kerrycoco.ie/KCCWebsite/planning/renew/lca.pdf>

not considered to have capacity." The Proposed Development Site is not located in that area.

The site is visually constrained as shown in the Zones of Theoretical Visibility (ZTV, see Figures 6-4a and b; and 6-4 a and b of Volume 2 of the EIA Report) with significant visibility limited to the area to the north of site within 5km.

Note that these Zones only take account of larger scale topographic screening (i.e. 'bare ground') and not of forestry, vegetation, smaller scale topographic features (such as rocks and crags) or man-made structures.

Actual visibility will be less with site boundaries broadly defined by forestry with only occasional views from within the Proposed Development Site of the surrounding hills and mountains possible amongst breaks between the forest.

Significant effects on landscape (including the VSA) are anticipated within the Proposed Development Site in close proximity views (during all phases), however those effects diminish outside of the Proposed Development Site (during all phases). This is not unusual as all windfarms significantly alter the landscape in their immediate vicinity.

Of the 27 viewpoints agreed with the Planning Authority, no settlements or roads are anticipated to experience significant visual effects as a result of the Proposed Development (during any phase).

The landscape in the immediate vicinity of the Proposed Development Site contains a number of operational windfarms including Clydaghroe wind farm (south), Coomacheo wind farm(north), Gneevs wind farm (north-east), Curragh wind farm (east) and Caherdowney wind farm (east) all lie adjacent to the Proposed Development Site.

This reduces the susceptibility of the landscape to change and the overall sensitivity to wind development. Where visibility of the Proposed Development is predicted, the proposed turbines will likely be viewed in context with operational, consented and proposed turbines, however, cumulative interactions are not anticipated to be substantial due to the distance at which these interactions will be experienced.

Overall, whilst the Proposed Development will result in significant localised effects on the landscape, the surrounding context, vast scale and undulating nature of the receiving landscape is such that the landscape could accommodate the Proposed Development without leading to unacceptable levels of adverse effects on the overall landscape setting or visual amenity (during all phases).

It is noted that visual or landscape impact did not form part of the reasons for refusal on this site under 10/75 and ABP-236593. This is supported by the Landscape Character Assessment undertaken to establish previous wind zoning policy, which determined that this location in the Upper Clydagh Valley has capacity to absorb wind energy development that other locations do not.

8.4 Traffic and Access

Chapter 7 of the EIAR assesses the potential environmental effects associated with increased traffic generated by the Proposed Development.

The route for general construction HGV traffic travelling to the site is via the N22 and N40 from Cork. The turbine components would be transported by abnormal load vehicles from Ringaskiddy Port via the N28, N40 and N22 to Site.

All general construction traffic will access the site via the existing Coillte CGA site entrance, directly from the N22 at Cummeenavrick which is approximately 7.4km north of Ballyvourney.

A new site entrance will be formed at the junction of the site access road and the N22.

The traffic generated by the construction of the Proposed Development (over a 24-month period) will result in a temporary increase traffic levels of up to a maximum of 2,107 additional two-way HGV movements over the first three months of the construction period.

Approximately 30 construction staff would be present on site on an average day resulting in a movement of 60 two-way car /LGV movements per day.

This corresponds with an approximate increase in HGV movements of between 5% and 18% on the N22 north and south of the site and between 3.5% and 6.5% between Junctions 1 and 2 on the N40 Cork Ring Road the N28 at Raffeen Bridge, Ringaskiddy.

The increase in car/LGV traffic would be negligible (less than 5%).

It is therefore considered that the road network is able to accommodate the additional traffic arising in the busiest months of construction, operation and decommissioning

8.5 Biodiversity

Chapter 8: Biodiversity of the EIA Report assesses the impact of the Proposed Development of ecological features, including habitats, mammals, bats, fish, terrestrial and aquatic invertebrates. Potential impacts on birds are assessed in Chapter 9: Ornithology).

The Proposed Development will result in the direct loss of 0.9ha of wet heath. This loss of wet heath will be compensated by the replacement of 4.76ha in areas around turbines 11 and 17. This will be achieved through a programme of ditch blocking to raise the water level and the installation of cut off drains to isolate these areas from runoff and nutrient enrichment sources.

No significant effects are likely for Kerry slug within the Proposed Development as a translocation, under licence from the National Parks and Wildlife Service, will be undertaken to clear working areas prior to construction. As forestry operations, unrelated to the Proposed Development, have been in place for many years, Kerry slug is considered able to thrive in this changing environment.

Kerry slug habitat will be improved through undertaking a rhododendron eradication programme (rhododendron invasion being one of the main threats to the species), retaining felled tree stumps and surface boulders and the installation of roadside underpasses.

Comparatively high activity of Leisler's bat (*Nyctalus leisleri*) and common pipistrelle (*Pipistrellus pipistrellus*) was recorded at some locations within the Proposed Development Site. This is a species considered vulnerable to collisions from operational turbines at both an individual and population level.

To mitigate this a programme of curtailment will operate involving changing the operational parameters of specific turbines to cut in at higher windspeeds at higher temperatures at certain times of the year as follows:

- Summer (June – mid-August and Autumn (mid-August – mid September); turbines 7 and 10;
- Autumn; turbine 8; and
- Autumn; turbine 2.

Atlantic Salmon *Salmo salar* was found on the River Clydagh and associated tributaries. Trout *Salmo trutta* was also found on these watercourses and the Mullaghanish River. However, no significant effect is likely given the mitigation measures which will be in place to prevent pollution (See Section 11 below). These include:

- Avoidance of sensitive aquatic areas by using a buffer zone between construction activities and the watercourses where possible;
- Installation of double silt fences between watercourses and any work within the buffer zones (e.g. approaches to watercourse crossings);
- Undertaking watercourse crossing work within the months of July to September only to avoid impacts on spawning salmonids and lamprey;
- Discharging surface water runoff by diffuse overland flow or through the use of settlement ponds; and
- Preventing any discharge of water contaminated with cement, hydrocarbons or other pollutants.

Fish habitat will be improved through improving bankside conditions by planting willow species on eroded bankside and selective thinning of woodland where mature trees are resulting in overshadowing. Existing obstacle to fish passage will also be removed.

Control of construction activities to avoid impacts on habitats and species will be managed through the Construction Environment Management Plan, and overseen by an Ecological Clerk of Works.

In addition to the above, existing grassland will be improved to encourage colonisation by marsh fritillary butterfly (one of the qualifying interests of the nearby SACs).

The Proposed Development does not have the potential to impact fresh water pearl mussel populations.

No significant negative effects on Biodiversity have been identified during any phase of the Proposed Development, with positive effects resulting from the implementation of the enhancement measures indicated above.

In this way the Proposed Development is considered compliant with the aims and policies of KCDP and CCDP.

8.6 Ornithology

Chapter 9: Ornithology of the EIA Report assesses the potential impact of the Proposed Development on birds.

Vantage point surveys were undertaken between March 2021 and October 2023 to determine which birds were present and to characterise their behaviour in terms of their risk of collision with the turbine blades.

The surveys determined limited hen harrier activity with only six flights observed during surveys, all within the non-breeding period.

No observations were made of Greenland White-fronted geese (a qualifying species of the Killarney National Park Special Protection Area located c.19km from the site).

Other sensitive species recorded included non-breeding Golden plover, breeding Woodcock and Red grouse.

The main potential impacts of the construction, operational and decommissioning phases of the development on ornithology are:

- Direct and/or indirect habitat loss during the construction stage;
- Disturbance and displacement as a result of human activity;
- Disturbance/displacement including barrier effects (where the operational windfarm creates an obstacle to movement of birds, particularly when migrating); and
- Additional mortality as a result of turbine collisions during operation.

The limited available habitat for breeding Red grouse means that impacts during construction would be limited. There will be a likely minor beneficial effect through the clearance of forestry which would create additional areas of suitable habitat.

Woodcock breed in forest, so the clearance of forestry for the construction of the Proposed Development would represent a loss of habitat. However, Woodcock make use of open areas within forests for foraging and nesting so a more diverse structure to the forest could be beneficial.

The fact that the Site is already subject to regular felling as part of the commercial forestry operations means that the birds could be used to some degree of disturbance.

Ultimately little is known about the ecology of this species, so as a minor negative effect is assumed due to loss of habitat as a conservative measure.

Impacts on birds during construction will be mitigated by avoiding vegetation clearance during the breeding season (March to August) where possible.

Nest protection areas will be established where nests are identified during ongoing monitoring and putting in place a disturbance buffer for Hen harrier should any breeding occur. The construction works and ongoing monitoring would be overseen by the Ecological Clerk of Works.

Whilst both hen harrier and golden plover are considered to be at risk of collision with the turbines, the predicted rate of collision for hen harrier is less than one collision over the entire lifespan of the Proposed Development and the collision rate for Golden plover is not sufficiently high enough to have a significant effect on the population.

The Proposed Development Site is not in an area known to support Sea Eagle populations.

8.7 Soils, Geology and Peat

Chapter 10 of the EIA Report provides an assessment of the potential effects of the Proposed Development on soils, geology and hydrogeology.

Survey work undertaken as part of this assessment identified Peat is present across large parts of the Site, generally between 1-2m deep but with localized deeper pockets.

A peat landslide hazard risk assessment was undertaken and found that landslide risk to be low but with areas where construction traffic and material stockpiling will need to be

prohibited to avoid creating a risk (see Technical Appendix 10-2: Peat Stability Risk Assessment of the EIA Report).

Reducing the potential impacts has been considered throughout the design process particularly in terms of the siting of infrastructure. Mitigation measures to avoid impacts consist of the application and monitoring of control measures detailed in the Construction Environment Management Plan during the construction period. In particular:

- The application of safety buffers around areas peat stability risk areas;
- Construction of borrow pits and peat repositories in accordance with the measures detailed in the Construction Environment Management Plan and the Peat Management Plan (Technical Appendix 10-3);
- Backfilling excavations as quickly as possible and avoiding work in severe weather to minimize the risk of erosion;
- Keeping all construction plant within a delineated work corridor to limit the extent of any damage to soils; and
- Ongoing monitoring of the installed windfarm infrastructure for stability and erosion risk through construction and operation of the Proposed Development of peat store and slopes.

On this basis, it is the Applicant's position that the Proposed Development meets the requirements of KCDP policy in relation to wind development in the Lough Leane catchment in that it has been designed so that it; *"...prevents any risk of peat, soil and rock slippage or erosion"*.

8.8 Hydrology, Water Quality and Flood Risk

The potential impact on water quality has been assessed as part of the EIA with the findings presented in Chapter 10: Hydrology, Water Quality and Flood Risk of the EIA Report.

Due to the sensitivity of the receptors a project specific quantitative water quality assessment was undertaken (see Technical Appendix 11-2 of the EIA Report) with the conclusions as follows:

- Surface water discharged from the Proposed Development site during felling will not lead to significant adverse effects on water (nutrient) quality in Lough Leane; and
- Surface water discharged from the proposed drainage system to be installed at the Proposed Development site during the construction phase will not lead to significant adverse effects on water quality (suspended solids) in the River Clydagh and the SAC or further downstream.

Full details of the quantitative assessment are included at Appendix 11-2: Water Quality Assessment.

Extensive mitigation measures have been implemented to prevent impacts on water quality including minimising water crossings through the design evolution, applying buffer zones, application of the principles of sustainable drainage (see Technical Appendix 11-3 of the EIA Report).

Control of construction activities to prevent water pollution will be achieved through the application of the measures identified in the Construction Environmental Management Plan (CEMP, Technical Appendix 4-1 of the EIA Report) and the employment of an Environmental Clerk of Works (Eco) to oversee and monitor the works.

In addition, further mitigation will be applied in terms of application of an adaptive response, whereby work will cease should a deterioration of water quality be identified through a comprehensive water quality monitoring plan (see Technical Appendix 11-4 of the EIA Report).

8.9 Air and Climate

This assessment included a determination of carbon balance estimated by comparing the carbon emissions from the construction and decommissioning of the Proposed Development against the avoided emissions through the replacement of fossil fuel electricity generation by the electricity generated through the windfarm operation.

Two scenarios were assessed for the purposes of determining the carbon calculations:

- Scenario 1 models the generation capacity at 6MW per turbine; and
- Scenario 2 models the generation capacity at 7.2MW per turbine.

Scenario 1 has a carbon payback time of 6.2 years for an estimated 401,938 tonnes of CO₂ equivalent when compared against a common grid energy mix.

Scenario 2 has a carbon payback (equalisation) time of 5.6 years for an estimated 434,259 tonnes of CO₂ equivalent when compares against a common grid energy mix.

A detailed dust assessment identified a medium risk of impact on the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC, localised to the area around construction of infrastructure near the northern boundary of the site where it borders the SAC.

Application of good practice measures (using construction methods that minimise dust release, use of appropriate dust suppression techniques and careful material handling) means that no significant effects are anticipated.

8.10 Noise

Chapter 13 of the EIAR considers the potential significant effects of noise caused by the Proposed Development.

No significant effects in relation to noise impacts as a result of the construction or decommissioning of the Proposed Development. The construction assessment did identify the potential for a breach in the prescribed noise limits at one property during the construction of the access track.

However, this breach assumes that all of the construction plant would be operating simultaneously at the same location and would only occur over the course of a single working day whilst the track in the vicinity of the property is being constructed.

The operational noise assessment determined a significant potential impact on two receptors: Receptor R65 during the night-time and Receptor R153 during the day and night-time.

A curtailment strategy involving the use of a reduced noise operation modes will therefore be employed on Turbines 9,10,11,12,13 and 15 during the daytime and turbines 6 to 15 inclusive during the nighttime.

After operational mitigation in the form of curtailment modes on the turbine, there will be no significant residual effects and the applicable noise limits will be met.

8.11 Cultural Heritage

Chapter 14 of the EIA Report assesses the potential effects of the Proposed Development on the archaeological, architectural and cultural heritage landscape both on and surrounding the Proposed Development Site.

The Paps Archaeological Landscape borders the Proposed Development Site to the northeast.

There are no National Monuments within 10km. There are 143 Recorded Archaeological Monuments within 5km of the Proposed Development Site, however, only one is located within the Site itself (a hut site) and that is located within mature forestry away from the windfarm infrastructure.

No discernible remains of this site could be identified during the site visit, accordingly there can be no effect on the immediate setting of this monument.

There are five undesignated sites within the Site boundary, three of which could be affected by the Proposed Development.

There are also seven areas of archaeological potential within the Site boundary. These areas have a higher potential for unknown archaeological features to be present.

Accordingly, a systematic advance programme of geophysical surveys and archaeological trenching (where practical) along the cable route and the turbine route together with monitoring by a suitably qualified and Licenced archaeologist will be undertaken prior to construction in those areas.

This will allow identification of any undesignated or previously unidentified archaeological features during groundworks allowing their preservation in situ or by record (excavation).

No significant effects (direct or indirect) are anticipated in relation to the construction of the Proposed Development.

However overall impact on designated cultural heritage sites within 5km is considered to be Moderate, largely owing to the proximity of The Paps Archaeological Landscape and the impact to setting of this landscape as it is viewed from the east and southeast.

A Moderate impact that results in a change to the architectural heritage which, although noticeable, is not such that it alters the integrity of the heritage. The change is likely to be consistent with existing and emerging trends.

These views will include at least 1-6 turbines but most frequently turbines 16-17. However, extensive views towards any Recorded Archaeological Monuments to the south and southeast beyond the Clydagh Valley are already largely obscured by topography

Policy in relation to the development wind energy in the context of Archaeological Landscapes is not expressly stated in the KCDP, however, It is useful to examine the 2012 designation process which was undertaken for wind energy.

It is worth noting that the Landscape Character Assessment prepared for the Renewable Energy Strategy 2012 incorporated Adopted/Proposed Archaeological Landscapes⁵². That document concluded that that there was capacity for development on the southern side of the Clydagh Valley.

8.12 Shadow Flicker

Chapter 15 of the EIAR considers the potential effects of shadow flicker as a result of the Proposed Development.

Shadow flicker can arise from the passing of the moving shadow of an operational wind turbine rotor-blade over a narrow opening such as the window of a nearby residence. A similar effect can also occur when the gloss blades of a rotating turbine reflect the sun causing a flashing light.

Shadow flicker is most likely to be experienced within 10 rotor diameters, so a study area was derived taking into account the full range of dimensions in relation to the turbine models proposed.

Within this study area, four dwellings were identified with two of those discounted due to their position to the south of the Proposed Development Site. It is not possible for these dwellings to experience shadow flicker as there is no time in the year that the Proposed Development would lie between them and the sun.

The guidance considered applicable to establishing the acceptable thresholds for shadow flicker are the 2006 Wind Energy Development guidelines, which state:

"...shadow flicker at neighbouring offices and dwellings within 500m should not exceed 30 hours per year or 30 minutes per day."

However, the draft 2019 Revised Wind Energy Development Guidelines state that;

"...no existing dwelling or other affected property (e.g. existing work places or schools) should experience shadow flicker"

Following the calculation of shadow flicker for the Proposed Development, daily and annual shadow flicker predictions fall below the significance threshold levels for receptor 1 (30 hours per year). However, the shadow flicker at receptor 2, is predicted to exceed the significance threshold for both daily and annual shadow flicker.

Mitigation in the form of the installation of shadow flicker curtailment software on the turbines to facilitate their shut down as required will be undertaken.

If shadow flicker is predicted to occur based on the prediction model, the software will safely shut down the turbines at the predetermined times based on the prediction model. This is a standard approach used across the industry. In this case the Applicant has committed to zero shadow flicker, thereby meeting the requirements of the 2019 Guidelines should they come into force as drafted.

⁵² <http://docstore.kerrycoco.ie/KCCWebsite/planning/renew/lca.pdf>

This then would meet the KCDP policy requirement that;

"...no neighbouring property experiences the occurrence of shadow flicker and in accordance with the Draft Revised Wind Energy Development Guidelines 2019..." (DHPLG)."

8.13 Material Assets

In addition to the topic above the EIA also assessed the potential impact on Material Assets, specifically the potential impacts on aviation, telecommunications, quarries, electricity infrastructure and utilities (see Chapter 16 of the EIA Report). In all cases the Proposed Development was determined to have no significant affect.

8.14 Risks and Major Accidents

Chapter 17 of the EIA report considered the potential significant effects on the environment arising from the vulnerability of the Proposed Development to risks of major accidents and/or natural disasters.

Major accidents or natural disasters are hazards which have the potential to affect the Proposed Development and consequently have potential impacts on the environment. These include accidents during construction and operation caused by operational failure and/or natural hazards.

The Proposed Development has been designed and built-in accordance with the best practice measures, as such, mitigation against the risk of major accidents and/or disasters is embedded through the design.

The assessment concluded that the risk of the Proposed Development to major accidents/natural disasters is low and not significant in every category assessed. No significant cumulative risks have been identified.

8.15 Natura Impact Statement

The NIS that accompanies the application identified a potentially significant impact on the Macgillycuddy's Reeks and Caragh River Catchment SAC qualifying interest of Oligotrophic waters containing very few minerals due to the potential for suspended solids to enter the watercourses as a result of construction activities.

However, application of the mitigation measures described above means that if the Proposed Development were to go ahead, there would not be an adverse effect on the integrity of the SAC.

The qualifying interest for Mullaghanish to Mushermore Mountains SPA, breeding Hen harrier, was not observed during breeding season surveys and so there was no evidence for use of the Site during the breeding season.

Hen harrier were observed during the non-breeding season; the provenance for these birds was unknown but could include individuals from the SPA breeding population. Even allowing this, usage of the Proposed Development was so limited that no likely significant effect could be identified and the Proposed Development could proceed without adverse impact on the integrity of the SPA.

9 Policy Assessment

This section presents an assessment of the applicable local planning policies. A full description of the policies referred to here are provided in Section 6 above.

Table 4: Policy Assessment KCDP

Policy No	Policy summary	Assessment
12.1 Energy	<i>To support and provide for the sustainable development of indigenous energy resources, with an emphasis on renewable energy supplies</i>	The Proposed Development directly contributes to this policy through the provision of an anticipated installed capacity between 102 MW and 122.4MW of renewable indigenous energy (for the purposes of assessing the benefits)
12.5 Renewable Energy	<i>To support and provide for the sustainable development of the renewable energy section in line with National strategic goals balance with the need to protect the environment</i>	The Proposed Development directly contributes to this policy through the provision of an anticipated installed capacity between 102 MW and 122.4MW of renewable indigenous energy (for the purposes of assessing the benefits). Protection of the environment will be achieved through the measures set out in the EIA Report
Objective KCDP 12-18	Design and development of projects in line with the <i>Draft Revised Wind Energy Development Guidelines 2019</i>	The Proposed Development has been designed in accordance with the 2019 guidelines, insofar as such guidelines represent current best practice.
KCDP Volume 6 Section 1.15.1	Development Management Standards and Guidelines	
	Site selection in a designated wind energy policy area	See Section 3 above
	Set back distances in relation to residential properties	Considered as part of the design of the Proposed Development
	Impact on the residential amenities of the area	Considered as part of the relevant technical assessments in the EIA Report
	Impact on the visual amenities of the area	See Chapter 6 of the EIA Report
	Scale and layout of the project, any cumulative effects due to other projects and the extent to which the impacts are visible across the	See Chapter 6 of the EIA Report

Policy No	Policy summary	Assessment
	local landscape	
	Visual impact of the proposal with respect to protected views, scenic routes and sensitive landscapes	See Chapter 6 of the EIA Report
	Impact on nature conservation, ecology, soil, hydrology, groundwater, archaeology, built heritage and public rights of way	See Chapters 8,9,10,11 14 and 16 of the EIA Reort
	Impact on ground conditions and geology	See Chapter 10 of the EIA Report
	Consideration of falling distance plus an additional flashover distance from wind turbines to overhead transmission lines	No applicable due to distance from transmission infrastruture
	Impact of development on the road network in the area;	See Chapter 7 of the EIA Report
	Impact on human health in relation to noise disturbance (including consistency with the Word Health Organisations 2018 Environmental Noise Guidelines for the European Region), shadow flicker and air quality.	See Chapters 12, 13 and 15 of the EIA Report
	Lifecycle Assessment of the wind farm particularly in relation to emission of GHG to include, if applicable, loss from LULUCF further to the proposed development.	See Technical Appendix 12-1: Carbon Calculator of the EIA Report
	That the developer consult with the Planning Authority during the site selection process to identify considerations particular to the proposed site which would indicate its suitability or otherwise for a specific type of renewable energy development.	See Technical Appendix 2-2 Scoping Responses of the EIA Report
	That the developer consult with other relevant statutory agencies that could assist in identifying environmental sensitivities and relevant considerations such as the Department of Housing, Local Government, Department of Environment, Climate and Communications, Department of Agriculture, Food and Marine, The Forestry Service, the Irish Aviation Authority, National Parks and Wildlife Service, Inland Fisheries Ireland and other appropriate statutory and non-statutory bodies.	See Technical Appendix 2-2 Scoping Responses of the EIA Report
	Details of consultations with the electricity transmission operators (EirGrid & ESB Networks) regarding the nature and location of a proposed grid connection as part of pre-planning consultation.	See Technical Appendix 2-2 Scoping Responses of the EIA Report
	A construction and environmental management plan as part of the	See Technical Appendix 4-1 Construction

Policy No	Policy summary	Assessment
	planning application.	Environmental Management Plan of the EIA Report
	A Landslide susceptibility and risk assessment, to ensure all factors contributing to slope stability are identified and addressed appropriately.	See Technical Appendix 10-2 Peat Stability Risk Assessment of the EIA Report
	Sub threshold EIAR for wind energy developments that are likely to have a significant effect on the environment.	Not Applicable
	Appropriate Assessment Screening Report and where applicable a Natura Impact Statement.	See NIS Report
	Ornithological (bird) survey (winter and breeding) for at least 2 years prior to a planning application being made. As part of this, the Irish Hen Harrier Survey (IHHWS) should be consulted with in relation to Hen Harrier Winter Roost locations.	Undertaken in support of the ornithological impact assessment (see Chapter 9 : Ornithology of the EIA Report)
	Assessment of the carbon balance of the proposed development, particularly any development on or potentially impacting on peat or other carbon rich or sequestering soils.	See Chapter 12: Air and Climate and Technical Appendix 12-1: Carbon Calculator of the EIA Report
	Engagement with active public consultation with the local community in advance of and in addition to the statutory public consultation required as part of the planning application process.	See Technical Appendix 1-2: Community Report of the EIA Report
	Preparation of a Community Report to form part of the planning application – (details of what a Community Report entails can be found in the Draft Wind Energy Development Guidelines 2019).	See Technical Appendix 1-2: Community Report of the EIA Report
	A detailed plan outlining how the developer intends decommissioning the infrastructure within and serving the site and the reinstatement of the lands.	See Technical Appendix 4-1 Annex C Decommissioning Plan
KCDP 8-24 (ii)	Ensure that proposed development which may have implications for the archaeological heritage of the county will be subject to an Archaeological Assessment.	Archaeological Assessment presented in Chapter 15: Cultural and Archaeological Heritage of the EIA Report
KCDP 8-27	Ensure that development within the vicinity of a recorded monument, zone of archaeological potential or archaeological landscape does not detract from the setting of the feature and is sited and designed appropriately and sympathetically with the character of the monument/feature/ landscape and its setting.	Chapter 15: Cultural and Archaeological Heritage of the EIA Report has determined no significant effect on setting of recorded monuments, zones of archaeological potential or archaeological landscapes.

Policy No	Policy summary	Assessment
KCDP 8-28	Ensure the active protection of the 19 identified, significant archaeological landscapes with particular emphasis on the landscape settings, views to and from the landscapes and monument/feature inter-visibility within these landscapes.	Chapter 15: Cultural and Archaeological Heritage of the EIA Report has determined no significant effect archaeological landscapes including andscape settings, views to and from the landscapes and monument/feature inter-visibility within these landscapes. .
KCDP 11-78	Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.	Chapter 6: Landscape and Visual Impact Assessment of the EIA Report does identify a significant effect on the VSA, however, this effect is limited to Proposed Development Site itself and its immediate vicinity. Given the existing pattern of development in the are this not considered to be a detrimental impact of the character, integrity or distinctiveness of the VSA
KCDP 11-79	Preserve the views and prospects as defined on Maps contained in Volume 4.	The Proposed Development will not have a negative effect on the views and prospects identified in Volume 4 of the KCDP. See Chapter 6: Landscape and Visual Impact Assessment of the EIA Report
KCDP 11-81	Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.	The Proposed Development will not have a negative effect on the views designated the KCDP. See Chapter 6: Landscape and Visual Impact Assessment of the EIA Report
KCDP 2-10	Policy Support integrated nature-based solutions and biodiversity to climate change challenges and also initiatives aimed at increasing soil carbon retention, sequestration, and storage;	The Proposed Development will result in biodiversity enhancement including the creation of habitat able to sequester carbon. See Chapter 8: Biodiversity of the EIA Report.
KCDP 2-15	Promote awareness of the value of restored peatlands in storing carbon and mitigating climate change and promote and support efforts to both prevent further degradation of peatlands and to restore already degraded peatlands;	The Proposed Development will result in the restoration of wet heath habitat which can be peat forming.
KCDP 11-2	Maintain the nature conservation value and integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs). This shall include any other sites that may be designated at national level during the	The Proposed Development will not have any effect on the nature conservation value or integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas (NHAs) and proposed

Policy No	Policy summary	Assessment
	lifetime of the plan in co-operation with relevant state agencies;	Natural Heritage Areas (pNHAs). See the NIS accompanying the Application.
KCDP 11-3	Work with all stakeholders in order to conserve, manage and where possible enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County;	The Proposed Development will result in biodiversity enhancement. See Chapter 8: Biodiversity of the EIA Report.
KCDP 11-12	Support the protection of the biodiversity and tourism-value of Killarney National Park by proactively engaging with all stakeholders to tackle Rhododendron infestation and combating illegal fires.	Although the Proposed Development is not within the National Park it does contain measures to tackle Rhododendron for protection and enhancement of biodiversity. See Chapter 8: Biodiversity of the EIA Report.
KCDP 11-36	Ensure that any application with the potential to create noise nuisance is appropriately assessed and that suitable measures to mitigate any nuisance are proposed and implemented.	An assessment to determine the potential for the Proposed Development to give rise to noise impact has been undertaken and is reported in Chapter 13: Noise of the EIA Report. This includes a description of the mitigation measures to be implemented
KCDP 11-69	Ensure that developments in upland areas provide sufficient storm water attenuation to avoid the occurrence of river erosion or flooding downstream subject to hydrological and ground/peat stability assessments.	A full assessment of hydrology and grand stability risks has been undertaken and is presented in the EIA Report. The principles of sustainable drainage will be employed to prevent increasing the risk of flooding elsewhere.

9.1 Policy Conclusion

This assessment illustrates that the Proposed Development is in material compliance with KCDP policies applicable to development, save for the wind energy designation which has been discussed in this Planning Statement. Although the policies in 12.5.4.1 only apply to Open to Consideration areas, this assessment sets out that the development would adhere to such policies, should the Board adopt a site specific approach to determining the application.

10 Conclusions in Relation to the Proposed Cummeennabuddoge Wind Farm

The Applicant proposes a wind farm consisting of 17 turbines with a tip height of between 199.5 to 200 metres (m), and associated infrastructure on land at Clydaghroe and Cummeennabuddoge Clonkeen, County Kerry.

This land is outwith of land designated in the current 2022-228 KCDP as 'Open to Consideration' for wind energy due to the potential for release of sedimentary phosphorus. There is no evidence that wind energy is associated with this release per se, however, forestry activity has been previously identified through previous studies as a small contribution (3%) to the overall nutrient loading of Lough Leane.

Although the Proposed Development does involve the removal of forestry it is in an area of active forestry operations which have been ongoing for many years with no adverse effect on the Lough Leane catchment.

This was reinforced through baseline water quality monitoring between 2021 and 2022 to inform the assessment of potential impacts on water quality as part of the EIA. This identified no elevated nutrient levels associated with the routine forestry operations occurring at that time (felling of 107ha of mature forest).

The Applicant contends that the exclusion of the Proposed Development site from the areas 'Open to Consideration' in the KCDP occurred as a result of a broadbrush approach taken by the Council which applied constraints that do not properly reflect the site conditions. This means that a significant proportion of the County is not within an area that is designated as suitable for commercial wind energy.

The Board should therefore not apply this designation mechanically and should instead take an evidenced based approach by assessing the site's suitability for wind farm development.

In applying this approach, and otherwise determining whether to grant planning permission, the Board is required to have regard to recent legislation and international, national, regional and local policies. In particular, matters that post-date the adoption of the KCDP such as the EU Renewable Energy III Directives and the Regulations pertaining to the acceleration of the deployment of renewable energy.

The Proposed Development will also make a direct contribution to the targets in National policy, particularly CAP24. It is submitted that the Board must adopt a higher standard than applying local policies and instead act, in so far as is practicable, in a manner that is consistent with CAP24.

The Applicant therefore contends that this Application be treated on a site specific basis and conducts a full assessment of the applicable policies. The Applicant submits that the development is in accordance with the proper planning and sustainable development as it is anticipated to provide an anticipated 102MW to 122.4MW installed wind energy capacity and is suitable for such development according to the site-specific conditions.

Due to the limited environmental impact, the overriding public interest in respect of the need to accelerate renewable energy deployment and the fact that the Proposed Development would be in compliance with National, regional and local policies (were

it not for the current zoning), the Applicant submits that the Board should grant permission for the Proposed Development.

Appendices

A. FEI Consultation Response Draft Kerry County Development Plan 2022-2028

Damien Ginty,
Senior Planner,
Planning Policy Unit,
Kerry County Council,
Rathass,
Tralee,
Co. Kerry,
V92H7BT.

21st February 2022

Dear Sir/Madam,

Re: Kerry County Development Plan, Draft Kerry County Development Plan 2022-2028

Thank you for providing an opportunity to consult on the above matter. This submission is made on behalf of FuturEnergy Ireland.

FuturEnergy Ireland (FEI) is a new joint venture company owned on a 50:50 basis by Coillte and ESB. This collaboration combines the State's strongest assets and expertise in onshore renewable energy development on behalf of the people of Ireland. We are one of the largest dedicated developers of onshore wind in Ireland and our mission is to maximise the potential of our national resources and accelerate Ireland's transformation to a low carbon energy economy.

The Climate Action Plan (CAP) 2021 requires 80% of our electricity to come from renewable sources by 2030 comprising up to 8,000MW of onshore wind, approximately doubling what is being produced today. FEI is currently targeting the delivery of 1,000 MW of new onshore wind projects in this period, largely enabled by Coillte lands across Ireland.

We have two overriding and significant concerns in relation to the Draft Plan as follows:

- The inability of the Draft Plan to facilitate the significant renewable electricity onshore wind targets set out in the Climate Action Plan 2021;
- The absence, following the application of its site identification methodology, of any appropriate locations for onshore wind.

As will be explained in detail in this submission and as regards these two overarching concerns, our review has found that the quantum of lands available for wind development as either 'open to consideration' or 'strategic' has been reduced from circa 77,000ha in the current Plan to circa 6,000ha 'open to consideration' in the Draft Plan. We do not believe that this decision has been taken in a manner consistent with the proper planning and sustainable development of the County.

Furthermore, our analysis has found that the Draft Plan effectively prohibits any new commercial wind farm development in Kerry, once separation distances to EirCodes are taken into account. This has arisen because many of the screening constraints used in our view are inappropriate and exclusionary in nature. The constraints are also applied in an arguably unfair manner to the wind energy industry only, and not to other industries, even where other industries appear to be the principal cause of the problem intended to be avoided. In taking this approach, we believe the Draft Plan has gone too far into policy-making, in circumstances where no such national policies exist.

Some of the constraints applied go beyond that provided for under Section 28 Wind Energy Development Guidelines and the overall approach does not comply with the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (Dept. of Housing, Planning, Community and Local Government) July 2017. Such issues have already been subject to unfavourable Ministerial Directions¹.

While the Draft Plan's approach to wind energy purports to set out a logical basis, it would appear from our review that it is not evidence-based and is therefore subjective in places. The approach is thus contrary to national renewable energy policy, climate change policy, and to the requirements of the Section 28 Wind Energy Development Guidelines (WEDGs) 2006.

Section 3.5 of Wind Energy Development Guidelines 2006 sets out a "Step-by-Step Guide to the Analysis of Suitable Areas for Wind Energy by the Planning Authority". It involves analysing the wind energy resource of the County, the landscape character of the County, and an overlay of the two.

"The process of overlaying wind energy mapping and landscape assessment with the development plan designations will produce a basis for identifying broadly, the areas where wind energy developments would be 'acceptable in principle', where they would be 'open for consideration', and where they would be 'not normally permissible'."

This, in turn, is integrated with information on grid infrastructure² and overall;

"This process will establish, at a general level, areas where wind energy resources are readily capable of development as well as identifying other areas where wind energy resources are capable of being developed but where there is a need for corresponding development of electricity grid infrastructure."

All other environmental aspects are appropriately left to be addressed on a site-specific basis, through the processes of Environmental Impact Assessment and Appropriate Assessment. The Draft Plan has gone far beyond this remit. It has applied, at a gross level, constraints which are only appropriate to consider at a site-specific level and in so doing so has excluded all viable new commercial wind farm sites in the County.

Our company has a strong record of responsible development and delivery of renewable energy infrastructure of scale which can play a meaningful role in climate action, and also have a lasting impact on local communities through benefit funds and unique amenity offerings. As such, we would greatly value an opportunity to continue to work with Kerry County Council on the delivery of its new Development Plan.

¹ [Draft Ministerial Direction Westmeath 2.pdf \(westmeathcoco.ie\); Ministerial-Direction-Laois-County-Development-Plan.pdf; Notice of Draft Ministerial Direction in the matter of Section 31\(7\) of the Planning & Development Act 2000 \(as amended\) Kilkenny City and County Development Plan 2021-2027 | Kilkenny County Council Consultation Portal](#)

² EirGrid's 'Shaping our Electricity Future Roadmap' 2021, envisages upgrades that will facilitate additional generation in the southwest. Furthermore, as per Coillte's Renewable Energy division's submission on the Issues Paper, FEI recommend that existing grid constraints are not considered hard constraints when preparing wind energy strategies. This is because, amongst other things, the development of the Grid will react to (planning) consented developments where necessary. In essence this means that a planning consent, or indeed a critical mass of planning consented projects triggers grid development/reinforcement where necessary.

1 The Draft Plan does not facilitate the Renewable Electricity Onshore Wind targets in the Climate Action Plan 2021.

1.1 National Renewable Energy Targets - the Critical Role of onshore Wind

Climate change is the most significant challenge the world has ever faced. We need to remove fossil fuels from our society because of the harm they are causing.

The Climate Action Plan (CAP) 2021 sets out the agreed course of action over the coming years to tackle the climate emergency. It provides a roadmap of what must be achieved by 2030 and requires 80% of all our demand to come from renewable energy sources. To achieve the 80% target, it earmarks a target of 5,000MW offshore wind, up to 1,500MW of solar and up to 8,000MW of onshore wind. All forms of renewables are thus necessary and important:

1. In terms of onshore wind this equates to a doubling of existing onshore wind generation from circa 4,000MW (today). To put the scale of the ambition into further context it should be noted that it took 20+ years to achieve the current level of onshore wind penetration onto the Grid. The challenge is now to achieve twice as much in less than half the time.
2. Given the relatively high likelihood that a significant portion of new offshore capacity will only start to be delivered onto the system post 2027 and with a regulatory framework yet to be formally established and become operational, there is real potential that volumes may fall short of the targets set out in the National Energy Climate Plan 2021³, increasing reliance on onshore wind.
3. The criticality of onshore wind in Ireland's energy mix is further apparent when the near-term trajectories in the Clean Energy Package Governance Regulation are considered. This states that Member countries must set a trajectory for their total 2030 share of energy from renewable sources at 18%, 43% and 65% in 2022, 2025, 2027 respectively.
4. Lastly, there is a strong policy signal that renewable energy ambition levels will continue to increase over the course of the decade, as evidenced by the recent increase in our national target from 70% to 80% late last year, and that onshore wind energy will continue to have the vital leading role that it has in the CAP 2021.

We urgently need to increase our renewable energy generation. Onshore wind farm development is a proven technology that can deliver at pace and scale and is critical to achieving national targets and particularly targets over the six-year lifetime of the Kerry County Development Plan. It is therefore critical that the Draft Plan proposes clear, supportive policies and objectives that facilitate onshore wind targets set out in the CAP 2021. The Draft Plan currently has the effect of eliminating all potential sites for new commercial wind farms in the County.

We respectfully request that Section 12.5.2 of the Draft Plan is updated to account for the above most recent policy context and the 80% renewable electricity target.

1.2 Draft Plan, Chapter 12 – Energy (Renewable Energy)

We welcome **KCDP 12-1** which *'supports and facilitates the sustainable provision of a reliable energy supply in the County, with emphasis on increasing energy supplies derived from renewable resources*

³ <https://www.gov.ie/en/publication/0015c-irelands-national-energy-climate-plan-2021-2030>

*whilst seeking to protect and maintain biodiversity, archaeological and built heritage, the landscape and residential amenity and integration of spatial planning and energy planning in the county’. We also welcome **KCDP 12-12** and the Council’s objective to ‘maximise the development of all renewable energies at appropriate locations in a manner consistent with the proper planning and sustainable development of the County’.*

It is vital in meeting our new renewable targets that the Draft Plan continues to identify appropriate onshore wind opportunities. National targets have increased, and each county has a responsibility to analyse and facilitate associated developments in accordance with the principles of proper planning and sustainable development. We recognise and applaud Kerry’s significant contribution to the existing onshore wind fleet. This reflects the extensive natural renewable resource of the County, the strong Grid and the supportive development plan policy context of the current Plan.

The Draft Plan in our view, however, appears to be based on a premise that the County has done enough and is currently disproportionately facilitating onshore wind relative to the rest of the region and the Country. Section 12.5.3.2 states “*Kerry is contributing 742MW or 30.2% of the Regional total, yet the county’s population amounts to 9.3% of the region and Kerry’s landmass is 16% of the region*”. The elements influencing the suitability of an area for wind energy are complex, and for example include landscape, density of dwellings, presence of sensitive habitats and flora or fauna. In this light, it is not appropriate to determine renewable energy policy by a pro-rata assessment of population (or Dublin could never meet its requirements) or by County size.

The Section 28 WEDGs require that a Development Plan should provide “*objectives to secure the maximum potential from the wind energy resources of the planning authority’s area commensurate with supporting development that is consistent with proper planning and sustainable development*”. The Draft Plan has done the opposite and has effectively eliminated all areas suitable for new commercial wind farm development.

As stated earlier, we have fundamental issues with the approach to implementing national policy targets and the site identification methodology used in the Draft Plan. In terms of implementing national policy and requirements, the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (Dept. of Housing, Planning, Community and Local Government) July 2017, Special Planning Policy Requirement No. 2 states:

It is a specific planning policy requirement under Section 28(1C) of the Act that, in making, reviewing, varying or amending a development plan, or a local area plan, with policies or objectives that relate to wind energy developments, the relevant planning authority shall carry out the following:

(2) Indicate how the implementation of the relevant development plan or local area plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts); and...

We contend that the Draft Plan has failed to indicate the potential wind energy resource (in MW) that may arise from its implementation over its effective period. The analysis of the current status of wind in the county, as provided in S 12.5.3.1, is not an indication of the potential arising from the Draft Plan and in particular the potential arising from proposed Map 12.4.

FEI’s technical team has undertaken an analysis of the wind energy development potential in MW of the Draft Plan. The analysis examines all lands designated as ‘open to consideration’. Repowering areas are identified in the Draft Plan, which will maintain and improve the current level of renewables

and while this is welcomed, if we intend to meet CAP 2021 targets, new suitable lands must also be identified subject to proper planning and sustainable development principles.

Our analysis applies a setback of 680m from all dwellings with an Eircode⁴. This setback is based on a typical present day turbine model⁵ of 170m tip height and a 4-x tip height setback, which is the setback standard in the Draft Wind Energy Development Guidelines 2019.

When the above exercise is undertaken, the potential wind energy development in MW on lands designated 'open to consideration' (OTC) equates to no new commercial wind energy⁶. This means there is no opportunity for new commercial wind farms anywhere in Co. Kerry. This is in direct conflict with national renewable energy and climate change policies. This is clearly illustrated in Figures 1, 2 and 3. Figure 1 shows the OTC lands (blue). Figure 2 shows these in the context of existing Eircodes (red dots) and Figure 3 shows how these lands are eliminated when setbacks are overlaid. (Large scale figures available in Appendix 1).

Our analysis also found that the quantum of lands available for wind development categorised as either 'open to consideration' or 'strategic' has been reduced from circa 77,000ha in the current Plan to circa 6,000ha 'open to consideration' in the Draft Plan. This is a reduction of circa 92%.

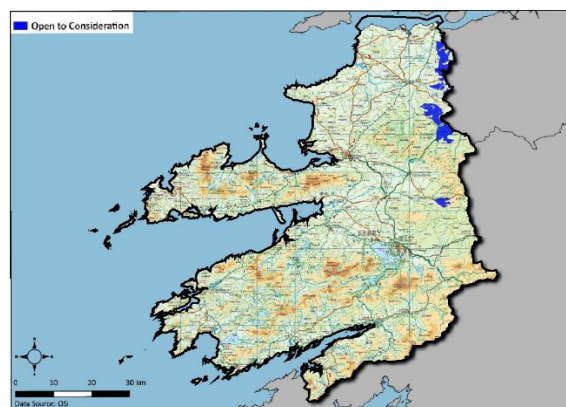


Figure 1 – OTC lands (coloured blue)

⁴ Eircode is Ireland's postcode system. Each Eircode is unique to a postal address and its geographic location. <https://www.eircode.ie>.

⁵ Older models are continuously being phased out of the market.

⁶ There is one 7ha plot but subject to other constraints this size might reduce further and is too small to be commercial in today's market.

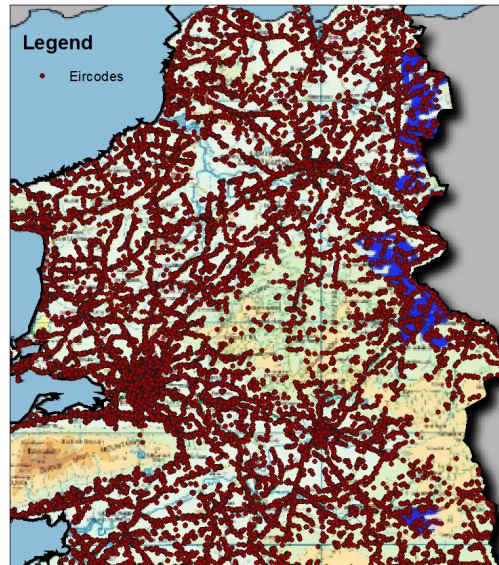


Figure 2 – Existing EirCodes

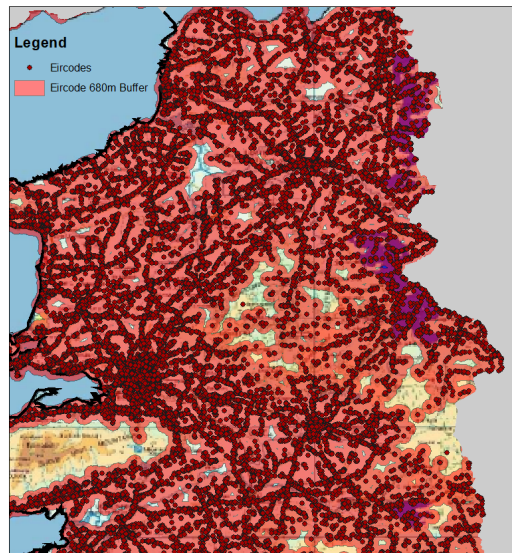


Figure 3: Setbacks applied to EirCodes which eliminates OTC lands for Wind Farm Development

It should be noted that even if the minimum 500m setback in the Draft WEDGs is applied there are still no land parcels greater than 50ha in the ‘open to consideration’ designation. Parcels of land less than 125ha⁷ are not considered viable as a commercial (i.e. a non-domestic) wind farm opportunity for which a threshold size of 25MW is needed (equating to approx. 4/5 turbines, using present-day generator size). In our view, 25MW is the lower size range necessary to participate successfully in a competitive Renewable Electricity Support Scheme (RESS) auction.

It should also be noted that there are also no ‘acceptable in principle’ areas (aka ‘strategic site search areas’ or ‘preferred areas’), identified in the Draft Plan, which are required in the Wind Energy Development Guidelines (WEDGs) 2006⁸ and Draft WEDGs 2019⁹.

⁷ In our experience and from industry research, 125ha is a viable size. With regard to industry research, a presentation by MKO at the WEI conference in April 2021 found that the average size of wind energy projects (based on 10 different wind farms that had progressed through the planning system) averaged circa 20MW / 100ha (km²).

⁸ Section 3.5, Step by Step Guide to the Analysis of suitable Areas for Wind Energy by the Planning Authority

⁹ Development Plan – Strategic Aims and Objectives, Section 3.4

In short, the Draft Plan has provided such a limited quantum of ‘open to consideration’ land area and no ‘preferred’ areas that, after setback distances to EirCodes are applied, there is no place in the County for new commercial wind farms.

It can be seen when these setbacks are applied to the entire County (Figure 4) that the constraints process in the Draft Plan has eliminated all remote areas and directed development towards densely populated areas, thus, in our view, leading to an essential flaw in the Draft Plan.

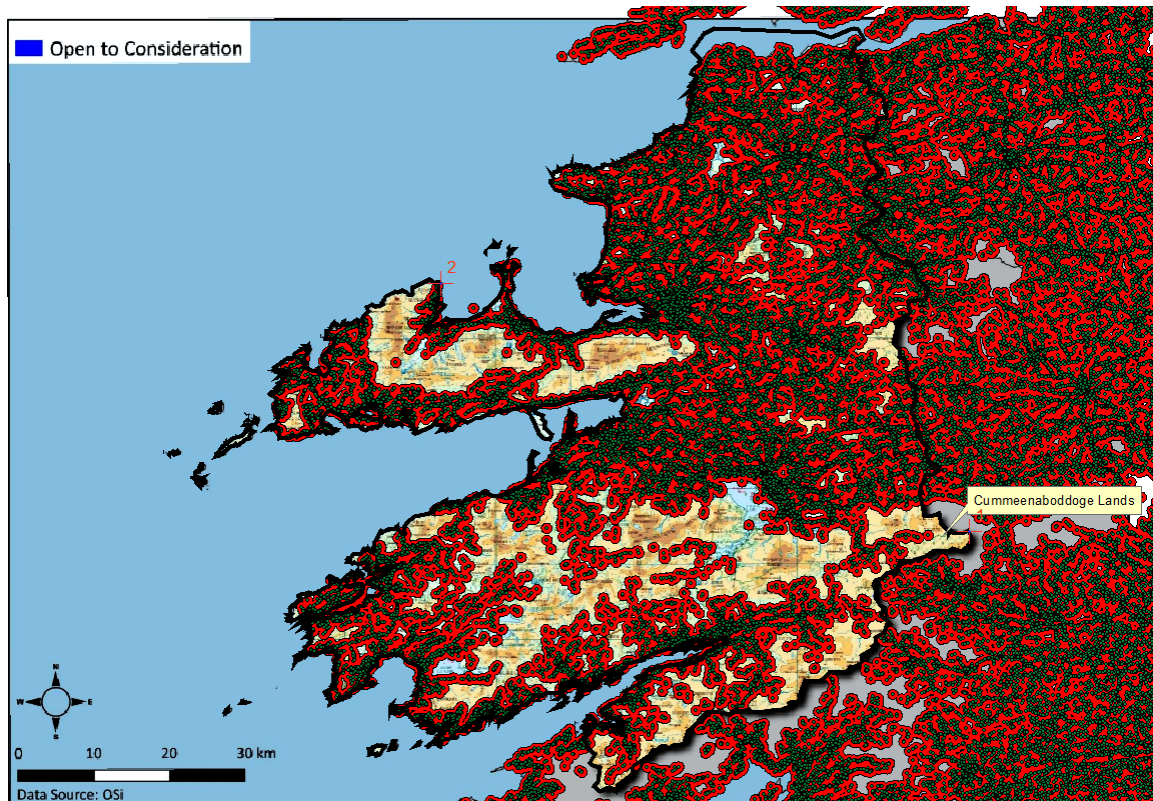


Figure 4 - Setbacks applied to EirCodes across the entire County

The above-described technical analysis is realistic but also conservative. Recent An Bord Pleanála decisions have permitted turbines, with tip heights up to 185m, which would require even greater setbacks.

No matter what reasonable present-day tip turbine height is used, the analysis has the same results. There is no potential for new commercial wind farms in the Draft Plan and this is contrary to national policy.

We believe in totality that the Draft Plan:

- Contravenes Special Planning Policy Requirement (SPPR) No. 2 of the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (Dept. of Housing, Planning, Community and Local Government) July 2017;
- Fails to implement national policy and targets in the Climate Action Plan 2021;
- Fails to provide any land in an ‘acceptable in principle’ category to deliver sufficient wind energy quantum based on the principles of proper planning and sustainable development;
- Fails to provide an adequate land area in the ‘open to consideration’ category to deliver a

sufficient wind energy quantum based on the principles of proper planning and sustainable development;

- Conflicts with the Draft Plan's own proposed policy, KCDP 12-12.

2 Failure of the Wind Zoning Methodology to identify Appropriate Locations for Onshore Wind

2.1 Wind Zoning Methodology, Appendix 6

We have serious concerns in relation to how the Draft Plan has undertaken its analysis of areas suitable for wind energy in the County. We believe some unsuitable and highly restrictive constraints have been used to needlessly screen out viable areas for wind energy development.

For example, Step 3 of the draft Plan purports to screen out areas of the County arising from cumulative visual impact. We believe there are three significant flaws in this methodology.

1. Firstly, visibility is conflated with visual impact. If something is visible it does not mean the visual impact is unacceptable. This fails to account for the fact that some landscapes have the capacity to absorb wind turbine development, whereas others do not. The blanket approach used in the Draft Plan assumes visual impact everywhere, when in fact, little or none may arise at some locations. There is no provision for site-specific assessment, contrary to Sections 6.5, 6.10, 6.15, 6.16, Appendix 1 and Appendix 3 of the Section 28 Wind Energy Development Guidelines 2006;
2. Secondly, this approach insufficiently accounts for mitigation by distance. All turbines within 20 km are treated in the same way. Visual impact from turbines within 1 km cannot be compared to that at 20 km; but the draft Plan makes no distinction;
3. Thirdly, areas are excluded based on theoretical visibility, even though those areas may have no real views of any wind turbines. Areas can be screened from views of turbines due to trees, hedgerows, large rocks, buildings, and small hillocks that do not show on large-scale mapping. None of this is accounted for in the current Draft Plan.

We believe this is a very significant error in the constraints approach in Appendix 6. The exclusion of wind farm sites due to poor assessment is wholly unacceptable, especially considering the climate crisis.

These and other issues are discussed below and have resulted in there being no site that can be developed for new commercial wind farms in the whole County. This is contrary to national policy and the urgent and imperative challenges arising from climate change.

2.2 Detailed Review of Constraints in Appendix 6 & Review of lands at Cummeenabuddoge

We wish to highlight a site that FuturEnergy Ireland is proposing to develop, along with a leading Irish energy developer, at Cummeenabuddoge, near Ballyvourney in south-east Kerry, on the boundary of Co. Cork. Pre-application discussions have commenced with An Bord Pleanála and Kerry County Council.

Land use at this location is predominantly commercial forestry and the main access point is via a minor road off the N22. It is a visually secluded site that is remote with few dwellings in the surrounding area. It also has a very good wind resource and there is a grid connection close by. The lands are

currently in commercial forestry, and it is an excellent site for wind energy development. However, it has been eliminated in Step 2 of the wind zoning methodology. The lands are shown in Figure 5.

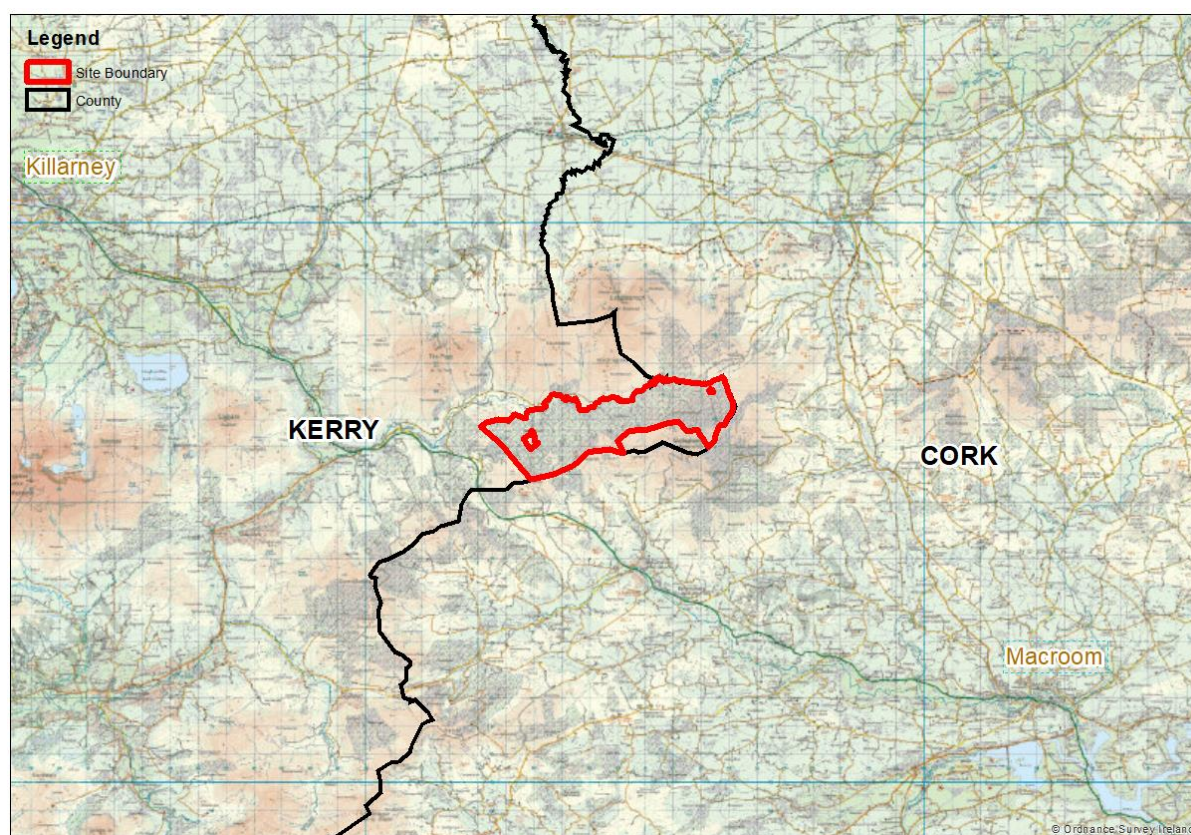


Figure 5: Cummeednabuddoge Lands

These lands have been considered as suitable for wind energy development from a visual perspective in the current and previous iterations of the County Development Plan.

The lands are deemed unsuitable for wind energy development in the Draft Plan for the following reasons, however we believe none of these stand up to scrutiny:

- Presence of peat soils in the area;
- Site elevation (small portion of the lands);
- Landslide susceptibility (small portion of the lands);
- Location in the River Basin Management Plan Blue Dot Programme; and
- Location in the Lough Leane catchment.

2.2.1 Presence of Peat Soils

It is considered by the Council that peat soils are not suitable for wind energy development in Kerry due to loss of carbon sinks.

We fully agree with protecting peatlands such as intact boglands and wet heaths as carbon sinks, however, it must be noted that peat located in commercial forests is drained, modified and degraded.

The International Union for Conservation of Nature (IUCN)¹⁰ recognises that peatlands are the largest natural terrestrial carbon store; however, it also recognises that damaged peatlands are a major source of greenhouse gas emissions. To function as carbon storage, IUCN states that year-round waterlogged conditions are necessary in undamaged peatlands. Similarly, according to the Environmental Protection Agency (EPA)¹¹, natural peatland acts as a long-term carbon store; however, when peatland is damaged this function is reversed and carbon is released into the environment¹².

Due to the existing and on-going commercial forest activity at Cummeenabuddoge the underlying peat is drained and modified and is unlikely to be sequestering Carbon. The Council's logic to eliminating peat lands from wind farm development to protect carbon sinks is thus flawed in relation to existing commercial forests on peat lands. We strongly contend that this constraint needs to be removed from the Wind Zoning Methodology at this location.

A recent study, Wind Power and Peatland by Scottish Renewables (2020), states that:

Wind farms which are to be built on peatlands are assessed using the Scottish Government's Carbon Calculator to ensure that the carbon payback is taken into account during decision making. A review by the University of Edinburgh has shown that all wind farms included in a number of studies achieved carbon payback within two years.

The Scottish Government's Carbon Calculator methodology is approved by the Scottish Government and Scotland's Environmental Protection Agency to calculate the carbon balance from the development of the wind farms. It is also the established best practice in wind farm planning in Ireland and is a key feature of wind farm assessments.

The Carbon Calculator proves that wind farms in Ireland displace carbon over their entire lifetime, and that any carbon released during their construction is typically paid back within one to two years, in a 30-year lifespan.

We also note that such a constraint is not imposed on any other type of small- or large-scale development on peatlands in the Draft Plan. If this is a genuine concern for the Council, it should be applied to all types of development on peat soils. Applying this solely to onshore wind development demonstrates an unfair treatment of onshore wind energy in the Draft Plan.

Both the 'Wind Energy Development Guidelines' (2006) and the 'Draft Revised Wind Energy Development Guidelines' (2019) envisage development on peatlands and there are specific policies set out in each to this effect. If the Draft Plan's approach to constrain all peat soils from wind farm development was implemented nationally, 40% of Ireland's forested lands would be excluded from

¹⁰ International Union for Conservation of Nature (IUCN) Peatlands and climate change www.iucn.org Issue Briefs.

¹¹ Environmental Protection Agency (2013) EPA Note on *Ireland's Environment* Land and Soil. Environmental Protection Agency (2013) Climate Change Research Programme (CCRP) 2007-2013 Report Series No. 15; Carbon Restore: The Potential of Restored Irish Peatlands for Carbon Uptake and Storage.

¹² A paper published in May 2021 (Jovani-Sancho, A.J., Cummins, T, and Byrne, K.A. (2021) Soil Carbon Balance of afforested peatlands in the maritime temperate climatic zone; University of Limerick, Ireland, University of Nottingham, UK, and the UK Centre for Ecology and Hydrology.)¹², investigated the soil carbon balance of afforested peatlands and concluded that afforested blanket peatland soils are net sources of CO₂ emissions from oxidation of soil carbon. Losses from decomposing peat, following from oxygen entry due to drainage, are larger than above and below ground carbon inputs. The result of the study is that the carbon input is too small to give net carbon sequestration.

consideration for wind farms. These lands are vital for wind energy development, particularly where they comprise large land areas remote from dwellings. This approach has the effect of negating very viable sites for wind energy and undermines national renewable energy and climate change policies.

2.2.2 Elevation

The Draft Plan eliminates areas over 500m in elevation for wind farm development based on significant visual impact and access issues. There is a small portion of the Cummeenabuddoge land along the south-eastern Kerry border that falls under this constraint as shown in the Draft Plan Appendix 6, Map 6.10. However, there is an existing turbine immediately to the south of the lands that is located above the 500m contour (Kerry Co. Co. ref. 06/1680).

In terms of access, it should be noted that the site is easily accessible from the N22 to the west via a small portion of local road but predominantly via an existing Coillte forest access track. There are existing forest roads throughout the proposed development and therefore access is not a concern at this site.

In terms of visual impact, the lands are remote from any residential dwellings. They effectively sit in a bowl between two high points, Mullaghanish to the south and Caherbarnagh to the north. The site is highly visually secluded and screened by hill ridges to the north, east and south (see Plate 1 below looking north). It is only from the west that it is possible to obtain any views of the site. It is a unique location in the County from this perspective. In the planning history of the site¹³, Kerry County Council and An Bord Pleanála both found this area to be a suitable site for wind energy development from a landscape and visual perspective.



Plate 1

¹³ KCC-10/75, ABP-236593

This demonstrates that a blanket constraint approach in relation to elevation is incorrect, and results in viable sites being unreasonably excluded from consideration.

2.2.3 Susceptibility to Landslides

The Draft Plan eliminates areas of stated high landslide susceptibility per the Geological Survey of Ireland (GSI) landslide susceptibility map. There is a small portion of the Cummeenabuddoge lands along the southern Kerry border that fall under this constraint as indicated in Appendix 6, Map 6.23 of the Draft Plan.

The GSI landslide susceptibility map is a valuable resource created based on the concept that if a landslide has occurred in a particular set of conditions (soil type, slope, water flow) and if those conditions occur elsewhere those locations would also be susceptible to landslides. The GSI map is carefully considered in any landslide site assessment, but it is created at a regional level using a map-based approach and so does not account for site-specific topography or site-specific peat depths or peat strengths. It also does not discriminate between landslide type; it would not separate rockfalls from extensive peat landslides. Decisions in relation to soil stability cannot therefore be made based on GSI mapping. Survey work is the only means of accurately assessing geotechnical conditions.

We contend that sites should never be excluded based on GSI mapping and assessed based on accurate, site-specific information.

The Cummeenabuddoge lands are an example of the inappropriateness of this approach. Preliminary site investigations thus far on the eastern and central areas have indicated that the peat at this location, overall, is shallow and strong. Only localised pockets of deeper peat have been identified and these are constrained by rock depressions. It bears none of the characteristics of sites where peat slippages have occurred. Such slippages involved large, deep areas of very wet, weak peat.

Overall, we contend it is not appropriate to constrain the Cummeenabuddoge lands, or any site, based on regional scale GSI mapping in the absence of site-specific data.

2.2.4 River Basin Management Plan Blue Dot Programme

The Draft Plan considers wind farm development a threat to the River Basin Management Plan 2018-2021, Blue Dot Programme, which aims to protect and restore high-status waters. Due to the scale and works associated with a wind farm, the Draft Plan deems these locations unsuitable for such development. No other industry appears to be targeted in this way in the Draft Plan, no matter what the scale.

It is true that wind farms involve substantial construction works, however, the protection of watercourses through appropriate management is standard in the construction industry. Surface water management techniques are well-established, well known and well understood. The record of wind energy construction in Ireland over almost 30 years has shown that this can be very well managed in practice. In our view, it doesn't make sense to exclude one industry alone (and no others) based on a matter that is very capable of being well-controlled.

Furthermore, wind farms in operation have no effects on water quality whatsoever. If there are challenges in protecting water in Blue Dot catchments, they are more likely to be from other activities such as agriculture, and not from wind energy.

The application of Blue Dot waters as a constraint reflects the attempt by Donegal County Council to designate Freshwater Pearl Mussel waters as a constraint to wind energy development which triggered a ministerial direction in 2016¹⁴. The blue dot exclusionary approach is similarly inappropriate here. It is an arbitrary exclusion and breaches the provisions of the Section 28 Wind Energy Development Guidelines in that it removes the capacity for a case-by-case assessment of wind energy projects based on an objective analysis of potential impacts on water.

2.2.5 Lough Leane Catchment

At the outset it should be noted that felling and wind farm construction has been on-going in this catchment without issues to water quality or to Lough Leane, as discussed below, yet the constraint process in Appendix 6 eliminates wind farm development based on a concern over impact.

The Draft Plan notes that the Lough Leane Catchment is of significant importance to the County's tourism industry, and to tourism angling in particular. It also notes that water quality in this catchment was subject to an algae bloom in the late 1990s on foot of which a study of the catchment and of phosphorus loadings to the lake was undertaken. The study highlighted the need to reduce the annual total phosphorus load entering the lake. Given the potential for the release of sedimentary phosphorus arising from wind development, this catchment is alleged to be unsuitable for wind development in the Draft Plan.

We are fully aware of the historical issues at Lough Leane, the decline in water quality in 1997 and the local authority's focus on the protection and restoration of our high water status in the County. The report referred to in the Draft Plan was a catchment wide monitoring programme undertaken by the EPA¹⁵ on foot of the incident and was published in 2003. It is important to note that this report identified agriculture as the main phosphorous source with potential for impact. It did not identify forestry, nor did it identify any particular type of development on forested lands as having potential for impact. Furthermore, there was no target reduction proposed or required for forestry¹⁶. In short, forestry and development on forested lands was not identified as a threat to the Lough Leane catchment based on the findings of this report.

As mentioned above it is also critical to note that felling has been ongoing in the Lough Leane catchment since 1997 without any decline in water quality. Water quality has in fact improved in the catchment; Lough Leane is classified as having a good status since 2007^[1] while the upper and middle reaches of the Flesk and Clydagh also have improved to good or high status since 2007. Felling at the Cummeenabuddoge lands has also been on going during this period including in 2021 when a full year of seasonal water quality sampling was undertaken by the Cummeenabuddoge wind farm project team around the site and along the Flesk River. Results from the 2021 water quality monitoring campaign showed nothing of concern in terms of phosphorous loading from this concurrent felling activity.

¹⁴ [Ministerial Direction in relation to Variation No. 2 to CDP 2012-2018 \(As Varied\).pdf \(donegalcoco.ie\)](#)

¹⁵ Lough Lane Catchment monitoring and management system - final report, EPA

¹⁶ Lough Lane Catchment monitoring and management system - final report, EPA, 2003, Pg. 31, table 11, Section 4

[1] Data obtained from

www.catchments.ie/ https://www.catchments.ie/data/#/waterbody/IE_SW_22_210?k=uy4f1b. Lake and the upper and middle reaches of the Flesk are indicated as having good status in the four water framework directive monitoring cycles since 2007.

It is also important to point out that the statement in the Draft Plan that sedimentary phosphorous arises from wind farm development and causes an issue, ignores the precedent of wind farms being constructed successfully on forested lands around the country and in this catchment. Figure 4 (below) shows the location of turbines in the area and that 21 wind turbines, a substation and access tracks through the forested lands have been constructed in the catchment immediately to the north and south of the Cummeenabuddoge lands. These are shown in Figure 4. No significant environmental effects are known to have occurred to the water quality during construction at these locations, downstream of same, or in Lough Leane, as a result.

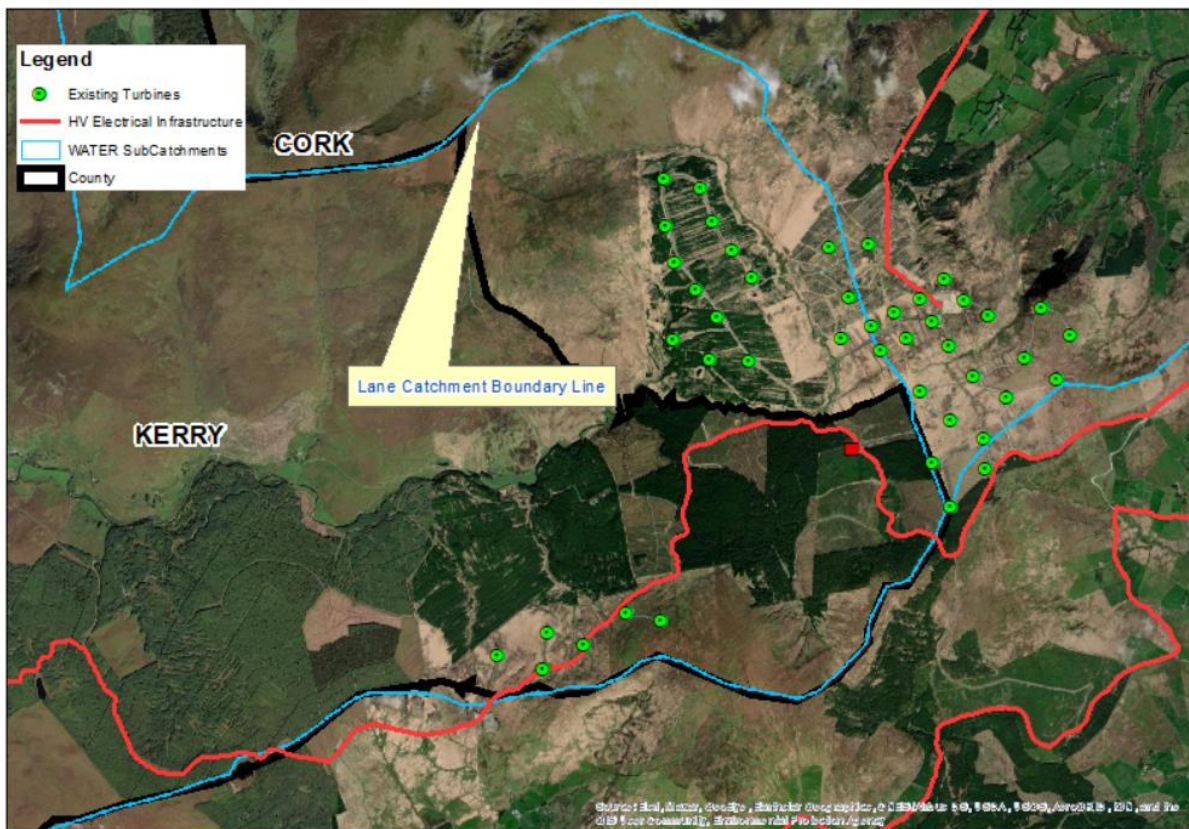


Figure 4

For the above reasons we strongly contend that the Lough Leane constraint needs to be removed from the Wind Zoning Methodology at this location. If the aim of the Draft Plan is to protect phosphorous loading in the Lough Leane catchment then the logical conclusion to the EPA report would be to deem the catchment unsuitable for agricultural activities and all developments on agricultural lands, as this was the principal risk. Similarly, Killarney town is in the catchment and no constraints are proposed on urban development. We do not suggest such proposals, it is merely being used to illustrate the conclusion of the Draft Plan and the unfair treatment being applied to onshore wind development.

The appropriate means of assessing the likelihood of specific impacts on water quality will be through the processes of Environmental Impact Assessment and Appropriate Assessment. We are confident that it can be clearly demonstrated that a wind farm at this location will have no significant effects on the River Clydagh or Lough Leane. We believe it is inappropriate to pre-empt the results of such an assessment by excluding this site from zoning in the Draft Plan. Such an approach would be to presume that an effect will arise, but without having analysed that effect in any meaningful way and is therefore unreasonable. The more appropriate course of action is to allow a detailed assessment

to be undertaken that will provide an opportunity to show that a wind farm at this location will not affect water quality (or indeed to refuse permission if that is not shown).

We strongly contend that in light of the evolution of understanding of the matters affecting water quality in Lough Leane over the past decade, it is no longer appropriate to rely on inaccurate presumptions in relation to the effects of wind farm construction. The constraint on wind energy development in the entire Lough Leane catchment fails to follow due process and, in our view, constitutes an unfair treatment of the wind energy industry.

2.3 Wind Zoning Methodology Appendix 6, Step 4

Due to the aforementioned constraints, the Cummeenabuddoge lands were not brought forward for further assessment in Step 4 of the Council's methodology. As set out above, however, we believe the constraints identified are not evidence-based and contrary to national renewable energy and climate change policies, Section 28 WEDGs and not in accordance with proper planning and sustainable development.

We have therefore considered the lands based on the remaining constraints in Step 4 of the methodology namely:

- Size of Area;
- Infrastructure;
- Population;
- Landscape Sensitivity.

Size of Area:

The Cummeenabuddoge lands are of a suitable scale for wind development and occupy an area of circa 1,500ha.

Infrastructure:

The grid network in Kerry is strong and has been successfully developed and reinforced in recent years. The lands are served by the Garrow sub-station and the Ballyvouskill substation, circa 3km to the east which is part of the 220kV transmission network.

Population:

There are no occupied dwellings within the Cummeenabuddoge lands and the surrounding area is scarcely populated.

Landscape Sensitivity:

In the planning history of the site¹⁷, Kerry County Council and An Bord Pleanála found this area to be a suitable site for wind energy development from a landscape and visual perspective.

In the current *Renewable Energy Strategy (RES)*, *Landscape Character Assessment*¹⁸ it states in relation to the Cummeenabuddoge lands that:

"... coniferous forestry...detracts from the quality of the landscape, it has altered the character of the landscape. Population levels in the area are very low...It is considered that there would be some landscape capacity in this area. This area would include lands east of

¹⁷ KCC-10/75, ABP-236593

¹⁸ <http://docstore.kerrycoco.ie/KCCWebsite/planning/renew/lca.pdf>

the N22 in the Clydagh River Valley, to the south of the river... This area is not being zoned for windfarm development as there is an ecological sensitivity, The Lough Leane Catchment."

The Cummeenabuddoge lands remain a commercial forestry plantation with a low population and the capacity identified in the current RES still exists in this visually secluded location.

Wind farms are an established element of the landscape and the lands are surrounded by constructed and permitted wind farms¹⁹ on the adjoining lands in Co. Cork to the north, east and south, although there is little intervisibility between the Cummeenabuddoge lands and these surrounding developments, because the site is so secluded visually.

From the photographs below which are taken within the site, it can be seen that it is classically upland in nature. In this context, and in light of its visual seclusion, and the pre-existing wind farm development in its surrounds, it is considered that this site is eminently suitable for wind energy development.



¹⁹ Namely the Clydaghroe wind farm, Clydaghroe Extension, Caherdowney wind farm, Curragh wind farm, Coomacheo wind farm, Gneevies wind farm and Carrignaima wind farms and the recently permitted Knocknamork windfarm directly to the south.

☼ 103°E (T) ● 51.998552, -9.160898 ±23 m ▲ 445 m



Views of existing turbines immediately up the ridge to the south and north respectively in the surrounding area (and within the same catchment) are also shown below.

☼ 80°E (T) ● 51.987354, -9.187424 ±11 m ▲ 464 m



☼ 354°N (T) ● 52.002691, -9.140739 ±7 m ▲ 442 m



3 Draft Revised Wind Energy Development Guidelines 2019 (DHPLG)

We note there is significant reference and reliance on the Draft Wind Energy Development Guidelines (WEDGs) 2019 in Chapter 12. For example, in Section 12.5.2 it is stated that this has been used to identify suitable development areas in the County and, in Section 12.5.4, it states the Draft Plan's renewable energy policies have had regard to it. This culminates in **KCDP12-13** which *'ensures that projects shall be designed and development in line with the Draft document, and any update, in terms of siting, layout and environmental studies'*.

The Draft 2019 Guidance is still under review and is likely to be subject to change. The current guidelines remain the Wind Energy Development Guidelines 2006. Such references to the Draft Plan are therefore problematic in this interim period. This is particularly the case in terms of the Council's policies in Section 12.5.4.1.4 that enforces setback distances, noise limits and shadow flicker standards from the 2019 Draft.

The 2006 Guidelines were formally adopted by the Minister under Section 28 of the Planning and Development Act 2000, as amended. The 2019 Guidelines have not been adopted and have no formal or any status. As noted, they are subject to change. It is, therefore, inappropriate to reference them in the draft County Development Plan.

To ensure there are no conflicts between the updated WEDGs when adopted and the Kerry Draft Plan, we request that all such extracts, references and reliance are removed and that the Draft Plan cross-refer to the WEDGs 2006 and any update thereof and/or any guidance adopted under Section 28 of the Planning and Development Act 2000, as amended.

4 Draft Plan, Section 12.5.5: Community Consultation, Community Benefit

As the Council is aware, the Energy Sector is a key sector for job growth throughout the lifetime of the Draft Plan. Wind energy developments can generate significant construction and operation jobs throughout its lifetime and significantly contribute to rural regeneration through the provision of local community benefit funds and local authority rates contributions.

In relation to communities, FuturEnergy Ireland operate a 'Fair Play Model' of engagement that commits to transparent dialogue and the sharing of information on an on-going basis with those most impacted by proposed developments. This model focuses on the residents of dwellings within 2km and recognises the need to ensure people located further away from the development are informed as details become more defined.

FuturEnergy Ireland is also committed to ensuring that local communities benefit from having a wind farm in their locality in terms of a Community Benefit Fund that supports the development of local recreation amenities and provides additional community project funding. Community benefit schemes relating to RESS projects will have significant community benefit and provide an opportunity to transform rural communities where projects are located. A good example includes recreational facilities at Sliabh Bawn Wind Farm in Co. Roscommon (www.sliabhawnwindfarm.ie).

The Public Consultation on Good Practice Principles for Community Benefit Funds²⁰, under the third Renewable Energy Support Scheme (RESS3) published 30th March 2021, provided welcome guidance

²⁰ DoECC, 2021 "Community Benefit Funds – Good Practice Principles Handbook"

<https://www.gov.ie/en/consultation/995be-public-consultation-on-good-practice-principles-for-community-benefit-funds-under-the-renewable-electricity-support-scheme/> 12 | Page

on Community Benefit Fund administration, structure and quantity, indicating that a 50MW project will provide approximately €300,000 to the local community annually.

FuturEnergy Ireland is an active member of the Wind Energy Ireland (WEI, formerly IWEA) and our staff actively participate in several of the Association's committees. WEI statistics confirm that in terms of initial capital investment, every megawatt (MW) of wind energy capacity installed gives rise to an investment of approximately €1.25 million. Ongoing investment and economic development benefits during the 30-year plus operational lifespan of wind farms take the form of rents payable to landowners, financial support for local communities in the form of community benefit schemes and commercial rates payable to local authorities. Combined, these amount to approximately €25,000 per MW per annum. A review carried out by WEI indicated over €3.5million²¹ was paid to Kerry County Council from wind farms in the form of commercial rates in 2020 alone.

We are also working hard around Community Investment and examining how communities could be given the opportunity to invest in a wind farm project.

Therefore, FuturEnergy Ireland believes that wind energy is of strategic importance to the county in addressing climate change, growing the Kerry economy and providing employment opportunities in both rural and urban communities.

FuturEnergy Ireland is therefore supportive of policies in the Draft Plan to require developers of proposed large-scale renewable energy projects to carry out community consultation in accordance with best practice and to start the consultation at the commencement of project planning. The final format of the Community Benefit Fund will be in accordance with the Department's RESS terms and conditions. We suggest the policy in the Draft Plan of ensuring all community benefits are distributed to projects in support of the community within a 20km radius of the site and within the county only, is tempered with requirements to adhere to the RESS terms and conditions.

5 Working in Partnership on Wind Projects

The scale of the overall Climate Action Plan ambition is substantial and requires considerable collaboration between all parties involved or associated with renewable energy including the communities that will ultimately host the infrastructure. FEI has an experienced team in wind farm planning and development and is available to work in partnership with Kerry County Council to support the realisation of the CAP targets.

6 Conclusion

It is critical that we increase our renewable energy fleet and remove fossil fuels from our society. Onshore wind is critical to meeting targets in our Climate Action Plan 2021 as well as our interim national targets between now and 2030.

Kerry has always been a leader and exemplar in facilitating renewable energy and onshore wind and should be applauded for this. However, the potential wind energy development in MW on lands designated 'open to consideration' (OTC) in the Draft Plan equates to no opportunity for new commercial wind farms anywhere in the County.

²¹ Valuations Office Website, 17th June 2020

This means the Draft Plan fails to facilitate renewable electricity onshore wind targets set out in the Climate Action Plan 2021 and contravenes Special Planning Policy Requirement (SPPR) No. 2 of the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (Dept of Housing, Planning, Community and Local Government) July 2017.

Furthermore, the Draft Plan fails to identify appropriate locations for onshore wind in a manner consistent with the proper planning and sustainable development of the County. This is at odds with the Draft Plan's own proposed policy, KCDP 12-12.

We believe unsuitable and highly restrictive constraints have been used to screen out viable areas for wind energy development in the Wind Zoning Methodology in Appendix 6. This includes:

- Eliminating wind farm development on the grounds of theoretical cumulative visibility, irrespective of there being any real visibility;
- Eliminating wind farm development on peat soils based on Carbon release, irrespective of the condition of the peatland;
- Eliminating wind farm development in the Blue Dot Programme catchments without any reference to the successful protection of waters afforded by surface water management during construction;
- Eliminating wind farm development based on location in a Freshwater Pearl Mussel catchment, without any recognition of the prior experience of successful construction of wind farms in Freshwater Pearl Mussel catchments elsewhere;
- Eliminating wind farm development in the entire Lough Leane catchment in the context of ongoing felling and wind farms construction not causing or having caused any known effects;
- Eliminating wind farm development over certain elevations despite the recognition of such blanket bans as inappropriate in the absence of landscape impact assessment;
- Eliminating wind farm development due to landslide concerns based on gross regional data, notwithstanding that preliminary site-specific data indicates only localised pockets of deeper peat constrained by rock depressions. It bears none of the characteristics of sites where peat slippages have occurred.
- Eliminating wind farm development based on constraints relating to Kerry Airport, Archaeological Landscapes and Geological Heritage Sites, without any clear rationale for the justification of each particular constraint.

These constraints have been presented as the output deriving from a correct screening process; however, on scrutiny they seem to lack a strong and objective basis. We believe this approach is prejudicial towards the wind energy industry and it pre-judges case by case assessments provided for in the Section 28 Wind Energy Development Guidelines.

Such blanket constraints do not reflect the true impact of wind farm developments which have been successfully developed across the country for the past circa 30 years including in Co. Kerry.

Such restrictions are not applied to other large-scale developments in the Draft Plan and reflect an unfair consideration of the onshore wind sector.

These restrictions have led to the elimination of viable wind farm sites including one at Cummeenabuddoge, near Ballyvourney in south-east Kerry. Land use at Cummeenabuddoge is predominantly commercial forestry and the main access point is via a minor road off the N22. It is a visually secluded site that is remote with few dwellings in the surrounding area. It also has a very good wind resource and there is a grid connection close by. In the planning history of the site, Kerry County Council and An Bord Pleanála found this area to be a suitable site for wind energy development from

a landscape and visual perspective. The lands are an excellent site for wind energy development and we strongly request the Council amend the Draft Plan and zone these lands as 'acceptable in principle' or equivalent.

Based on current designs the total anticipated output of a wind farm at Cummeenabuddoge is greater than 100MW²². As per the Wind Energy Ireland statistics referred to in this submission this equates to a capital investment of more than €140million. It will yield ongoing investment of close to €3m per year in the form of rents payable to landowners, financial support for local communities through community benefit schemes and commercial rates payable to local authorities. Of this annual investment it will yield more than €0.5m annually in the form of a community benefit fund for the first 15 years (based on current RESS3 terms and conditions).

Overall, zoning the Cummeenabuddoge lands will enable Kerry to contribute in a meaningful way to the renewable targets in the CAP 2021 and will also facilitate new wind farm development in the County in accordance with the principles of proper planning and sustainable development.

We thank you for the opportunity to provide our feedback on the Draft Plan through the current consultation process. We would be happy to participate in any further engagement on this matter, including to discuss any particular aspect of our response or to clarify any matters arising, should that be of interest to you.

We would be happy to clarify any matters arising.

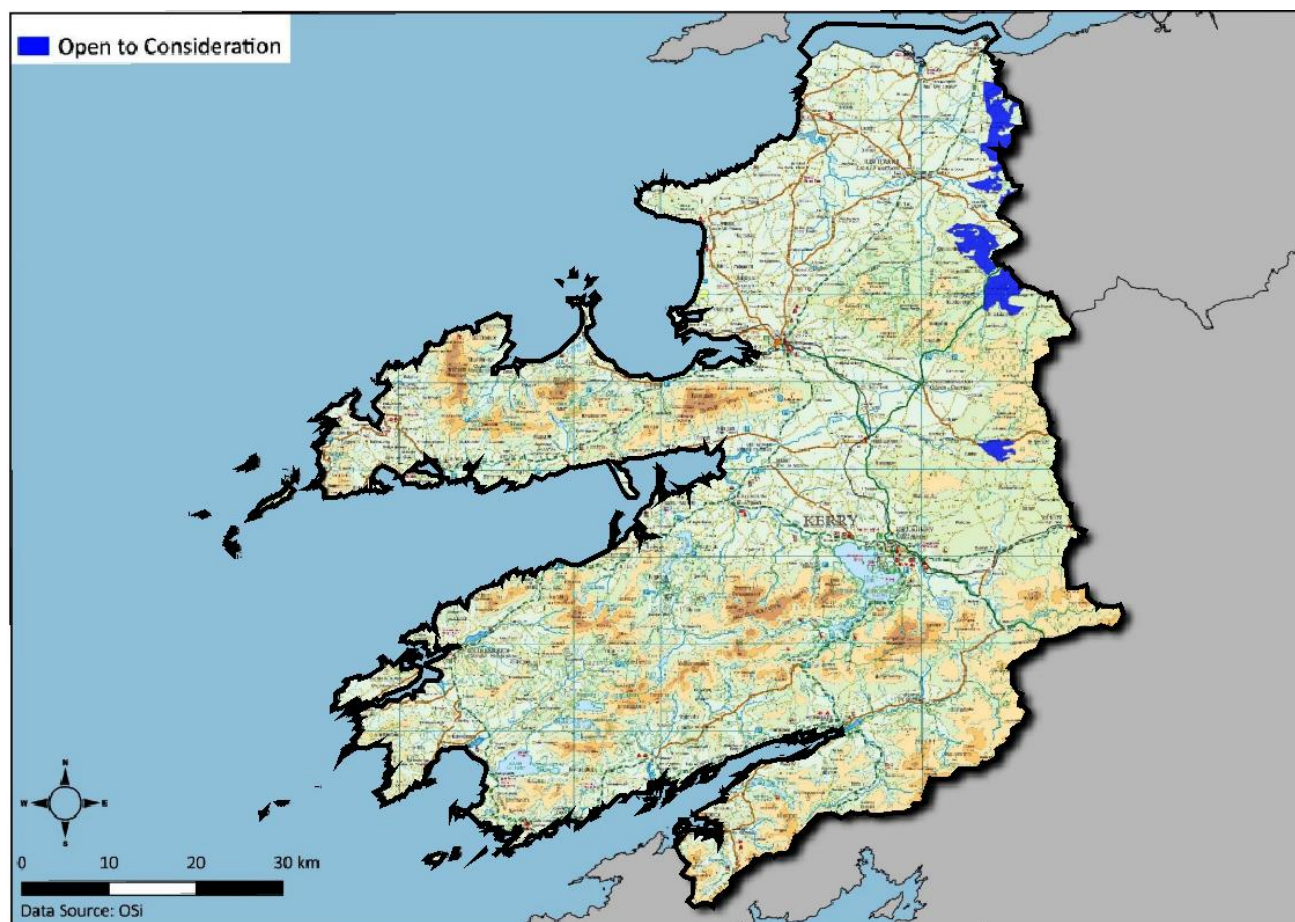
Yours sincerely,

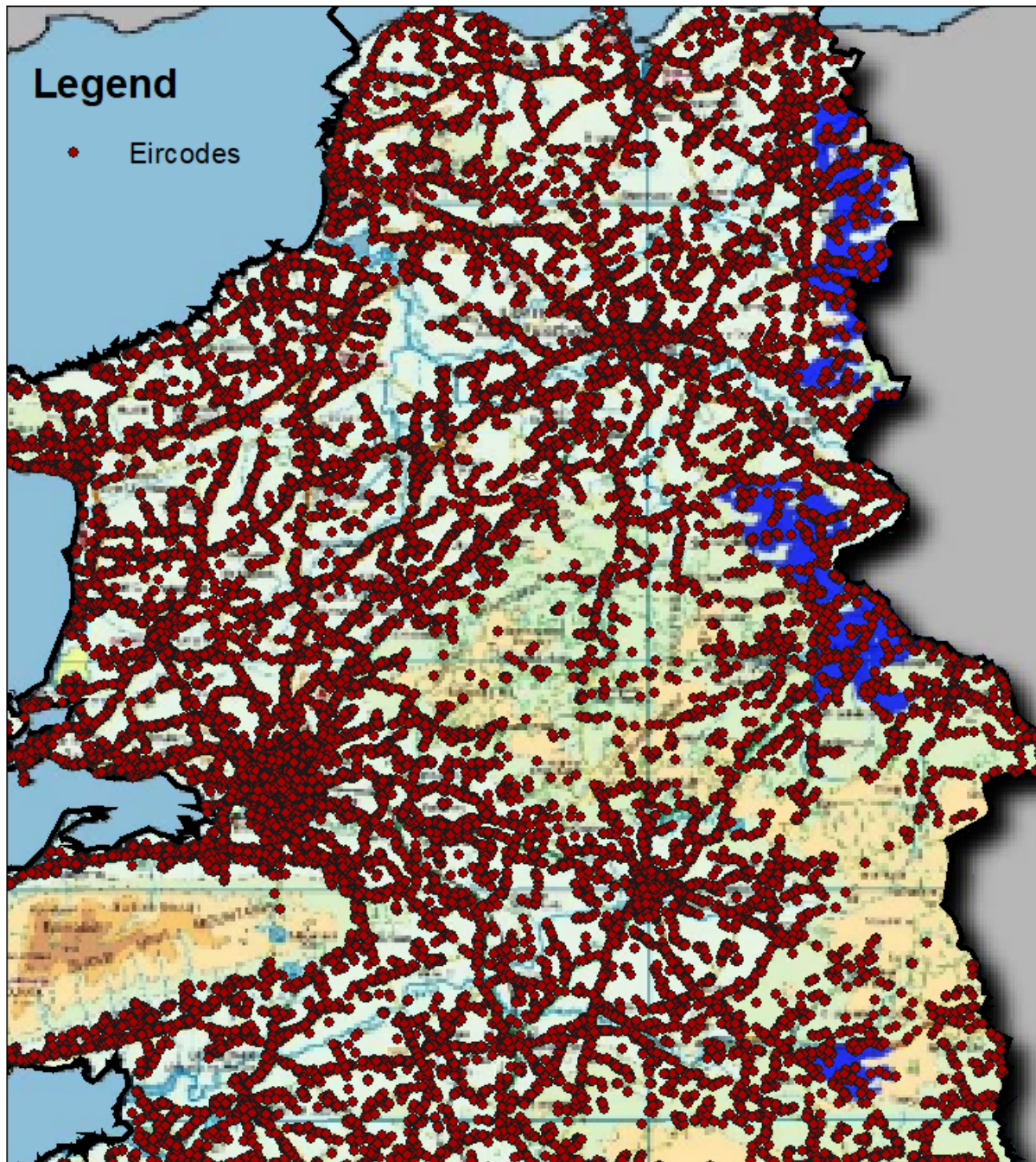
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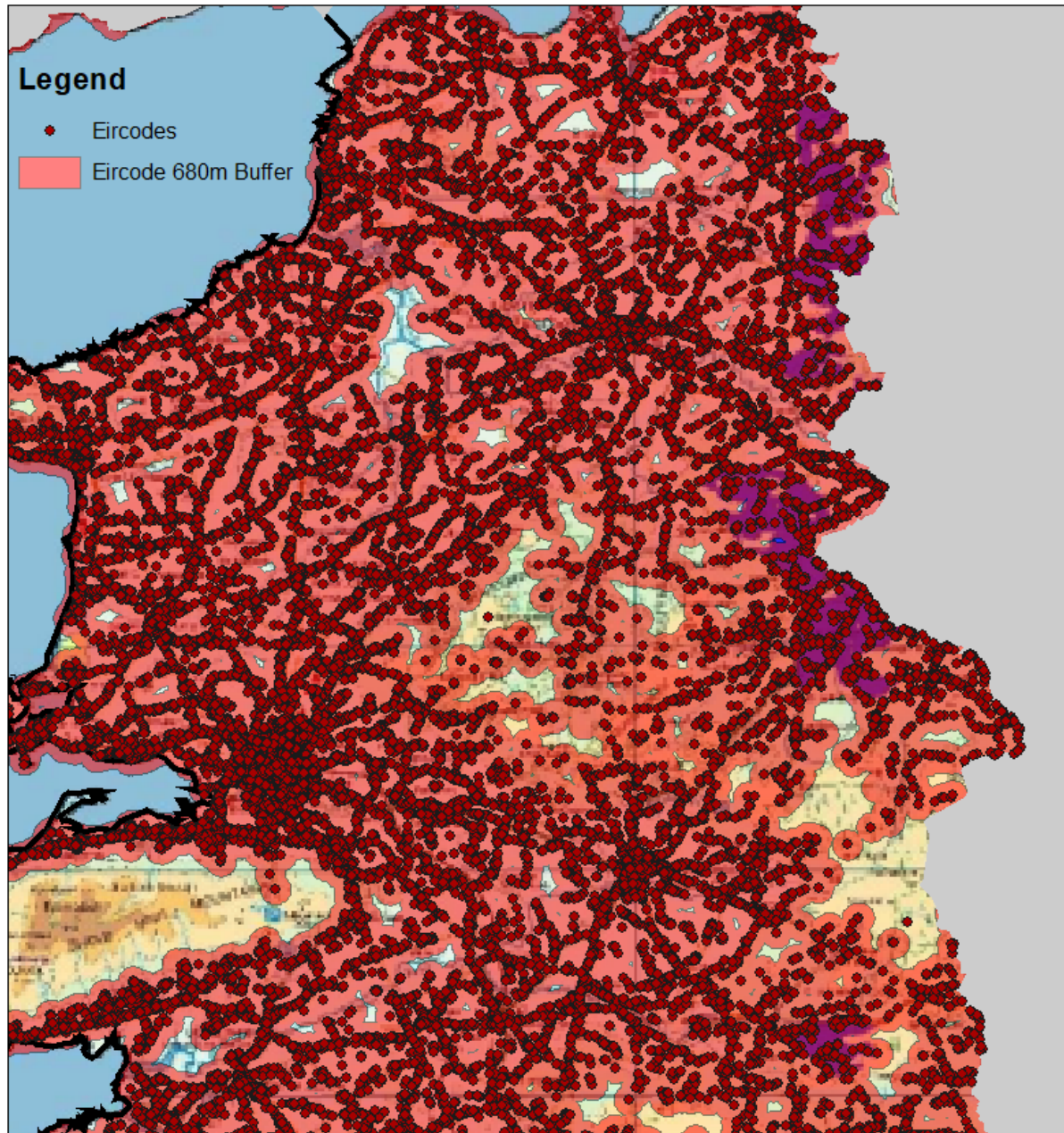
Sinéad O'Malley
Planning Manager
FuturEnergy Ireland
Email: Sinead.omalley@futureenergyireland.ie

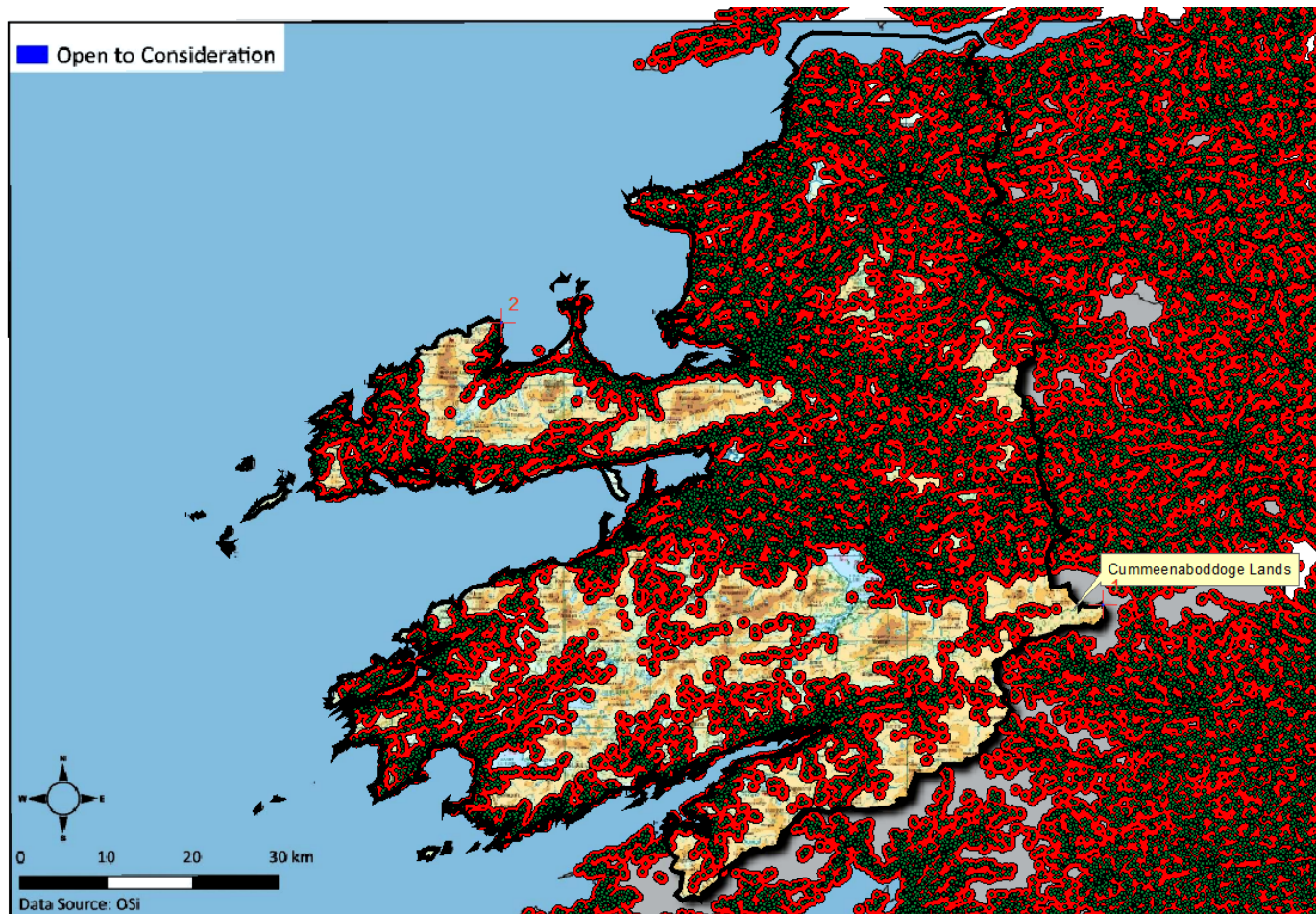
²² Figures in this paragraph are subject to the final wind farm design which is anticipated in 2022.

Appendix 1 – Figures 1,2,3, 4









B. Counsel's Opinion

- OPINION -

QUERIST: *Cummeennabuddoge DAC*

AGENT: *Elaine Keating, Solicitor, MHC Solicitors, Barrow Street, Dublin 2*

SUBJECT: *Cummeennabuddoge Wind Farm, County Kerry (“the Proposed Development”)*

I PRELIMINARY

1. This Opinion is to accompany an application for approval by Querist (‘Cummeennabuddoge DAC’) to develop a wind farm of 17 turbines at Cummeennabuddoge and Clydaghroe, Clonkeen, County Kerry.
2. In this Opinion I have been requested to address the manner and/or extent to which An Bord Pleanála is required consider and/or place weight on: (i) policies in the applicable County Development Plan(s) that designate land as not being appropriate for wind energy development; and (ii) policies that support renewable energy development at a local, regional, and international level and balancing of the same.

II POLICY CONTEXT

3. The Planning Statement to be lodged with the application sets out in detail relevant local and national policy relating to renewable energy which is of relevance. In this regard it is proposed to set out certain relevant policies under the Kerry County Development Plan 2022 -2028 (‘CDP’) and then to consider certain relevant national and European/international policies.

Windfarm Designation under the CDP

4. The Kerry County Development Plan 2022 -2028 (‘CDP’) was adopted on 4th July 2022 and came into effect on 15th August 2022. The Plan was subject to a Ministerial Direction dated 5 December 2022 which amended the CDP.
5. Section 12.5.4.1.3 Kerry County Development Plan – Wind Energy Policy Areas, states as follows:

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

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

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

6. Figure 8-1: Kerry County Development Plan 2022: Map 12.4 Open to Consideration Areas shows the areas which are “open for consideration”. The site of the proposed windfarm does not fall within an area designated ‘Areas Open to Consideration’ and ‘Repower areas’ under the development plan, although the site was previously designated for wind in two earlier County Development Plans. I am instructed that 96% of the territory of County Kerry does not fall (and so only 4 % is included) within an ‘open for consideration area’. I am further instructed that the CDP reduced the area designated for wind energy development by 92%, from 77,000 ha to circa 6,000 ha

7. Section 12.5.4.1.4 Kerry County Development Plan – Open to Consideration

Having regard to County Kerry’s current contribution to the provision of wind energy generation capacity in the State, the scale of this contribution and the scale of permitted, but not as yet constructed development, it is considered that the capacity of certain areas in the County to facilitate additional wind energy developments has been reached.

Wind energy development in areas ‘open to consideration’ may be appropriate, depending on the character of the landscape and the potential impact of the proposed development. The capacity of these areas has limits and the cumulative impact of wind development in these areas will be monitored.

The detailed policies of the Council in relation to wind energy development are set out as follows:

- Ensure that applications for wind development are accompanied by a technical assessment in relation to the slope stability, landslide susceptibility of the development site and the proposed project.
- Ensure that all proposals for wind energy development (including the grid connection) have regard to the cumulative effect of the development on the

environment in conjunction with the entire development and other existing/permitted developments in the area.

- Ensure that all proposals demonstrate conformity with existing and approved wind farms to avoid visual clutter and demonstrate how they had regard to potential cumulative effects, where appropriate.
- Ensure that all applications have regard to the impact on existing built environment, particularly neighbouring residential properties and other sensitive amenity areas.
- Ensure that the development of wind turbines comprise a setback distance as detailed in the Draft Revised Wind Energy Development Guidelines 2019 (DHPLG).
- Ensure that noise restriction limits are consistent with those as included in the Draft Revised Wind Energy Development Guidelines 2019 (DHPLG).⁴⁰
- Ensure that no neighbouring property experiences the occurrence of shadow flicker and in accordance with the Draft Revised Wind Energy Development Guidelines 2019 (DHPLG).
- Ensure that all applications have regard to the impact of any proposal for wind energy development on surrounding tourism and recreational related activities.
- Ensure that all applications are in compliance with Article 6 Habitats Directive, EIA Directive and Water Framework Directive. Where applicable this should be informed by at least 2 years of annual (breeding and wintering) bird survey undertaken to best practices guidelines in addition to early engagement with statutory and non-statutory holders of ecological data, including with the Irish Hen Harrier Winter Survey.
- Ensure that proposals within sensitive water catchments must demonstrate compatibility with the objectives of the Water Framework Directive having due regard to possible impacts on high status objectives waterbodies and non-annexed freshwater habitats and species including extant (non-designated) populations of Freshwater Pearl Mussel.
- Ensure that any application proposed in an area known to support the White-Tailed Sea Eagle is informed by at least two years of ornithological survey (breeding and winter) by a suitably qualified expert and if applicable, the ornithological impact assessment takes into account the results of ongoing monitoring of existing renewable energy infrastructure in the area and should include mitigation to prevent eagle mortality as agreed for the existing Grousemount Wind Farm.
- Ensure that any wind energy proposals within the Lough Leane catchment or other water quality sensitive catchments, demonstrate that they have been designed in a manner which prevents any risk of peat, soil and rock slippage or erosion and which provides for ongoing protection / improvement of water quality and the maintenance of natural hydrological processes. Proposals which would increase flood risk or bankside erosion downstream will not be permitted.
- Ensure that proposals which cannot avoid adverse impacts on Natura 2000 Sites (SPA's and SAC's) or adjoining areas and locations affecting Natura 2000 site integrity, including habitats of significant value for Lesser Horseshoe Bats associated with Natura 2000 sites in the vicinity, and other sites and locations of significant ecological value, will not be permitted.
- Ensure that all proposals within/in proximity to known visually sensitive areas/designated views and prospects are subject to a Landscape Visual Impact Assessment (LVIA) undertaken to best practices guidelines. Where applicable

the LVIA should include possible visual impacts on 19 archaeological landscapes identified in Section 8.3.2 of the County Development Plan notably No. 13 The Paps and No.15 Mangerton/Cumeenduvassig/Bausheen/Slaght/Knockeens.

- Ensure that, at a minimum, turbines shall be set-back a distance equalling the blade tip height of the turbine from national roads and railways. Set-back from other roads will be site specific and determined at application stage.

8. The CDP also states in respect of Wind Energy Development states that it is an objective of the Council to:

Objective KCDP 12-19

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

Section 12.5.4.1.6 Kerry County Development Plan – Unsuitable for Wind Development

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

This is then reflected in Wind Energy Projects. It is an objective of the Council to:

Objective KCDP 12-20

Ensure that commercial wind energy projects will not be considered in areas outside of ‘Open-to-Consideration’ and ‘Repower Areas’.

9. In terms of the site of the proposed development, Section 11.6 of the County Development Plan sets out the policies of the Council that relate to landscape. There are two landscape designations for the county, being Visually Sensitive Areas, and Rural General. Policies in relation to Views & Prospects are set out. Landscape designations are presented in Map O of Volume 4 of the County Development Plan. The site is located within a Visually Sensitive Area, and also has View & Prospect facing eastwards towards the proposed development site.

Renewable Energy under the CDP

10. The energy policies of the Council are set out in Section 12 of the County Development Plan 2022 – 2028. 34 In relation to renewable energy, the following is stated in Section 12.1:

It is the policy of the Council to support and provide for the sustainable development of indigenous energy resources, with an emphasis on renewable energy supplies, in the interests of economic progress and the proper planning and sustainable development of the county.

The Council supports the development of a safe, secure and reliable supply of electricity...

The County has, in terms of alternative energy, huge potential for the development of wind, solar, biomass, geothermal, hydro and wave energy.

In ensuring energy and growth are integrated, the Council will support the emerging climate action policy to align energy planning with spatial planning.

This is then encapsulated in a specific objective, Energy. It is an objective of the Council to:

Objective KCDP 12-1

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

11. Section 12.5 further states:

Access to secure, clean and affordable energy is essential for the future economic and social development of the county

12. It is then sets out a number of objectives relating to Renewable Energy:

It is an objective of the Council to:

Objective KCDP 12-14

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

KCDP 12-15

Support and facilitate proposals for hybrid energy systems and/or co-location of renewable energy where applicable where such development has satisfactorily demonstrated that it will not have adverse impacts on the surrounding environment.

KCDP 12-16

Facilitate and promote sustainable alternative forms of renewable energy including hydro, bio, solar, geothermal and off-shore wind energy.

KCDP 12-17

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

Section 12.5.1 Kerry County Development Plan – National Targets and Responding to Climate Change

It is “estimated that the Kerry County Development Plan provides a framework for approximately 389 MW of additional renewable energy to be potentially generated over the lifetime of the plan from the following sources:”

Hydroelectricity 6 MW

Solar 373 MW

Bioenergy 10 MW

Wind not provided for

13. Section 12.5.4 Kerry County Development Plan – Renewable Energy Policy

Kerry has seen significant development in terms of RE. With the resources that are available in the county, subject to the principles of proper planning and sustainable development, there is potential for additional development, but development is also subject to constraints.

Section 12.5.4 Kerry County Development Plan – Wind Energy

It is the policy of the Council to support, in principle and in appropriate locations, the sustainable development of wind energy resources in County Kerry. This policy document builds upon previous policies in place to develop an updated tool for identifying potentially suitable locations for wind energy development and to guide future assessment of wind energy planning applications in the County.

National Policies

14. While there are a range of national policies which are outlined in the Planning Statement, among the most relevant include those set out in the current Climate Action Plan.

15. Climate Action Plan 2024, adopted on 21st May 2024 retained the key targets of the Climate Action Plan 2023, updating Ireland’s ongoing Climate Action Plan, as follows:

- 80% of electricity from renewable energy by 2030, and 50% by 2025;
- 6,000 MW of onshore wind, and up to 5,000 MW of solar by 2025;

- 9,000 MW onshore wind (from a current base of just over 4,000 MW), 8,000 MW solar, and at least 5,000 MW of offshore wind by 2030;
- alignment of the planning system to support accelerated renewable energy development, supported by national policy to inform regional and local planning policies, noting that County Development Plans are obliged to set out objectives to facilitate energy infrastructure;
- in line with the emerging EU frameworks, ensure that renewable energy generation will be considered to be in the overriding public interest;
- all relevant public bodies to carry out their functions to support the achievement of the 80% renewable electricity target.

16. Climate Action Plan 2024 also contains a number of notable statements such as at Section 12.1.3 “The Scale of the Challenge”, which states at pg. 129

“For onshore renewables, greater alignment between national, regional and local plans and renewable energy targets to support investment in and delivery of onshore wind and solar renewable energy is also critical in this context

Also notably at pg. 169:

“Given that the programme of large-scale offshore wind deployment is expected to be realised towards end decade, **deployment rates for onshore renewables will need to increase to match demand growth to ensure we keep electricity emissions within range of the carbon budgets. This requires a major upscaling and accelerating in current deployment of renewables, particularly onshore wind.**

17. It is of some note, as will be discussed, that the Climate Action Plan 2023 (Cap23) increased renewable energy targets from Climate Action 2021 (Cap21), which was in force at the time Kerry County Development Plan was adopted on the 4th July 2022. The Climate Action Plan 2023 and 2024 commits to 22GW of new renewable capacity by 2030, a significant rise from 15GW in CAP21. This included for Onshore Wind, an increase to 9GW, from 8GW in CAP21. The 2025 target is 6GW.

18. In addition, the establishment of the Accelerating Renewable Energy Taskforce is also an important measure under the Climate Action Plan 2023. This was established in March 2023 with the role to coordinate and fast-track the development of onshore renewable power and associated infrastructure.
19. A further important action under CAP23 is Action EL/23/2 which requires the preparation of the Renewable Electricity Spatial Policy Framework (RESPPF). This is designed to reflect national policy for onshore renewable electricity and will inform and reshape the development and distribution of onshore renewables.
20. Other notable development included the National Energy Security Framework, updated November 2023.
21. In addition to this the Regional Spatial & Economic Strategy (RSES) of the Southern Regional Assembly 2020 include policies relating to promoting renewable energy. This includes Regional Policy Objective 99 – Renewable Wind Energy
- “It is an objective to support the sustainable development of renewable wind energy (on shore and off shore) at appropriate locations and related grid infrastructure in the Region in compliance with national Wind Energy Guidelines”.
22. Also in July 2024, the Draft Revision to the National Planning Framework. While this is only a draft, a revised National Planning Framework may be in place by the time the Board makes its determination on the application. At pg. 133 of the Draft it is stated in respect of renewable energy:
- Government has set ambitious targets to achieve 9 GW of onshore wind, 5 GW of offshore wind and 8 GW of solar by 2030, as well as supporting at least 500 MW of local community-based renewable energy projects and increased levels of new micro-generation and small-scale generation.
- The accelerated delivery of additional renewable electricity generation is therefore essential for Ireland to meet its climate targets,** reduce its greenhouse gas emissions, and improve its energy security by reducing reliance on imported fossil fuels and diversifying its electricity supply. A diversified energy portfolio from multiple sources is required, onshore wind, solar, and gas will remain a contributor for energy security) and this will require the upgrading and development of a range of key infrastructure, offshore and onshore, to support a secure and reliable energy supply amid projections of rapid electricity growth over the decade.

NPO 75 sets out regional renewable electricity capacity allocations for onshore wind and solar energy.

23. At European/international level, it may be noted that in December 2023, Ireland signed up to a European Wind Charter which seeks to develop and improve the conditions necessary for the delivery of wind energy targets. As part of the European Wind Charter, Ireland has also signed a voluntary ‘wind pledge’ committing to the delivery of wind energy targets for the period 2024-2026, as well as pledging indicative targets for 2030 and post-2030.
24. The recast Renewable Energy Directive III now in force, provides that by 21st February 2024 Member States shall ensure that renewable energy plants (including wind) and associated infrastructure are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in individual cases for the purposes of Articles 6(4) and 16(1)(c) of the Habitats Directive, Article 4(7) of the Water Framework Directive, and Article 9(1)(a) of the Birds Directive; this is intended to limit the grounds of legal objections to new installations,
25. A further significant development at European level, was Regulation 2022/2577 issued on 22 December 2022 laying down a framework to accelerate the deployment of renewable energy. Article 3(2) requires wind farms, as projects recognised as being of overriding public interest, to be given priority when balancing legal interests in the individual case. EU Regulation 2024/223 extends the application of certain provisions of EU Regulation 2022/2578, which would have ceased to apply in June 2024 and these remain in force until 30th June 2025.

III LEGAL CONTEXT

26. In the context of application under section 37E, the principle provision dealing with matters to be considered by the Board in determining the application is set out in section 37G which states:

37G.— (1) When making a decision in respect of a proposed development for which an application is made under section 37E, the Board may consider any

relevant information before it or any other matter to which, by virtue of this Act, it can have regard.

(2) Without prejudice to the generality of section (1), the Board shall consider—

(a) the environmental impact assessment report submitted under section 37E(1), any submissions or observations made, in response to the invitation referred to in section 37E(3), within the period referred to in that provision, the report (and the recommendations and record, if any, attached to it) submitted by a planning authority in accordance with section 37E(4), any information furnished in accordance with section 37F(1) and any other relevant information before it relating to—

- (i) the likely consequences of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the development, and
- (ii) the likely effects on the environment of the proposed development,

(b) any report or recommendation prepared in relation to the application in accordance with section 146, including the report of the person conducting any oral hearing of the proposed development and the written record of any meeting referred to in section 37F(3),

(c) the provisions of the development plan or plans for the area,

(d) the provisions of any special amenity area order relating to the area,

(e) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact,

(f) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c), that fact,

(g) the matters referred to in section 143,

(h) any relevant provisions of this Act and of any regulations made under this Act.

27. Thus section 37G(1) establishes a “have regard” standard, which comprises the consideration set out in section 37G(2) which include under (c) the provisions of the development plan and under (g) the matter referred to in section 143. The matters referred to in section 143 concern certain national policy objectives, insofar as it provides:

143.— (1) The Board shall, in the performance of its functions (other than functions conferred by Chapter III of Part XXI), have regard to—

(a) the policies and objectives for the time being of the Government, a State authority, the Minister, planning authorities and any other body which is a

public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns or other areas, whether urban or rural,

(b) the national interest and any effect the performance of the Board's functions may have on issues of strategic economic or social importance to the State, and

(c) the National Planning Framework and any regional spatial and economic strategy for the time being in force.

28. As regards the meaning of “*have regard*” in the context of planning in *Cork County Council v Minister for Local Government* [2021] IEHC 683, Humphreys J stated § 54:

To come back to the most central point of the foregoing, I would attempt to summarise the answer to the question, what does “have regard to” mean, as follows:

(i). Expressions like consider, take into account and have regard to all mean the same thing.

(ii). It is inherent in the objectivity of language that in principle that meaning is the same whether it is the State that is having regard to something, or that is seeking to have regard had by someone else to its views. The latter context does not impose a different or more exacting meaning on the term “have regard to”.

(iii). Having regard implies looking at the matter concerned, and factoring in its relevance, if any, and weight, if any, as those matters appear to the decision-maker.

(iv). Hence if the decision-maker fails to even look at the documents or matters to which it is to have regard, or if the evidence doesn't demonstrate that it has done so, then a ground for certiorari arises (*B.C. (Zimbabwe) v. International Protection Appeals Tribunal* [2019] IEHC 488, [2019] 7 JIC 0207 (Unreported, High Court, 2nd July, 2019), *Atlantic Diamond Ltd. v. An Bord Pleanála* [2021] IEHC 322, [2021] 5 JIC 1403 (Unreported, High Court, 14th May, 2021)).

(v). If the decision states that regard was had to something, then the onus is on the party challenging that to prove otherwise by evidence.

(vi). Like the exercise of any public law duty, the process of having regard has to be carried out bona fide and in accordance with the statutory purpose and with all other administrative law duties. But those requirements are independent of, and not created by, the requirement to have regard.

(vii). Once the decision-maker has looked at the matter, its determination as to relevance if any is subject to review for legality, and its determination as to weight if any is normally subject to review for unreasonableness only. The weight to be attached to a particular piece of material is peculiarly one for the

decision-maker (per Birmingham J. in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 (Unreported, High Court, 27th June, 2008) at para. 27.

(viii). There is no necessary obligation for the consideration to be lengthy or ponderous. By analogy, a court has regard to all submissions made, although some are rejected in limine on the grounds of invincible incomprehensibility, patent irrelevance or patent error, such as for example if a personal litigant citizen disputes the court's jurisdiction on the grounds that she has not consented to submit to it (see *Meads v. Meads* [2012] ABQB 571 per Rooke C.J.). Immediate rejection of a patently incomprehensible, irrelevant or erroneous matter is not a failure to have regard. It is decision-making in action – the decision-maker has looked at everything and is trying to sort the wheat (if any) from the chaff. This reflects the point that the degree of weight and consideration to be given to something depends in significant measure on that something, not on some completely dry, academic and disembodied conceptualisation of elaborate legal process in the abstract.

(ix). The use of mandatory, strident, peremptory or any other sort of language in a document to which regard is being had doesn't elevate the duty to have regard to the document into any sort of enhanced level or require additional reasons. That would be a self-evidently bootstrapping conceit. If any possible enhanced duty exists in a particular situation, it has to come externally from the document itself, such as from the statute or the legal context, and can't be created out of whole cloth by the entity seeking to have regard had to its views.

(x). The duty to have regard to something doesn't automatically create a duty to give reasons for not giving that matter more weight. That follows from the entitlement of the decision-maker to assess the weight to be given to the various matters which it is considering. An enhanced duty may be created expressly, as in s. 28(1B)(b) of the 2000 Act, or impliedly by virtue of the particular legal context (such as where the nature of the process is that a detailed discussion is carried out at a sub-level, such as by an inspector, so that when a more summary operative decision is being made, such as by the board, there would be a gap in reasoning if the board didn't give express and adequate reasons for disagreeing with the inspector, or where providing reasons is required under the principle of giving the main reasons for the main issues).

(xi). However, if the provision concerned (external to the document being considered) uses an intensifier such as to have "due" regard to something (e.g., Article 16.2.4° of the Constitution), or "appropriate and reasonable regard" (as in the SPPR considered in *Atlantic Diamond v. An Bord Pleanála*) then that generally connotes an additional degree of weight to be given to the matter to which regard is to be had, with a general enhancement of the level of reasons that have to be given for not affording such weight. Here, the OPR erroneously criticised the council for not giving "sufficient" regard to the guidelines, whereas in fact the statute only requires "regard". Intensifiers can't simply be read into the statute by sleight of hand. They significantly change the meaning of the concept.

29. While the above passage purports to explain at length the meaning of “have regard”, I have underlined in particular some of principles which have particular relevance for the Board in applying section 37G(1) and (2). When it comes to the provisions of the Kerry County Development plan 2022-2028 including the designation of areas for windfarms and other policies, there is a requirement to look at such provisions but it is a matter of for the Board as to what weight to attach to the same. It does not have to give long or ponderous consideration to the same nor does it necessarily have to give reasons for not following the same, although the provision of reasons would demonstrate consideration of the matter. Moreover, section 37G(6) provides in relation to a material contravention of a development, provides:

(6) The Board may decide to grant a permission for development, or any part of a development, under this section even if the proposed development, or part thereof, contravenes materially the development plan relating to any area in which it is proposed to situate the development.

The above provision is effectively for the avoidance of doubt, as insofar as there is requirement to have regard to provisions of the development plan, it follows that the Board equally is only required to have regard that a development, is a material contravention of the development plan. While section 37G(6) is in similar terms to section 37(2)(a) of the 2000 Act relating to appeals from the planning authority, there is no requirement for the Board in the context of a section 37E application, to justify the grant of a development in material contravention of the development based on the four reasons set out in section 37(2)(b)¹. This has no application whatsoever to an application under section 37E and the Board is not in any way limited to granting permission based on the four reasons contained in that provision or even necessarily required (as follows from Cork County Council case above) to give any reasons for granting permission in material contravention of the development plan.

¹ Section 37(2)(b) of the 2000 Act, states “(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—(i) the proposed development is of strategic or national importance, (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or (iii) permission for the proposed development should be granted having regard to F363[regional spatial and economic strategy] for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan”.

30. While the Climate Action Plan 2024 policies fall within the scope of national policies under section 143 of the 2000 Act, Climate Action Plan policy have a higher status before the Board than a “have regard” as expressed under section 143. This is because of the terms of section 15 of the Climate Action and Low Carbon Development Act 2015 as amended which states:

- (1) A relevant body shall, in so far as practicable, perform its functions **in a manner consistent with—**
 - (a) the most recent approved climate action plan,
 - (b) the most recent approved national long term climate action strategy,
 - (c) the most recent approved national adaptation framework and approved sectoral adaptation plans,
 - (d) the furtherance of the national climate objective, and
 - (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

Section 15 of the 2015 Act as originally enacted contained a “have regard” standard but this was changed to a consistency standard under the Climate Action and Low Carbon Development (Amendment) Act 2021. In *Cork County Council v Minister for Local Government*, Humphreys J albeit addressing the requirement of a development plan to be “consistent” with NPF and SPPRs, contrasted the standard of “have regard” with that of consistency, stating at §88

(i). **Mandatory criteria where consistency is required.** This category includes the National Planning Framework and the Regional Spatial and Economic Strategy under s. 10(1A) in the development plan context, s. 28 SPPRs or s. 29 policy directives that are binding generally.

....

(iii). Section 28 guidelines which do not include SPPRs. There **the obligation is only to have regard** to the guidelines generally, as well as to give reasons where the guidelines are departed from in the context of the adoption of a development plan, although not in the variation context

31. Thus the Board in carrying its function of determining the application under section 37E is mandatorily required to act in a manner consistent with the Climate Action Plan 2024, qualified only by the phrase “insofar as practicable”. This is contrast to a requirement merely to have regard to the development plan provisions, which is a lesser standard.

IV ASSESSMENT AND APPLICATION

32. It follows from all the above, that when it comes to the Board determining the application, it is required to consider or have regard to the fact that the site is in an area

which is not designated for windfarm development under the development plan but nothing more.

33. However, in weighing up such provision of the development plan, the Board must also balance this with several other consideration. Firstly, 96% of the functional area of the County Kerry is similarly not designated. It is therefore readily apparent that the development plan adopted a very broad brushstroke approach to the designation of areas for windfarm development, rather anything approaching a granular assessment of specific areas or sites. It appears from the maps in Appendix 6 of the adopted Wind Energy Strategy that the constraints which may have led to the land not being zoned as Open to Consideration include Location in the Lough Leane catchment; Presence of peat soils in the area; Site elevation (only a small portion of the overall lands); Landslide susceptibility (only a small portion of the overall lands); Location in the River Basin Management Plan Blue Dot Programme.
34. However, again the Board is entitled to consider that in designating areas the development plan again took a very broadbrush approach rather at the level of specific sites. Rather than mechanically applying a designation, it would be more appropriate for the Board to adopt an evidenced based approach considering the specific site of the proposed development, such as examining whether the proposed windfarm would, as a matter of fact adversely affect engage any these constraints or issues. Thus the Board can assess the underlying planning rationale for development plan designation or lack of designation for windfarm development. Such designation or lack of it under the development plan is not an end in itself but is only relevant in so far as it is an expression of proper planning and sustainable development, which is the ultimate standard for the Board to determine the application. It may be noted, in the present instances, the lack of favourable windfarm designation was following a general sieve mapping approach. Even if the planning rationale does apply to the specific site, the Board is entitled to consider whether this planning rationale is outweighed by other considerations.
35. Secondly, the Board again in weighing up the absence of designation of the site for windfarm development may also consider that there largely are conflicting provisions in the development plan. The development plan contains several policies promoting renewable energy, including windfarms, but inconsistently only designates a very small

area of the county for windfarm development. For example, at Section 12.1 the development plan refers to the “..huge potential for the development of wind, solar, biomass, etc... energy”, while in objective KCDP 12-14 refers to “Maximise the development of all renewable energies at appropriate location...”

36. Thirdly and perhaps, most pertinently, the Board should consider that national and European policy *has changed* since the adoption of the development plan, requiring the promotion of renewable energy development such as the proposed development. As noted the development plan was adopted on 4th July 2022 and came into effect on 15th August 2022 – over two years ago. Since then, there has been significant and material changes in policy as addressed in the previous section. Thus Climate Action Plan 2021 was in force at the time of the adoption of the development plan but this was replaced by Climate Action Plan 2023 which increases the target for onshore windfarm energy, created a taskforce to accelerate windfarm development and requires National Energy Security Framework. These are replicated in the current Climate Action Plan 2024 with further strong statement to accelerate onshore wind farm development including at pg. 169 which state:

“....deployment rates for onshore renewables will need to increase to match demand growth to ensure we keep electricity emissions within range of the carbon budgets. This requires a **major upscaling and accelerating** in current deployment of renewables, **particularly onshore wind**”.

37. Insofar as these are contained in the current Climate Action Plan 2024 there is a requirement for the Board, to act, as far as practicable, consistent with the same. In addition to these important national policy changes, this was reflected in policy changes under European Law which were outlined earlier
38. In the light of the above, the Board may consider the development plan policies somewhat out of date or at least, weigh in the balance, the fact that the development plan policy were adopted at a time, when there different underlying national and European policies. In this regard, there is are number of English authorities, indicating that where development plan policies are out of date, this itself may be a material justification for departing from the same. *In R (DLA Delivery Ltd) v Lewes District Council [2017] EWCA Civ 58; [2017] PTSR 949, Lindblom LJ* stated:

“22. . . . The provisions of Part 2 of the 2004 Act envisage a “local development scheme” comprising “development plan documents”, which will together form the statutory development plan for the local planning authority’s area (section 17(3) of the 2004 Act). A neighbourhood development plan, once made, will be a constituent part of the development plan (section 38A(2) of the 2004 Act). As one would expect, the statutory scheme seeks to ensure an appropriate degree of consistency between a neighbourhood development plan and the strategy of the extant, statutorily adopted development plan. That is the essential purpose of the “basic condition” in paragraph 8(2)(e). Section 13 of the 1990 Act requires local planning authorities to keep their development plan documents under review. If a neighbourhood development plan has been made and the local planning authority later produces a development plan document containing new “strategic policies”, that development plan document will, under section 38(5) of the 2004 Act, prevail over any inconsistent policies in the neighbourhood development plan. **And if a policy in a neighbourhood development plan is not, or ceases to be, up-to-date, this will be a material consideration in a development control decision, and may justify departing from that policy.**

39. Also in *Oxton Farm and another v D Noble Ltd* [2020] EWCA Civ 805, Lord, Lewison LJ, commented at §33:

“A policy may be out-of-date because of a change in national policy or because of things that have happened on the ground, or for some other reasons: *Bloor Homes* Whether a policy is out-of-date is a matter of planning judgment: *Hopkins Homes* at [55].”

40. While those cases were dealing with a different statutory regime in England, nonetheless the principle is the same, which is if there has been subsequent changes in national or international planning policy since a development plan policy, the decision maker can take this into account in deciding how much weight to attach to a development plan. Clearly, if subsequent policies, have rendered the development plan policy outmoded, then this is a justification for attaching less weight to the same.

41. In fact, fourthly, it may also be observed that it may not be strictly necessary to view national policy and local policy in the form of the development plan as in conflict, as the Kerry County Development Plan itself seeks incorporate changes in national policy relating to renewable energy, in Section 12.5 which state:

The Council will **continue to support and facilitate** the sustainable development of the renewable energy sector **in line with the strategic goals set out by the Department of Communications, Climate Action and the Environment** whilst balancing the need for new development with the protection of the environmental, cultural and heritage assets of the county.

Insofar as the national strategic goals have changed to increased and more accelerated deployment of onshore windfarms, it would therefore be consistent with the same for wider consideration of windfarm development than was designated in the development plan in July 2022.

42. I should also note in passing that in the context of an ordinary application for permission under section 34/37 of the 2000 Act (an example being ABP-316051-23, §11.4.5) , as opposed to an SID application, the Board has occasionally addressed an issue of conflict between the development plan and certain types of national policy, by citing *Brophy v. An Bord Pleanála* [2015] IEHC 433 (Ministerial Guidelines) and *Murtagh v An Bord Pleanála* (the NPF), to the effect that the development plan takes primacy over these matters. The rationale for this is because the development plan implemented the Guidelines or NPF and the same Guidelines or NPF provisions, cannot be used to contradict the a development which incorporated same. However, this has no application to the present application for several reasons. Firstly, what is relevant here is that there were *changes* in national policy (and indeed European policy) *since the adoption of the development plan*, which was not the situation or issue in those cases, (*Brophy* concerned 2005 Guidelines and *Murtagh* prior NPF provisions). Secondly, the national policies relevant in this application derive not from Guidelines or the NPF where a “have regard” standard applies, but from the Climate Action Plan, which as discussed, has a higher status of a requirement of consistency not simply to have. Thirdly, those cases dealt with entirely different type of planning applications, rural housing under an ordinary section 34 application, not an SID application for a windfarm under section 37E, which has a different statutory framework, such as the restriction under section 37(2)(b) of the 2000 Act which has no application to an SID application.

CONCLUSION

43. As set out in detail above:
- In the context of the application to the Board, a “have regard” standard applies to provision of the development plan including the designation of areas for consideration of windfarm development.
 - There somewhat inconsistent policies in the development plan seeking to promote and maximise the potential for windfarm development but then only designating a small areas for consideration of such development. Also the

development plan expressly seeks support renewable energy in line with national strategic goals

- The Board is entitled to take an evidenced based approach to consider the underlying planning rationale for the absence of a favourable designation and whether it actually applies or significantly applies to the specific site of the proposed development or even if does apply, to consider whether this planning rationale is outweighed by other considerations.
- The Board is not limited or required to justify a material contravention of the development plan based on the reasons set out under section 37(2)(b), which has no application to an SID application under section 37E
- There have been significant changes in National and European policy relating to deployment of renewable energy including windfarm since the development plan was adopted in July 2022.
- The national changes include significant changes from the Climate Action Plan 2021 which was in force at the date of the adoption of the development plan, to the current Climate Action Plan 2024.
- The Board is required to act, as far as practicable in a manner consistent with the Climate Action Plan 2024, which is a higher standard than the “have regard” standard which applies to the development plan.

STEPHEN DODD SC