TOBIN

Scart Mountain Wind Farm
Planning Statement

December 2024

Ireland
FuturEnergy

BUILT ON KNOWLEDGE

Document Control Sheet	
Document Reference	Scart Mountain Wind Farm Planning Statement
Client:	Futurenergy Ireland
Project Reference	11303

Rev	Description	Author	Date	Reviewer	Date	Approval	Date
D05	Address Client Comments	LB	26/11/2024	FEI	16/012/2024	JS	17/12/2024

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EXECUTIVE SUMMARY

This Planning Statement has been prepared by TOBIN and Paul Blout of FEI on behalf of Futurenergy Scart Mountain Designated Activity Company and accompanies a planning application for a 15-turbine wind farm and associated infrastructure, at Scart Mountain, County Waterford (the "proposed development").

The key matter addressed in this report is that the proposed development is not located within a land use designation that is favourable for onshore wind energy development following a change in designations which came into effect in July 2022.

While that is a factor in the consideration of the application, it is one which does not preclude a grant of permission. On the contrary, national and regional planning policy are emphatically in favour of the proposed development and it is submitted that permission should be granted by reference to the following:

- There is significant policy support for the accelerated development and delivery of onshore wind at both a national and EU level. In particular, Ireland has very ambitious and legally binding targets, including a specific target to more than double the installed capacity of onshore wind in Ireland in the next 7 years (refer sections 2.2 and 2.3).
- Ireland is significantly off track to meet both these targets and GHG emissions reductions targets (this is addressed in detail in Section 4).
- The Climate Action and Low Carbon Development Acts 2015 to 2021 requires An Bord Pleanála (the "Board") as a relevant body, to "in so far as practicable, perform its functions in a manner consistent with" inter alia "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" (Refer Section 2.3.2 overall and specifically section 2.3.2.2).
- The local County Development Plan in Waterford is fundamentally at odds with national and EU energy policy. In particular, and notwithstanding the climate crisis and national legislation established to tackle this crisis, the latest local County Development Plan is demonstrably less supportive for onshore wind than its predecessor (Section 2.4).
- Under the Planning and Development Act 2000 as amended, for Strategic Infrastructure Development projects, the Board has discretion to grant permission irrespective of whether a proposed development materially contravenes the relevant County Development Plan (Section 3).
- Finally, there have been a number of refusals of planning applications by the Board based solely on projects being in contravention of local County Development Plan Wind Energy Designations. The reason for refusal has been based on a contravention of a development plan-led system. However, the system for the approval of renewable energy developments in Waterford cannot properly be characterized as "plan led" because as stated above it was at odds with national and EU energy policy at the time of its making and, furthermore, has not been varied to account for additional changes in national and EU energy policy (Section 3). As such, it is respectfully submitted that the Board should grant permission if it is satisfied that the proposed development is

consistent with the policy framework identified in this report and proper planning and sustainable development.

The report will conclude by looking at the refusal of the neighbouring Dyrick Hill Wind Farm and illustrating key differentiating factors when compared with the Proposed Project.

1. PROJECT INTRODUCTION

For ease of reference, this report is structured as follows:

- Section 1 – Project Introduction
- Section 2 – Policy and Legislative Context
- Section 3 – Rationale to Consent in Contravention of Local County Development Plan
- Section 4 – Need for the Development
- Section 5 – Conclusion: Dyrick Hill Wind Farm

1.1 PROJECT DESCRIPTION

The proposed development will consist of the installation of 15 wind turbines with a blade tip height in the range of 179.5 - to 185 metres. The turbines will have a maximum export capacity (MEC) of between 85.5 MW and 108 MW, which will improve the security of supply and reduce reliance on energy imports.

The proposed wind farm has the potential to produce up to between 262,143 and 331,128 MWh (Megawatt hours) of electricity per year. The 229,950 to 331,128 MWh of electricity produced by the proposed project will be sufficient to supply the equivalent of between 45,598 and 65,661 Irish households with electricity per year[1].

The development will include for a 110kV on site substation, new entrances and access roads, upgraded access roads, cabling, compound areas, borrow pits, turbine delivery route works and any other associated works. The planning application seeks a 10-year planning permission and a 35-year operational life time.

The overall project will also include a 110kV grid connection which will export electricity generated on site via an underground cable to the existing Dungarvan 110kV substation. This element of the project is being progressed under a separate planning application to the Board but all parts of the project have been assessed for the purposes of environmental impacts.

The proposed development will involve the implementation of a Biodiversity Management Plan (BMP), which will result in the provision of 326.87 hectares (ha) of enhanced and restored habitat. This will safeguard protected habitats and species such as Hen Harrier and Bat.

A full and detailed description of the proposed development is provided in Chapter 2 of the EIAR.

1.2 SITE LOCATION

The proposed development site is located across an upland ridge plateau known as Scartmountain, with Broemountain in the vicinity of the site and sitting at a slightly higher level of (481m AOD). Both hills are positioned at the eastern most periphery of the Knockmealdown Mountain range immediately south of the Tipperary border. The Comeragh Mountain range is located approximately 10km east of the proposed development site.

1 This is based on the Sustainable Energy Authority of Ireland *"Energy in Ireland 2022 Report"* from December 2022, which details domestic consumption values for electricity customers in 2021. This report updates the average annual dwelling electricity consumption figure to 5,043 kWh per annum. (https://www.seai.ie/publications/Energy-in-Ireland-2022.pdf).

The settlements of Cappoquin and Lismore are located southwest of the site at approximately 4 km and 11 km, respectively. Dungarvan is located approximately 13 km to the southeast.

The Glensheelane river runs through a valley within the proposed development and is the nearest watercourse to the proposed development. Other notable watercourses nearby include the Glenafalla River, the River Blackwater, the River Bride and the River Suir.

The site is bound by several local roads with an entrance to the site located approximately 8.5km north of the N72 national road.

Please refer to Figures 1-1 and 1-2 for site location and layout/master plans.

Figure 1-1: Site Location Plan

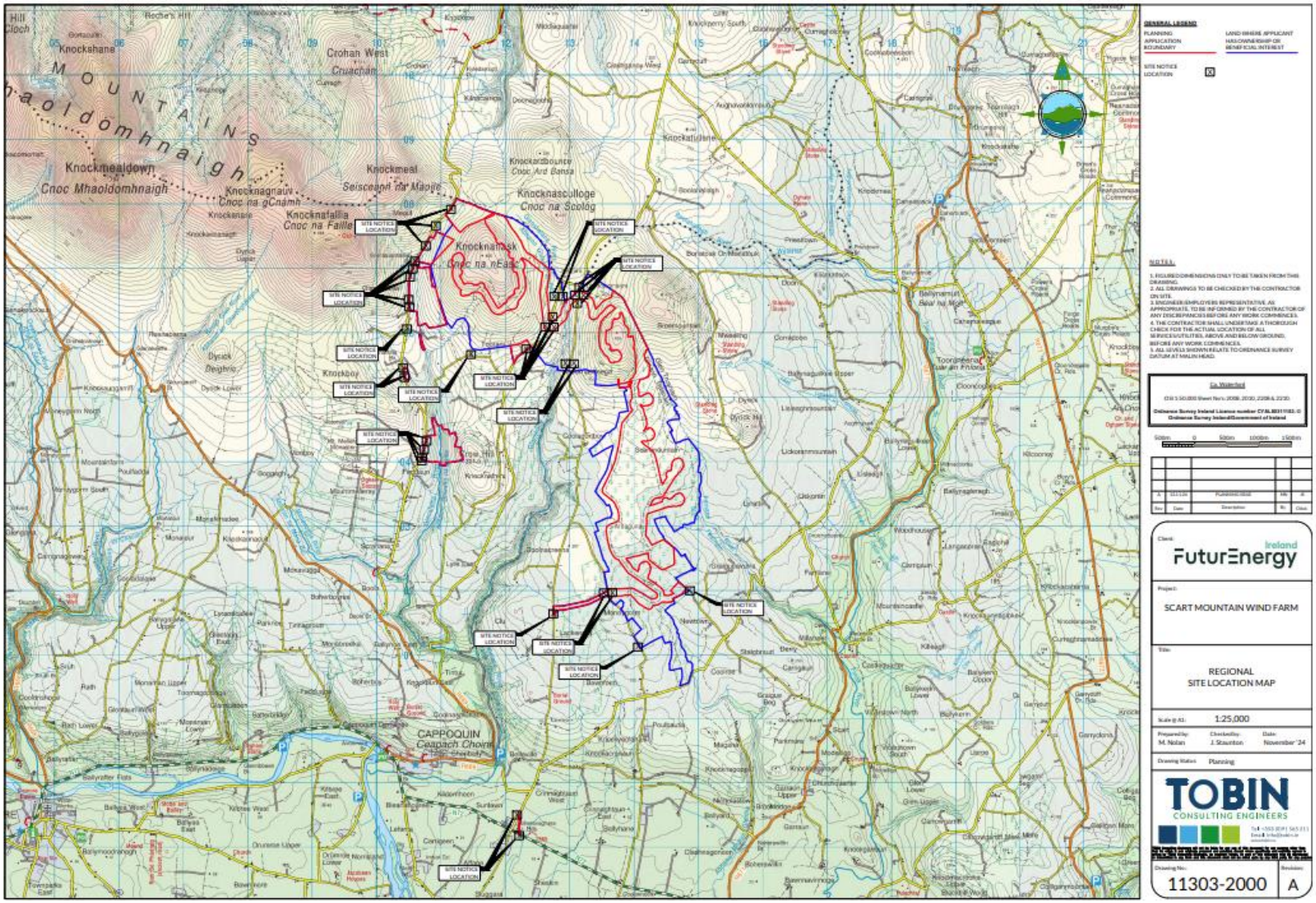
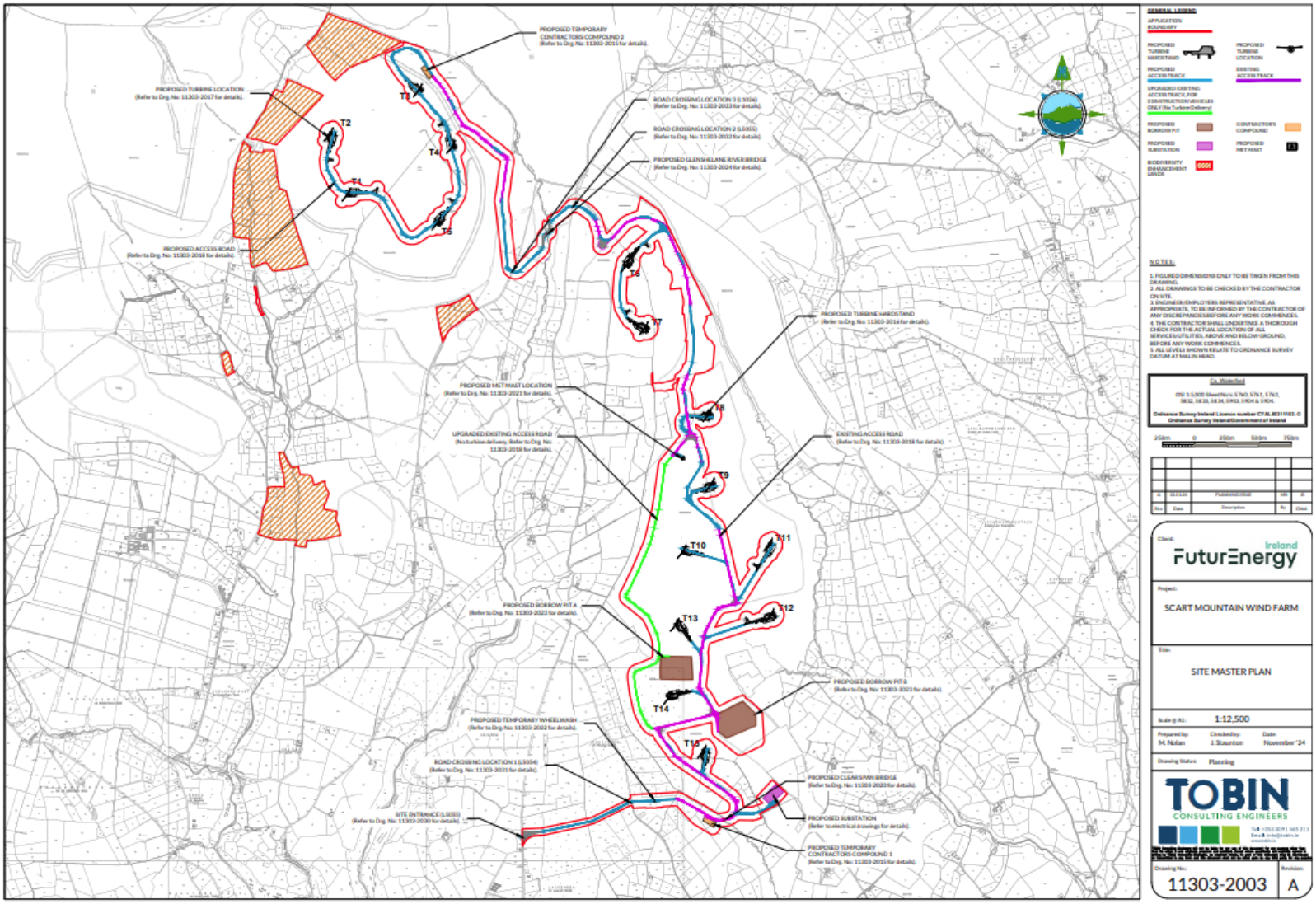


Figure 1-2: Site Layout/Master Plan



2. POLICY AND LEGISLATIVE CONTEXT

2.1 LEGISLATIVE AND POLICY CONTEXT

This section of the report presents the most relevant legislation and planning policy matters to be considered by the Board when considering the proposed development. It sets out climate action targets and provides a summary of relevant international and national energy policy and legislation, as well as relevant national spatial planning policy, as they relate to the proposed development.

The purpose of this section is to illustrate the strong policy framework supportive of the approval of the proposed development. That policy justification in turn supports two independent but complementary propositions:

1) That the Board is entitled to grant permission by reference to that policy framework notwithstanding that elements of the CDP are not supportive of renewable energy development at the proposed location, (section 37G(6) of the Planning and Development Act 2000 (as amended) and,

2) The policy framework and in particular the obligation to act consistently with the Board's obligations for the purposes of the Climate Acts 2015-2021 would weigh heavily in favour of a grant of permission, that should only be displaced by the most pressing counter-considerations under the rubric of either EIA or Appropriate Assessment. As addressed in the submitted planning application documents, there are in fact no such counter-considerations.

This report is intended as complementary and should be read in conjunction with the detailed information provided in the Environmental Impact Assessment Report (EIAR), the Natura Impact Statement (NIS) and other supporting documents of the submitted planning application.

2.2 Relevant International and EU Policy

This section will look at relevant international policy, Council Regulation 2022/2577 as amended by Council Regulation EU/2024/223 and the revised Renewable Energy Directive, Directive (EU) 2023/2413 (REDIII).

2.2.1 Relevant International Policy

The Intergovernmental Panel on Climate Change (IPCC) AR6 Synthesis Report distils more than 10,000 pages of climate science from three Working Groups and three Special Reports published between 2018 and 2022. The Synthesis report reflects an undeniable scientific consensus about the urgency of the climate crisis, its primary causes, and the catastrophic and irreversible harm that will occur if warming surpasses 1.5°C, even temporarily. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe – with widespread loss and damage to both nature and people.

The Paris Agreement, adopted in 2015, is a global treaty under the United Nations Framework Convention on Climate Change (UNFCCC) aimed at limiting global warming to well below 2°C above pre-industrial levels, with efforts to limit it to 1.5°C. It requires countries to submit Nationally Determined Contributions (NDCs) outlining their climate action plans to reduce greenhouse gas emissions, and to strengthen these commitments over time. For Ireland, as part of the European Union, its obligations are incorporated into the EU's collective NDC.

The 2024 Climate Change Performance Index (CCPI), which was published during COP28, has highlighted the need for additional climate action in Ireland. Although Ireland played a central role in discussions at COP28, the country is failing to take adequate action to support climate protection at home. This year, Ireland has dropped six places on the index, now sitting at number 43 (out of 63) and is one of the worst performers in the EU in terms of greenhouse gas emissions.

The CPPI report finds that while Ireland now has legally binding carbon budgets and emissions ceilings in place, under the framework of the NDCs set out in the Paris Agreement, Irish policy implementation is falling short of meeting these budgets and emissions ceilings.

One of the key issues that is highlighted by the CPPI is Ireland's lack of a long-term strategy for phasing out fossil fuel infrastructure. Transitioning to cleaner fuel sources, such as wind energy, is central to this process, with renewables being recognised globally as a critical driver in achieving the 1.5° limit. According to the International Energy Agency (IEA), tripling renewable power capacity by 2030 could significantly contribute to meeting this limit. This ambition was recently crystallised in the final agreement reached at COP28, which calls for a "tripling of renewable energy capacity globally".

As outlined in a recent report by KPMG, (Accelerating onshore renewable energy in Ireland, Oct 2023), 2023 recorded an increase in onshore wind energy capacity entering the planning system in Ireland over previous years. However, there are significant obstacles at play within the Irish market that are currently hindering the country's potential to deliver on renewables targets.

Further action is required by the government to facilitate the deployment of new renewable capacity and to ensure they are meeting commitments outlined under the framework of the Paris Agreement. Within this context, KPMG has identified one such obstacle as the need to marry County Development Plans with national targets and policies:

"the Government and local authorities are out of sync. National efforts to accelerate the delivery of renewable energy are being impeded by county councils across Ireland amending County Development Plans, which can increase the risk of prolonging Ireland's dependence on fossil fuels." p.4

2.2.2 Council Regulation 2022/2577 as amended by Council Regulation EU/2024/223

The Regulation, that is currently in force per Article 10, is "*binding in its entirety and directly applicable in all Member States*". It represents an obligation on EU Member States to accelerate renewable energy projects such as this one as a matter of urgency, the deployment of which is viewed as vitally important to the achievement of the EU's strategic objectives.

Significantly, it incorporates and makes clear that renewable energy projects enjoy **a rebuttable presumption** that they are of overriding public interest and serving public health and safety, in particular, for the purposes of the relevant Union environmental legislation, except where there is clear evidence that these projects have major adverse effects on the environment which cannot be mitigated or compensated for.

Significantly, it incorporates and makes clear that renewable energy projects enjoy a rebuttable presumption that they are of overriding public interest and serving public health and safety, when balancing legal interests in the individual case for the purpose of specified EU legislation: the Habitats Directive (92/43/EEC), the Water Framework Directive (2000/60/EC) and the Birds Directive (2009/147/EC). It states that renewable energy projects should be given priority when balancing legal interests in the individual case. As indicated in the NIS submitted with the planning application, there are no adverse effects on protected European habitats or species, and the need to balance the legal interests in the manner described in Regulation 2022/2577 as amended therefore does not arise. Nonetheless, this Regulation is an indication of the importance attributed to the development of renewable energy projects at EU level and illustrates the need to significantly weight the need for renewable energy in the context of all other planning and environmental considerations.

2.2.3 Revised Renewable Energy Directive (REDIII)

The European Union has been a global leader in climate action, with its policy framework evolving to meet increasingly ambitious environmental goals. The European Green Deal (2019) serves as the EU's roadmap to transform its economy and society for sustainability, aiming for net-zero greenhouse gas emissions by 2050. It encompasses initiatives across energy, agriculture, transport, industry, and biodiversity, emphasizing the transition to a circular economy and ensuring a just transition for all member states.

Central to these efforts is the EU Climate Law (2021), which makes the 2050 climate neutrality goal legally binding for the EU and establishes the 2030 emissions reduction target in law. It also requires the European Commission to propose intermediate targets every five years, ensuring consistent progress toward these objectives. Together, these policies create a robust framework for member states, including Ireland, to align their domestic efforts with the EU's overarching climate ambition.

To operationalize the Green Deal's goals, the Fit for 55 package was introduced in 2021. This legislative framework targets a 55% reduction in EU greenhouse gas emissions by 2030 (compared to 1990 levels). It includes reforms to the EU Emissions Trading System (ETS), the

introduction of a Carbon Border Adjustment Mechanism, strengthened energy efficiency and renewable energy directives, and revised targets for sectors like agriculture and transport.

The Fit for 55 package included a Commission proposal[2] to revise the Renewable Energy Directive (EU) 2018/2001. This proposal was further updated[3] in May 2022 as part of the REPowerEU Plan (see below). On the 30 March 2023, a political agreement was reached between the European Parliament and the European Council. The European Parliament adopted an updated version of the agreement on the 12 September 2023[4], and this text was subsequently endorsed by EU ambassadors (COREPER) on the 27 September 2023 and came into force in November 2023. Some key relevant provisions are highlighted below:

- **Increased ambition for renewable energy**

  RED II[5] 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. The text that has been adopted by the European Parliament and endorsed by COREPER increases this target to 42.5 %.

  Additionally, the RED III 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 %*"[6]

  The associated recital (Recital 5) included in the final agreed text 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….. In that context, ***it is appropriate to increase the overall Union renewable energy target to 42,5% in 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.****"*[7]

  This indicates a significant increase in the mandatory targets for renewable energy in the EU, aiming for a more sustainable and independent energy system, with signals of further increasing ambitions through the 45% stretch target. This increased ambition for renewable energy at an EU level will be addressed in all future iterations of the national Climate Action Plan.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0557
[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A222%3AFIN&qid=1653033811900
[4] https://www.europarl.europa.eu/doceo/document/TA-9-2023-0303_EN.html
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001
[6] Article 3, paragraph 1.
[7] Emphasis added throughout document unless otherwise indicated.

- **Measures to accelerate the pace of deployment of renewable energy projects**

  The RED III directive also includes specific observations and measures related to the accelerated deployment of renewable energy, storage and grid infrastructure projects across EU member states these include:

  - Specific areas, suitable for developing renewable energy projects should be designated as 'renewables acceleration areas'.
  - The process of designation of these renewables acceleration areas should be streamlined.
  - Projects in renewables acceleration areas should benefit from streamlined administrative permit-granting procedures.
  - The designation of renewables acceleration areas should not prevent the installation of renewable energy projects in all available areas.

RED III came into force in November 2023 and Member States have a period of 18 months to fully implement it. Notwithstanding that the Board is likely to be considering this application for permission during the implementation period, the Directive is highly relevant for three reasons:

- Firstly, it envisages and requires a step-change in terms of the immediacy and ambition for renewable energy development across the Member States, without which the Unions climate neutrality objective simply cannot be achieved.
- Secondly, it identifies the social and environmental benefits of renewable energy development as noted in Recital 2 "By reducing those greenhouse gas emissions, renewable energy can also contribute to tackling challenges related to the environment, such as the loss of biodiversity, and to reducing pollution" and which will help to achieve the aim to "protect, restore and improve the state of the environment by, inter alia, halting and reversing biodiversity loss" while bringing "broad socioeconomic benefits, creating new jobs and fostering local industries"
- Thirdly, and significantly the Directive identifies the imperative necessity for the designation of suitable sites by Member States for the development of renewable energy. While the Directive does not displace the designations County Development Plan, that imperative strongly supports the submission that the Board can and should grant permission if it is satisfied that the proposed Wind Farm accords with proper planning and sustainable development.

In summary, the clear policy and legislative signals from Europe is that we need more renewable projects, delivered earlier. It is noteworthy that Ireland has already received a letter of formal notice from the European Commission for failing to transpose certain provisions of this Directive in advance of a 1st July 2024 deadline.

2.3 Relevant National Policy and Legislation

This section will look at Ireland's formal declaration of a climate emergency, the Climate Action and Low Carbon Act (2015), as amended, the Climate Action Plans 2023 and 2024, the National Energy Security Framework, National Planning Framework and the RSES for the Southern Region.

2.3.1 Declaration of a Climate Emergency

Ireland declared a climate emergency on May 9, 2019. This declaration was made through an amendment to a parliamentary motion related to a report on climate action. The amendment, which declared a "climate and biodiversity emergency," was accepted by both the government and opposition parties, making Ireland the second country in the world, after the United Kingdom, to declare a climate emergency formally.

The Emergency was declared against a backdrop of GHG emissions that were described by the Governments' Climate Change Advisory Council as "*disturbing*" and that Ireland was "*completely off course in terms of its commitments to addressing the challenge of climate change*".[8]

2.3.2 Climate Action and Low Carbon Act (2015) as amended

The Climate Action and Low Carbon Development Act 2015 and its subsequent amendments in 2021 serve as the primary legislative framework guiding Ireland's approach to addressing climate change and promoting a sustainable, low-carbon economy. The main purposes of the Act and its 2021 amendments are set out below.

- **Climate Action and Low Carbon Development Act 2015:**
    - National Transition Objective: Identified as the obligation "*To transition to a low carbon, climate resilient, and environmentally sustainable economy by the end of 2050".*
    - National Mitigation Plans and National Adaptation Frameworks: The Act required the government to adopt and implement plans in the areas of climate mitigation and adaptation. These plans set out measures to reduce emissions and address the impacts of climate change.
    - Climate Change Advisory Council: The Act established the Climate Change Advisory Council, an independent body responsible for advising the government on climate policy, reviewing national plans and strategies, and offering recommendations.

- **Climate Action and Low Carbon Development (Amendment) Act 2021:**

The 2021 amendment significantly enhanced the original 2015 Act in response to increasing global momentum on climate action and a heightened awareness of the urgency to address the climate crisis. In particular:

- **Carbon Budgets:** The amendment introduced a system of rolling carbon budgets, which are five-year ceilings on total greenhouse gas emissions in Ireland. These budgets are set for successive periods, and the government must develop a plan to adhere to them (for further detail, see section 2.2.3.2.1 below).
- **Formal 2030 Target and strengthened 2050 Target on Emissions:** The amendment committed Ireland to halving emissions by 2030 and achieving climate neutrality (net-zero emissions) by 2050.
- **Enhanced Role of the Climate Change Advisory Council:** The Council was given a stronger role in recommending carbon budgets and assessing the government's progress. As noted by the Council in their commentary on the Climate Action Plan 2023:

[8] Climate Change Advisory Council Annual Report 2018 at ppii-iv.

The EPA projections published in early June give the best early indicator of the likelihood that compliance will be achieved. Provisional national total emissions in 2021, the first year of the first carbon budget period, are estimated to have totalled 69.3Mt CO2 eq, reflecting a reduction of 1.3% on emissions in the base year 2018. This accounts for about 23.5% of the emissions allowance for the first period and means that there will be a requirement for emissions to fall more quickly over the period 2022-2025 than originally anticipated if the first budget is to be met. Emissions reductions of 8.4% per annum will now be required. Current EPA projections to 2030 indicate that the first two carbon budget targets present a significant challenge based upon existing and planned measures, with estimated gaps to target of 40-55Mt CO2 eq in the first carbon budget period and 77-127Mt CO2 eq in the second period."

- **Strengthened Reporting and Accountability:** The amendment introduced stricter requirements for the government to report on its progress and to align its policies with the carbon budgeting framework.
- **Sectoral Emissions Ceilings:** To support the carbon budgets, the amendment required the government to set binding sectoral emissions ceilings, ensuring that different sectors (e.g., transport, agriculture, energy) contribute to meeting the national targets (for further detail, see section 2.3.2.1 below).

The following two sections of the report, sections 2.3.2.1 and 2.3.2.2, set out carbon budgets and sectoral emission ceilings, as well obligations for the Board under the Climate Action and Low Carbon Act, as amended:

2.3.2.1 Carbon Budgets and Sectoral Emissions Ceilings

The sectoral emissions ceilings for the budgetary periods 2021 to 2025 and 2026 to 2030 were approved by Government on 28th July 2022[9]. An extract from this publication is shown in Figure 2-1 below:

[9] Sectoral Emissions Ceilings

Table - Sectoral Emission Ceilings[3]

(Figures for $MtCO_2eq$ for 2018 and 2030 have been rounded. This may lead to some discrepancies)

	2018 Baseline ($MtCO_2eq.$)[4]	Sectoral Emission Ceilings for each 5-year carbon budget period ($MtCO_2eq.$)		Indicative Emissions in Final Year of 2021-2025 carbon budget period ($MtCO_2eq$)	Indicative Reduction in Emissions in Final Year of 2021-2025 budget period compared to 2018	Emissions in final year of 2026-20230 carbon budget period ($MtCO_2eq$)	Reduction in Emissions final year of 2026-2030 carbon budget period compared to 2018	Agreed CAP21 Ranges
Sector	2018	2021-2025	2026-2030	2025	2025	2030	2030	2030
Electricity	10	40	20	6	~40%	3	~75%	60 – 80%
Transport	12	54	37	10	~20%	6	~50%	40 – 50%
Built Environment - Residential	7	29	23	5	~20%	4	~40%	45 – 55%[5]
Built Environment - Commercial	2	7	5	1	~20%	1	~45%	
Industry	7	30	24	6	~20%	4	~35%	30 – 40%
Agriculture	23	106	96	20	~10%	17.25	~25%	20 – 30%
LULUCF[6]	5	XXX	XXX	XXX	XXX	XXX	XXX	40 – 60%
Other (F-Gases, Waste & Petroleum refining)	2	9	8	2	~25%	1	~50%	N/A
Unallocated Savings[7]			*-26*			*-5.25*		
TOTAL[8]	*68*	*XXX*	*XXX*	*XXX*	*XXX*	*XXX*	*XXX*	*N/A*
Legally binding Carbon Budgets and 2030 Emission Reduction Targets[9]	-	295	200	-	-	34	51%	-

[3] Table reflects what was agreed by Government on 28 July 2022
[4] Million tonnes of carbon dioxide equivalent.
[5] CAP21 outlined 45-55% range for all buildings i.e. it did not split out residential and commercial buildings
[6] Finalising the Sectoral Emissions Ceiling for the Land-Use, Land-Use Change and Forestry (LULUCF) sector has been deferred for up to18 months to allow for the completion of the Land-Use Strategy
[7] Unallocated savings on an economy-wide basis in the second 5-year carbon budget period from 2026-2030, before factoring in net LULUCF sector emissions
[8] Following finalisation of the Sectoral Emissions Ceiling for the Land-Use, Land-Use Change and Forestry (LULUCF) sector, total figures will be available
[9] As provided by section 6A(5) of the Climate Action and Low Carbon Development (Amendment) Act 2021

Figure 2-1: Final binding sectoral emissions ceilings for the budget periods 2021 to 2025 and 2026 to 2030 (Source: Sectoral Emissions Ceilings September 2022)

As illustrated above, the total cumulative emissions budget for the electricity sector over the first two budgetary periods to 2030 is 60Mt CO2 eq. Meeting this target requires rapidly accelerating the deployment of renewable energy projects. Projects delivered earlier in the budgetary period create greater emissions savings within these periods than projects delivered later.

Emissions analysis[10] completed by EirGrid in support of the national 2023 Climate Action Plan indicates that in a best case / optimistic case scenario we will have utilised 59.8Mt CO2eq of this budget by 2029. Extract from this analysis shown in Figure 2-2 below:

[10] https://www.gov.ie/pdf/?file=https://assets.gov.ie/245172/2c2fd729-261b-4b64-af5e-c7f5f8d18924.pdf#page=null

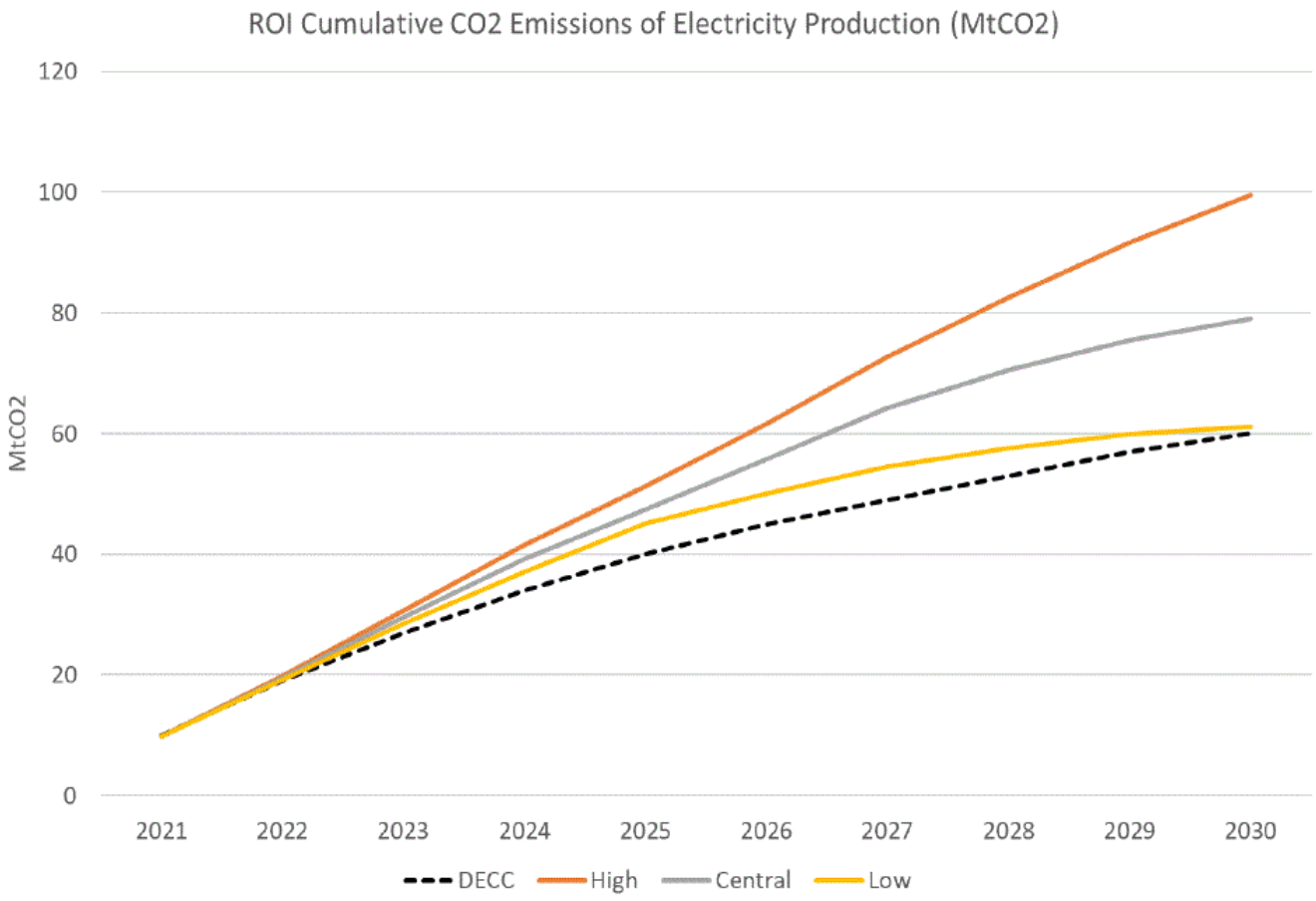


Figure 2-2 - Emissions analysis completed by EirGrid in support of Climate Action Plan 2023 (Source: CAP23 Emissions Analysis Key Scenarios EirGrid Group)

This means that in a best case scenario, if the electricity sector emits more than 0.2Mt CO2eq in 2030 Ireland will almost certainly be in breach of the binding sectoral emission limit for the electricity sector. The implications of this are that, while the headline target for renewable electricity in 2030 is for 80%, our legally binding carbon budgets imply that we will need to be much closer to 100% renewables by 2030 in order to comply[11]. This will require more renewable projects to be delivered faster. Proven technologies, such as onshore wind are critical. This point is emphasised and evidenced further in Section 4 below.

2.3.2.2 Planning Authority's Obligations under the Climate Act 2015, as amended

Section 17 of the Climate Action and Low Carbon Development Act (Amendment) 2021 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,*

[11] If the best case projection is that we will have used up all but 0.2Mt of our sectoral budget by 2029, limiting emissions to 0.2Mt in 2030 would require very close to 100% renewable electricity

(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.".

The text highlighted in bold amended the wording of section 15 of the previous 2015 Act, which required:

> *"15. (1) A relevant body shall, in the performance of its functions,* ***have regard to****...[sections (a) to (e) as set out above]"*

The change from a requirement to "*have regard to*" various national objectives to a standard where relevant bodies must "*perform their functions in a manner consistent with*" the latest national climate action policies, represents a considerable raising of the legal bar. While the Superior Courts have not, to date, addressed the precise parameters of the obligation to act consistently in the context of the Climate Acts 2015-2021[12], it is absolutely clear that the Board is obliged insofar as practicable to make decisions that are consistent with the Climate Action Plan and the obligation to further the national climate objective.

This is a sea change from the *"have regard*" to obligation identified by Mr Justice Holland in *Coyne* as imposing an obligation only that the decision maker is aware of the relevant policy but no more – in other words a "*have regard to*" obligation says nothing at all about the weight of any factor to which regard must be had and is agnostic as to the result to be achieved. An obligation to act consistently *does* bear on the result which has to be achieved and clearly, per Mr Justice Holland's decision at §19, is engaged by the Board in *all* of its functions.

The legislation states that the obligation applies only "*in so far as practicable".* However, that, quite clearly, means what it says and justifies the Board from departing from its obligation of consistency only if there are practical difficulties justifying that departure. Simply because the Board might be of the view that *on balance* the requirements of proper planning and sustainable development support a conclusion to refuse permission for the proposed Wind Farm, this cannot be a legitimate reason within the meaning of section 15(1), i.e.. the obligation is to act consistently unless there are practical reasons why that is not possible.[13]

Where the Board is weighing up competing policy objectives, it must consider this overarching, legally binding, emissions reduction objective, and act in a manner that is consistent with the delivery of this target.

This obligation is, if anything, even more pressing where (as identified in Section 4 in more detail) there is a clear and profound shortfall in the volumes of renewable projects required to support compliance with national transition objective, carbon budget and Sectoral emissions ceilings. It is respectfully submitted that the obligation of be consistent with, is particularly acute

[12] See i.e. *Coyne v An Bord Pleanála* 2023 IEHC 412

[13] The legislative phrase as to what is "practicable" has been defined as whether it is "capable of being … carried out in action … feasible" (Budd J. *Butler, In the Matter of the Equitable Insurance Co. London* (1970) IR 45 and in similar terms in *O'Donovan v Attorney General* [1961] IR 114 and *Gillen v Commissioner of An Garda Siochana* 2012 IESC 32

in relation to renewable energy developments that are, as is the case for this proposed project, 'shovel ready' and will be in a position to make a significant contribution to the meeting of those targets prior to 2030.

More recently 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[14].

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

86 "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…

87, 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

[14] Carrownagowan Leave to Appeal Judgment [2024 IEHC 549]

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…."

2.3.3 Climate Action Plans 2023 & 2024

The Climate Action Plan 2023 (CAP23) is the first Plan to be prepared under the Climate Action and Low Carbon Development (Amendment) Act 2021, and follows the introduction, of the carbon budgets and legally binding sectoral emissions ceilings.

It implements the carbon budgets and sectoral emissions ceilings and includes the following key provisions in relation to renewable electricity and in particular in relation to onshore wind development.

- Renewable electricity targets
    - Renewable electricity targets of 50% by 2025 and 80% by 2030
    - Onshore wind installed capacity of 6GW by 2025 and 9GW by 2030.

- Measures to scale and accelerate renewable electricity
    - Action EL/23/1: Establish a task force to accelerate renewables
    - Action EL/23/2: Publish the Renewable Electricity Spatial Policy Framework
    - Action EL/23/3: Publish a roadmap for the development and implementation of Regional Renewable Electricity Strategies.

Similar to EU policy, national policy is clearly calling for the rapid acceleration in deployment of renewable electricity projects.

It has taken Ireland over 20 years to deliver 4.3GW of onshore wind. Government is now asking the sector, supported by all relevant national stakeholders (relevant bodies), to more than double that in the next 7 years. This is a proportionate response to the twin climate and energy security / energy cost crises. The emphasis on urgency and the necessity to scale up ambition for renewable energy development in the Climate Action Plan is completely consistent with International and European policy contained in Regulation 2022/2577 and Directive RED III.

These ambitions have all been effectively restated in the latest Climate Action Plan 2024.

2.3.4 National Energy Security Framework

The Department of Environment, Climate and Communications published a National Energy Security Framework[15] in April 2022. This document notes that Ireland imports over 70% of the energy we use. This is among the highest level of import dependencies among EU countries. It

[15] https://www.gov.ie/en/publication/ea9e4-national-energy-security-framework/

also notes that a *"key method of ensuring energy security is to have significant levels of domestically produced energy, energy storage and diversified sources of energy imports".* One of the key measures proposed to tackle this is replacing fossil fuels with renewables including wind and solar energy. Response 25 (page 60) of this document calls on the Department of the Environment, Climate and Communications in conjunction with the Department of Housing, Local Government and Heritage to "*Align all elements of the planning system to fully support renewable energy development".* The proposed development is aligned with and supportive of the Framework, as it will significantly contribute to Ireland's energy security.

2.3.5 National Planning Framework & RSES for the Southern Region

The need for increased renewables at appropriate locations across the country is clear in national and regional spatial planning frameworks and strategies. The National Planning Framework 2018, states it is an objective 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." (Objective 55)

The Regional Spatial & Economic Strategy (RSES) published by the Southern Regional Assembly[16] states:

> "It is an objective to support the sustainable development of renewable wind energy (on shore and off shore) at appropriate locations and related grid infrastructure in the Region in compliance with national Wind Energy Guidelines." (RPO 99)

The proposed project has been evaluated as having a suitable wind resource. It has also been assessed against each of the topics contained in the EIAR and adverse residual environmental impacts are avoided demonstrating the appropriateness of the site in line with National and Regional planning objectives.

The proposed development is therefore aligned with the NPF and RSES

2.3.6 Conclusion of International and National Legislation and Policy

Sections 2.2 to 2.3.5 have illustrated the strong policy framework that surrounds and supports the proposed development. Most importantly, it is noted that there is an obligation on the Board to act consistently with the Climate Acts 2015-2021, which weighs heavily in favour of a grant of permission for the proposed development.

2.4 Relevant Local Policy

The siting of the proposed development is not favourably designated by the local County Development Plan in Waterford, following a change in wind energy designations, from "open to consideration" under the 2011-2017 plan to an exclusion area under the new plan which came into effect in July 2022.

This section of the report sets out the previous local County Development Plan as a point of comparison to the current local County Development Plan. It describes the process of adoption of the new Plan and critiques the current plan against the policy context set out above. Please

[16] http://www.southernassembly.ie/uploads/general-files/Southern%20Regional%20Assembly%20RSES%202020%20High%20Res.pdf

note that this section looks at the zoning designation only, with further detail on the wider local policy context provided in the submitted EIAR.

The Board may question the merit of including this section of the report and its fully acknowledged that expired County Development Plan policies are not considered when determining a planning application. However it is included here to serve another purpose, which is to demonstrate the following:

- that the new wind energy map was created in advance of the adoption of Ireland's new legally binding sectoral emissions ceilings which were approved by Government and in advance of the publication of the Climate Action Plan 2023 and 2024, which includes further increased targets for onshore wind deployment in Ireland;
- that the current local policy context surrounding the proposed development lies far outside the international and national policy contexts set out above;
- that there is insufficient wider availability for planning consent to be secured for wind energy proposals in the wider county landbank; , in particular, in circumstances where national policy is calling for a more than doubling of installed wind capacity, the updated plan has reduced the overall potential for wind development in the county, and,
- that it is established under case law, that Board must "have regard" to local policy but it does not need to comply with it in an unquestioning or "slavish" manner.

For the reasons summarised above, we argue that the weight given to this local policy should be proportionate to the overall framework in which it sits, given that it is not reflective of national policy.

The next section, Section 3, will examine and challenge the degree of consideration required for strategic infrastructure development under the local County Development Plan by looking at the legal basis and the Planning and Development Act.

2.4.1 Comparison of the Waterford County Development Plan for years 2011-2017 (as extended) and 2022 - 2028

The following pages present the relevant wind energy maps contained in the Waterford County Development Plan (CDP), for the years 2011 and 2022.

The Waterford County Development Plan 2011 – 2017 (as extended) included a wind energy strategy map, shown in Figure 2-3 below, that identified parts of Waterford as being, Strategic, Preferred, Open to consideration, or No-go areas for renewable development.

Under the Waterford City and County Development Plan 2022-2028, an updated renewable energy strategy was prepared which included an updated wind energy strategy map shown in Figure 2-3 below. This identified different parts of Waterford as Preferred, Open to consideration or Exclusion areas.

As noted above, the new map was created in advance of the adoption of Ireland's new legally binding sectoral emissions ceilings which were approved by Government in July 2022 and published in September 2022. It was also in advance of the publication of the Climate Action Plan (CAP) 2023 and 2024, which includes further increased targets for onshore wind deployment in Ireland, and RED III. Notwithstanding this, we note that when making its decision, the Board will need to have regard to this policy and legislation, regardless of what has been reflected in the adopted map.

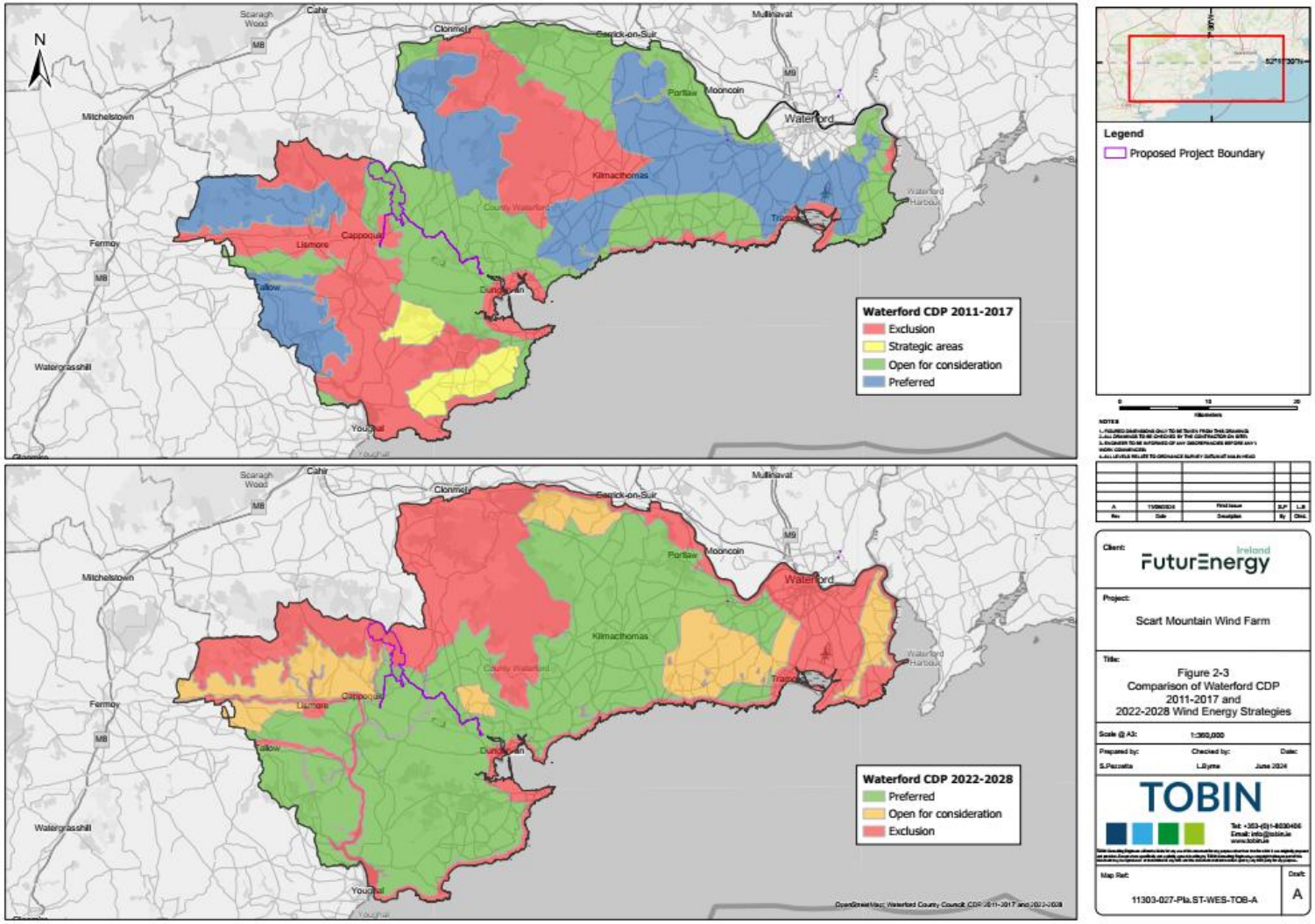


Figure 2-3: Comparison of Waterford CDP 2011 -2017 and 2022 -2028 Wind Energy Strategies

Figures 2-4 and 2-5 below overlay two basic development constraints that are considered by onshore wind developers in Ireland when examining site feasibility, namely a four times tip height[17] setback from residential receptors and the avoidance of Natura 2000 sites. The beige colour highlights the resulting constrained areas. Irrespective of any designation contained in the Waterford CDP wind energy strategy, it would generally not be feasible to develop wind turbines on these lands i.e. on beige coloured lands.

By looking at this in further detail, we will demonstrate that between the plan period 2011 and 2022, Waterford Council reduced the amount of viable land available for the provision of wind energy development. Thus further evidence that local authority undertook an overly broadbrush approach without leaving sufficient land to sufficiently contribute to national renewable energy targets and further evidence that a material contravention should be supported by the Board.

Our analysis indicates that after the two basic constraints are applied, there was a remaining viable area for wind farm developments of 69.78sq.km designated under the 2011- 2017 plan. For clarity, the quantity of viable land is represented by the colour pink below (the pink areas are designated 'open to consideration', 'preferred' or 'strategic' areas in the CDP (2011) and labelled "viable area" in Figure 2-4). The red areas are "no-go" area under the same plan.

To apply the same analysis to the new CDP (2022) wind energy map, Figure 2-5 below shows this map with the same two basic development constraints overlain. This analysis indicates that when these constraints are applied, the remaining viable area designated as 'open to consideration' or 'preferred' for wind energy development has actually been reduced from 69.78sq.km to 62.48 sq.km. Again, the focus for this discussion is the pink areas below.

This analysis is being presented to demonstrate that the local policy context surrounding the proposed development sits outside international and national policy contexts currently adopted by the EU and Ireland. The maps provided below demonstrate that although the national ambition for the provision of renewable energy has increased, with a specific target to more than double the installed capacity of onshore wind in Ireland over the next 7 years, the CDP (2022) has actually reduced the amount of viable land available for wind farms.

If CDP 2022 were aligned with new legally binding sectoral emissions ceilings and Climate Action Plans 2023 and 2024, adopted after the CDP, it would be expected that the landbank, i.e. pink areas, would have increased in size.

By interrogating the details of the Waterford Council wind energy maps, we are challenging the degree of consideration that should be given to this policy when making a decision for the proposed development, given that the maps appear to be contrary to international and national policy and legislation, that has entered into force after the CDP.

We also believe the analysis presented above means that the Board must adopt an evidence based approach to the site analysis rather than being restricted to relying on the development plan zoning. It is also important to note that the Board is not required to justify a material contravention of the development plan under section 37G(6) PDA 2000 (as amended).

[17] The setback standard in the Draft Wind Energy Guidelines 2019. A 750m setback was used for the purposes of this exercise. Modern turbines are up to 200m and this is therefore a conservative estimate.

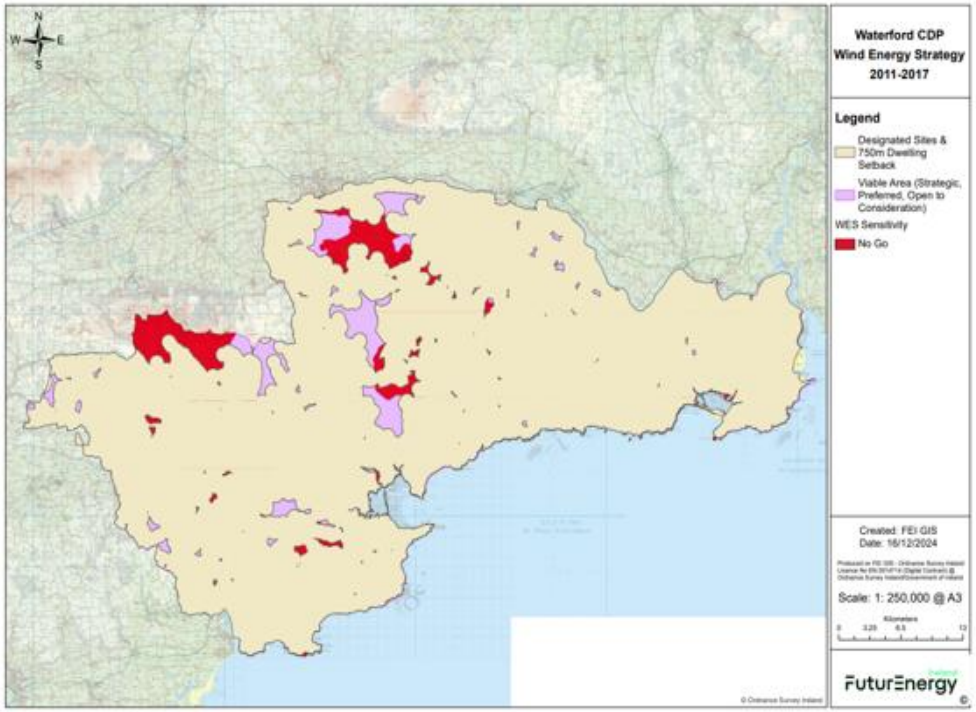


Figure 2-5: Waterford wind Energy Strategy 2011 – 2017 – Beige areas are areas within 750m of a dwelling and/or within a designated. Red areas were designated as no-go areas for renewables. Pink areas were either strategic, preferred or open to consideration and outside of the dwelling set back and designated site constraints.

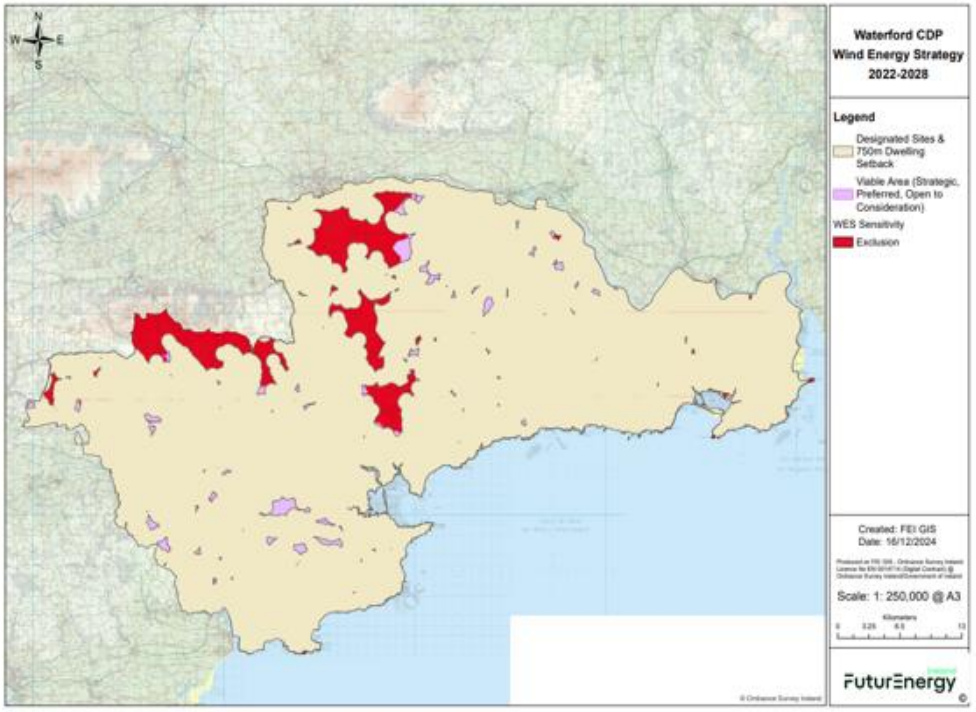


Figure 2-4: Waterford wind Energy Strategy 2022 – 2028 - Beige areas within 750m of a dwelling or within a designated site removed from viable area. Red areas designated as Exclusion areas for renewables. Pink areas are either strategic, preferred or open to consideration and outside of the dwelling set back and designated site constraints.

2.4.2 Site Suitability with respect to CDP (2022)

This section will demonstrate that notwithstanding the site's location within an Exclusion Zone for onshore wind, the site or the proposed development is highly suitable for wind farm development in accordance with the proper planning and sustainable development of the area. We would respectfully propose that this point in itself is a reason for the approval of the proposed development and reason for the board to proceed with a material contravention. Additionally however, and of no less importance, this section is presented to demonstrate the overall point that the local zoning designation is inconsistent with recent policy context and does not properly reflect the planning characteristics of the site that it is supposed to represent.

Of note, the site has:

- Wind speeds of between 6.5-8.8 m/s at 100 m above ground level
- A contiguous large area of over 900 hectares
- Available grid capacity in the region, with an existing available grid connection location near Dungarvan
- Good national road network near the site
- Absence of areas of deep peat – where peat is present it is extremely shallow
- The site will achieve appropriate setbacks from properties including dwellings, existing powerlines, and natural watercourses

It may also be helpful to examine the site within the context of the Waterford CDP 2022 wind energy map and its relevant maps layers and data[18]:

Map Layer #1: Natura 2000 Network

A Natura Impact Statement is submitted with this application, which finds the following:

> *"The proposed development is adjacent to the upper reaches of a tributary forming part of the Blackwater River (Cork/Waterford) SAC in the northern most section of the site between the Knocknanask and Knocknasheega Mountains. Additionally, the proposed grid connection route crosses this SAC again in the townland of Modeligo, County Waterford. This SAC consists of the freshwater stretches of the River Blackwater and is designated for nine Annex I habitats, and nine Annex II species. The proposed development site is also hydrologically connected to the Blackwater Estuary SPA and the Dungarvan Harbour SPA which are located 25km and 4km downstream respectively."*

The NIS concludes that:

> "*No significant adverse effects on the integrity of any European sites during development and operation of the proposed development is anticipated, either alone or in-combination with any other plans or projects, and there is no scientific doubt in relation to this conclusion."*

[18] List of overlain maps and data under the Waterford City and County Development Plan 2022-2028: 1) Natura 2000 network; 2) Urbanised areas; 3) Waterford Regional Airport Masterplan (Appendix 12 of the Development Plan); 4) Wind energy mapping of adjacent local authorities; 5) Major road infrastructure; and 6) Transmission grid.

Map Layer #2: Urbanised Areas

The site lies between Ballynamult and Modelligo which are located approximately 4.2km and 3.8km from the nearest proposed turbine, respectively. A larger settlement Cappoquin town, is located approximately 3.5 km northeast of the site of the proposed wind farm (or 4.3km from the nearest turbine).

The main urban centres in the region are Dungarvan, located approximately 13km (with grid connections work being approximately 2.5km from Dungarvan at the existing Dungarvan 110kV substation) southeast of the proposed wind farm site and Clonmel, located approximately 17km northeast of the proposed wind farm site.

Map Layer #3: Waterford Regional Airport Masterplan

Waterford Regional Airport Waterford Airport is located approximately 48 kilometres east of the proposed wind farm site. Following consultation with Waterford Airport and the IAA, and examination of the project under EIA, chapter 11 of the submitted EIAr concludes the following:

> *"No effect related to aviation is anticipated during the construction phase and no specific mitigation measures are proposed, as such, no residual effect is predicted in relation to aviation."*

With the implementation of the mitigation measures, the proposed wind farm during operation will have no residual effects on aviation receptors such as Waterford Airport.

Map Layer #4: Wind energy mapping of adjacent Local Authorities

We understand that the wind energy mapping of adjacent Local Authorities have been brought over to CDP (2022) and this is evident at the proposed development site, which mirrors an Exclusion Zone running along the north Waterford/Tipperary Council border. What is unclear however is:

- The reasoning behind this i.e. do the applicable thresholds for Tipperary Council also apply to this site?
- The extent of the carry over, i.e. how far beyond the County boundary should zoning extend?
- And lastly, consistency. It is noted that this approach has not been followed by Waterford City and Council for all neighbouring county boundaries and their respective zoning, as set out in Figure 2-6 below.

Map Layer #5: Major Road Infrastructure

The proposed development site can be accessed via the L5055, continuing the L1027 Local Road Network from the nearby N72 National Secondary Road. The condition of these roads is generally good, with a full description of the existing road network with respect to construction, AILs, material haul routes and cable connection works provided in section 16.2.6 of Chapter 16 of the submitted EIAr.

Map Layer #6: Transmission Grid

The wind farm will connect to the grid via a proposed onsite substation which will connect via 110 kV underground cable to an existing substation near Dungarvan.

The overall length of the grid connection between the proposed substation and the existing substation is approximately 15.6km, most of which is located within the public road corridor with a short section being within the site of the proposed wind farm, and the remainder being located within Coillte and other private lands.

The information provided here and within the supporting documents of this planning application demonstrate the strong suitability of this site for wind farm development. In doing so, it calls into question the validity of the Waterford City and Council wind energy map zoning, which we believe is not representative of the proposed development site.

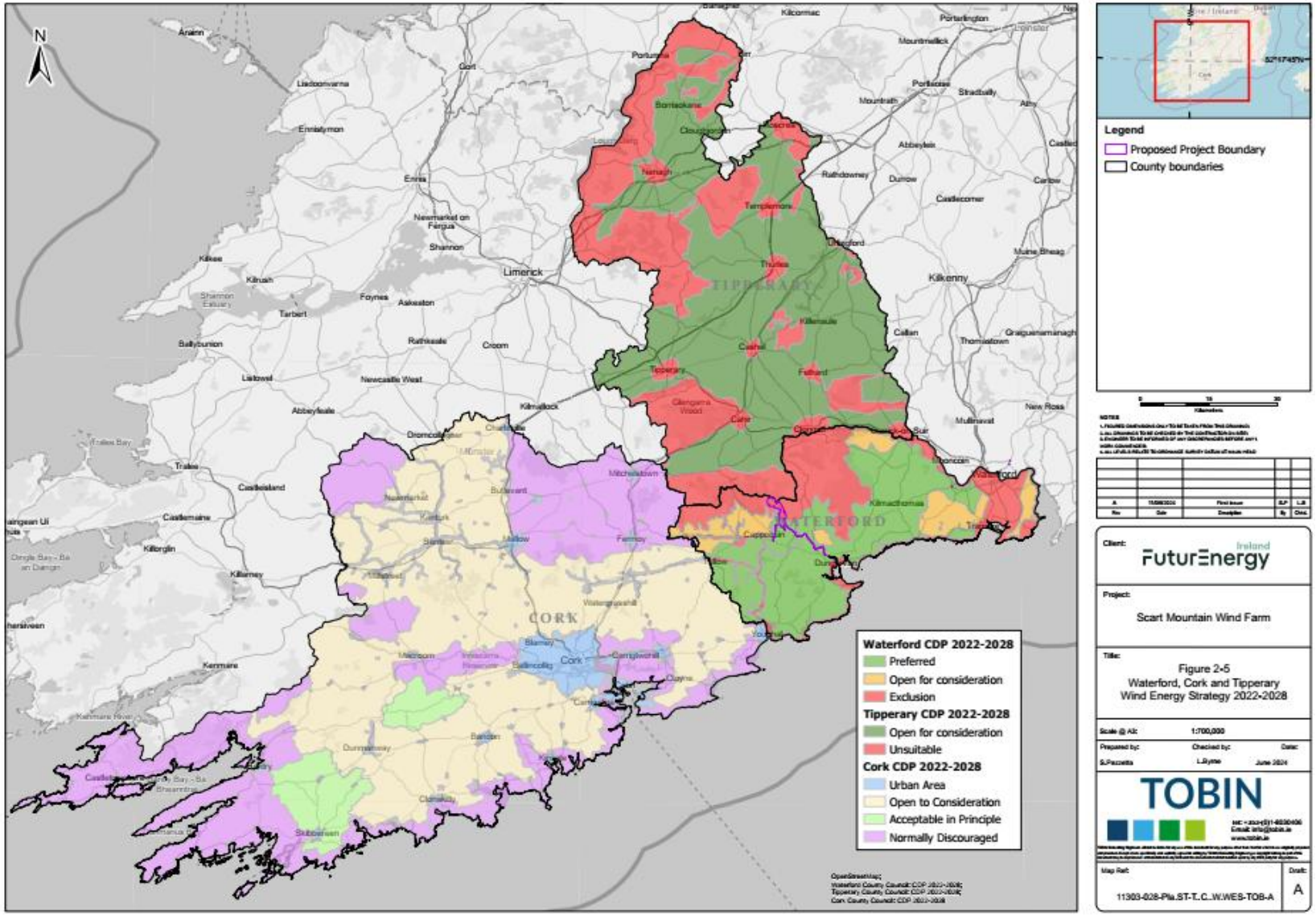


Figure 2-6: Waterford, Cork and Tipperary Wind Energy Strategies 2022-2028

3. RATIONALE TO CONSENT IN CONTRAVENTION OF THE LOCAL COUNTY DEVELOPMENT PLAN

This section of the report will examine and challenge the degree of consideration required for strategic infrastructure development under the local County Development Plan by looking at the legal basis and the Planning and Development Act.

3.1 LEGAL BASIS

Pursuant to the Planning and Development Act 2000 as amended, for Strategic Infrastructure Development projects, the Board shall *consider* the provisions of the local County Development Plan but is not required to make decisions that *are consistent with* it and may decide to grant a permission for development, even if the proposed development, or part thereof, contravenes materially the development plan.

Therefore, as a matter of jurisdiction, the Board has discretion under the Planning and Development Act to grant permission for the proposed development.

As the majority of the proposed development site is located within an "Exclusion Zone" for wind energy, the proposed development is contrary to the Waterford City and County Development Plan 2022-2028.

Therefore, the proposed development could be interpreted as a material contravention of this plan. This section of the report will examine the proposed development within the context of material contravention, which is set out under Section 37G of the Planning and Development Act (as amended).

3.2 PLANNING AND DEVELOPMENT ACT

Under section 37G (6) of the Planning and Development Act, 2000 (as amended), the Board has the power to grant planning permission in material contravention of a local county development plan.. In this respect section 37G(6) states:

> *"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".*

Under Section 37G(2) of the Planning and Development Act, 2000 (as amended) there are certain matters which the Board shall consider in its determination, in particular this states:

(2) Without prejudice to the generality of subsection (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,

…

(c) the provisions of the development plan or plans for the area,

…

(g) the matters referred to in section 143, [that being –

(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.]

(h) any relevant provisions of this Act and of any regulations made under this Act.

As identified by Mr Justice Haughton in *Element Power v An Bord Pleanála* 2017 IEHC 550 (§68):

> *"Of course, even if there was a clear national strategy in relation to "spatial dimension", and while this would doubtless assist the Board, the Board under present legislation would not be obliged to follow such guidelines or plans, and in the exercise of its own judgement and expertise would be entitled to take a different view.* ***Equally if a local development plan adopted wind energy strategies with a more detailed "spatial dimension", for example by zoning particular areas as suitable for wind farm development, it would be open to the Board to grant permission for a proposed development, even if it was a material contravention of such zoning.*** *Section 37G(6) expressly empowers the Board to grant permission even if the development would materially contravene a development plan. Thus, while the Board must have regard to national and local strategy, it is not bound by it."*

This is the precise position that obtains in this case. The proposed Wind Farm has unequivocal national and EU policy support but is not designated favourably for wind in the County Development Plan. All the Board is obliged to do is have regard to the Plan.

There are five *additional* reasons why the approach in *Element Power* is the correct one and should be followed:

Firstly, and while it is accepted that the subject matter is different, the section 15(1) Climate Act obligation of consistency imposes a significantly higher threshold than that contained in section 37(6)(g) of the 2000 Act. Insofar as the Board identifies any conflict between the County

Development Plan and the requirements of section 15(1) then the objectives contained in the latter must be given priority over the former.

Secondly, section 37(G)(2)(g) itself requires that regard is had to the matters referred to in section 143 of the Planning and Development Act 2000. This includes an obligation to 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"*

The climate crisis is clearly a matter to which the Board has to have regard for the purposes of (b) and the policies and objectives for the purposes of (a) must include the Climate Action Plan, Carbon Budgets and Sectoral Emissions Ceilings. Therefore, even if the Climate Act 2014-2021 did not impose an obligation to act consistently, the Planning and Development Act 2000 identifies these policies and objectives as having *precisely* the same statutory weight as the County Development Plan.

Thirdly, and relatedly, the County Development Plan does not, either itself or in context, constitute a "plan led system". Similar sentiments were expressed by the Board in relation to refusals of permission in respect of, *inter alia,* Croaghaun Wind Farm (ABP 309937-21) and Cahermurphy Wind Farm (ABP 311044-21). Both refusals were subsequently quashed on judicial review, it is submitted that the Board was incorrect in any event to *either* identify the relevant County Development Plans as representing a "*plan led system*" or reasoning from a breach of those Plans to a conclusion that those proposed Wind Farms "*would be contrary to the proper planning and sustainable development of the area."*

As the Board is aware, there is a significant spatial policy formation pending under the Climate Action Plan 2023[2]. In particular, a Renewable Electricity and Spatial Planning Framework is imminent (in 2023 / 2024) which will set regional MW targets, and Regional Renewable Electricity Plans are to be drafted and implemented in 2024. The Climate Action Plan is the roadmap to achieve Ireland's sectoral emissions ceilings and therefore these plans and strategies are an absolute requirement to deliver same.

Furthermore, neither the National Planning Framework nor the current suite of Regional Spatial and Economic Strategies Plans have been adopted or amended in the context of the Climate Action Plan 2023 and the legally binding obligation to act in a manner consistent with this plan under the Climate Action and Low Carbon Amendment Act 2021. It should be noted it is a requirement under the Climate Act 2021 to align policies with the carbon budget framework and this has not occurred in relation to these plans. In simple terms, while we have legally binding targets for decarbonisation, supported by specific targets for renewable energy including onshore wind, there is currently no mechanism in place to ensure that the aggregated spatial plans developed at the local level, support these overarching national objectives.

The County Development Plan, which was adopted on 7th June 2022 and came into effect on 19th July 2022, is already out of date in respect to the overarching national climate action policy.

Carbon Budgets for the purposes of the Climate Action and Low Carbon Development Act 2015 (as amended) were adopted on 4th May 2022 but were not considered for the purposes of the

County Development Plan. Sectoral Emissions Ceilings for the purposes of the same Act were adopted on 28th July 2022 and clearly post-date the adoption of the Plan.

The Climate Action Plan 2023 was adopted on 21st December 2022. §12.3.1 of the Plan includes measures to accelerate renewable energy delivery and identifies "renewable energy generation projects and associated infrastructure are considered to be in the overriding public interest". Under both the Climate Action Plan 2023, and the current 2024 plan, the Onshore Wind target is 9GW, up from 8GW under Climate Action Plan 2021. The 2025 target is 6GW.

The County Development Plan is therefore an outdated both in terms of the policy position it adopts but is *also* incompatible with effectively *each and every* objective identified in section 15 of the Climate Acts 2015-2021. It is therefore impossible to characterise a breach of the County Development Plan insofar as the proposed Wind Farm is concerned as a breach of a plan led system where that Plan was adopted without reference to current national climate policy.

Fourthly, and relatedly, the County Development Plan has the status of a statutory instrument, per the analysis of Mr Justice Humphreys in *Clonres v An Bord Pleanála* 2021 IEHC 303. Insofar as it may be erroneously argued that the County Development Plan has any or any dispositive effect, the Board is obliged ensure that EU law is fully effective and must (of its own motion if necessary and without requesting or requiring the prior setting aside of such provisions) to disapply any provision of national legislation that may be contrary to EU law (Case 378/17 - *Minster for Justice v Workplace Relations Commission* §50*)* as identified and relied upon by the Board itself in *Save Cork City v An Bord Pleanála* 2020/563 JR. The Wind Energy Map that forms part of the County Development Plan, that effectively sterilises Waterford for the purposes of Wind Energy, is not compatible with Article 3 of Regulation 2022/2557 or the RED III Directive. In particular the presumption that such projects are in the over-riding public interest and must be accorded priority is completely incompatible with the purported sterilisation of the County. However, it is not necessary for the Board to take this step as *per Element Power,* the County Development Plan is simply one of the factors to which regard must be had.

Fifthly, and finally, the Board in its pre-application Consultation has asked that consideration be given to the decision of Ms Justice Baker in *Brophy v An Bord Pleanála* 2015 IEHC 433. In that case the applicant sought to rely upon a national guideline that gave a more generous definition of 'local needs' than the relevant County Development Plan. The nub of the Court's decision is that (§28):

> "*I consider, however, that in the case of a conflict between the general provisions contained in relevant guidelines and a specific provision contained in a planning policy, that the latter must prevail for the following reasons."*

That case is of no relevance to this application. Leaving aside the fact that it was a determination on appeal pursuant to section 37, this is not a case of general provisions conflicting with a specific provision. The national and EU policy framework is *highly specific* as to the measures that have to be taken and the matters in respect of which the Board is obliged to act consistently. The County Development Plan purports to frustrate the achievement of those objectives by, in effect, sterilising Waterford for wind energy development but that is a very different position to that addressed in *Brophy* where the Court preferred the specific over a general definition of, in effect, the same thing.

The same observation applies to the decision of Mr Justice Owens in *Murtagh v An Bord Pleanála* 2023 IEHC 345. That involved a factual scenario very similar to that in *Brophy* – the applicant was seeking to rely on an Objective in the National Planning Framework in order to avoid the operation of a restriction on one-off housing contained in a County Development Plan. Mr Justice Owens said that this was not the correct way to approach the issue in similar terms to that in *Brophy.* However, again this is a case of general guidelines dealing at a level of generality with *the same issue* as dealt with specifically in a County Development Plan.

However, two further points arise from these cases:

Firstly – it has never been the case that on an ordinary appeal brought via section 37 of the Planning and Development Act 2000 the Board is constrained to follow the County Development Plan. That is clear from section 37(2)(b) which prescribes a process that must be followed in the event, and only in the event, that the planning authority has determined a proposed development to be a material contravention of the County Development Plan. In that scenario the Board must be satisfied that one of the four factors in that sub-section is satisfied and then is entitled to grant permission. If no determination of material contravention is made then the Board does not even have to concern itself with those factors and is at large to grant permission once it has "*had regard*" to the County Development Plan. On no interpretation is it correct to read the provisions of a County Development Plan as binding on the Board and neither *Murtagh* nor *Brophy* are authority for any contrary proposition.

Secondly, however, all of this is of passing interest only given the specific inclusion of section 37G(6) which *specifically* allows the grant of planning permission in material contravention of a County Development Plan without even the necessity to satisfy any of the section 37(2)(b) criteria. This is put beyond doubt by *Element Power* and the Board's obligations in relation to the County Development Plan are therefore to "have regard" to it only.

4. NEED FOR THE DEVELOPMENT

This section of the report is being provided for the Board's consideration as a reason for the approval of the proposed development. It will demonstrate that Ireland is way off track to meet climate targets and GHG emissions reductions targets by providing leading body assessments and key analysis on Ireland's progress in meeting climate targets.

It is structured to cover the following:

- Environmental Protection Agency (EPS) Assessment of Progress on Carbon Budget Compliance
- Eirgrid Assessment of Progress with Carbon Budget Compliance
- Climate Change Advisory Council (CCAC) Assessment
- National Onshore Wind Targets - State of play
- Contribution to Climate Action Targets

4.1.1 Environmental Protection Agency (EPS) Assessment of Progress on Carbon Budget Compliance

"Ireland's Greenhouse Gas Emissions Projections 2022-2040" [19] published by the EPA in 2023, provides an in-depth analysis and projections of greenhouse gas emissions in Ireland from 2022 to 2040.

In relation to sectoral emissions ceilings for the first two carbon budget periods, the report anticipates that the electricity industry, amongst others, will exceed the relevant sectoral emission ceiling. The report notes:

- Sectoral emissions ceilings for 2025 and 2030 are projected to be exceeded in almost all cases, including Agriculture, Electricity, Industry, and Transport (Page 4).
- For the first budget period (2021-2025), the projected emissions from the electricity sector are 45.2 Mt CO2 eq, while the sectoral ceiling is set at 40 Mt CO2 eq.
- For the second budget period (2026-2030), the projected emissions are 28.2 Mt CO2eq, with a sectoral ceiling of 20 Mt CO2eq (Page 14).
- In percentage terms, **the largest sectoral ceiling exceedances projected are for Industry and Electricity in the second budget period.**

This was updated more recently in their report "Irelands Greenhouse Gas Emissions Projections 2023 – 2050[20]" which noted in its key findings that:

- *"The first two carbon budgets (2021-2030), which aim to support achievement of the 51 per cent emissions reduction goal, are projected to be exceeded by a significant margin of between 17 and 27 per cent."*
- *"Sectoral emissions ceilings for 2025 and 2030 are projected to be exceeded in almost all cases, including Agriculture, Electricity, Industry and Transport."*

[19] https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/EPA-GHG-Projections-2022-2040_Finalv2.pdf

[20] https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/EPA-GHG-Projections-Report-2022-2050-May24--v2.pdf

- *"Faster implementation of measures is necessary to meet both National and EU targets. The pace at which planned policies and measures are implemented needs to be accelerated."*

4.1.2 Eirgrid Assessment of Progress with Carbon Budget Compliance

Eirgrid anticipate a 32.5% exceedance of our legally binding targets, in a central case scenario.

Under a best case scenario, they anticipate that Ireland will have emitted 59.8Mt of our 60Mt CO2 equivalent emissions budget by the end of 2029, leaving a budget of only 0.2Mt for 2030.

It is worth noting that:

- This scenario is one which sees Ireland falling short on its 9000MW installed capacity target for onshore wind and is non-compliant with our carbon budget and sectoral emissions ceilings.
- As of Sept 2023, Ireland has yet to reach the onshore wind installed capacity specified in this non-compliant scenario for 2022.
- The volumes clearing the recent RESS 3 auction fell well short of the volumes originally targeted for this auction and would not appear to be sufficient to align with even this non-compliant scenario – in other words, developments since that Eirgrid analysis was conducted are supportive of a conclusion that even the non-compliant central case scenario is out of reach.

4.1.3 Climate Change Advisory Council (CCAC) Assessment

In its 2023 Annual Review, the CCAC concluded that, at the current rate of policy implementation, Ireland will not meet the targets set in the first and second carbon budget periods unless urgent action is taken immediately and emissions begin to fall much more rapidly[21].

This stark warning issued shortly after warnings from the EPA which confirmed that Ireland is now tracking a 29% reduction in its greenhouse gas emissions by 2030 compared with its 51% legally binding target. The report notes that despite the stark outlook, increased renewable energy generation, from wind and solar, if delivered as planned, can reduce Energy Industry emissions by 60 per cent and achieve over 80 per cent renewable electricity generation by 2030.

4.1.4 National Onshore Wind Targets – State of play

The applicant has procured a database of projects at various stages of development prepared jointly by two independent consultants[22] in order to track the level of progress to date towards the delivery of Ireland's 9GW onshore wind target. [23]

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[21] https://www.climatecouncil.ie/councilpublications/annualreviewandreport/CCAC-AR-2023-FINAL%20Compressed%20web.pdf

[22] https://mkoireland.ie/ and http://mullangrid.ie/

[23] The database is compiled using a number of sources including ESB Networks and EirGrid documents and publicly available information on the County Council Planning Portals/An Bord Pleanála. The raw data is available on request to the Board.

At the time of the latest update in August 2023, our database indicated that the onshore wind pipeline in Ireland could be summarised as shown below:

Table 4-1 Summary of onshore wind development projects at specific stages in the development process

Project Phase/Category	MW
Energised	4,353
With planning permission and grid access	2,431
With planning permission and queued for grid access	41
In planning process	1735
Energised but will be 25 years or older in 2030	-157.5

With typical historic rates of attrition at different phases of development (including an 80% success rate in planning for wind farms), **we would optimistically estimate that all currently known projects will deliver 6974MW out of a total target of 9000MW by 2030. However, in the first half of 2024, we understand that out of 16 decisions, 11 projects were refused, while only 5 were granted. In 2023, out of 19 projects, 8 were refused, while 11 were granted.**

Even under the optimistic attrition rates above, this implies that we would need to see planning applications for approximately 3126MW lodged in the period from August 2023 to 2026, with an 80% success rate in planning, if we are to have any chance of delivering on our 9000MW onshore wind target. Based on the refusal rate in 2023 / 2024 the requirements are significantly greater. It is also important to note that the accelerated delivery of this onshore wind target is critical to achieving compliance with our legally binding sectoral emissions ceilings for the electricity sector.

4.1.4.1 Timing for delivery of consented projects

In the context of the above figures and noting that earlier delivery of projects has a greater impact on cumulative emissions compared with later delivery, it is important to consider timelines for delivering a project from the date it receives a planning grant. The **timelines below should be considered as best case scenarios** assuming any judicial reviews, and any additional planning consents required in relation to grid connection methods, are all dealt with in parallel with the timelines below:

- Planning grant to executed grid connection offer = 12months
- Grid offer to secured route to market = 6months
- Project financing = 6 months
- Project construction and delivery = 18 months.

This implies that in a best case scenario, from the date of a planning grant to the date of energisation, there will be a minimum of 3.5 years. **This implies that planning grants issued after mid 2027 will have little to no chance of contributing to our 9GW target for onshore wind.** It is equally important to note, that the later these projects are delivered the less their impact will be on cumulative emissions over the period.

4.1.4.2 Onshore RESS Auctions Progress to Date

Ireland's Renewable Electricity Support Scheme (RESS) auctions are competitive processes, run by the Department of Environment, Climate and Communications (DECC) designed to support the development of renewable energy projects across the country. The goal is to help Ireland meet its renewable energy targets, reduce greenhouse gas emissions, and transition towards a more sustainable energy system.

Following the publication of the Climate Action Plan 2021, DECC published a future auction schedule[24] that set out the indicative forward auction volumes required to support our renewable energy targets at that time. Table 4-2 below sets out a comparison of the target volumes established at that time (noting that renewable energy targets have **since increased**) vs the actual volumes procured in the onshore auctions to date.

Table 4-2 RESS Auction target vs procured volumes

Auction	Indicative Target volume (GWh)	Actual Procured volumes (GWh)
RESS 2 [25]	1,000 – 3,500	2,747
RESS 3 [26]	2,000 – 5,500	933
RESS 4 [27]	1000 - 5000	373

It is noteworthy that less than half of the minimum target volume of projects established in 2021 was successfully procured in the recent RESS 3 auction. **It is widely accepted that this has been primarily driven by an insufficient throughput of positive wind farm decisions through the planning system.** In RESS 3 only 148.4MW of onshore wind cleared the auction spread across 3 separate wind farms, with 24MW's failing to clear. This stands in stark contrast to 479MW and 414MW successfully cleared under RESS 1 and 2 respectively. RESS 4 again procured less than half the lowest end of the indicative range required.

It is also noteworthy that the average price in RESS 3 was over €100 / MWh making it by far the most expensive renewable auction in Europe. Again, the lack of new projects with modern turbine technologies being consented through the planning system is a significant contributing factor to these high costs.

4.1.5 Contribution to Climate Action Targets

The final installed capacity for the project will be between 85.5 - 108 MW's. There are currently approximately 45000MW's of installed onshore wind capacity in the Republic of Ireland. Our latest climate action plan established a target of 9GW of installed onshore wind capacity. This leaves a gap of approximately 4500MW's. As such **this single proposed development has the potential to contribute approximately 2% of the total additional onshore wind capacity required nationally by 2030**, which we believe to be a strong consideration for the Board when determining the proposed development.

[24] https://assets.gov.ie/212080/be6fa505-d4e7-4634-80d9-64fd9d1a0800.pdf
[25] https://www.eirgridgroup.com/site-files/library/EirGrid/RESS-2-Final-Auction-Results-(R2FAR).pdf
[26] https://www.eirgridgroup.com/site-files/library/EirGrid/RESS-3-Provisional-Auction-Results-(R3PAR).pdf

[27] https://cms.eirgrid.ie/sites/default/files/2024-09/RESS_4_Provisional_Auction_Results_%28R4PAR%29.pdf

5. CONCLUSION: DYRICK HILL WIND FARM

To conclude this report, we will look at the neighbouring Dyrick Hill Wind Farm (Reg. Ref. ABP-317265-23), which was refused by the board on the 27th September 2024. As the two wind farms sit side by side, there is good reason to examine the reasons for refusal. Specifically, this section will look at the reasons for refusal for that wind farm in the context of the proposed Scart Mountain Wind Farm.

Reason 1

The first reason for refusal relates to the associated zoning for the project under the Waterford County Development Plan. With respect to the proposed Scart Mountain Wind Farm, the zoning has been addressed throughout this report, providing strong evidence and reason for the board to approve the proposed development.

There is significant policy support for the accelerated development and delivery of onshore wind at both a national and EU level and within this context, Ireland is way off track to meet both these targets and GHG emissions reductions targets.

The Climate Action and Low Carbon Development Acts 2015 to 2021 requires the Board as a relevant body, to "in so far as practicable, perform its functions in a manner consistent with" inter alia "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".

In addition, under the Planning and Development Act 2000 as amended, for Strategic Infrastructure Development projects, the Board has discretion to grant permission irrespective of whether a proposed development contravenes the relevant County Development Plan.

For Dyrick Hill Wind Farm, the board has argued that there is insufficient evidence to proceed to a material contravention of the Waterford County Development Plan. However, in this report we have demonstrated that the system for the approval of renewable energy developments in Waterford cannot properly be characterized as "plan led" because as stated above it was at odds with national and EU energy policy at the time of its making and, furthermore, has not been varied to account for additional changes in national and EU energy policy.

This report further demonstrates that with respect referenced case law *Brophy v An Bord Pleanála 2015 IEHC 433* and *Murtagh v An Bord Pleanála 2023 IEHC 345*, the board has, in our opinion, overly relied on their outcomes:

It has never been the case that on an ordinary appeal brought via section 37 of the Planning and Development Act 2000 the Board is constrained to follow the County Development Plan. That is clear from section 37(2)(b) which prescribes a process that must be followed in the event, and only in the event, that the planning authority has determined a proposed development to be a material contravention of the County Development Plan. In that scenario the Board must be satisfied that one of the four factors in that sub-section is satisfied and then is entitled to grant permission. If no determination of material contravention is made then the Board does not even have to concern itself with those factors and is at large to grant permission once it has "had regard" to the County Development Plan. On no interpretation is it correct to read the provisions of a County Development Plan as binding on the Board and neither Murtagh nor Brophy are authority for any contrary proposition.

Secondly, the specific inclusion of section 37G(6) allows the grant of planning permission in material contravention of a County Development Plan without even the necessity to satisfy any of the section 37(2)(b) criteria. This is put beyond doubt by Element Power and the Board's obligations in relation to the County Development Plan are therefore to "have regard" to it only.

As such, the Board should grant permission if it is satisfied that the proposed development is consistent with the policy framework identified in this report and proper planning and sustainable development.

Reason 2

Reason 2 for the refusal of Dyrick Hill Wind Farm relates to landscape:

> ***"The subject site is located within and adjacent to an upland area designated "Most Sensitive" in the Waterford Landscape and Seascape Character Assessment undertaken to inform the development plan, in an area of scenic value. The proposed development by virtue of its layout and scale would adversely interfere with the intrinsic character, integrity and distinctive qualities of the landscape setting which it is considered necessary to preserve under the Development Plan. The proposed development would be contrary to Policy Objective LO2…"***

With respect to the proposed Scart Mountain Wind Farm, Chapter 13 of the EIAr examines Landscape and Visual Impact. The chapter states:

> "the intrinsic character of this landscape is that of a gradual transition from productive rolling foothills of forestry and low intensity agriculture into a more open and extensive mountain moorland setting.
>
> In the context of the Wind Energy Development Guidelines (2006/2019 revised draft) the subject landscape would fall principally into the category of the 'Transitional Marginal' Landscape Type, which is described as a "landscape type that bridges the organised and intensively managed farmland and the more naturalistic moorland".
>
> In this regard, it is no different to foothills landscapes throughout the country, which are the very landscapes that have become synonymous with wind energy development over the past three decades and for a number of pragmatic reasons. The inherent robustness for wind energy development in this type of foothills landscape relates to its intrinsic qualities as well as the favourable wind speeds afforded. This is clearly evident in the western foothills of the Knockmealdown Mountains, where the existing Barranafaddock Wind Farm development is located in an almost identical foothill context to the proposed wind Scart Mountain wind farm.
>
> Landscape characteristics in foothill contexts include broad scale landform and land use patterns that can accommodate the height and extent of wind energy developments without a sense of them being over-scaled or overbearing. Foothills landscapes also tend to be valued more for rural productivity than pristine naturalness, such as the core mountain areas of the Knockmealdown range would be. It is factors of slope, elevation and a strong sense of remoteness and the naturalistic that distinguish mountain areas from their surrounding foothills. Furthermore, the population density of foothills landscapes tends to be considerably lower than within settled agricultural lowlands allowing for the requisite setback distances to turbines (4 X tip height under the draft revised WEDG 2019).

In its 2018 publication entitled "Wind Energy Development in Ireland: Planning and Environmental Considerations "the Environmental Protection Agency (EPA), noted that wind farms are frequently located in more rural or elevated landscapes (including foothills) due to the wind conditions and less dense human settlements, making them a common feature of such environments.

It should also be noted that landscape character does not transition as abruptly as lines on a map and in this instance occurs gradually over several kilometres. Thus, the fringe portions of a landscape character unit are likely to have attributes of the landscapes on both sides of the division, which also translates to landscape sensitivity. In this instance the transition occurs within the site itself between the 'Foothills' landscape type (generally 'Low' sensitivity) and the 'Uplands' landscape character type (generally 'Most' sensitive), bearing in mind that the 'Uplands' LCT also includes the core ridgeline of the Knockmealdown range further to the west as part of the same sensitivity classification."

The expert analysis concludes that:

"In relation to landscape effects, the proposed project will result in considerable increase in the intensity of built development in the local landscape and will become one of the principal built features in the immediate surrounds of the site. The proposed project will also result in some physical landscape impacts, however these will be contained to localised areas within the site. Overall, the **significance of landscape effect** during the **operational phase** is considered to be **Moderate / Negative / Long-term** within and immediately around the site.

In terms of the residual **visual effect**, the **operational phase visual effects** generated by the proposed project will result in some localised close to significant visual effects, however, these are **not considered to reach the significant threshold**. Whilst the proposed project will present with a dominant visual presence from some of the nearest receptors, the design of the proposed array directly responds to the guidance for 'transitional marginal' landscape types in the current WEDGs (2006), which aids the development in assimilating into this transitional foothill landscape context.

Based on the assessment herein, it is considered that the proposed project is of a notable scale but appropriately sited in a broad-scale transitional foothill landscape context and will **not give rise to any significant residual landscape effects or visual effects.**"

Reason 3

Reason 3 for the refusal of Dyrick Hill Wind Farm relates to ecology and ornithology:

"The proposed development would result in the direct loss of 3.5 hectares of dry heath (4030) habitat, which is included in Annex I of the European Union Habitats Directive of 1992. This area of dry heath located on Broemountain forms part of a wider habitat across the commonage area of Broemountain and across the Knockmealdown Mountains which supports nationally declining species, including Annex 1 species protected under the EU Birds Directive of hen harrier and golden plover, as well as other bird species of high and medium conservation concern. Having regard to the direct loss of 3.5 hectares of Dry Heath habitat and the lack of interrogation of the implications for the hen harrier recorded in the area, in addition to associated risk of displacement caused by the proposed turbines to hen harrier and golden plover in this area, the Board

is not satisfied that the proposed development will not result in a significant loss of biodiversity…"

With respect to the proposed Scart Mountain Wind Farm, Chapter 6 of the EIAr examines the flora and fauna of the site. Regarding dry heath it states the following:

> "The proposed project will result in the permanent loss of 2.79ha wet heath (4010) and 0.33ha of dry heath (4030) as described in Sections 6.7.3.1.2 and 6.7.3.1.3 of the EIAr. To compensate for the loss of wet heath (4010) and dry heath (4030) the following compensatory measures will be implemented:
>
> - Management of grazing
> - Prevention of burning
>
> The correct implementation of the compensation and enhancement measures will contribute towards improving the wet heath (4010) and dry heath (4030) condition and restoring its Favourable Conservation Status. The improvement of 112.12ha of wet heath will offset the loss of 2.79ha of degraded wet heath. And the improvement of 41.87ha of dry heath will offset the loss of 0.33ha of degraded dry heath."

In addition, the following measures will enhance the existing habitat within the proposed project site and within lands located outside the proposed project:

- Clearence of conifer plantation
- Removal of bracken
- Rush and grassland management
- Hedgerows management
- Reduction in fertilizer
- Planting of native trees
- Scrub development

These compensation and enhancement measures will be implemented across a total area of 206.5ha. Further information is detailed in the Biodiversity Management Plan, which can be found in 2-1 of the EIAr.

With respect to ornithology, which is set out in Chapter 7 of the EIAr, expert analysis concludes the following:

> "The proposed project is predicted to result in residual significant effects for Hen Harrier and snipe as a result of displacement during the operational phase. There are no other significant residual effects predicted for any of the Important Avian Features discussed identified in this chapter.
>
> In line with the mitigation hierarchy, as significant displacement effects on Hen Harrier and snipe cannot be avoided, prevented or reduced, compensation measures are provided to offset the residual effects of the proposed project. The compensation measures proposed are provided as a Biodiversity Management Plan (Appended to Chapter 6). The BMP sets out 3 broad aims as follows:
>
> - Aim 1: Management of lands to improve suitability for foraging hen harrier.
> - Aim 2: Restoration of moorland habitats.
> - Aim 3: Restoration of conifer plantation to dry heath.

The first aim is specific to the residual effects identified in this chapter as it will focus on offsetting the predicted displacement of Hen Harrier and snipe. The suite of management measures that will be implemented to improve or create suitable habitat for Hen Harrier and snipe has been tried and tested by the Hen Harrier Project[28], farming organisations[29] and other agri-environment schemes in Ireland. The efficacy of the proposed management measures has been demonstrated by agri-environment schemes such as the Hen Harrier Project but the efficacy is also supported by Conservation Evidence [30].

The measures will be implemented between 3 and 5 years before wind farm operation commences. Therefore, some of the improvement in habitat will have occurred before operation commences thereby reducing the significance of the predicted residual effects."

Note 1

Finally, regarding surveys methods, we would draw the Board's attention to the robust survey analysis conducted and described in Chapter 7 Ornithology, of the submitted EIAr. We believe the methods to be sufficient to address concerns raised with respect to the neighbouring Dyrick Hill Wind Farm, which were:

> ***"The Board noted and shared the opinion of the inspector wherein the inspector was not satisfied that the methodology applied to the ornithological surveys as set out in Appendix 7.1 of the [Dyrick Hill] EIAR, in particular the timing of surveys using CBS based methods, was scientifically robust for the reasons (section 12.6 of the inspectors report refers). Accordingly, the Board cannot be satisfied that the information allows for a complete assessment of breeding birds in the community……"***

Full details of the methods used for all the bird surveys are included in Appendix 7.1 – 7.6 of the EIAr. The assessment states:

> "The scope of, and methods used for, the bird surveys were based on Scottish Natural Heritage's guidance: *Recommended Bird Survey Methods to Inform Impact Assessment of Onshore Wind Farms* (SNH, 2017).
>
> The bird surveys included vantage point surveys to monitor flight activity over the proposed wind farm site and other surveys that recorded the distribution and abundance of bird species of interest within and around the proposed wind farm site.
>
> The core datasets used for this assessment are four seasons of vantage point surveys, and two seasons of breeding surveys. These were carried out between winter 2022/23 and summer 2024.
>
> Additional bird surveys carried out between the winter of 2017/18 and the summer of 2022 were used to provide context and to examine longer-term trends in occurrence patterns."

[28] Hen Harrier Project website http://www.henharrierproject.ie/ (last accessed 8 December 2024)

[29] Farming for Nature https://www.farmingfornature.ie/ (last accessed 8 December 2024)

[30] Conservation Evidence summarises the documented evidence for the effectiveness of conservation actions. See https://www.conservationevidence.com/actions/700 (last accessed 15 December 2024)

In conclusion, the matters dealt with in this report provide the Board with justification for the approval of the proposed development, in accordance with the proper planning and sustainable development of the area.

Appendix A CRITIQUE OF ZONING PROCESS

This appendix will describe the process for the production and adoption of the updated wind energy map, contained in the CDP (2022) and critiques it against the international and national policy context set out above.

It will demonstrate that wind energy map appears to have been developed in an *ad hoc* basis, devoid of evidence base or a consistent approach to constraints. The reasons for this assertion are listed further down.

The result of this approach is that the Waterford CDP has removed wind energy potential from the county without a clear justification, including removing development opportunities from transitional farmed and forested foothills landscapes. Foothills typically relate to a region between the lowlands and the more elevated uplands and are often contained in typical transitional rural land uses such as elevated farmland and areas of conifer forestry. A typical example of a foothill context includes the landscape in the immediate vicinity of the site and the rolling landscape to the north of the River Blackwater and south of the more elevated and remote uplands within the Knockmealdown Mountains.

Such landscapes throughout the country, and in County Waterford have previously proved suitable to wind energy development because they have low population densities, good wind speeds as well as broad scale landform and land use patterns that can readily accommodate wind turbines. With regard to the proposed development, the most notable development within a similar and almost identical foothill landscape context is the existing Barranafaddock Wind Farm, which is situated at the opposite end of the Knockmealdown Mountains but at an almost identical elevation and is characterised by similar foothill transitional land uses.

The zoning process throws up the following inconsistences and questions, all of which are presented to the Board to call in question the degree of consideration that can be given to this local policy:

- A comparison of the previous and current wind energy maps show that extensive areas of the landscape within the current 'No Go Areas' were previously 'Preferred Areas' and 'Open to Consideration Areas' under the previous Waterford County Development Plan. Bearing in mind that the landscape in question did not change, it is unclear how such a contrasting designation was arrived at. At the time, the Chief Executive's report did not include any further information on how the capacity of the landscape within these areas changed or why they became unsuitable for wind energy development. Ambiguity was also generated by the fact that large areas previously identified as 'No Go Areas' became 'Preferred Areas' under the new plan.
- There is no clear relationship between the broad 'Exclusion' areas adopted under the current plan and the list of constraints applied during the zoning process. The mapping constraints applied appear to eliminate wind farm development on peat soils based on carbon release, irrespective of the condition of the peatland. We believe this approach is inappropriate and pre-judges case by case assessments provided for in the Section 28 Wind Energy Development Guidelines. Although not listed[31] or mapped as a constraint, during the zoning adoption process, the Chief Executive's report of the *then* Draft Waterford City and County Development Plan, refers to the 'wind energy map' and the

[31] List: 1) The Landscape and Seascape Character Assessment (Appendix 8 of the Development Plan); 2) Natura 2000 network; 3) Urbanised areas; 4) Waterford Regional Airport Masterplan (Appendix 12 of the Development Plan); 5) Wind energy mapping of adjacent local authorities; 6) Major road infrastructure; and 7) Transmission grid.

'upland characterisation of the County' as being informed by peatland soils and potential for carbon release. From this it appears peatland soils and the potential for carbon release may have been a factor in determining the wind energy map. Although again it is stated that this factor is unknown. With respect to the proposed development site, the Board should note that there is an absence of areas of deep peat and where peat is present, it is extremely shallow.

- The classification of the entire uplands and its surrounding foothills with a 'Most Sensitive' classification and the corresponding designation as an "Exclusion" area, is considered overly simplistic and inaccurate. Whilst there is no argument that some of the more elevated upland areas within County Waterford are highly sensitive and have a low potential to accommodate development, these broad areas have wide-ranging sensitivities and values. The most sensitive areas of the Comeragh and Knockmealdown Mountains are considered to be their most elevated upland slopes and ridges that comprise rugged mountainous terrain and possess a strong sense of the naturalistic. In contrast to this, the rolling foothills surrounding these mountains are considered much less susceptible as many of these areas are currently characterised by anthropogenic land uses such as extensive areas of commercial forestry, overhead cable infrastructure, and pastoral farmland and do no warrant being designate "Exclusion" areas for wind on this basis. Thus, the broad brushstroke approach of classifying the entire uplands and their surrounding foothills as 'Most Sensitive' (the highest sensitivity classification in County Waterford), which has a strong influence on the proposed wind energy classifications, is inaccurate / inappropriate and largely eliminates the potential for wind energy development within County Waterford. This is addressed further in the chapter 13 of the EIAr, Landscape and Visual Impact.

For the purpose of this planning statement, the important point to consider is that the CDP 2022 wind energy map effectively sterilises a significant quantity of land in Co. Waterford for the purposes of Wind Energy Development over the Plan's lifetime. The policy position encapsulated in this map is demonstrably incompatible with:

- The IPCC Synthesis Report
- The National Transition Objective,
- Section 15(1) of the Climate Acts 2015-2021,
- The Sectoral Emissions Ceilings to 2030,
- The realisation of the Carbon Budget for the first two budget periods to 2030,
- The Long Term Climate Strategy,
- The declaration of a Climate Emergency.
- Regulation 2022/2557
- The RED III Directive

The legal implications of the CDP 2022 wind energy map are addressed below. Our view, based on the policy context set out above, is that the map is outdated and we submit that the Board should consider it in that context.

It should be noted that the Board clearly must "*have regard*" (section 143(1) of the planning and development act 2000 as amended) to this map, in so far that it is an obligation of the Board to be aware of its contents only, as noted by Mr Justice Holland (at §21 of *Coyne*) *"…regard generally does not require any implementation or compliance – slavish or otherwise".*

We would therefore encourage the Board to question the adequacy of this map within the context of international and national policy set out above. We would argue that it is outdated and inconsistent with relevant new policy and legislation and on this basis, should be considered with less weight when determining the proposed development.