



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

OPR Ref: AD-021-22

12th August 2022

Mr. Peter Burke TD
Minister for Local Government and Planning
Department of Housing, Local Government and Heritage
Custom House
Dublin 1
D01 W6X0

BY HAND AND BY EMAIL

**Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act
2000 (as amended) – Variation No. 2 to Donegal County Development Plan
2018-2024**

A chara,

I am writing to you in relation to the recent adoption by the elected members of Variation No. 2 of the Donegal County Development Plan 2018-2024 (the 'Variation').

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator ('the Office') pursuant to section 31AM(8) of the Planning and Development Act 2000 (as amended) (the 'Act') to issue a Notice to you on the basis that, having considered the Development Plan, the Office is of the opinion that:

- a) the Development Plan has not been made in a manner consistent with and fails to implement the recommendations of the Office, which required specific changes to the Variation, having regard to the specific planning policy requirements of the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* (2017) (*the Interim Guidelines*), to the *Wind Energy Development Guidelines* (2006) (*the Wind Energy Guidelines*), to National Policy Objective 55 (NPO 55) of the National Planning Framework (NPF) and to Regional Policy Objectives RPO 4.16, and

RPO 4.17 of the Regional Spatial and Economic Strategy for the Northern Region.

Specifically, the Variation:

- i. Does not incorporate and adequately indicate how the implementation of the variation to the Development Plan will over its effective period contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and potential wind energy resource (in megawatts);
- ii. Introduces a mandatory setback under Policy *E-P-23 and Policy E-P-24* from residential properties and any area of human habitation; and
- iii. Does not identify areas as suitable for wind energy development based on an objective evidence based approach.

and therefore fails to promote renewable energy generation at appropriate locations to meet national objectives towards achieving a low carbon economy by 2050 consistent with NPO 55, RPO 4.16, and RPO 4.17 and is inconsistent with the specific planning policy requirements of *the Interim Guidelines*.

- (b) as a consequence of the above, the Variation to the Development Plan as made by Donegal County Council fails to adequately provide for a renewable energy strategy, specifically in relation to wind,
- b) as a consequence of the above, the Variation to the Development Plan as made by Donegal County Council fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of section 10(1) of the Act; and
- c) the use by you of your function to issue a direction under section 31 of the Act would be merited.

The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

1. Background

1.1 Variation No. 2 to the Donegal County Development Plan 2018-2024

Variation No. 2 to the Donegal County Development Plan 2018-2024 (the proposed Variation) was on public display from 29th April 2022 to 3rd June 2022. The proposed Variation comprised amendments to the wind energy policy energy framework of the current Donegal County Development Plan 2018-2024. The proposed Variation introduced a number of key elements including:

- New policy framework stipulating a setback distance requirement of 10 times the tip height of the wind turbine from residential properties (Policy E-P-23 and Policy E-P-24);
- A wind energy map (Map 8.2.1) which identifies areas of the county designated as “Acceptable in Principle”, “Open for Consideration” and “Not Normally Permissible” for wind energy;
- New policies relating to the three designated areas;
- Background and contextual updates to the legislative framework and guidelines in which windfarm developments must be considered.

The Variation included a positive and supportive statement of the importance of wind energy as a renewable energy source in accordance with Section 3.4 of the *Wind Energy Guidelines*. The proposed Variation also included revisions to the existing Section 28(1A)(b) Statement concerning the implementation of Ministerial Guidelines.

Notwithstanding that the statement states that the proposed wind energy policy was prepared having regard to the *Wind Energy Guidelines* (2006) and the *Interim Guidelines* (2017), the revised section 28(1A)(b) statement addresses only the policies and objectives under the *Draft Revised Wind Energy Development Guidelines* (2019) (the draft Guidelines). The draft Guidelines have not been made by the Minister under section 28 of the Act. The statement does not directly address the operative guidelines, being the *Wind Energy Guidelines* and the *Interim Guidelines*, but states:

As the contents of the Draft Guidelines are largely unchanged from earlier Guidelines with regard to set-back distances and map preparation methodology, the undernoted addresses alignment with the Draft Guidelines, and particularly the specific planning policy requirements (SPPRs), of which there are two, contained therein.

The Office notes that while the Act does not expressly require a statement under section 28(1A)(b) in respect of a variation to a development plan, the local authority should nonetheless provide adequate reasons or explanations relating to the proper planning and sustainable development of the area as to why it has not been possible to implement certain aspects of section 28 guidelines in respect of the variation to a development plan.

Notwithstanding the reference to the *draft Guidelines* as opposed to the operative guidelines, the statement addresses the substance of the policy requirement, with respect to contribution to national targets (regarding wind energy potential in MW). However, the statement does not include information to demonstrate that the planning authority had formed the opinion that it is not possible to implement the policies of the Minister under the SPPR in the *Interim Guidelines*, it merely asserts that for certain stated reasons ‘*it is not possible to make such calculations with any degree of accuracy*’.

Notwithstanding the reference to the *draft Guidelines* as opposed to the operative guidelines, the statement addresses the substance of the policy requirement with respect to setback distances. However, the statement does not include information to demonstrate that the planning authority had formed the opinion that it is not possible to implement the policies of the Minister under the SPPR in the *Interim Guidelines*, it merely asserts that for certain stated reasons the proposed Variation is at variance with item 3 of the SPPR of the *Interim Guidelines*.

Notwithstanding the reference to the *draft Guidelines* as opposed to the operative guidelines, the statement addresses the substance of the policy requirement with respect to the step-by-step guide to the analysis of suitable areas for wind energy. However, the statement does not include information to demonstrate that the planning authority had formed the opinion that it is not possible to implement the policies of the Minister under section 3.5 of the *Wind Energy Guidelines*.

The Office of the Planning Regulator (the Office) made a submission to the proposed Variation containing two (2) recommendations and one (1) observations on 3rd June 2022 as follows:

Recommendation 1 – Compliance with statutory guidelines:

- a) To provide targets for wind energy development in the county in accordance with SPPR(2) of the *Interim Guidelines*;
- b) To omit Policy E-P-23 and Policy E-P-24 that introduce a mandatory setback distance of 10 times the tip height of the wind turbine from residential properties.

Recommendation 2 – Sieve Mapping Analysis:

To omit *Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns*”, and all “moderately High” and “Moderately Low” landslide susceptibility areas from “Not Normally Permissible” designation.

Observation 1 – Strategic Environmental Assessment:

To review the SEA as relates to item 3 of the SPPR in the *Interim Guidelines* in respect of achieving the renewable energy target.

1.2 Adoption of Variation No. 2 of the Donegal County Development Plan 2018-2024

No material amendments were made to the proposed Variation on foot of public consultation and the elected members of Donegal County Council resolved to make Variation No. 2 to the Donegal County Development Plan 2018-2024 at its Plenary Council Meeting on 18th July 2022.

Subsequently, the Chief Executive sent a combined notice letter under section 13(5)(aa) and section 31(AM)(6) of the Act, dated 25th July, to the Office advising of the making of the Variation to the Development Plan, without amendment.

The combined section 13(5)(aa) and section 31(AM)(6) notice letter stated that Recommendation 1 and Recommendation 2 of the Office had not been complied

with and provided the reasons of the planning authority for the decisions not to comply.

1.2.1 Recommendation 1: Compliance with statutory guidelines

Recommendation 1 of the Office's submission to the proposed Variation required the planning authority to indicate how the Development Plan will contribute to national targets, in particular, wind energy production and the potential wind energy resource (in megawatts) in the county, as required by the specific planning policy requirements (SPPR) of the *Interim Guidelines*.

It also required the planning authority to demonstrate consistency of the Plan with the delivery of wind energy resource, as required by the SPPR, through the omission of the setback standard for wind energy development under Policy E-P-23 and Policy E-P-24. These policies impose a separation distance of 10 times the tip height from any residential receptor.

Recommendation 1 – Compliance with statutory guidelines stated:

In accordance with the provisions of section 28(1C) of the Planning and Development Act 2000, as amended (the Act) and the Specific Planning Policy Requirement contained in the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017), and having regard to the government's commitment in the Climate Action Plan 2021 to achieve 80% of electricity from renewable sources by 2030 and NPO 55 which promotes renewable energy use and generation to meet national targets towards achieving a low carbon economy by 2050, and RPO 4.16, RPO 4.17, RPO 4.19 of the Regional Spatial and Economic Strategy, and section 28 guidelines including Wind Energy Development Guidelines for Planning Authorities (2006) and the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017), the planning authority is required to:

- (i) indicate, based on relevant and meaningful metrics, how the Plan will contribute to meeting national targets on renewable energy and climate change mitigation and, in particular, wind energy production and the potential wind energy resource (in megawatts) in the county as required*

by item (2) of the of the SPPR in the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017); and

- (ii) demonstrate that the Plan is consistent with the delivery of part (i), including through the omission of the setback standard for wind energy development under Policy E-P-23 and Policy E-P-24 of the proposed Variation and ensure that any provision for mandatory setback are consistent with the Wind Energy Development Guidelines for Planning Authorities (2006).*

Recommendation 1(i) Contribution to meeting national targets

The *Wind Energy Guidelines* and the *Interim Guidelines* are the operative section 28 guidelines concerning the development of wind energy strategies as part of the development plan review process. The revised section 28(1A)(b) notice, which formed part of the variation, states that the Plan's wind energy policy was prepared having regard to the said guidelines and to the *Draft Revised Wind Energy Guidelines* (2019) which have not been made by the Minister under section 28.

The *Interim Guidelines*, issued under section 28, include a Specific Planning Policy Requirement (SPPR), which states:

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

- (1) Ensure that overall national policy on renewable energy as contained in documents such as the Government's 'White Paper on Energy Policy - Ireland's Transition to a Low Carbon Future', as well as the 'National Renewable Energy Action Plan', the 'Strategy for Renewable Energy' and the 'National Mitigation Plan', is acknowledged and documented in the relevant development plan or local area plan;*
- (2) Indicate how the implementation of the relevant development plan or local area plan over its effective period will contribute to realising overall national*

targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts); and

- (3) *Demonstrate detailed compliance with item number (2) above in any proposal by them to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use into their development plan or local area plan. Such a proposal shall be subject to environmental assessment requirements, for example under the SEA and Habitats Directives. It shall also be a material consideration in SEA, when taking into account likely significant effects on climatic factors, in addition to other factors such as landscape and air, if a mandatory setback or variation to a mandatory setback proposed by a planning authority in a development plan or local area plan would create a significant limitation or constraint on renewable energy projects, including wind turbines, within the administrative area of the plan.*

The revised section 28(1A)(b) statement addressed the inconsistency of the Variation with item 2 of SPPR contained in the *Interim Guidelines* (and with SPPR2 of the *draft Guidelines*). It states that ‘*in the absence of detailed technical guidance, it is not possible to make [calculations concerning contribution to national targets on wind energy production/resource (in megawatts)] with any degree of accuracy*’ for the following reasons:

- Wind energy development is not precluded for a significant part of the county;
- A significant proportion of the area where it is not precluded would be constrained by the presence of residential receptors and the need to achieve 10 times tip height distance;
- Policy allows for derogation from these minimum setback requirements where written consent of owners is provided;
- It is not possible to project how many of the existing 301 operational turbines in the county will be replaced, or their generating capacity; and

- SEAI advised that the developing technology of wind energy production also makes calculating potential output difficult.

It is an objective of the NPF under NPO 55 to:

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

The *Climate Action and Low Carbon Development (Amendment) Act 2021*, requires the Government to ‘*pursue and achieve*’ a national climate objective of a ‘*climate resilient ... and climate-neutral economy*’ (net-zero GHG emissions) by the end of 2050¹, and sets a binding interim target to reduce greenhouse gas emissions by 51% by 2030². This is to be achieved through, annual climate action plans³.

The *Climate Action Plan 2021* sets a target of 80% for electricity demand generated from renewable sources by 2030⁴. It anticipates that this will be delivered by up to 8GW for onshore wind. The *Climate Action Plan 2021* indicates that onshore wind energy continues to play the largest role in meeting national renewable energy targets over the period to 2030.

It is also an objective of the North West Regional Assembly (NWRA) Regional Spatial and Economic Strategy (RSES) under RPO 4.17:

To position the region to avail of the emerging global market in renewable energy by: [inter alia] Stimulating the development and deployment of the most advantageous renewable energy systems.

The revisions proposed to Chapter 8 as part of the variation acknowledge the Government’s commitment to reducing GHG’s and the importance of wind energy as a renewable energy source in achieving national targets. However, the proposed

¹ Section 3 of the Act, as amended.

² Section 6A of the Act, as amended.

³ Section 6 of the Act, as amended.

⁴ Section 11.2 Targets, CAP 2021.

variation did not indicate how the Development Plan would contribute to national targets on wind energy production (in megawatts).

The Chief Executive's report under section 13(4) of the Act included a procedural recommendation '*strongly recommending that Members do not approve / make the published Proposed Variation*'. The Chief Executive recommended an amendment be made to the proposed Variation to comply with Recommendation 1 of the Office's submission, specifically the insertion of the following:

The Planning Authority acknowledges again the national policy drive towards increased renewable energy output. The Authority further acknowledges Special Planning Policy Requirement (2) of the Interim Guidelines, re the requirement of planning authorities to ie. 'Indicate how the implementation of the relevant development plan or local area plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts)'. Following consultation with the Office of the Planning Regulator, the Authority sets out its calculations in this regard as follows:

Map 8.2.1 Designation	Area (KM2) (total area of County = 4,680 KM2)	Apply Factor of 25% due to scattered rural dwelling pattern	Potential no. of Turbines (Using factor of 5/KM2)	'Provisional' Output (Megawatts) (Using factor of 3 Megawatts/Turbine)	Adjustment Rate for Attrition (ie. lack of success of potential projects)	Final Estimated Output M'watts
Acceptable in Principle	4.33	1	5	15	80%	3
Open to Consideration	2,800	700	3,500	10,500	90%	1,050
Total						1,053

According to Appendix B (Scenario 2⁵), these calculations were based on the amendment of the following areas, in accordance with the recommendation of the Chief Executive, from 'Not Normally Permissible' and moved to 'Open for Consideration':

⁵ The two scenarios are both labelled Scenario 2 in Appendix B, but as 1 and 2 in section 7.0.

- Moderately High and Moderately Low Landslide Susceptibility Areas (omission required by Recommendation 2 of the Office's submission);
- Lifford- Stranorlar Municipal District Areas at risk of Landslides and Associates Environmental and Ecological Concerns (omission required by Recommendation 2 of the Office's submission); and
- Freshwater Pearl Mussel Catchment Areas.

The Chief Executive also calculated the potential wind energy contribution to the national renewable energy targets of the published proposed Variation (that is as adopted without amendments) at 526 MW (Scenario 1).

The main difference between the two scenarios is in respect of the land area designated as 'Open to Consideration', which amounts to 2,800km² in Scenario 2 and a little under 1,400km² for Scenario 1.

The calculations carried out by the Chief Executive followed a reasonable, rational, and evidence-based approach based on land area designated as 'Open for Consideration' and 'Acceptable in Principle', including the application of a reduction factor to account for scattered rural dwelling patterns and adjustment for attrition (i.e. lack of success of potential projects).

The Office therefore considers that the recommendation of the Chief Executive provides a reasonable basis upon which the Development Plan can indicate how the implementation of the Plan will contribute to realising overall national targets on renewable energy and climate change mitigation, in particular in relation to wind energy production and the potential wind energy resource (in megawatts), subject to the consideration of setback distances and designation of areas as 'Open for Consideration' as set out below.

The planning authority did not comply with the CE's recommendation and has therefore made the variation to the Development Plan in a manner that is not consistent with Recommendation 1(i) of the Office.

A combined section 13(5)(aa) and 31AM(6) notice was issued by the planning authority that detailed the recommendation of the Chief Executive and the reasons why the elected members decided to not comply with the Office's recommendation.

In deciding not to comply with the Office's recommendation, the elected members agreed to rely on the reasons contained in the relevant subsection of the revised Section 28 Statement, as set out above.

Consideration of reasons given by elected members

The Office acknowledges the reasons of the elected members for not complying with Recommendation 1(i) set out in the combined section 13(5)(aa) and section 31AM(6) notice.

Regarding the reason given that the absence of detailed technical guidance makes it difficult to develop a local policy, Recommendation 1 alerted the planning authority to the *Wind Energy Guidelines* and the *Interim Guidelines*, inclusive of an SPPR, as the relevant Ministerial guidelines, issued under section 28 of the Act, to inform the amendment of its wind energy policy and objectives.

Furthermore, the Chief Executive provided a calculation of the potential contribution to the national renewable energy targets in MW for the Variation as published in Appendix B of the Chief Executive's report and recommended that additional narrative in respect of the SPPR set out in the *Interim Guidelines* be included to indicate the potential wind energy resource in megawatts of the county. The ability to prepare these calculations is therefore contrary to the reasons given by the elected members for not accepting the Chief Executive's recommendation.

Regarding the reason given that it is not possible to determine the generating capacity of the replacement of the existing 301 turbines in the county, the estimated calculation is based on the amount of available land in the county and takes account of attrition rates of potential projects. Therefore the existing operational capacity of the turbines is not required.

The reasons given do not address the substantive issue in the Recommendation 1(i), that the planning authority demonstrate how the Development Plan will contribute to meeting national targets on wind energy production, as required by the SPPR of the *Interim Guidelines* and consistent with meeting national objectives towards achieving a low carbon economy in accordance with NPO 55, by way of realising the potential from the wind energy resources of the planning authority's area in accordance with

the *Wind Energy Guidelines* and by stimulating the development and deployment of renewable energy systems in accordance with *RPO 4.17*.

Further, the constraints imposed on wind energy development through the failure to have adequate regard to the step-by-step analysis of areas suitable for wind energy development under section 3.4 of the *Wind Energy Guidelines*, and through the proposed setback policy under Policy E-P-23 and Policy E-P-24 which will effectively rule out wind energy development for the vast majority of land designated 'Open for Consideration' or 'Acceptable in Principle', unreasonably constrain the wind energy potential of the county.

The reasons given by the planning authority do not demonstrate that the planning authority has formed the opinion that it is not possible, because of the nature and characteristics of the area of the plan to implement certain relevant policies and objectives of the Minister contained in the *Interim Guidelines*, contrary to the obligation on the planning authority to provide adequate reasons as to why ministerial guidelines could not be implemented.

The planning authority did not address the requirement under section 28(1)(C) that planning authorities comply with SPPRs in the performance of their functions; or the requirement under sections 13(7) and 13(14) that elected members, in making the variation to the development plan are obliged to ensure the development plan is consistent with the objectives of the NPF and RSES and with SPPRs in section 28 guidelines.

In this regard, the Variation is inconsistent with the SPPR of the *Interim Guidelines*, NPO 55 and with RPO 4.17. In so making the variation to the development plan the planning authority has contravened section 13(7), 13(14) and 28(1C) of the Act

Recommendation 1(ii) – Setback Policy

In relation to Part (ii) of Recommendation 1, the planning authority was requested to demonstrate that the plan is consistent with the delivery of part (i) of the recommendation including through the omission of Policy E-P-23 and Policy E-P-24 regarding set back distances. These policies impose a separation distance of 10 times the tip height from any residential receptor.

Recommendation 1(ii) Compliance with statutory guidelines stated:

- (i) *demonstrate that the Plan is consistent with the delivery of part (i), including through the omission of the setback standard for wind energy development under Policy E-P-23 and Policy E-P-24 of the proposed Variation and ensure that any provision for mandatory setback are consistent with the Wind Energy Development Guidelines for Planning Authorities (2006).*

Policy E-P-23 states:

It is a policy of the Council that wind farm development:

(2) Must:

- (b) *Ensure a setback distance for visual amenity purposes of ten times the tip height of proposed turbines from the nearest part of the curtilage of residential properties and other centres of human habitation, [sic] An exception may be considered for a lower setback requirement from existing or permitted dwellings or other sensitive properties to new turbines where the owner(s) and occupier(s) of the relevant property or properties are agreeable to same and where the noise requirements of the relevant Wind Energy Guidelines are capable of being complied with in all cases. In such exceptional reduced setback situations, the relevant parties must provide written confirmation to the satisfaction of the Planning Authority that they have agreed to a reduced setback and have no objection to the proposed wind energy development.*
- (3) *Shall, subject to compliance with sub-paragraphs (1) and (2) above and other relevant policies of this Plan, be acceptable where a setback distance for visual amenity purposes of ten times the tip height of proposed turbines from the nearest part of the curtilage of residential properties and other centres of human habitation, has been achieved.*

In all cases, whether in 'Acceptable in Principle', 'Open to Consideration' or 'Not Normally Permissible' areas, compliance with the setback distances required under Policy E-P-23 will be required. For re-powering or augmentation projects, the required setback distance shall be the required multiple of the new turbine

height and no allowance shall be made in this regard for the established development.

Policy E-P-24 states:

It is a policy of the Council that wind farm developments must ensure a setback distance for noise and shadow flicker purposes of ten times the tip height of proposed turbines from the nearest part of the curtilage of residential properties and other centres of human habitation.

Neither the *Wind Energy Guidelines* (2006) nor the *Interim Guidelines* recommend a specific mandatory setback of wind energy development from residential receptors.

Section 3.4 of the *Wind Energy Guidelines* state that development plan should set out policies and objectives, including, inter alia:

objectives to secure the maximum potential from the wind energy resources of the planning authority's area commensurate with supporting development that is consistent with proper planning and sustainable development.

Policy E-P-23 and Policy E-P-24, which would effectively prevent the consideration of wind energy development throughout almost the entire area designated as 'Open for Consideration' or 'Acceptable in Principle', would undermine the objectives of the Development Plan as varied, including objective E-O-7, which seeks '*to secure the maximum potential from the wind energy resources of the planning authority's area commensurate with supporting development that is consistent with proper planning and sustainable development.*' In making the Variation, the planning authority therefore does not have adequate regard to the *Wind Energy Guidelines*. Insofar as some regard may have been had to the *Wind Energy Guidelines*, the provisions of those guidelines were misunderstood. No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why aspects of the guidelines have not been implemented.

As stated, above, The *Interim Guidelines*, issued under section 28, include a Specific Planning Policy Requirement (SPPR). Item 3 of the SPPR requires the planning authority to:

Demonstrate detailed compliance with item number 2 [of the SPPR] in any proposal ... to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use into their development plan.

That is, it must demonstrate compliance with the contribution to national targets on wind energy production and the potential wind energy resource (in megawatts).

Further, item 3 of the SPPR also requires that where such mandatory setbacks are proposed, they '*shall be subject to environmental assessment requirements, for example under the SEA and Habitats Directives*'. In particular, it provides that:

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

The SEA Environmental Report of the draft Variation, as prepared by the planning authority, included the proposed setback of 10-times tip height proposed under Policy E-P-23 and E -P- 24 as a material consideration on climatic factors. Section 7.2 of the Environmental Report concluded that the setback had '*No Relationship / Insignificant Effect*' on Climatic Factors, the Consolidated Environmental Protection Objectives of which were stated as:

- *Reduce Greenhouse Gas emissions in order to help mitigate climate change and meet our relevant International, European and National climate change obligations and targets including achieving the National Climate Objective.*
- *Pursue development strategies which increase our ability to adapt to climate change and improve climate resilience.*

As noted in the submission to the draft Variation, the Office carried out an analysis of the implications of the aforementioned policies having regard to a tip height of 150m and 180m, which determined that only a small portion of highly fragmented land designated 'Open for Consideration' would not be precluded from wind energy

development under Policy E-P-23 and E -P- 24 (see Figure 1, below and Figure 2 in Appendix A).

The Office concluded that the subject setbacks would therefore create significant limitations and constraints on the provision of wind energy development within County Donegal that will negatively impact on the ability of the State to meet the national 2030 renewable energy targets. Accordingly, under Observation 1 the Office requested the planning authority to review the conclusions of the SEA Environmental Report concerning the likely significant effects on climatic factors of the proposed separation distances under Policy E-P-23 and Policy E-P-24.

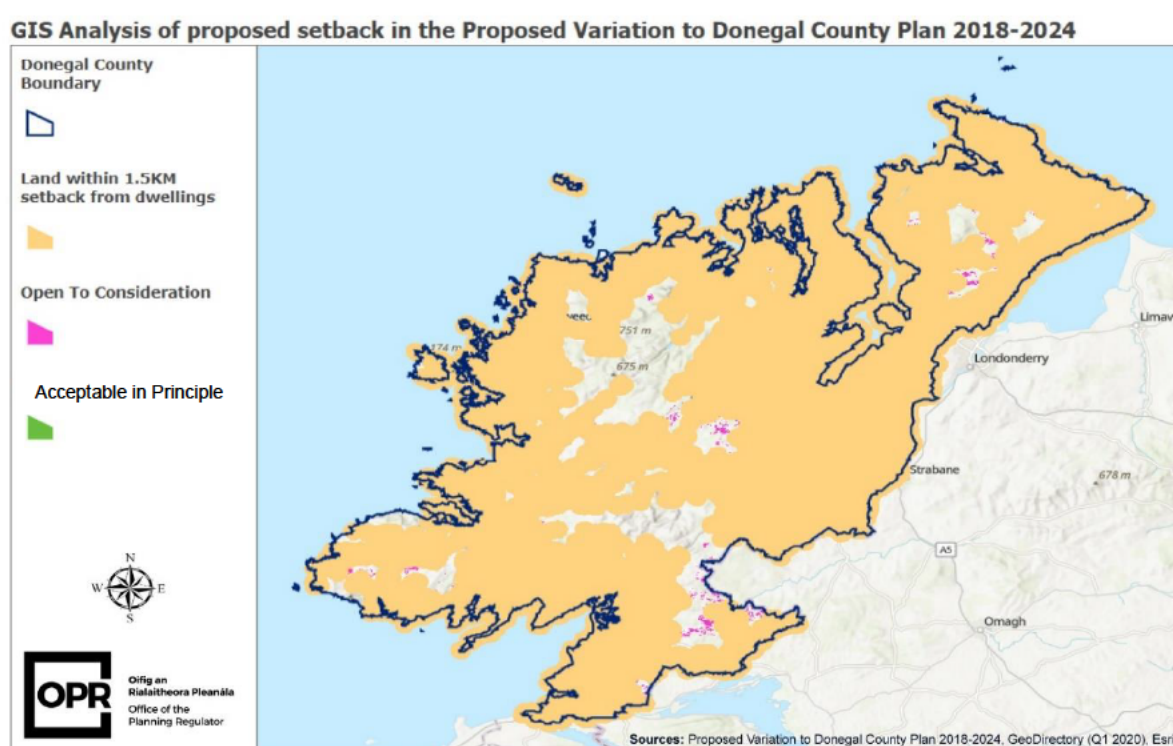


Figure 1: OPR's GIS analysis of 1.5km setback of wind energy development

The submission from Northern and Western Regional Assembly (NWRA), noted that:

Notwithstanding the potential excessive setback of 10 times the Turbine Tip Height, it is considered that the revised Wind Energy Policy Variation is not inconsistent with the RSES per se, but it will limit the opportunity for Donegal to realise its potential to deliver renewable energy through wind energy sources.

The Office acknowledges the position of the NWRA. However, as demonstrated in the analysis above, the inclusion of a setback of ten times the tip height under Policy

E-P 23 and E-P 24 would so significantly and unreasonably limit the delivery of onshore wind energy, which is identified in the *Climate Action Plan 2021* as the largest individual renewable energy source for the state for the period up to 2030, to the extent that it is inconsistent with RPO 4.17.

Observation 1 Strategic Environmental Assessment stated:

Having regard to point (3) of the SPPR of the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017) and to the provisions of the Strategic Environmental Assessment: Guidelines for Regional Assemblies and Planning Authorities (2022), the planning authority is requested to a review of the conclusions of the SEA Environmental Report, based on a clear evidence-based approach, concerning the environmental assessment of the likely significant effects on climatic factors of the proposed 10-times tip height separation distance provided for under Policy E-P-23 and Policy E-P-24 of the proposed Variation.

The revised section 28(1A)(b) statement does not address item 3 of the SPPR of the *Interim Guidelines*, either directly or indirectly through the consideration of SPPR 1 or 2 of the draft guidelines.

The revised section 28(1A)(b) does indirectly address the requirements under section 3.4 of the *Wind Energy Guidelines*, but it does not indicate that the planning authority has formed the opinion that it is not possible, because of the characteristics of the area of the development plan to implement the policies and objectives in the guidelines.

The CE recommended to omit the ten times tip height setback standards for wind energy development as contained in Policy E-P-23 and Policy E-P-24 of the proposed variation, as required by the Office, and to insert the following policy in their place:

It is a policy of the Council to ensure that the assessment of wind energy development proposals will have regard to the following:

- *Sensitives of the county's landscapes;*

- *Visual impacts on protected views, prospects, designated landscapes, as well as local visual impacts;*
- *Impacts on nature conservation designation, archaeological area, county geological sites, historical structures, public rights of ways and walking routes;*
- *Local environmental impacts, including those on residential properties such as noise and shadow flicker;*
- *Visual and environmental impacts of associated development, such as access roads, plant and grid connections from the proposed wind farm to the electricity transmission network;*
- *Scale, size and layout of the project and any cumulative effects due to other projects;*
- *The impact of the proposed development on protected bird and mammal species;*
- *The Planning System and Flood Risk Management, Guidelines for planning Authorities (2009);*
- *The protection of drinking water sources.*

The replacement policy follows the guidance set out in Section 4.5 of the *Wind Energy Guidelines* in respect of general considerations in assessment of wind energy planning applications.

The Office is satisfied that the revised policy approach recommended by the Chief Executive is compliant with Recommendation 1(ii) and obviates the need to review the SEA Environmental Report as requested under Observation 1. In this regard, it is noted that the Chief Executive's Report does not address Observation 1 and makes no relevant recommendation concerning same.

However, the elected members did not agree with the Chief Executive recommendation and resolved to make the plan as published for consultation. Therefore, the planning authority has not complied with Recommendation 1(ii) of the

Office's submission and has made the variation to the Development Plan in a manner that is not consistent with the recommendation of the Office.

The combined section 13(5)(aa) and 31AM(6) notice issued by the planning authority detailed the recommendation of the Chief Executive and the reasons why the elected members decided to not comply with the Office's recommendation.

According to the Section 31AM(6) Notice the elected members agreed to rely on the reasons contained within the revised Section 28 Statement contained within the amendment item no. 3 of the proposed variation as a reason for not complying with the Chief Executive's recommendation, which are summarised from the Notice as follows:

- *'These policies are consistent with policy decisions previously agreed by Donegal County Council both in (a) June, 2014 (Variation no.2 (Wind Energy)) of the County Development Plan, 2012-2018; and (b) in May 2018 (County Development Plan 2018-2024).'*
- *'These decisions were made having due regard to national guidelines at the time and ... the views of the people of Donegal ... and to protect the environmental and ecological integrity of the County.'*
- *'The present decision also has regard to the Minister's Challenge to the aforementioned 2014 variation and to the findings of an independent Inspector appointed to review that Variation, namely that:*
 - *Donegal County Council did not ignore or take insufficient account of the submission made by the Minister in May 2014;*
 - *Variation no.2 (of the County Development Plan 2012-2018) did not significantly impact on the internal coherence of the County Development plan; and*
 - *Did not make the development plan inconsistent with national policy.'*
- *'Donegal County Council believes that ten times the tip height separation is a fair set back for modern day turbines which are a size and scale not*

envisaged when the original Wind Energy Guidelines were published in 2006.'

- *'Turbines are now approximately 160 metres with the potential for greater even greater heights'.*
- *'..ten times tip height setback policy is favoured by the vast majority of people of Donegal'.*

Consideration of reasons given by elected members

The Office acknowledges the reasons of the elected members for not complying with Recommendation 1(ii), set out in the section 31AM(6) notice.

Regarding the reason given that Policy E-P-23 and Policy E -P- 24 are consistent with previous policy decisions made by the Council in respect of the making of Variation no.2 of the County Development Plan 2012-2018 and in respect the making of the County Development Plan 2018-2024, the Variation documentation confirms that a similar policy in the County Development Plan 2018-2024 (policy 6.5(f) was omitted as a result of High Court Order made on the 5th day of November, 2018.

The setback restrictions imposed by Policy E-P-23 and Policy E -P- 24 do not have adequate regard to the statutory guidelines issued by the Minister under section 28, namely the *Wind Energy Guidelines* and the *Interim Guidelines* . The subject policies are inconsistent with the Specific Planning Policy Requirement under the *Interim Guidelines*, with NPO 55 and with RPO 4.17 and in so making the variation to the development plan the planning authority has contravened section 13(7), 13(14) and 28(1C) of the Act.

The reasons given do not, therefore, address the substantive issue in Recommendation 1(ii), that the planning authority demonstrate that the Plan is consistent with the delivery of national renewable energy targets, specifically in relation to wind energy, including through the omission of the setback standard for wind energy development under Policy E-P-23 and Policy E-P-24.

The reasons given by the planning authority do not demonstrate that the planning authority has formed the opinion that it is not possible, because of the nature and

characteristics of the area of the plan to implement certain relevant policies and objectives of the Minister contained in the *Wind Energy Guidelines* and *Interim Guidelines*, contrary to the obligation on the planning authority to provide such reasons.

The planning authority did not address the requirement under section 28(1)(C) that planning authorities comply with SPPRs in the performance of their functions; or the requirement under sections 13(7) and 13(14) that elected members, in making the variation to the development plan are obliged to ensure the development plan is consistent with the objectives of the NPF and RSES and with SPPRs in section 28 guidelines.

In this regard, the Variation is inconsistent with the SPPR of the *Interim Guidelines*, NPO 55 and with RPO 4.17. In so making the plan the planning authority has contravened section 13(7), 13(14) and 28(1C) of the Act.

1.2.2 Recommendation 2: Sieve Analysis Mapping

Recommendation 2 of the submission to the variation requested that the planning authority review the sieve mapping analysis to amend the areas “*Acceptable in Principle*”, “*Open for Consideration*” and “*Not Normally Permissible*” by omitting specific constraints in accordance with the policies set out in the NPF and the evidence based approach detailed in the *Wind Energy Guidelines*.

Recommendation 2 – Sieve Analysis Mapping stated:

Having regard to National Planning Policy 55, which promotes the generation of renewable energy, National Strategic Outcome 8 ‘Transition to Sustainable Energy’, and the Wind Energy Development Guidelines for Planning Authorities’ (2006) which requires the implementation of plan-led approach to identify suitable or unsuitable areas for wind energy development through a systematic, evidence-based approach referred to as ‘sieve mapping analysis’, the planning authority is required to remove the following constraints from the sieve mapping and to amend the areas within the county “Acceptable in Principle”, “Open for Consideration” and “Not Normally Permissible” (Map 8.2.1 Wind Energy) accordingly:

- i) remove the “Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns”; and
- ii) remove all “Moderately Low” and “Moderately High” landslide susceptibility areas from that area defined as “Not Normally Permissible

Section 3.5 of the *Wind Energy Guidelines* sets out a step-by-step guide to the analysis (sieve analysis) of suitable areas for wind energy development by the planning authority.

The considerations relate specifically to the spatially distributed potential of available wind resource in the county, landscape evaluation and sensitivity, built and natural heritage designations and the accessibility to electricity transmissions and distribution grids.

In order to provide a plan-led context to the assessment of individual wind energy development proposals the *Wind Energy Guidelines* also require that:

The development plan must achieve a reasonable balance between responding to overall Government Policy on renewable energy and enabling the wind energy resources of the planning authority’s area to be harnessed in a manner that is consistent with proper planning and sustainable development.

Furthermore, the guidelines indicate that the development should include strategic aims and objectives including:

the identification on development plan maps of the key areas within the planning authority’s functional area where there is significant wind energy potential and where, subject to criteria such as design and landscape planning, natural heritage, environmental and amenity considerations, wind energy development will be acceptable in principle.

Map 8.2.1 of the Variation determines the areas where wind energy development is ‘Acceptable in Principle’, ‘Open-to-Consideration’ and ‘Not Normally Permissible’.

It is evident that in preparing Map 8.2.1 the planning authority departed from the step-by-step guide by considering extraneous factors in the analysis, which factors do not warrant protection through the prohibition of all wind energy development

within certain areas. As a consequence the extent of lands designated as “Not Normally Permissible” for wind energy development was significantly expanded. In carrying out its step-by-step analysis, the planning authority therefore did not have adequate regard to the *Wind Energy Guidelines*.

The section 28(1A)(b) statement included in the Variation does not address the *Wind Energy Guidelines*, which are the operative guidelines. Referring to point (3) of SPPR1 of the *Draft Revised Wind Energy Development Guidelines* (2019), the statement indicates that Map 8.2.1 was prepared using, as a basis, the step-by-step methodology under section 3.6 of the *Draft Guidelines*, which is very similar to that under section 3.4 of the *Wind Energy Guidelines*. Therefore, although the *Draft Guidelines* have not been adopted by the Minister under section 28, in responding to the requirements of those guidelines the statement addresses the substantive issue.

The statement states that subsequently the “*members by resolution, made five amendments to the proposed map submitted by the Chief Executive, which change those areas from ‘Open to Consideration’ to ‘Not Normally Permissible’*”. The statement gives reasons for not implementing the policy and objectives of the Minister, as concerns the step-by-step analysis, which may be summarised as:

- The inclusion of additional areas due to the landslide event adjacent to an existing Meenbog Windfarm site;
- The inclusion of additional areas due to the presence of identified Moderately High and Moderately Low landslide susceptibility; and
- The ecological and environmental sensitivities of the area including the strategic Lough Mourne public water supply reservoir and associated tributaries and unknown underground feeder supplies, and the consequent imperative need to protect the catchment area by adopting a precautionary approach to the specific area;
- The need to protect the catchment area by adopting a precautionary approach to this specific area.’

The constraints of particular concern to the Office included the:

- “*Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns*”, and
- All “Moderately High” and “Moderately Low” landslide susceptibility areas.

In the submission to the Variation, the Office previously advised that the inclusion of the ‘*Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns*’ effectively imposes a blanket ban over an area of 7,700ha. As illustrated in Figures B and C, below, only small parts of the ‘*Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns*’ in Figure B comprise of areas identified as constraints in terms of landslide susceptibility in Figure C.

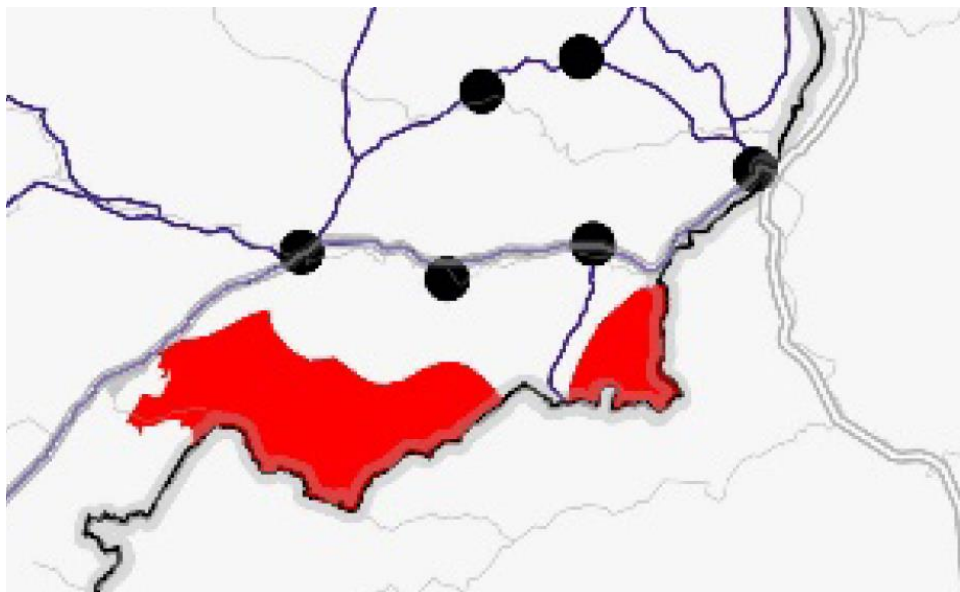


Figure B - ‘Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns’

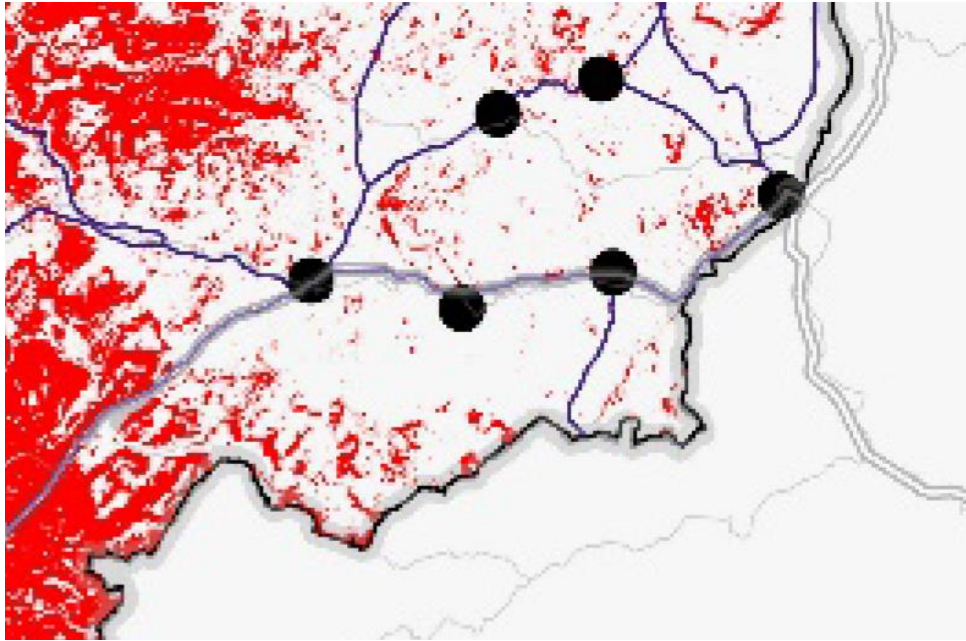


Figure C – Landslide Susceptibility (High, Moderately High and Moderately Low)

The inclusion of all “Moderately High” and “Moderately Low” landslide susceptibility areas within the ‘Not Normally Permissible’ zone effectively prohibits wind energy development within those areas due to the dispersed and highly fragmentation nature of these areas. The Office considers that this unjustified constraint will also have a significant indirect impact on the potential for wind energy projects within lands identified as ‘Open For Consideration’ as such lands are highly fragmented as a result, thereby creating very significant practical constraints to the delivery of future wind energy developments in the county.

This will therefore significantly limit the ability of the planning authority to contribute to the realisation of national targets on Renewable Energy and Climate Change mitigation in particular wind energy production and the potential wind energy resource(in megawatts) as required by SPPR 2 of the *Interim Guidelines*.

Furthermore, by introducing unreasonable constraints to wind energy projects in appropriate locations the Variation is also contrary to the promotion of renewable energy and generation at appropriate locations to meet national objectives towards achieving a local carbon economy in NPO 55, and fails to stimulate the development and deployment of the most advantageous energy system inconsistent with RPO 4.17.

This approach does not achieve a reasonable balance between responding to Government Policy on renewable energy and enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development and, in making the Variation, the planning authority has therefore not had adequate regard to the *Wind Energy Guidelines* (section 3.4). Insofar as some regard has been had to the *Wind Energy Guidelines*, the provisions of those guidelines were misunderstood. No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why these aspects of the guidelines have not been implemented.

Chapter 5 of the *Wind Energy Guidelines* identifies issues that can be more appropriately addressed as part of the consideration of an application for development through the development management process, rather than through step-by-step analysis. In this regard it highlights that localised, moderate landslide and stability risks can be appropriately considered by the planning authority at development management stage to allow for site specific design response and mitigation. Further, chapter 5 of the Guidelines concerning the assessment of landslide and slope stability risk, states that the consideration of localised, moderate risks can be appropriately considered by the planning authority at development management stage to allow for site specific design response and mitigation.

The SEA Environmental Report did not include, as a material consideration, *when taking into account likely significant effects on climatic factors, the impact of the constraints imposed on renewable energy projects by the inclusion of Lifford - Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns* and by the inclusion of all “Moderately Low” and “Moderately High” landslide susceptibility areas within that area defined as “Not Normally Permissible”.

In response to the submission of the Office, the Chief Executive in his report under section 13(4) clarified that “High Landslide” susceptibility areas were the only areas included in the “Not Normally Permissible” zone as part of the original proposed Variation. However at the plenary council meeting of November 2021 prior to the publication of the proposed variation, the elected members decided to include all

“Moderately Low” and “Moderately High” landslide susceptibility areas within the ‘Not Normally Permissible’ zone.

The section 31AM(6) notice states that ‘recommendation 2a of the CE Report expressly recommended that members comply with the Office's requirement. Under recommendation 2 of the CE report, the CE recommended that Map 8.2.1 ‘Wind Energy’ be amended as follows:

a. *Remove the:*

(i) *“Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns”; and*

(ii) *all “moderately High” and “Moderately Low” landslide susceptibility areas*

from the ‘Not Normally Permissible’ designation in Map 8.2.1 and revert the said Map of these areas to that submitted by the Executive to the November, 2021 Plenary Council meeting (i.e. to ‘Open for Consideration’)

The recommendation of the Chief Executive is consistent with Recommendation 2 of the Office. However, elected member decided not to comply with the recommendation of the Chief Executive. Therefore, the planning authority has not complied with Recommendation 2 of the Office’s submission and has made the variation to the Development Plan in a manner that is not consistent with the recommendation of the Office.

According to the section 31AM (6) notice, the members, in deciding not to comply with the Chief Executive’s recommendation, agreed to rely on the reasons contained in the relevant sub section of the (draft) revised section 28(1A)(b) statement contained in Amendment Item No. 3 of the proposed variation.

In relation to the Lifford- Stranorlar Municipal District Areas at Risk of Landslides and Associates Environmental Concerns, the reasons are summarised as follows:

This area was included:

- *‘due to the landslide event adjacent to an existing Meenbog Windfarm site’ (which was forewarned by a Civil and Structural Engineer in a submission to the relevant planning application);*
- *‘The presence of identified Moderately High and Moderately Low landslide susceptibility; and*
- *The ecological and environmental sensitivities of the area including the strategic Lough Mourne public water supply reservoir and associated tributaries and unknown underground feeder supplies, and the consequent imperative need to protect the catchment area by adopting a precautionary approach to the specific area;*
- *The need to protect the catchment area by adopting a precautionary approach to this specific area.’*

In relation to the inclusion of “Moderately High” and “Moderately Low” Landslide Susceptibility Areas, the section 31AM(6) notice states:

- *‘This amendment was made due to the same concerns as set out at Point 1 above (the Office assumes this is a reference to the landslide event adjacent to an existing Meenbog Windfarm site).*

Consideration of reasons given by elected members

The Office acknowledges the reasons of the elected members for not complying with Recommendation 2 set out in the section 31AM(6) notice.

Regarding the reason given as to why the Lifford- Stranorlar Municipal District Areas at Risk of Landslides and Associates Environmental Concerns and all “Moderately High” and “Moderately Low” Landslide Susceptibility Areas were included as Not Normally Permissible due to a landslide event adjacent to the Meenbog Wind Farm site, the Office notes that this approach does not have adequate regard to the ‘Step-by-Step Guide to the Analysis of Suitable areas for *Wind Energy Guidelines*. Insofar as some regard has been had to the *Wind Energy Guidelines*, the provisions of those guidelines were misunderstood. No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why these aspects of the guidelines have not been implemented.

The step-by-step guide does not provide for the exclusion of areas based on landslide susceptibility. Rather they suggest, under section 5.3 that issues pertaining to details of geology and landslide / slope stability be addressed as a critical issue during the development management process. Therefore in applying a blanket ban on an area wide basis due to a localised landslide risk and/or on the basis of moderate landslide susceptibility the planning authority has not had adequate regard to the *Wind Energy Guidelines*. Figure C, above, indicates that slope stability within this area is a highly fragmented and localised issue that does not justify the exclusion of the entire area from wind energy development.

Regarding the reason given that the Lifford- Stranorlar Municipal District Areas (& etc,) were included as 'Not Normally Permissible' due to the Lough Mourne public water supply reservoir and associated tributaries and unknown underground feeder supplies, and the consequent imperative need to protect the catchment area by adopting a precautionary approach to the specific area, the Office notes that this approach does not have adequate regard to the 'Step-by-Step Guide to the Analysis of Suitable areas for Wind Energy by the Planning Authority under section 3.5 of the *Wind Energy Guidelines*.

The step-by-step guide does not provide for the exclusion of areas based on hydrology. Rather, section 4.5 of the guidelines indicate that such matters would be considered at application stage, including consideration of information on site drainage and hydrological effects, such as water supply and quality and watercourse crossing. Therefore in applying a blanket ban on a catchment basis, particularly in the absence of detailed hydrological information relating to the entirety of the area concerned, the planning authority did not have adequate regard to the *Wind Energy Guidelines*.

In this regard it is noted that, according to the Chief Executive's report under s.13(4), the subject areas were changed from 'Open to Consideration' to 'Not Normally Permissible' by the members and were not identified as constraints by the Chief Executive in carrying out the step-by-step analysis in accordance with section 3.5 of the *Wind Energy Guidelines*. In including the subject areas as constraints on wind energy development the planning authority did not therefore have adequate regard

to the guidelines and failed to provide any or any adequate reasons as to why these aspects of the guidelines have not been implemented.

It is therefore considered that there is no evidential basis to support the reasons given to include the entire “Lifford - Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns” or the reasons given to include all “Moderately High” and “Moderately Low” Landslide Susceptibility Areas in the area designated ‘Not Normally Permissible’.

The reasons given by the elected members do not address the substantive issue in Recommendation 2, that the sieve analysis mapping be plan-led and provide for a systematic, evidence based approach to identifying suitable areas for wind energy development having regard to the *Wind Energy Guidelines*.

The reasons given by the planning authority do not demonstrate that the planning authority has formed the opinion that it is not possible, because of the nature and characteristics of the area of the plan to implement certain relevant policies and objectives of the Minister contained in the *Wind Energy Guidelines* and *Interim Guidelines*, contrary to the obligation on the planning authority to provide such reasons.

The planning authority did not address the requirement under section 28(1)(C) that planning authorities comply with SPPRs in the performance of their functions; or the requirement under sections 13(7) and 13(14) that elected members, in making the development plan are obliged to ensure the development plan is consistent with the objectives of the NPF and RSES and with SPPRs in section 28 guidelines.

In this regard, the Variation is inconsistent with NPO 55 and with RPO 4.17 and fails to have adequate regard to the evidence-based approach to the determination of areas suitable to accommodate wind energy development in the *Wind Energy Guidelines*. In so making the variation to the development plan the planning authority has contravened section 13(7), 13(14) and 28(1C) of the Act.

2. Opinion of the Office and Reasons

Having considered the Variation to the Development Plan, the Office also notes, under section 31 AM(7) of the Act, that the said Variation to the Development Plan has not been made in a manner consistent with the recommendations of the Office.

Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the notice letter dated (25th July) adequately justify the failure to implement those recommendations or explain how, notwithstanding that failure, the Variation as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

As you will be aware, under section 31AM(1)(a-e) of the Act, the Office has a statutory duty to evaluate and assess local authority development plans and proposed variations to such plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of local authority development plans and variations, such as this Variation:

- The provisions of section 31AM(2) as set out above.
- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.
- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.
- Under section 31S, the Office must, in performing its functions, have regard to:
 - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), 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, villages or other areas, whether urban or rural,

- b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,
- c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
- d) the requirements of relevant acts of the European Union, in particular, those relating to—
 - (i) the Environmental Impact Assessment Directive,
 - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
 - (iii) the Habitats Directive, and
 - (iv) the Birds Directives,

in so far as those requirements relate to planning authorities by virtue of being designated competent authorities for the purposes of those acts.

Accordingly, having considered the Variation in light of section 31AM(1)(a-e), section 31AM(2), section 31AM(3)(a), section 31P(3) and section 31S, and the letter from the planning authority of the 7th July 2022 issued under section 31AM(6), the Office is of the opinion that the Variation to the Development Plan has not been made in a manner consistent with the recommendations of the Office under Section 31AM (7).

As set out below, the Variation as made is not consistent with the policy objectives of the National Planning Framework, the Regional Spatial and Economic Strategy and with the Specific Planning Policy Requirements contained in Ministerial Guidelines issued under section 28 of the Act; and fails to have regard to certain Ministerial Guidelines issued under section 28 of the Act, in relation to wind energy as a renewable energy, which represents a failure to set out an overall strategy for the

proper planning and sustainable development of the functional area of Donegal County Council.

The Variation as made is in not consistent with a requirement contained in Ministerial Guidelines issued under section 28 of the Act, specifically items 2 and 3 of the Specific Planning Policy Requirement contained in the *Interim Guidelines*.

Specifically in making the Variation, the planning authority:

- fails to indicate how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts), and having regard to the binding interim target to reduce greenhouse gas emissions by 51% by 2030 under the *Climate Action and Low Carbon Development (Amendment) Act 2021*, to be achieved through, inter alia, the targets in the *Climate Action Plan 2021* including a target of 80% electricity demand generated from renewable sources by 2030, the majority of which is anticipated to be delivered by onshore wind (8GW);
- introduces a mandatory setback distance of 10 times the tip height for wind turbines from residential properties or other centres of human habitation which fails to demonstrate compliance with item number (2) of the SPPR and item (3) of the SPPR in relation to considering the mandatory setback as a material consideration in the SEA when taking into account likely significant effects on climatic factors; and;
- introduces spatial constraints that extend the “Not Normally Permissible” areas identified in Map 8.2.1 and limit the available land for wind development projects without having adequate regard to the guidelines.

The planning authority has failed to have adequate regard to the *Wind Energy Guidelines* in that the Variation to the Development Plan does not achieve a reasonable balance in responding to overall Government Policy on renewable energy, enabling the wind energy resources of the planning authority’s area to be

harnessed in a manner that is consistent with proper planning and sustainable development in order to provide a plan-led context to the assessment of individual wind energy development proposals. Specifically in making the Variation, the Planning Authority:

- does not have adequate regard to the step-by-step analysis of areas suitable for wind energy (or sieve analysis) under section 3.5 of the guidelines, specifically in including within the area designated as ‘Not Normally Permissible’:
 - i) the “Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns”; and
 - ii) all “Moderately Low” and “Moderately High” landslide susceptibility areas from that area defined as “Not Normally Permissible

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the wind energy strategy in the Variation to the Development Plan as made is consistent with an overall strategy for the proper planning and sustainable development of the area.

The statement under Section 28(1A)(b) which formed part of the Variation to the Development Plan has not provided adequate evidence based analysis to demonstrate that it is not possible to implement the policies and objectives contained in the *Wind Energy Guidelines*, the *Interim Guidelines*, including the SPPR, and sets out reasons for the forming of that opinion as to why it is not possible to implement the policies and objectives, however the reasons provided are not considered to be evidenced based and did not relate to the nature and characteristics of the area that would prevent the planning authority from complying with the Guidelines.

There is an obligation on the planning authority, to give adequate reasons for the forming of the opinion that it is not possible to implement the policies and objectives contained in relevant s.28 guidelines.

As set out above, the factors that the Office has taken into account in forming this opinion are as follows:

- (i) The requirements of sections 10(1), 13(7), 13(14) and section 28(1C) of the Act.
- (ii) The National Planning Framework including National Policy Objective 55, which states the following:

NPO 55

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;

- (iii) The North and Western Regional Assembly Regional Spatial Economic Strategy 2020-2032 including Regional Policy Objective 4.17, which states the following:

RPO 4.17

To position the region to avail of the emerging global market in renewable energy by: [inter alia] Stimulating the development and deployment of the most advantageous renewable energy systems.

- (iv) The Specific Planning Policy Requirement under the *Interim Guidelines*, issued by the Minister under section 28 of the Act which states:

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

- (1) *Ensure that overall national policy on renewable energy as contained in documents such as the Government's 'White Paper on Energy Policy - Ireland's Transition to a Low Carbon Future', as well as the 'National Renewable Energy Action Plan', the 'Strategy for Renewable Energy' and the 'National Mitigation Plan', is acknowledged and documented in the relevant development plan or local area plan;*

- (2) *Indicate how the implementation of the relevant development plan or local area plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts); and*
- (3) *Demonstrate detailed compliance with item number (2) above in any proposal by them to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use into their development plan or local area plan. Such a proposal shall be subject to environmental assessment requirements, for example under the SEA and Habitats Directives. It shall also be a material consideration in SEA, when taking into account likely significant effects on climatic factors, in addition to other factors such as landscape and air, if a mandatory setback or variation to a mandatory setback proposed by a planning authority in a development plan or local area plan would create a significant limitation or constraint on renewable energy projects, including wind turbines, within the administrative area of the plan.*
- (v) The *Climate Action and Low Carbon (Amendment) Act (2021)* which requires the Government to ‘*pursue and achieve*’ a national climate objective of a ‘*climate resilient ... and climate-neutral economy*’ (net-zero GHG emissions) by the end of 2050, and sets a binding interim target to reduce greenhouse gas emissions by 51% by 2030, to be achieved through, inter alia, annual climate action plans.
- (vi) The *Climate Action Plan 2021* which sets a target of 80% for electricity demand generated from renewable sources by 2030, 8GW of which is anticipated to be delivered through onshore wind energy.
- (vii) The *Wind Energy Guidelines*, issued by the Minister under section 28 of the Act including the:
- requirement that the development plan ‘*must achieve a reasonable balance between responding to overall Government Policy on renewable*

energy and enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development' in order to provide for 'the assessment of individual wind energy development proposals...within the context of a "plan-led" approach'.

- requirement that development plan should identify '*on development plan maps key areas ... where there is significant wind energy potential and where, subject to criteria such as design and landscape planning, natural heritage, environmental and amenity considerations, wind energy development will be acceptable in principle*'; and
- '*step-by-step guide to the analysis of areas suitable for wind energy by the planning authority*' (or sieve analysis) under section 3.5.

(viii) 92/43/EEC *The Habitats Directive*;

(ix) *Directive 2001/42/EC* of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment;

(x) The Chief Executive's reports on submissions on the variation to the Development Plan.

In light of the above, the Office is therefore of the opinion that the variation to the Development Plan has not been made in a manner consistent with its recommendations and that the variation to the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

3. Recommendation to the Minister

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps as to rectify the matter as set out in the draft direction to the planning authority accompanying this notice, that is:

- a. Indicate and incorporate into the Variation to the Development Plan, based on relevant and meaningful metrics, how the implementation of the Development Plan over its effective period will contribute to realising overall national targets

on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts);

- b. Omit Policy Policy E-P-23 and Policy E-P-24.
- c. Amend map 8.2.1 to change the designation of *“Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns”* and *“Moderately Low”* and *“Moderately High”* landslide susceptibility areas identified as ‘Not Normally Permissible’ to ‘Open-to-Consideration’.

Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at.

Yours sincerely,



Niall Cussen

Planning Regulator



Appendix A – Mapping Analysis

The Office has prepared maps to illustrate the areas “Acceptable in Principle” and “Open for Consideration”, see Figure 1 for details. The “Acceptable in Principle” area is indicated as a green colouring on the map and “Open for Consideration” areas are identified in pink. The “Not Normally Permissible” area has not been included in the assessment as these areas have been ruled out by the Planning Authority. For clarity the “Not Normally Permissible” areas comprise of all the remaining lands outside the “Acceptable in Principle” and “Open for Consideration” zone e.g. areas not coloured pink or green as illustrated on the map.

Figure 1: “Acceptable in Principle” and “Open for Consideration”

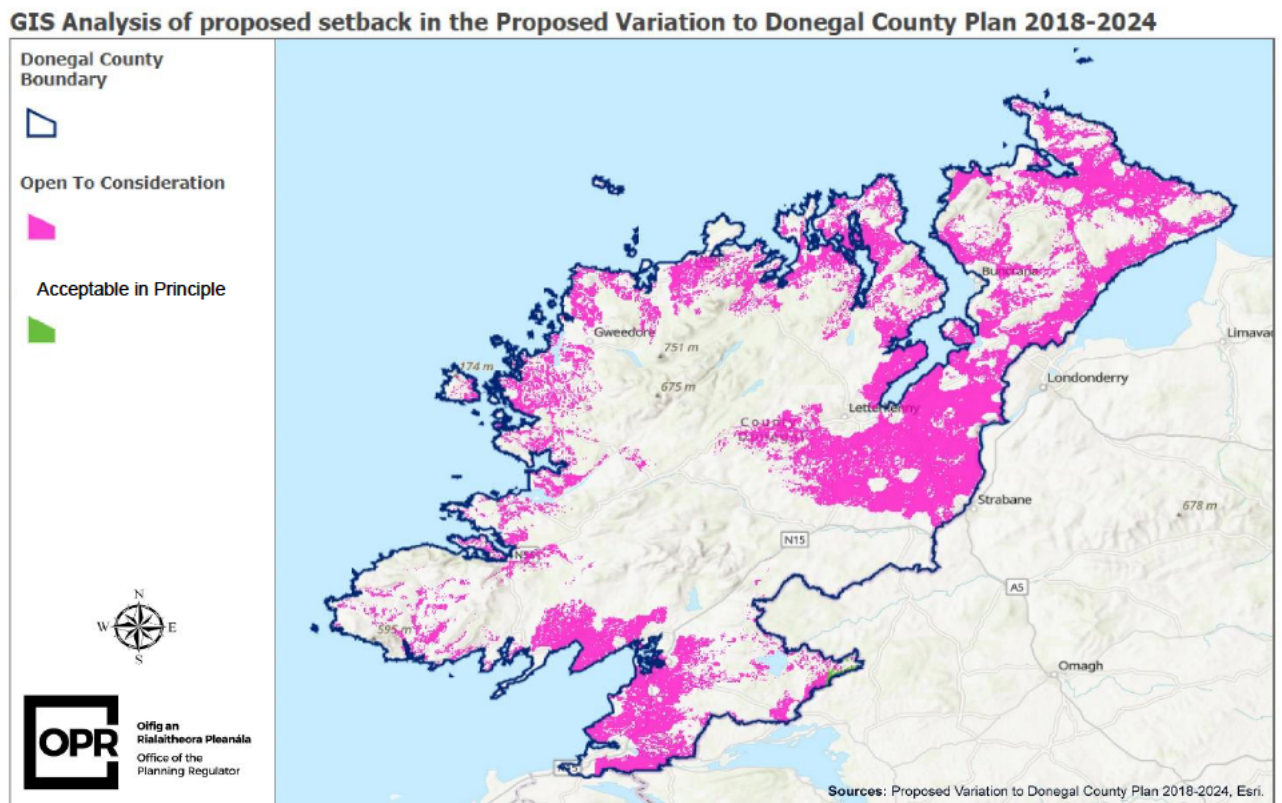
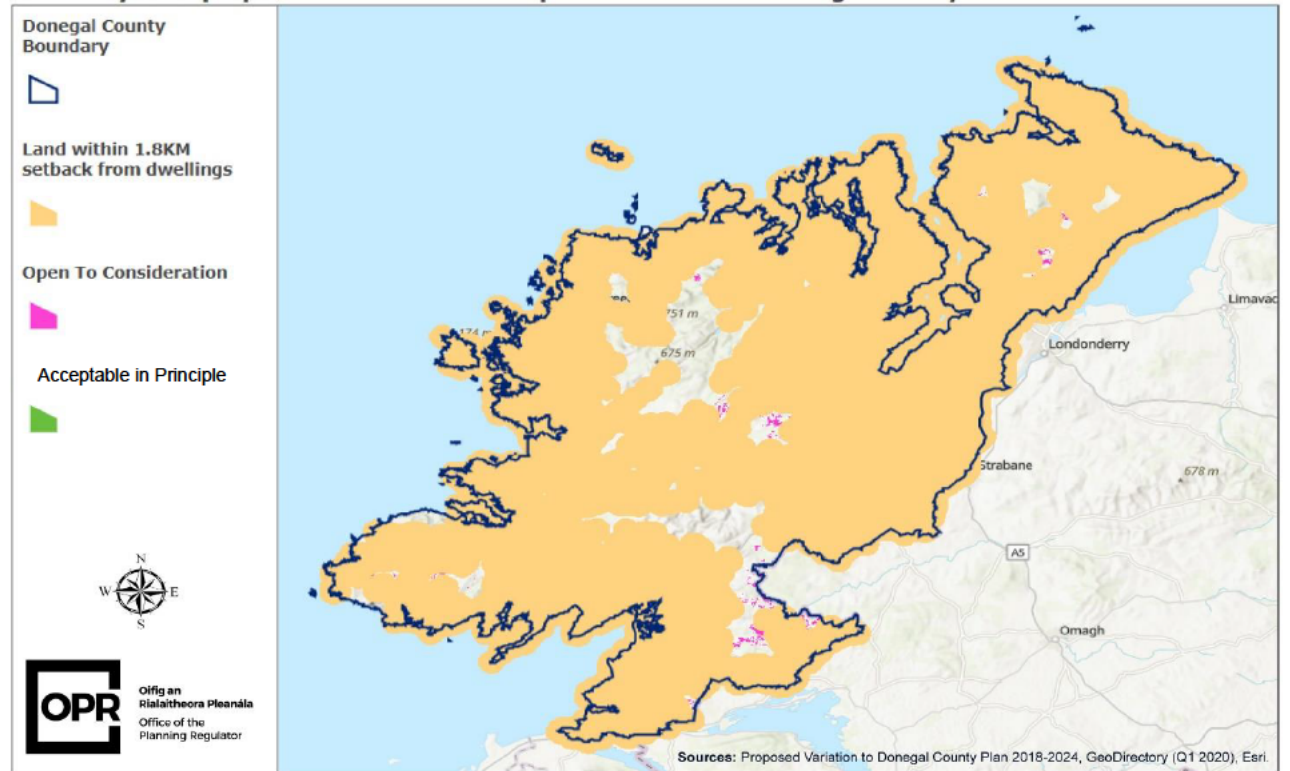


Figure 2 sets out the analysis in relation to the proposed setback distance having regard to a tip height of 180m. The proposed setback at 10 times the tip height has been overlaid against the “Acceptable in Principle” and “Open for Consideration” areas.

Figure 2: Analysis assuming a 180m Tip Height

GIS Analysis of proposed setback in the Proposed Variation to Donegal County Plan 2018-2024



DRAFT DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Variation No. 2 to Donegal County Development Plan 2018-2024

“Variation” means Variation No. 2 to Donegal County Development Plan 2018-2024

“Planning Authority” means Donegal County Council

WHEREAS the powers and duties of the Minister for Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended), other than the power to prosecute an offence, have been delegated to the Minister of State at the Department of Housing, Local Government and Heritage pursuant to the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2020 (S.I. 559 of 2020).

WHEREAS the Minister of State at the Department of the Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Act 2000, and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AM(8) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Variation No. 2 to the Donegal County Development Plan 2018-2024) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps with regard to the Variation to the Development Plan :
 - a. Indicate and incorporate into the Variation of the Development Plan, based on relevant and meaningful metrics, how the

implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts);

- b. Omit Policy E-P-23 and Policy E-P-24.
- c. Amend map 8.2.1 to change the designation of “*Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns*” and “*Moderately Low*” and “*Moderately High*” landslide susceptibility areas identified as ‘Not Normally Permissible’ to ‘Open-to-Consideration’.

STATEMENT OF REASONS

- I. The Variation to the Donegal County Development Plan 2018-2024 is inconsistent with the policy objectives of the National Planning Framework, specifically NPO 55, which states that it is an objective to ‘*promote of renewable energy ... generation at appropriate locations to meet national objectives towards achieving a low carbon economy by 2050*’, and the requirements for the planning authority to comply with, and the development plan to be consistent with, the aforementioned National Policy Objective under sections 10(1) and/or 13(7) read in conjunction with section 13(14);
- II. The Variation to the Donegal County Development Plan 2018-2024 is inconsistent with the policy objectives of the Regional Spatial and Economic Strategy, specifically RPO 4.17, which states that it is an objective ‘*To position the region to avail of the emerging global market in renewable energy by: [inter alia] Stimulating the development and deployment of the most advantageous renewable energy systems.*’, and

the requirements for the planning authority to comply with, and the development plan to be consistent with, the aforementioned Regional Policy Objective under sections 10(1A) and/or 13(7) read in conjunction with section 13(14);

- III. The Variation as made is in not consistent with a requirement contained in Ministerial Guidelines issued under Section 28 of the Act, specifically the Specific Planning Policy Requirements contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* (2017), and the requirements for the planning authority to comply with, and the development plan to be consistent with, the aforementioned Specific Planning Policy Requirement under sections 28(1C) and/or 10(1A) and/or 10(2A)(a) and/or 13(7) read in conjunction with section 13(14).

Specifically, the Variation:

- a) fails to indicate how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts), and having regard to the binding interim target to reduce greenhouse gas emissions by 51% by 2030 under the *Climate Action and Low Carbon Development (Amendment) Act 2021*, to be achieved through, inter alia, the targets in the Climate Action Plan 2021 including a target of 80% electricity demand generated from renewable sources by 2030, the majority of which is anticipated to be delivered by onshore wind (8GW);
- b) introduces a mandatory setback distance of 10 times the tip height for wind turbines from residential properties or other centres of human habitation which fails to demonstrate compliance with item number (2) of the SPPR in the *Interim Guidelines for Planning*

Authorities on Statutory Plans, Renewable Energy and Climate Change (2017) and item (3) of the SPPR in relation to considering the mandatory setback as a material consideration in the SEA when taking into account likely significant effects on climatic factors; and;

- c) introduces spatial constraints that extend the “Not Normally Permissible” areas identified in Map 8.2.1 and limits the available land for wind development projects without having adequate regard to the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* (2017).

- IV. The Variation does not have adequate regard to Ministerial Guidelines issued under Section 28 of the Act, specifically the requirement under the *Wind Energy Development Guidelines for Planning Authorities* (2006) that the Variation of the Development Plan does not achieve a reasonable balance in responding to overall Government Policy on renewable energy, enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development in order to provide a planned context to the assessment of individual wind energy development proposals. Insofar as some regard may have been had to the guidelines, the provisions of those guidelines were misunderstood. No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided by the planning authority to explain why those aspects of the guidelines have not been implemented.

Specifically, the Variation as made does not have adequate regard to the step-by-step analysis of areas suitable for wind energy (or sieve analysis) under section 3.5 of the guidelines, specifically in including within the area designated as ‘Not Normally Permissible’:

- i) the “Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns”; and
 - ii) all “Moderately Low” and “Moderately High” landslide susceptibility areas from that area defined as “Not Normally Permissible
- V. Further, the statement under Section 28(1A)(b) which formed part of the Variation to the Development Plan has not provided adequate evidence based analysis to demonstrate that the planning authority has formed the opinion that it is not possible to implement the policies and objectives outlined at (II) and (III), above, as contained in the guidelines, because of the nature and characteristics of the area or part of the area and to give reasons for the forming of that opinion and to explain why it is not possible to implement the policies and objectives. The Office notes that whilst the 2000 Act does not expressly require a statement under s.28(1A)(b) in respect of a variation to a development plan, the local authority should nonetheless provide adequate reasons or explanations relating to the proper planning and sustainable development of the area as to why it has not been possible to implement certain aspects of section 28 guidelines in respect of the Variation to the development plan;
- VI. The Variation as made:
 - (a) includes a wind energy strategy which is inconsistent with national policy and targets, including the aforementioned SPPR, and which fails to have regard to Ministerial guidelines for climate action and renewable energy outlined at (II) and (III), above; and therefore fails to set out an overall strategy for the proper planning and sustainable development of the area concerned.
- VII. No adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why

the wind energy strategy is consistent with an overall strategy for the proper planning and sustainable development of the area.

- VIII. The Variation to the Development Plan has not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31 AM.
- IX. In light of the matters set out at I to VI, above, the Minister is of the opinion that the Variation to the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.
- X. In light of the matters set out at I to VIII, above, the Variation to the Development Plan is not in compliance with the requirements of the Act

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.