



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

AD-021-22

8th November 2022

Mr Peter Burke TD

Minister for Housing, Local Government and Heritage
Department of Housing, Local Government and Heritage

Custom House

Dublin 1

D01 W6X0

Re: Notice pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended) – Variation No. 2 to the Donegal County Development Plan 2018-2024

A chara,

I am writing to you pursuant to section 31AN(4) of *the Planning and Development Act 2000* (as amended) (the "Act") in the context of variation No. 2 to the Donegal County Development Plan 2018-2024 (the "Variation"). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Donegal County Council (the "Council") by your office on 29th August 2022, and
- b) the report of the Chief Executive of the Council dated October 2022 on the submissions and observations received by the Council (the "Report").
- c) six (6) submissions made directly by elected members of the Council to this Office and considered by this Office pursuant to section 31(10(a)) of the Act.

Draft Direction

The draft Direction contained two parts:

- **Part 2(b)** Omit Policy E-P-23 and Policy E-P 24; and
- **Part 2(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’.

You will note that the Chief Executive’s Report (CE’s Report) prepared in accordance with section 31(8) of the Act recommends as follows:

Part 2(b)

- In relation to Policy E-P-23 (1) the Chief Executive recommends that the draft Direction is given effect in relation to:
 - (b) Gweebarra River Valley; and
 - (d)¹ Freshwater Pearl Mussel Catchment,

The Chief Executive recommends that the draft Direction is not given effect in relation to:

- (a) Glenveagh National Park;
 - (c) Especially high scenic amenity areas; and
 - (e) St John’s Point.
- In relation to Policy E-P-23 (2) the Chief Executive submits that this is a matter for the Minister/ OPR. However, it is recommended that should the Minister proceed with this element of the draft Direction, an assessment criteria based policy would be required. Although the Chief Executive does not specifically reference Policy E-P-23 (3), as the policy matter of concern is the same as for Policy E-P-23 (3), that is the requirement for ten-times tip height separation distance, the Minister may consider the Chief Executive’s recommendation to be equally applicable.
 - In relation to Policy E-P-24 the Chief Executive’s recommendation is the same as for Policy E-P-23 (2)above.

Part 2(c)

- The Chief Executive recommends that the draft Direction is given effect without amendment.

¹ Incorrectly referenced as E-P-23(1)(ii)(c) in Chief Executive’s Report

Following detailed consideration of the CE's Report and submissions to this Office, the Office now recommends pursuant to section 31AN(4) of the Act, that you issue the attached Direction with minor amendment to the draft direction for additional clarity.

In forming this recommendation, this Office reiterates the submissions made to you in the Notice which issued from this Office to your office on 12th August 2022 pursuant to section 31(AM)(8) of the Act.

Public Consultation on the Draft Direction

The public consultation on the draft Direction took place between 9th September 2022 and 22nd September 2022. The report of the Chief Executive summarised the views of members of the public, elected members and the prescribed authorities who made submissions to the planning authority.

You might please note the following:

- The Office received six (6) individual submissions from elected members (Councillors Albert Doherty, Michael McClafferty, Niamh Kennedy, Gary Doherty, Marie Therese Gallagher and Noreen McGarvey); and one (1) joint submission on behalf of Glenties Municipal District Councillors (Councillors Anthony Molloy, Michael McClafferty, John Sheamus O'Fearraigh, Noreen McGarvey, Michael Mac Giolla Easpaig and Marie Therese Gallagher). All of the submissions opposed the draft Direction. These submissions are attached to this letter for information purposes.
- The reasons outlined in the submissions repeat those raised in the section 31(8) Notice (i.e. submissions made by elected members to the Chief Executive) and relate to:
 - the impact of the Meenbog landslide event in determining the adopted landslide susceptibility policy;
 - the impact of the omission of the policy to provide a separation distance of 10 times the tip height on the environmental and ecological integrity of the county;

- the setback policy is consistent with national policy and national guidelines at the time and has gone through the proper planning process and public consultation process for its inclusion in the plan;
- the subject policies were already accepted in the Development Plan 2018 and were only part omitted due to judicial review proceedings;
- the size and scale of modern turbines were not envisaged in the Wind Energy Development Guidelines (2006) (Wind Energy Guidelines) therefore the Guidelines are outdated and the 10 times tip height separation distance is appropriate; and
- the significant contribution Donegal already makes in terms of wind energy output.

Additional reasons given by the elected members are summarised as follows:

- the detrimental impact of the omission of E-P-23 on the principle of development in the amenity designation areas such as Gweebarra River Valley, Glenveagh National Park, the Freshwater Pearl Mussel Catchment areas, areas of especially high scenic amenity, and St. John's Point;
- Policy E-P-23 should be amended to state that there will be no turbines in Gweebarra River Valley, the Freshwater Pearl Mussel Catchment areas, and areas of especially high scenic amenity;
- the impact of permitting wind farm development in peatlands in terms of carbon emissions, loss of carbon sink and landslide susceptibility;
- NPO 55, which promotes renewable energy 'at appropriate locations', was taken into account in including Policy E-P-23 and E-P-24;
- the impact of wind farm development on tourism due to the loss of great wilderness areas, especially high scenic amenity areas and freshwater pearl mussel catchment areas;
- the need to protect the most sensitive scenic and environmentally sensitive sites and area of high historical/environmental/ scenic significant to the County;

- the draft Direction disregards the elected members' lengthy consideration of the proposed variation, public submissions and existing development plan provisions on wind energy development upheld on judicial review; and
 - the draft Direction disregards the public consultation process of which 100% were in favour of variation.
- As set out in the Report, a total of ninety-six (96)² submissions were received by the Chief Executive during the consultation period, ten (10)³ from elected members, eighty-five (85)⁴ from members of the public, and one (1) from the Northern and Western Regional Assembly. The Report summarised the key points raised in the submissions.
 - As set out in the report, the issues raised in the ten (10) submissions from elected members opposed the draft Direction. The reasons outlined in these submissions largely repeat those raised in the section 31AM(6) Notice. In relation to both these reasons, and the additional reasons set out in the submissions on the draft Direction, the elected members have raised the same issues as those specified in the direct submissions to the Office (as summarised above).
 - As set out in the Report, seventy-eight (78) of the eighty-four (84) submissions from members of the public opposed the draft Direction based on the following reasons:
 - the perceived detrimental impact of wind farm development on the scenic landscape and tourism industry;
 - concerns surrounding the impacts on wildlife, public health and water quality;

² Although the CE Report specifies the total number of submissions as 96, the breakdown of submissions actually totals 95.

³ The CE report specifies a total of 10 submissions from elected members. However Cllr Anthony Molloy is listed twice in Appendix A 'Names of those who made submissions' which would bring the total to 11.

⁴ Although the CE Report specifies the number of submissions from the public as 85, the breakdown of submissions from the public actually totals 84.

- omission of the policy in relation to 10 times tip height separation distance from residential receptors;
 - removal of policy protection for Glenveagh National Park, the Freshwater Pearl Mussel Catchment area, the Gweebarra River Valley and St. John's Point;
 - concerns in relation to the principle of development in areas designated as Moderately High Landslide Susceptibility and Moderately Low landslide susceptibility; and
 - the disregard of the public consultation process and the removal of elected members' powers.
- As set out in the Report, six (6) submissions from members of the public supported the draft Direction having regard to the following reasons:
 - the need to meet onshore renewable energy needs;
 - the impact of the 10 times tip height policy on the potential developable area for wind farm development in the county;
 - impact on reducing greenhouse gas emission targets;
 - non-compliance with national guidance of 4 times tip height;
 - Ireland's windfarms represent significant investment;
 - contribution to 30% of Ireland's electricity in 2021;
 - consistency with the *Climate Action and Low Carbon Development (Amendment) Act 2021* and the *Climate Action Plan 2021*;
 - ability of off-shore wind energy to meet national energy targets and the unlikely success of meeting these targets if permission is not granted;
 - the announcement of REPowerEU Plan and requirement to eliminate dependence on Russian gas and secure more affordable sustainable energy; and
 - the requirement that windfarm development applications be accompanied by a Peat Stability Assessment Report.

Some of the public submissions considered that the Direction should go further to remove restrictions on wind energy and suggested the following:

- variation should include renewable energy targets;
 - Policy E-P-16 should be omitted;
 - Policy E-P-12 should revert to current plan and part (c)(i) and (ii) be amended;
 - specific sites should be changed from “Not Normally Permissible” to “Open to Consideration”; and
 - areas of “High Landslide Susceptibility” should be omitted from Map 8.2.1.
- As set out in the Report, the submission from the Northern and Western Regional Assembly (NWRA) supports the draft Direction with the exception of the omission of the 5 geographical areas under policy E-P-23 (1).
 - The NWRA does not support the draft Direction in respect of the omission of Policy E-P-23(1) and its submission identifies that the draft Direction did not intend to omit Policy E-P-23 in its entirety based on the following reasons:
 - the draft direction does not provide a narrative or justification for the removal of the environmental sensitivities referenced in policy E-P-23(1);
 - the environmental sensitivities referenced in policy E-P-23(1) are identified as “Not Normally Permissible” in Map 8.2.1 but are not required to be omitted in the draft Direction; and
 - Policy E-P-13 is the key policy that gives effect to Map 8.2.1 and was not required to be omitted in the draft Direction.

Part 2(b) Omit Policy E-P-23 and E-P -24

Policy E-P-23 comprises of 3 parts. Part (1), which restricts wind farm development within specified environmentally sensitive areas.

Parts (2) and (3) require a setback of 10 times the tip height of proposed turbines from the nearest part of the curtilage of residential properties and other centres of

human habitation. An end note relating to the setback distances is also included. The same setback policy applies under Policy E-P-24.

Policy E-P-23 (1) - Specified environmentally sensitive areas

The section 31(AM)(8) Notice issued to you by this office on 12th August 2022 recommended that Policy E-P-23 and Policy E-P-24 be omitted. As detailed in the Notice letter, the Office's concerns in respect of the two policies related only to the proposed setback requirements, under parts (2) and (3) of Policy E-P-23 and under Policy E-P-24, arising from Recommendation 1(ii) of the Office's submission to the draft Variation 3rd June 2022.

Part (1) concerns areas of environmental sensitivities, which were identified as constraints by the planning authority in its *'Introduction and Explanation of the Scope of the Proposed Variation to the County Donegal Development Plan 2018-2024 (As Varied) in respect of a Wind Energy Policy Framework'*. The Office was generally satisfied, subject to exceptions raised in Recommendations 1 and 2 of the Office's submission, that the planning authority had determined the areas where wind energy development could be accommodated through an evidence-based approach, which had regard to section 3.5 of the Wind Energy Guidelines.

Recommendation 1 of the Office's submission to the draft Direction required the omission of Policy E-P-23 parts (2) and (3). The omission of part (1) was not required. As such, by making the Variation of the development plan with Policy E-P-23 (1) the Variation was not inconsistent with a recommendation of the Office, and it was not the intention of the Office to include the omission of Policy E-P-23(1) in the draft Direction recommended to you.

The Office therefore recommends a minor amendment to the draft Direction to bring additional clarity by expressly omitting Policy E-P-23 (1) from the final Direction.

We note the reasons for the Chief Executive's recommendation to:

- retain in the development plan part (1)(a) Glenveagh National Park, 1(c) Especially High Scenic Amenity and 1(e) St. John's Point; and
- omit from the development plan part (1)(b) Gweebarra River Valley and (1)(d) Freshwater Pearl Mussel Catchments.

In view of the Office's recommendation to expressly exclude Policy E-P-23(1) from the final Direction on the basis that it did not form part of a recommendation of the Office, the Office is satisfied that the omission of Policy E-P-23(1) is appropriate.

In addition, the exclusion of Policy E-P-23(1) from the final direction addresses the concerns raised in submissions from the public and from elected members concerning potential detrimental impact of the omission of E-P-23 on the principle of development in the amenity designation areas such as Gweebarra River Valley, Glenveagh National Park, the Freshwater Pearl Mussel Catchment areas, areas of especially high scenic amenity, and St. John's Point. The exclusion of Policy E-P-23(1) from the final direction also addresses the potential negative impact on tourism and wildlife in these sensitive amenity areas.

The Office has considered the submissions in support of this aspect of the draft Direction. As set out above the Office did not make a recommendation in respect of Policy E-P-23(1) as the Office did not consider it to be inconsistent with national or regional policy. The Office appreciates that there may have been some ambiguity in the draft Direction however and recommends a minor amendment to the proposed final direction as identified in red in the attached document to bring additional clarity.

Policy E-P-23 (2) & (3) and E-P-24 - Ten Times Tip Height Setback

The CE's Report did not make recommendations in relation to the best manner in which to give effect to Part 2(b) of the draft Direction concerning Policy E-P-23 (2) and (3) and Policy E-P-24. Rather, the Chief Executive submitted that this is a matter for the Minister due to the strong opposition from the members of the public and the OPR's effective rejection of the Chief Executive's original recommendation to the draft Variation for a setback of 4 times the tip height.

However, the Chief Executive advised that, should the omission of Policy E-P-23(2) and E-P-24 be included in the final Direction, a new broad criteria based assessment policy should be included. The Office is satisfied that this is equally applicable in the case of Policy E-P-23(3) as to E-P-23(2) as both relate to the same separation distance standard.

The Office notes, however, that the requirements set out in the recommended policy below are already provided for in the Variation and/or in the existing Development Plan. The recommended policy is stated, below, along with what the Office considers to be the existing equivalent policy [in brackets]:

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;* [Addressed by Policy E-P-10, E-P-18 and E-P-26]
- *Visual impacts on protected views, prospects, designated landscape, as well as local visual impacts;* [Addressed by Policy E-P-10 and Objective E-O-5]
- *Impacts on nature conservation designation, archaeological area, county geological sites, historical structures, public rights of ways and walking routes;* [Addressed by Policy E-P-18]
- *Local environmental impacts, including those on residential properties such as noise and shadow flicker;* [Addressed by Objective E-O-6]
- *Visual and environmental impacts of associated development, such as access roads, plant and gird connections from the proposed windfarm to the electricity transmission network;* [Addressed by Policies E-P-17, E-P-21 and E-P-25]
- *Scale, size and layout of the project and any cumulative effects due to other projects;*[Addressed by Policy E-P-20]
- *The impact of the proposed development on protected bird and mammal species;* [Addressed by Policy E-P-12]
- *The Planning System and Flood Risk Management, Guidelines for planning Authorities (2009); and* [Addressed by Policy E-P-18]
- *The protection of drinking water sources.* [Addressed by Policy E-P-12]

The Office notes that this recommended policy follows Section 4.5 of the Wind Energy Guidelines in respect of general considerations in assessment of wind energy planning applications. However, the proposed policy requirements are effectively already covered by other policies in the Variation and / or in the current

development plan, as referenced above. Therefore, no minor amendment is necessary to the Direction in this regard.

The Office notes that the submission from the NWRA supports the draft Direction, and the reasons given by the Minister, as they refer to setback policy.

As set out in the section 31AM(8) Notice issued to you by this Office on 12th August 2022, the Chief Executive's recommendation to the elected members prior to the adoption of the Variation was to omit Policy E-P-23 (2) and (3) and E-P-24 and insert the same broad criteria based assessment policy proposed in the CE's Report, noted above.

The Office notes that many of the reasons cited in the submissions from both elected members and the public are similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Variation, and were detailed in the section 31AM(6) notice. These reasons have been set out above.

As set out in the section 31AM(8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive as summarised in the Report.

In relation to additional issues raised, a significant number of submissions opposing the omission of the mandatory setback of 10 times the tip height raised the matters of the protection of human health and negative impact on property.

As stated in the Office's Notice Letter of 12th August 2022, neither the Wind Energy Guidelines nor the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)* (the Interim Guidelines) recommend a specific mandatory setback of wind energy development from residential receptors. Instead, the Wind Energy Guidelines consider the main sources of health and nuisance concerns arising from wind energy development, such as impact from noise and shadow flicker. The Guidelines also makes recommendations on how those impacts should be addressed, principally as part of the development management process.

The elected members submit that the size and scale of modern turbines were not envisaged in the Wind Energy Guidelines, which are considered to be outdated, and that a separation of ten times the tip height is necessary to protect homeowners.

The Office notes, however, the Wind Energy Guidelines and the Interim Guidelines are the operative section 28 guidelines. While the submissions correctly state that there are no mandatory separation distances to protect sensitive receptors, the guidelines do set out a range of qualitative criteria for the assessment of impacts, principally as part of the development management process. Notwithstanding, no information has been submitted to demonstrate that the blanket application of a 10 times tip height separation distance was determined on an evidence basis as being necessary to avoid or mitigate impacts on sensitive receptors such as would justify the very significant constraints that these policies would impose on future wind energy development in the county.

In addition, in relation to statement of reason I in draft Direction, the elected members submit that NPO 55, which seeks to '*promote renewable energy ... generation at appropriate locations to meet national objectives towards achieving a low carbon economy by 2050*' was at the forefront of their reasoning for including policy E-P-23 and E-P-24. It is submitted by the elected members that E-P-23 and E-P-24, which exclude areas they consider inappropriate locations in the county from consideration for wind energy development, is consistent with NPO55.

However, the Office is satisfied that there is no evidenced-based justification in the submissions of the elected members nor any policy basis in the relevant section 28 guidelines for the determination that all land within 10 times tip height from the nearest part of the curtilage of residential properties and other centres of human habitation can be generally considered as not '*appropriate locations*' consistent with NPO 55, and therefore the submissions have not demonstrated how the variation could be considered consistent with NPO 55.

The statement of reasons in the draft Direction also related to the inconsistency of the variation with 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.’ The submissions do not demonstrate how the Variation, inclusive of Policy E-P-23 (2) and (3) and Policy E-P-24 is consistent with RPO 4.17.

The reasons given include that the draft Direction disregards the elected members’ lengthy consideration of the proposed variation, including extensive public submissions. Under section 13(7) of the Act, read in conjunction with section 13(14), in making a variation elected members are ‘*restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies, or objectives for the time being of the Government or any Minister of the Government*’.

In this regard, the inclusion of a highly restrictive setback for wind energy development under Policy E-P-23 (2) and (3) and E-P-24 prevents the consideration of wind energy development throughout almost all of that area designated as “Open to Consideration” or “Acceptable in Principle”, inconsistent with NPO 55 and RPO 4.17, and which constraints have not had regard to the Wind Energy Guidelines. 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.

Following consideration of the submissions and report, there is no basis to amend the recommendation of the Office in respect of Part 2(b). However, it is considered appropriate, to make the following minor amendments to the draft Direction:

- revise the number reference of Part 2(b) of the Direction to take account of the omission by the Minister of Part 2(a) of the draft Direction; and
- amend the wording of Part 2(b) to ‘Omit Policy E-P-23 (2) and (3) and associated endnote and Policy E-P-24’ to bring additional clarity to the draft Direction.

Part 2(c) Amend map 8.2.1

The CE’s Report recommends changing 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 from “Not Normally Permissible” to “Open to Consideration”. The Office is satisfied, therefore, that the Chief Executive’s recommendation would give effect to Part 2(c) of the draft Direction.

As set out in the section 31AM(8) Notice issued to you by this Office on 12th August 2022, the Chief Executive’s recommendation to the elected members prior to the adoption of the Variation was also consistent with these changes to Map 8.2.1.

The Office notes that the submission from the NWRA supports Part 2(c) of the draft Direction, and the reasons given by the Minister.

The Office notes that many of the reasons cited in the submissions from both elected members and the public are similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Variation, and were detailed in the section 31AM(6) notice, or were referred to in the section 28(1A)(b) statement. These reasons have been previously set out above.

As set out in the section 31AM(8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in response to those similar points raised again in submissions to the Chief Executive as summarised in the Report.

In relation to the matter of peat stability and impact of the Meenbog landslide event on the considerations of elected members, the Office fully appreciates the concerns of elected members and the public.

The Variation was, however, informed by a sieve analysis assessment carried out by the planning authority, which was clearly set out and which was generally in accordance with section 3.5 of the Wind Energy Guidelines. Through this process, the planning authority determined it was appropriate to designate peat bogs as areas “Open to Consideration”, subject to compliance with other objectives and policies of the Plan. The Office accepts the policy approach of the planning authority to wind energy development on peatlands as appropriate, evidence-based and which has regard to Wind Energy Guidelines.

Appendix 4 of the Wind Energy Guidelines set out a '*Best Practice Guide for Wind Energy Development in Peatlands*' to inform the assessment of windfarm developments at a project level at development management stage. In its submission, the NWRA considers the development plan makes sufficient provisions to enable potential adverse impacts on peatlands to be considered through the development management process in accordance with section 4.5 of the Wind Energy Guidelines.

In this regard, the Office notes that policy E-P-26 of the Variation requires the submission of a Peat Stability Assessment Report with all applications for all wind farm or repowering development on peatlands. The Office is satisfied that the Variation, inclusive of the changes required by the proposed final Direction, makes appropriate policy provision for the consideration of impacts on peat stability, consistent with the Wind Energy Guidelines.

In relation to elected members concerns about the impact of loss of carbon sequestering peat soils, the SEA Environmental Report concluded that the overall effect of the proposed variation is insignificant due to the small fraction of soil likely to be removed relative to the overall soil resource; the requirement under Policy E-P-26 for a "Peat Stability Risk Assessment Report" for applications; soil erosion avoidance and mitigation measures integral to wind energy developments; and soil types within Donegal do not have specific protection; and the reduced risk of soil/peat erosion by the inclusion of "High, Moderately High and Moderately Low Landslide Susceptibility Areas" within the "Not Normally Permissible" zone.

Notwithstanding the removal through the draft Direction of "Moderately High and Moderately Low Landslide Susceptibility Areas" from the "Not Normally Permissible" to "Open to Consideration", it is considered that there is sufficient protection in place in the Development Plan to address the concerns in relation to loss of carbon sequestration.

Regarding potential impacts on water quality, in particular potential impacts on the Lough Mourne water supply reservoir catchment, Irish Water did not make a submission on the draft Direction. However, the Office notes that although Irish Water highlighted the potential impact on the catchments of water sources and on

security of supply as a key concern in its submission on the draft Variation, it noted that such developments are required to comply with following objectives:

- WES-O-4 – To implement the EU Water Framework Directive through the implementation of the appropriate River Basin Management Plan and Programme of Measures as it affects Donegal; and
- WES-O-5 - To maintain, protect, improve and enhance the quality of surface waters and ground waters in accordance with the Programme of Measures contained within the relevant River Basin Management Plan.

Objective WES-O-6 provides additional requirements for the protection of water quality and other factors of the environment. The NWRA, in its submission on the draft Direction, supports part 2(c) of the Direction and notes that no evidence was provided to support the veracity of the ecological and environmental sensitivities of the area to warrant the exclusion of the entire area from wind farm development.

The submissions do not demonstrate how the Variation, as made - specifically how the inclusion within the area designated as 'Not Normally Permissible' 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 - could be considered to have had regard to the step-by-step analysis areas suitable for wind energy (or sieve analysis) under section 3.5 of the Wind Energy Guidelines.

The Office notes that the obligation on the planning authority is to have regard to such guidelines but no or no adequate reasons are provided as to why such policies could not be implemented, and the submissions to the draft Direction do not provide adequate reasons or explanations relating to the proper planning and sustainable development of the area as to why the policies set out in the guidelines could not be implemented. A minor amendment would be appropriate to ensure there is no misunderstanding as to the legal status of section 28 guidelines.

In relation to the submissions which argue that the Direction should go further to remove restrictions on wind energy, the Office is satisfied that, in applying the planning authority's own data which is based on scientific analysis, the draft

Direction strikes 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, and providing a plan-led context to the assessment of individual wind energy development proposals in accordance with the provisions of the Wind Energy Guidelines. In particular, it has regard to the provisions of section 3.5 of the guidelines to determine '*the most suitable location of wind energy development*' through the spatial data used in the sieve analysis provided in the "*Introduction and Explanation of the Scope of the Proposed Variation to the County Donegal Development Plan 2018-2024 (as varied) in respect of a Wind Energy Policy Framework*".

The Office considers that any requirement to remove the policy restrictions on wind energy development on lands outside of those referred to in part 2(b) and (c) of the draft Direction would not be consistent with the evidence-base in the planning authority's sieve analysis, which are considered to have had regard to the Wind Energy Guidelines.

Following consideration of the submissions and report, there is no basis to amend the recommendation of this Office in respect of Part 2(c). However, it is considered appropriate to make the following minor amendments:

- amend statement of reason III to state '*does not have ~~adequate~~ regard to Ministerial Guidelines*' and '*does not have ~~adequate~~ regard to the step-by-step analysis*'; and
- amend statement of reason IV to state '*the policies and objectives outlined at ~~(II) and (III)~~, above*'.

Recommendation

In light of the above and for the reasons given in our Notice Letter of 12th August 2022, the Office remains of the view, as set out in the 31(AM)(8) notice, that the Variation to the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

Having regard to section 31AN(4) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the Direction with minor amendments as identified in red in the attached proposed Direction to bring clarity to the scope of the direction in respect of Policy E-P-23 and make clear that there is no misunderstanding as to the legal status of the relevant section 28 guidelines. As noted in the Office's 31AM(8) letter, insofar as some regard may have been had to the Wind Energy Guidelines, the provisions of those guidelines were misunderstood and 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.

There is a failure to address or explain why it was considered appropriate to make the Development Plan without implementing the relevant policies set out in the Wind Energy Guidelines and therefore why the policies and objectives of the Minister have not been implemented.

Additional minor amendments are recommended for clarity to insert an additional policy requirement as recommended by the Chief Executive; to correct a clerical error in the number referencing within statement of reason IV; and to provide consistent numbering for the parts to the Direction as identified in red in the attached.

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 plans@opr.ie.

Yours sincerely,



Niall Cussen
Planning Regulator



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

“Development Plan” means the Donegal County Development Plan 2018-2024

“Variation” means Variation No. 2 to the 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 Planning and Development Act 2000 (as amended) ("the Act"), and consequent to a recommendation made to him by the Office of the Planning Regulator under Section 31AN(4) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Variation No. 2 to Donegal County Development Plan 2018-2024) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps with regard to Variation No. 2 to the Development Plan:

a. ~~b.~~ Omit Policy E-P-23 (2) and (3) and associated endnote and Policy E-P-24.

b. ~~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. Pursuant to section 31(1)(ba)(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. Pursuant to section 31(1)(ba)(i)

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. Pursuant to section 31(1)(c)

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) in 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 plan-led context to the assessment of individual wind energy development proposals. 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.

IV. Pursuant to section 31(1)(c) and section 31(1)(b)

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;

V. Pursuant to section 31(1)(b)

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.

VI. Pursuant to section 31(1)(a)(i) and (ii)

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.

VII. Pursuant to section 31(1)(b)

The Variation to the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

GIVEN under my hand,

Minister for Housing, Local Government
and Heritage

day of Month, year