



Wind Energy CDP Variation
Central Planning Unit
Donegal County Council
County House
Lifford
Co. Donegal
F93 Y622

22 September 2022

via email: windenergycdpvariation@donegalcoco.ie

RE: DRAFT DIRECTION TO VARIATION NO. 2 TO DONEGAL COUNTY DEVELOPMENT PLAN 2018-2024

A chara,

I refer to the public notification given on 9 September 2022 in respect of the above Draft Direction and the Northern and Western Regional Assembly wish to take this opportunity to make its submission in respect of the Draft Direction that the Minister intends to issue.




The Draft Direction has been issued following consideration by the Minister of the recommendation made to him by the Office of the Planning Regulator. The Draft Direction is to:

1. Omit Policy EP-23 and Policy EP-24.
2. 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'.

The Draft Direction provides a Statement of Reasons in the following terms:

1. The Variation 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);
2. The Variation 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

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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);

3. 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.

4. 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;

5. 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.

6. 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.

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

The Focus of the Draft Direction is upon policy provisions that include a general prohibition on windfarm proposals where they are within a distance of ten times the tip height of the turbines and a prohibition within specified areas susceptible to landslides and Associated Environmental and Ecological Concerns.

This submission will focus initially on the steps relating to the separation distances (Omission of EP-24 and EP-23 (2) and (3)) and then examine the required amendment to Map 8.2.1 to remove the exclusion of windfarms from within certain areas that are susceptible to risk of landslides. Finally, the report will turn to other matters that are to be omitted within EP-23.

1.0 Draft Direction requirements pertaining to separation distances - Omit Policy EP-24 and EP-23 (those parts within subsections (2) and (3) thereof):

(i) Policy EP-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.*

(ii) Policy EP-23 (2) and (3) states that it is a policy of the Council that wind farm developments must:

(2) a. *Meet the requirements and standards set out in the DEHLG Wind Energy Development Guidelines 2021, or any subsequent related Guidelines; and*

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, 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.*

Opinion: The Assembly agree with this element of the Ministerial Direction, which seeks to omit the Policy on ten times turbine tip height (from the curtilage of a dwelling house). This policy is contained within EP-24 but also referenced within Policy EP-23 (2)(b) and (3).

The Assembly, in its original submission to the variation (June 2022), made 4 observations and one of the observations advised Donegal County Council to omit this element of the Variation. It was considered by the Assembly that there was no clear justification for it, it did not form part of any of the recommended standards set out in the Wind Energy Guidelines of 2006, nor was it a feature of the Draft Guidelines of 2019: the Draft Wind Energy Guidelines proposed to introduce the concept

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of a 500m setback from a residential curtilage (or alternatively 4 x Tip Height) as the industry norm on future Planning applications (See 6.18.1 – SPPR2 of 2019 Draft Wind Energy Guidelines). The Assembly also advised that the relevant Guidelines were the Wind Energy Guidelines 2006 and the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017).

It should be noted the Draft Direction points out (Statement of Reasons) that there is no adequate explanation provided by the Council for such a policy measure, and it is the view of the Assembly it is a justified and proportionate action to require the deletion of Policy EP-24 and EP-23 (2(b)) and EP-23(3). Furthermore, EP-23(2(a)) should be deleted as it refers to what are the Draft Guidelines of 2019.

2.0 Draft Direction requirements pertaining to Map 8.2.1

The Draft Direction is to:

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’.

For the purposes of clarity this part of the Draft Direction requires two separate elements to be removed as follows:

- (i) Change of “Moderately Low” and “Moderately High” landslide susceptibility areas **from** ‘Not Normally Permissible’ **to** ‘Open to Consideration’.
- (ii) Change of “Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns” **from** ‘Not Normally Permissible’ **to** ‘Open to Consideration’

Opinion: The Assembly agree with this element of the Ministerial Direction and the reasons given in the Statement of Reasons. Furthermore, in respect of Item (ii) it is noted that the ecological and environmental sensitivities of the area are referenced, including the ‘strategic Lough Mourne public water supply reservoir’ but evidence is not provided to support the veracity of these sensitivities and whether they would justify the exclusion of this entire area.

It is acknowledged that the background to this aspect of the Variation has its origins in the Meenbog Peat Slide, which resulted in significant transboundary environmental damage to the Mournebeg River System at the upper reaches of the Finn / Derg River system. A significant peat slide occurrence resulted from site works being carried out pursuant to a permission granted by An Bord Pleanála under Strategic Infrastructure Development, Section 37E. of the Planning and Development Act 2000. The development provided for 19 wind turbines. It is accepted the measures being proposed by Donegal County Council may be well intentioned in the future protection of this River Catchment and also the catchment of the Lough Mourne Water supply reservoir - which is the subject of a planned water supply augmentation scheme. However, on the basis of the evidence provided, the justification for a blanket ban is not apparent and there are other mechanisms within the Plan, and project assessment process, outlined within the Wind Energy Guidelines 2006, which should be followed to prevent a repeat incident.

The Assembly is of the opinion that the Draft Direction is justified and proportionate in requiring the change from ‘Not Normally Permissible’ to ‘Open to Consideration’ – no adequate evidence-based

justification has been provided for what is essentially a blanket ban in respect of areas (i) and (ii). The designation as 'Open to Consideration' will afford suitable protection, whilst enabling the suitability of any proposal that may emerge to be determined at project level.

In view of the foregoing, the Assembly support this element of the Draft Direction.

3.0 Draft Direction requirement to omit EP-23 (1) (ie. Focusing upon the provisions other than within (2) and (3) thereof)

Policy EP-23 (1) states: It is a policy of the Council that wind farm developments:

(1) (i.) *Must not be located within:*

(a.) *the zone of visual influence of Glenveagh National Park;*

(ii.) *Must not be located within the following areas, subject to the possible exceptions set out in Policy E-P-12(1)(c)(ii):*

(b) *the Gweebarra River Basin;*

(c) *areas contained within 'Especially High Scenic Amenity' on Map 7.1.2 'Scenic Amenity';*

(d) *Freshwater Pearl Mussel Catchments; and*

(e) *St. John's Point.*

Definitions Glenveagh National Park: Zone of Visual Influence:- *The environmental and visual character of Glenveagh National Park consists of the geographic extent of the park and its immediate environs. The implementation of the relevant policy should not be interpreted as relating to lands with limited physical or visual connection to the park. The onus is on the applicant to demonstrate the extent of the potential impact a proposed wind energy development has on the National Park.*

Centre of Human Habitation: 'Centre of human habitation' includes schools, hospitals, churches, residential buildings or buildings used for public assembly.' Curtilage: An area immediately surrounding or adjacent to the property which is used in conjunction with the property, other than any part of that area that is a public place.

(From Criminal Law (Defence and the Dwelling) Act, 2011).

Opinion: The Draft Direction does not provide a narrative or justification for the removal of these elements of Policy EP-23 but the Draft Direction is to omit Policy EP-23 in its entirety and therefore the implication is that the above text will by default be omitted, whilst removing the intended policy provision that relates to the 'ten times the tip height' provisions within subsection (2) and (3), as referenced above.

It is noteworthy that the geographical areas referenced in subsection (1) are included as 'Not Normally Permissible' for windfarms in Map 8.2.1 but are not required to be removed within the Draft Direction. Furthermore, Policy EP-13 is not the subject of the Draft Direction and it is the key policy that gives effect to Map 8.2.1. Therefore, it is considered that the removal of these parts of this policy has not been justified in the Draft Direction and that it is reasonable to interpret that it is not the intention to have sub-section (1) omitted. Had it been intended, then the decision to omit EP-23 (1) would have been stated in the various documentation associated with this Draft Direction. Furthermore, any change would have to be informed by the assessment pursuant to the SEA and Habitats Directives and this would have been alluded to in the associated documentation.

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It was the view of the Assembly in making its submission to the Proposed Wind Energy Variation to the Donegal CDP in June 2022, that the policy to set out the 5 areas for specific safeguarding in EP-23 (1) was consistent with the RSES. The fundamental concerns in relation to landscape protection, as well as the safeguarding of heritage, one of the Country's foremost National Parks, as well as distinct habitats designated under European Law were amongst the principal motivations for this view being formed.

The Assembly therefore believe that the intention is not to delete Policy EP-23 (1) but if this view is incorrect then the Assembly formally recommends that this subsection is retained within the Plan, and its omission is not supported.

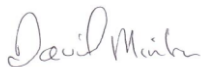
4.0. Conclusions:

The Assembly supports the Draft Direction in respect of the following proposed measures:

- a) The Removal of Policy EP-24 and EP-23 (2) and EP-23(3).
- b) The amendment to Map 8.2.1. to:
 - (i) Change of "Moderately Low" and "Moderately High" landslide susceptibility areas **from** 'Not Normally Permissible' **to** 'Open to Consideration'
 - (ii) Change of "Lifford -Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns" **from** 'Not Normally Permissible' **to** 'Open to Consideration'
- c) The Assembly does not consider it is the intention of the Draft Direction to omit EP-23 (1), as it has not been justified within the documentation, and the omission of this sub-section of the policy would not be consistent with the RSES. The Assembly would request this element of the Draft Direction not be proceeded with as its inclusion in the suite of policies in the development plan is of benefit to the coherence of the overall Development Plan.

I hope that the above is of assistance in consideration of the next steps.

Mise le meas,



David Minton
Director