



This document is in support of Councillor John Campbell's motion to vary elements of the wind energy section of the County Development Plan 2012-2018 (CDP) and responds in specific detail to matters raised in a presentation by Mr. Kelly, Executive Planner, at the Strategic Policy Committee (SPC) meeting of 28 November 2013. There is little new in the SPC presentation, it seems to be a mix of slides likely to have been presented before the votes on the CDP in 2012, and are remarkably similar to some of those presented to the Straboy oral hearing. There are just a few items to consider before the motion goes to Council floor on 9 December 2013 which we shall deal with below. We have addressed these under three headings:

- Executive Planner's attempts to fudge;
- Freshwater Pearl Mussels; and
- Setback distances.

Executive Planner's attempts to fudge

Firstly in response to the attempt to muddy the waters contained in slides 18, 21, 24, 25, 28 and 37 of Mr. Kelly's SPC presentation. Regarding slide 18, there is no issue in relation to the 2020 targets, according to EirGrid projects with accepted grid offers are more than enough to meet the 2020 targets.¹ The statement that the €2m in rates receipts would be in jeopardy is untrue. The variation proposal would not impact on existing operational (rate paying) wind farms.² The guiding principles in relation to making a development plan are also no obstacle to the motion to vary which is proposed.

Mr. Kelly using section 28 of the Planning and Development Act 2000 (as amended) claims that any Council policy or plan must be consistent with national guidelines, implying that the Council have no discretion on this issue. However the specific requirement under section 28 is that planning authorities *shall have regard to guidelines* in the performance of their functions.³ Obviously there is no requirement on Donegal County Council to incorporate flawed guidelines into the County Development Plan, in fact there is both a legal and moral obligation on the Council to amend the CDP in order to protect the health and safety of residents of the county.

Slide 21 again reiterates the national objective to meet our international climate change obligations. As pointed out above Ireland is on target to meet those objectives. The next key point relates to the 2006 Wind Energy Guidelines which as the Council advise states that at

¹ EirGrid Group, *Annual Renewable Report 2013*, at page 13 states that "sufficient wind farms have now accepted offers to connect to the grid in order to meet the 40% renewable electricity target in 2020", available at <http://www.eirgrid.com/media/EirGridAnnualRenewableReport2013.pdf> accessed 1 December 2013.

² If correct, the wind farm rates figure is less than 10% of the €21.625m total of rates due in 2013.

³ Slide 21 erroneously claimed that: "Section 28 of the Planning & Development Act 2000 – Development Plan to ***be consistent*** with the policies and objectives of the Minister contained in guidelines." It is important to note *having regard* to does not mean *be consistent with*.

greater than 500m noise is unlikely to be a significant problem. These flawed guidelines are currently under review and draft revised guidelines were due to be issued for consultation by the Department before the end of November 2013.⁴ This has not yet happened and it is unclear when they are now likely to be published.

Furthermore a setback is not just to protect against noise but also other risks including the potential of blade throw due to turbine failure, see for example the Loughderryduff turbine failure in March 2013 which scattered debris over a considerable range and last weeks Corkermore blade incident which thankfully embedded debris into the bog and not into one of the homes nearby. Other risks include the specifics in relation to Straboy where An Bord Pleanála in their Inspector's report, and the Board's order and direction confirm that works in relation to the wind farm, in particular the ancillary peat repositories "would seriously injure the amenities of property in the vicinity."⁵

A further issue raised on slide 24 is the forthcoming 2014 Managers Report on the performance of the CDP which it is claimed will be informed by the new Wind Energy Guidelines and Landscape Character Assessment which could lead to a variation in the wind energy elements of the development plan. Unfortunately the still unpublished revised guidelines which will only be draft guidelines and are to be issued for public consultation and according to the Department of Environment, Community and Local Government will not now be finalised until at least the third quarter of 2014. Therefore the residents of Donegal are left in limbo, awaiting the revised guidelines to be enforced, with no setback distance set in the CDP and a reinforcement of the flawed 2006 Guidelines failure to recognise potential noise impact on a home which is greater than 500m from a turbine.

In relation to the points raised, in slides 25 and 28, that the Glenties group presentation referenced the Inspectors report and not the board decision, this is another example of the Council executive trying to confuse the issues for the elected representatives. An Bord Pleanála in their direction in relation to the Straboy appeal clearly indicate that they "decided to refuse permission generally in accordance with the Inspector's recommendation" and this was subject to just two amendments.⁶ The first amendment was technical in nature where An Bord Pleanála disagreed with the inspector who had felt the EIS which accompanied the application was inadequate.⁷ If the Board had agreed with the Inspector on this point the application would have been invalidated rather than being refused.

The second and only other issue where An Bord Pleanála disagreed with the Inspector was in relation to visual impact of the development. The reasons given, by the Board, in not accepting the Inspector's view on visual impact, were that the area was not zoned or designated as an Area of Especially High Scenic Amenity and the Board did not agree that the development would constitute a highly obtrusive development.⁸ These are the only two

⁴ McDonald, Frank, "Development of wind energy needs 'new approach'" *Irish Times* (12 October 2013), available at <http://www.irishtimes.com/news/environment/development-of-wind-energy-needs-new-approach-1.1558014> accessed 6 December 2013.

⁵ An Bord Pleanála, *Straboy Wind Farm Appeal* (2012/3), Ref: PL05B.240166.

⁶ *Ibid.*

⁷ *Ibid.* at note 1 of the Board Direction; "The Board did not agree with the Inspector that there was insufficient information in the environmental impact statement to allow an environmental impact assessment to be completed."

⁸ *Ibid.* at note 2 of the Board Direction: "In deciding not to accept the Inspector's recommended reason for refusal relating to visual impact the Board noted that the proposed development is located outside of any designated Area of Especially High Scenic Amenity and does not adversely impact on any protected view or

elements of the Inspector's report not accepted by An Bord Pleanála in relation to the Straboy wind farm appeal. Therefore all the issues and direct impacts related to wind farm development raised by the Glenties group in their presentation of 21 October 2013 are real and tangible and despite the impression canvassed by the Council they have not been dismissed by An Bord Pleanála in their orders or direction in relation to the Straboy wind farm appeal.

Freshwater Pearl Mussel

The protected Freshwater Pearl Mussel populations of Donegal are listed, since 2009, as Special Areas of Conservation, (SAC) in Statutory Instrument No. 296 of 2009 European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009. The Freshwater Pearl Mussel (FWPM) is extremely sensitive, therefore any activity that can give rise to sediment and nutrient inputs to water has the potential to impact negatively on the species.

There is a legal obligation on Donegal County Council under the FWPM Regulations to implement the measures in the FWPM sub-basin plan. This includes a requirement that measured improvement in the parameters listed in schedules 3 and 4 of the FWPM Regulations, which indicate both the health of the FWPM population and their habitat, should be evident by 2015. Other specific targets relate to the maintenance and improvement of the water status of the catchment, with some waters earmarked for an improved status by 2015 and, others by, 2021.

Unfortunately the Owenea is currently ranked twenty-second out of the twenty-seven Freshwater Pearl Mussel SAC populations in the country on the basis of population status, habitat condition and current pressures. The level of siltation and nutrient input throughout the catchment area is high and is evident from recent studies of the sub-basin area. Surveys were carried out in 1988, 1992, 1996, 2005 and 2007 and have found that the population had continued to decline in terms of both numbers and geographical extent. This is already a population under threat that requires special protection.

The sub-basin management plan highlights further risks to the catchment area, in particular site clearance works associated with wind farm development which are a major cause of concern. The sub-basin management plan goes on to describe as a ***significant risk*** the proposed location of wind farms in the Owenea sub-basin catchment area. This is due to the large quantities of peat and peaty soils in the area and when taken together with the number and size of other infrastructure developments in the area (for example the 110kv Binbane-Letterkenny line) further development is a real cause of concern and could cause further destabilisation.

The significant and real risks posed by peat excavation and disposition, in protected FWPM areas, is also a point which is reiterated by An Bord Pleanála in the report of the Senior Inspector in relation to the Straboy wind farm oral hearing and which was fully accepted by the Board in reaching their decision to refuse permission. In fact the scenario highlighted by the Straboy wind farm application, where very large volumes of peat were to be excavated and relocated on the site within the sub-basin catchment is one which poses the greatest

prospect as set out in the current Donegal County Development Plan. The Board considered that the proposed development, albeit sited in a highly visible location close to the town of Glenties, would not necessarily constitute a highly obtrusive development or compromise the scenic amenities of the area.”

identifiable risk to the Owenea catchment FWPM population and is a required ancillary activity with any wind farm development in these protected areas.

The sub-basin plan also places an obligation on Donegal County Council to provide appropriate guidance to *different sectors* to assist with their compliance with the FWPM Regulations.⁹ Given the current low rank of the sub-basin catchment areas and the legal requirement to show improvement in related parameters by 2015, and subsequent years, the guidance and zoning of this area as open to wind farm development is indefensible. Such zoning directs wind farm developers to this protected and ecologically sensitive area and under E-P-11 of the Donegal County Development Plan the council will facilitate development in areas so zoned.

Such zoning and facilitation of wind farm development in the sub-basin catchment is also in direct conflict with Objective NH-O-4 of Donegal County Development Plan, which seeks to protect and improve the integrity and quality of FWPM basins and to take account of the relevant FWPM sub-basin plan. This is a conflict recognised in the Straboy appeal and when assessed the objective of protecting the area clearly trumped the indefensible zoning of the area as open for wind farm development. Despite the positive spin of the Council this result is indicative of a need to change the zoning of the area in line with Objective NH-O-4. The conflict can not be brushed aside by claiming that Objective NH-O-4, of the Donegal County Development Plan, ensures that appropriate assessment at planning application stage will resolve the problem.

Indeed the Council's *bona fides* in relation to claiming that Objective NH-O-4 of the Donegal County Development Plan adequately protects the sub-basin areas is highly questionable, especially when one considers that despite the objective they granted permission for the Straboy wind farm. The Council's true position was presented to An Bord Pleanála by Mr. Frank Sweeney, Planner in the Council's submission to the oral hearing. Mr. Sweeney confirmed that in the context of CDP 2012-2018 Donegal County Council were satisfied that development at Straboy, in a FWPM sub-basin area:

“... does not contravene any of the policy objectives contained in the new plan. The subject site is located within an ‘area open to consideration’ as identified in the wind energy map no. 7 contained in the plan and is not on designated lands.”¹⁰

It is quite clear that Donegal County Council do not believe that Objective NH-O-4 protects the FWPM sub-basin catchment areas. In fact the Council seek to direct wind farm development into the areas zoned open for consideration including a FWPM sub-basin area. This point was reinforced at the oral hearing when Mr. Sweeney as part of the formal submission to An Bord Pleanála stated that:

“[t]he planning authority considers that to permit development at Straboy directs similar type development away from sensitive 'best quality' examples of such habitat within designated sites.”¹¹

⁹ The issue of guidance to different sectors is important. This means, as is obvious, that zoning the designated FWPM sub-basins as not favoured for wind farms does not prohibit other development in those areas. Other non-wind farm development is not restricted by the negative wind farm zoning.

¹⁰ Written submission of Donegal County Council to the Straboy oral hearing, delivered by Mr. Frank Sweeney, at page 10.

¹¹ *Ibid.* at page 27.

The Council clearly directed and facilitated development in the area zoned as open for wind farm development as required by Objective E-P-11. This is despite the Council, as lead authority in the region, being in receipt of €2.3 in European funding under the INTERREG IVA Programme and the obligation tied to this funding that they promote the catchment plans, begin testing measures, and prepare guidance for a number of sectors to ensure that development activities in the catchment area are sustainable and will not affect pearl mussel survival. The only way to effectively deal with this issue and ensure that wind farms are directed away from such ecologically sensitive and legally protected areas is to zone the FWPM sub-basin catchment areas as not favoured for wind farm development.

Such “not favoured” zoning, in relation to the FWPM is not new in Ireland for example Kerry County Council, in November 2012, clearly and unambiguously identified five of their FWPM sub-basin and catchment areas and confirmed that:

“... given the risk of sediment generation associated with wind development, it is considered that ecologically *these catchments are not suitable for wind development*. Wind development will not therefore be permitted in these areas.”¹²

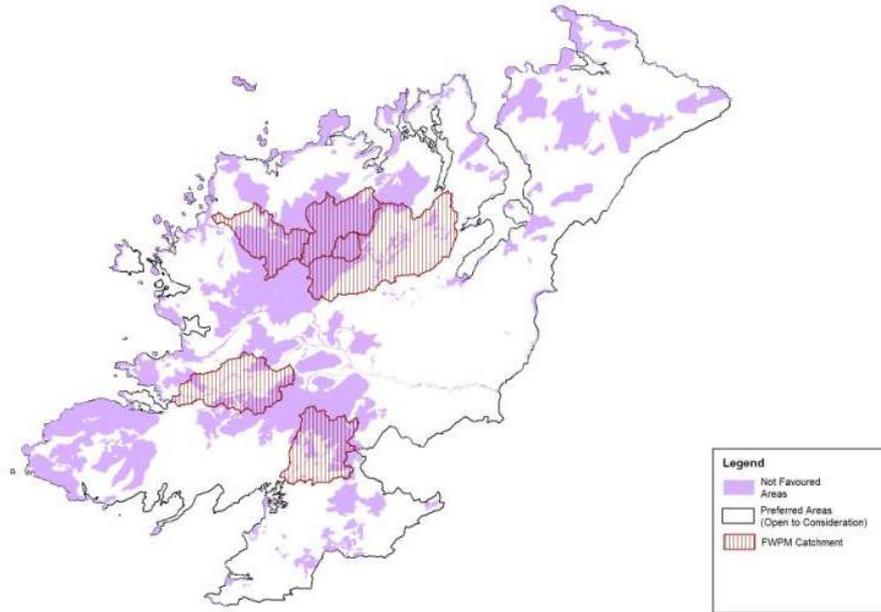
In any case it is clearly evident from slide 31 (see map below) that recognising the FWPM sub-basin areas and catchments would not have a major delimiting impact on the overall spatial scope of areas designated as open for wind farm development in the county. The proposal for variation just seeks to remove from consideration for wind farm development these legally protected areas. Further attempts have been made, to prevent dezoning, by some Councillors, erroneously claiming that dezoning from wind farm development would have knock on effects and prevent locals from building houses or engaging in appropriate conventional farming activities in those areas: such claims are untrue. The sub-basin management plan clearly and unambiguously empowers and obliges Donegal Council to provide sectoral guidance for the sub-basin catchments - one such sector is wind farming which is identified as a significant risk to the FWPM population. The wind farm zoning, which the motion seeks to vary, deals only with wind farm planning and does not impact on other types of development or activity in the areas.

Finally in relation to the FWPM it is arguable that given the nature, perceived strength and subsequent clarified meaning of Objective NH-O-4 of the Donegal County Development Plan that such a change to the areas from favoured to not favoured areas for wind farm development could proceed without the need for public consultation.¹³ The Council in amending the zonings would be merely reflecting the clarified meaning of Objective NH-O-4 of the Donegal County Development Plan in the wind farm zoning elements of the plan.

¹² Kerry County Council, *Variation No. 8 to the Kerry County Development Plan 2009 – 2015: Renewable Energy Strategy 2012*, (adopted 5 November 2012) available at <http://www.kerrycoco.ie/en/allservices/planning/codevplanvariations/8thvariationtothecodevplan/thefile.7789.en.pdf> accessed 1 December 2013, at paragraph 7.4.5.11; page 44.

¹³ The clarified meaning of Objective NH-O-4 of the Donegal County Development Plan was presented by Mr. Denis Kelly, Senior Executive Planner, Central Planning Unit, Donegal County Council at the Planning and Economic Development, SPC Workshop (28 November 2013) at Lifford.

Wind Energy



Setback distances

The Council have four primary arguments in relation to setback, namely that the current focused review is in progress and this permits people to engage in a consultation. Secondly if councillor Campbell's proposal is accepted that a new variation will then be required following the review of the guidelines. The third argument is that a fixed limit is a measure equivalent to the dezoning of vast areas of the county, thus the reliance on maps with various setbacks highlighted. Finally they question the meaning of *human habitation* in terms of the proposed variation to the development plan.

All four of these, of course, ignore the reality that currently there is no setback in place in Donegal and local communities must rely on the implementation of the flawed 2006 Wind Energy Guidelines – which by virtue of the need to review the Department and stakeholders also accept are flawed. It must also be noted that despite the Council's heavy reliance on the 2006 Guidelines and their insistence that the revised guidelines will be the primary protection for Donegal residents against wind farm development the Council made no submission to the national consultation process which began in January 2013.

As pointed out earlier the revised guidelines, which we await publication of, will only be draft guidelines and will require a further round of national consultation and according to the Department of Environment, Community and Local Government will not be finalised until at least the third quarter of 2014. Therefore the residents of Donegal are left in limbo, awaiting the revised guidelines to be enforced, with no setback distance set in the CDP and a reinforcement of the flawed 2006 Guidelines failure to recognise potential noise impact on a home which is greater than 500m from a turbine. The Council executive attempt to brush this aside in slide 30:

“[s]etback is determined on project by project basis and in event that Guidelines state a specified parameter it will automatically apply. Otherwise a further Variation may be required to undo this variation.”

There a number of approaches available to deal with this. The variation could be amended to include a sunset clause which sets itself aside once the new guidelines come into force sometime in late 2014. Another option would be to include in the variation an *either/or clause* which gives effect to either the revised guidelines or the ten times maximum tip height which ever provides the greatest protection to the receiving community. However, these issues could be easily ironed out following the public consultation phase in relation to the proposed Donegal CDP variation.

With respect to the Council's attempt to equate the proposal to the dezoning of vast areas of the County, due to a fixed setback distance, through various maps, as pointed out by the Glenties group in the letter to Councillors other County Councils are in the process of introducing fixed setbacks of up to and including 2km. Such proposals meet strong opposition from the Irish wind energy sector as they create a fixed limit on development. In this regard the Glenties group are proposing a *simple, progressive and proportionate* setback of ten times the maximum tip height of a proposed turbine. This would greatly reduce the fears of constituents in relation to residential amenity, wind farm noise and any subsequent indirect health impacts, while addressing the wind industry concern in relation to fixed setback distances.

Finally the points raised in slide 36 in relation to requiring clarity on the meaning of human habitation. This is a non-issue and can easily be rectified. Human habitation can be defined to include dwellings, schools, hospitals, places of work and worship, or similar structures where a person or persons, reside or otherwise use for rest, recreation, education, entertainment, work or worship.

Conclusion

The primary point to highlight is that there is a legal obligation on the Council to protect the FWPM areas this can only be achieved by removing them from areas currently zoned as favoured for wind farm development.¹⁴ In relation to the setback distances a prudent approach would be for the Council to agree to review the issue of setback in tandem with the removal of the FWPM sub-basin areas. This would equip the Council with evidence in relation to public opinion, in Donegal, in order to make a considered judgement on the issue once the final revised guidelines emerge later in 2014.

Finally, it is important to remember that councillor Campbell's motion if passed will ensure that the people of Donegal can through the required consultation process on the proposed variation have a direct say in wind farm planning zoning and setback policy in the county, your support is required for this to happen, please remember the CDP is after all the people's plan. Overall the best interests of the receiving environment and communities are best served by accepting the motion and putting these important issues out to consultation in Donegal.

¹⁴ European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (SI no. 296 of 2009). See also *Sweetman and Others v An Bord Pleanála* C258/11 (11 April 2013) which confirms the meaning of the Habitats Directive 92/43/EEC in relation to conservation and reaffirms the scope of the legal requirement to maintain and restore natural habitats and populations of prescribed species.