



**An
Bord
Pleanála**

**Board Direction
BD-018842-25
ABP-312659-22**

The submissions on this file and the Inspector's report were further considered at a Board meeting held on 08/01/2025.

The Board decided to grant permission, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

The Board made its decision consistent with the:

- Climate Action and Low Carbon Development Act 2015, as amended;
- Climate Action Plan 2024,
- National Biodiversity action Plan 2023 - 2030

and in coming to its decision, the Board had regard to the totality of information on the file including the following:

European legislation, including:

- The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment.
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy.

National planning, related policy and guidance, including:

- Project Ireland 2040 National Planning Framework,

- the provisions of the Wind Energy Development Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government in June 2006 and the Draft Wind Energy Guidelines published by the Department of Housing Local Government and Heritage in December 2019.

Regional and local level policy, including:

- Regional Spatial and Economic Strategy for the Northern and Western Region 2020-2032,
- the Donegal Development Plan 2024 – 2030,

other matters, including:

- the nature, scale and design of the proposed development as set out in the planning application and the pattern of development in the vicinity,
- the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites,
- the documentation submitted with the planning application, including the Natura Impact Statement and the Environmental Impact Assessment Report,
- the submissions made to An Bord Pleanála in connection with the planning application and the applicant's response to submissions,
- the Inspectors Report (dated 24th day of April 2024) and Inspectorate Ecologist's report (dated 11th day of December 2024).

Appropriate Assessment: Stage 1:

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report (dated 24th April, 2024) that Lough Swilly SAC (Site Code: 002287), North Inishowen Coast SAC (Site Code: 002012), Lough Swilly SPA (Site Code: 004075), Lough Foyle SPA (Site Code: 004087), Lough Foyle SPA (UK9020031) and Trawbrega Bay SPA (Site Code: 004034) are the European Sites for which there is a likelihood of significant effects and which must therefore be subject to appropriate assessment.

Appropriate Assessment: Stage 2:

The Board considered the applicant's Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for these European Sites in view of the Sites' conservation objectives. The Board considered that the information before it, was sufficient, to undertake a complete assessment of all aspects of the proposed development in relation to the Sites' conservation objectives using best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following:

- (i) the site specific conservation objectives for these European Sites,
- (ii) the current conservation status, threats, and pressures of the qualifying interest features,
- (iii) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans and projects,
- (iv) the views of the Department of Housing, Local Government and Heritage, the views of Northern Ireland's Department of Agriculture, Environment and Rural Affairs,
- (v) the Inspector's report (dated 24th April, 2024), the report of the Inspectorate Ecologist (dated 11th December 2024), and
- (vi) mitigation measures which are included as part of the current proposal.

In completing the appropriate assessment, the Board considered, but did not accept, the Inspector's assessment and conclusion reached that the Board could not be satisfied that the proposed development, either individually or in combination with other projects, would not be likely to have an adverse effect on the European Sites Lough Swilly Special Area of Conservation (Site Code: 002287), Lough Swilly Special Protection Area (Site Code: 004075), Lough Foyle Special Protection Area (Site Code: 004087) or Lough Foyle Special Protection Area (Site Code: UK9020031).

In disagreeing with the Inspector in relation to Lough Swilly Special Protection Area (Site Code: 004075), Lough Foyle Special Protection Area (Site Code: 004087), and Lough Foyle Special Protection Area (Site Code: UK9020031), the Board accepted

and adopted the appropriate assessment carried out in the Inspectorate Ecologist's report in respect of the implications of the proposed development on the integrity of the aforementioned European Sites, Lough Swilly Special Protection Area (Site Code: 004075), Lough Foyle Special Protection Area (Site Code: 004087), and Lough Foyle Special Protection Area (Site Code: UK9020031). The Board was satisfied that the proposed development would not adversely affect the integrity of these European Sites in view of the Sites' conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

In disagreeing with the inspector in relation to European Site Lough Swilly Special Area of Conservation (Site Code: 002287), the Board considered that the evidence in the NIS and all mitigation measures and construction practices proposed in the documentation received, are adequate to dispel reasonable scientific doubt as to the occurrence of adverse effects on this site's integrity. The Board agreed with, and adopted, the Inspector's identification that the main likely impact arising from the proposed development on Lough Swilly Special Area of Conservation (Site Code: 002287) would be entrainment of suspended solids and the release of nutrients to the water bodies arising from a possible peat landslide or a failure to contain stored peat spoil or inadequacies of the site drainage provisions. However, the Board disagreed with the Inspector's assessment and conclusion reached as these did not align with the evidence on file relating to drainage proposals, construction methodology including the detail of the management of excavated and unusable peat and spoil on site and further noted the details of the submitted geotechnical and peat stability assessment with the conclusion reached, which the Board accepted and agreed with, of a low risk of a peat failure or landslide occurrence and when mitigation/control measures are taken into account adverse effects will be avoided. (See further commentary on 'Inspector's recommended refusal Reason No. 1' hereunder).

The Board was satisfied that there was no evidence on file of a scientific or technical nature that raised reasonable scientific doubt that the proposed development would have an adverse effect on this European Site, having regard to the site's conservation objectives. The Board considered the submission from the Department of Housing, Local Government and Heritage which did not raise any concerns in relation to potential adverse effects on Lough Swilly Special Area of Conservation

(Site Code: 002287). Having regard to the forgoing the Board concluded its appropriate assessment of the proposed development on Lough Swilly Special Area of Conservation (Site Code: 002287) and the Board was satisfied to determine that the proposed development would not adversely affect this European Site in view of the Site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

In overall conclusion of its appropriate assessment, the Board was satisfied that the proposed development would not adversely affect the integrity of European Sites Lough Swilly Special Area of Conservation (Site Code: 002287), Lough Swilly Special Protection Area (Site Code: 004075), Lough Foyle Special Protection Area (Site Code: 004087), Lough Foyle Special Protection Area (Site Code: UK9020031), or any other European Site, in view of the Sites' conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development taking into account:

- the nature, scale and extent of the proposed development,
- the environmental impact assessment report and associated documentation submitted in support of the application,
- the submissions from the Planning Authority, prescribed bodies and observers, and
- the Inspector's report (dated 24th day of April 2024) and Inspectorate Ecologist's report (dated 11th day of December 2024).

The Board was satisfied that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board was satisfied that the information was reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and

complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU and article 94 of the Planning and Development Regulations 2000, as amended.

Reasoned Conclusion on Significant Effects

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- Significant positive environmental impacts on climate would arise during the operational phase from the generation of renewable energy with the displacement of greenhouse gas emissions from the atmosphere arising from reduced requirement of and reliance on fossil fuel energy production.
- Negative impacts that would arise on residential amenity during the construction and operational phases would be avoided by the implementation of the measures, as set out in the Environmental Impact Assessment Report and associated Construction and Environment Management Plan which include specific provisions relating to the control and management of dust, noise, water quality, noise monitoring as well as a mitigation strategy to control the level of daily shadow flicker experienced at affected dwellings;
- The impacts on biodiversity during the construction and operational phases include potential disturbance, displacement, collision risk and loss of habitat to birds and bats. On the application of the mitigation measures outlined, it can be concluded that the proposed development will not result in any significant effects on the identified local bat population or on any of the identified key ornithological receptors or on habitats.
- The proposed development will result in the removal of large quantities of unusable peat and spoil across the site and this element of the proposed development has potential to cause peat instability or a peat landslide. The mitigation measures identified in the EIAR, including adherence to the Peat and Spoil Management Plan, Construction Environmental Management Plan and the Surface Water Management Plan will mitigate risk to an acceptable 'low' rating and significant impacts will thus be avoided.

- The risk of pollution of ground and surface waters during the construction phase which would be mitigated by the implementation of measures, as set out in the Environmental Impact Assessment Report and associated Construction and Environment Management Plan and Surface Water Management Plan which include specific provisions relating to groundwater, surface water and drainage;
- Impacts on roads and traffic will be mitigated during construction by the measures set out in the Environmental Impact Assessment Report and by a construction stage Traffic Management Plan. Having regard to the nature of the development, significant impacts during the operational stage would not arise.
- Landscape and visual impacts will arise during the operational phase from the insertion of the turbines in the landscape. Given the existing modified character of the receiving environment which includes coniferous commercial forestry and existing operational wind energy developments to the east and west, the development will not change the character of the landscape and will not adversely impact the visual amenities of the area.
- The impact on cultural heritage would be mitigated by archaeological monitoring with provision made for resolution of any archaeological features or deposits that may be identified.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, as set out in the Environmental Impact Assessment Report and, subject to compliance with the conditions set out herein, the effects on the environment as a result of the proposed development by itself and cumulatively with other development in the vicinity would be acceptable.

Proper Planning and Sustainable Development

It is considered that subject to compliance with the conditions set out below the proposed development would accord with European, national, regional and local planning policy, including strong policy support expressed in the County Donegal Development Plan 2024-2030 for the development of renewable energy in the county (E-O-1) and securing the maximum potential from the wind energy resources

(E-O-2). The proposed development would be acceptable in terms of impact on the visual amenities and landscape character of the area, would not adversely impact on existing amenities of residential properties and would not be prejudicial to public health, or to water quality and would be acceptable in terms of traffic safety. It has been demonstrated to the satisfaction of the Board, through compelling technical evidence presented with the application including the submitted EIAR, particularly proposals for peat and spoil management, that the proposed development would not result in a significant effect on the environment because of a peat failure or landslide occurrence. The Board was satisfied that the proposed development would be consistent with and supported by national climate ambitions and with the relevant provisions of the Climate Action Plan 2024. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In disagreeing with the inspector's recommended reasons for refusing planning permission, the Board sets out its reasoning below:

Inspector's recommended refusal Reason No. 1

With respect to the inspector's recommended reason number one that centred on concerns of a risk of failure to contain the peat and spoil that would be generated on site in the proposed borrow pit and repository and to the uncertainty and likely inadequacies of the site drainage provisions, leading to a serious threat to the environment, potentially causing extensive pollution of waterbodies within and in the vicinity of the site, the Board did not share these concerns or adopt this recommended refusal reason.

Instead, the Board, having reviewed the EIAR and in particular Chapter 8 (Land, Soils and Geology), Chapter 9 (Hydrology and Hydrogeology), Appendix 4.2 (Peat and Spoil Management Plan), Appendix 8-1 (Geotechnical and Peat Stability Assessment Report), Appendix 4-4 (Surface Water Management Plan) and Appendix 4-3 (Construction Environment Management Plan), concluded that, in the first instance, both the existing ground conditions, including commercial forestry planted on peat and the existing drainage regime on site serving the forestry, are evidently well understood by the applicant, informed by information gathered including site walkovers, site investigations (including peat depth probing, ground auguring and trial pits), insitu shear strength testing and laboratory analyses. The Board was also satisfied that the type and volumes of peat and spoil that require

excavation and management on site arising from the construction of the windfarm development are also well understood as part of the project design.

In its deliberations, the Board noted the key question arising and which gave rise to the inspector's stated concerns on this matter is whether or not the excavated peat and spoil, being soft soils that require excavation because they are not suitable for re-use as part of the project, save some that will be used for landscape purposes, can be excavated in the first instances and re-deposited on site thereafter, all in a safe manner.

In this regard, the Board reviewed the documentation on file, including of particular relevance, the Peat and Spoil Management Plan and the Geotechnical and Peat Stability Assessment Report. Both were prepared by engineers with demonstrated expertise and competence relevant to the project including the management of large earthworks and handling of unusable peat and spoil.

Table 7.1 of the submitted Peat and Spoil Management plan provides a summary of the proposed excavated peat and spoil volumes that would be encountered on site while Table 7.2 provides a summary of peat and Spoil Placement / Reinstatement areas on site. The shear strength testing undertaken on site provided values for the undrained shear strength, a measurement of maximum stress a soil can withstand before it fails due to shear forces, with results ranging from 10 to 78 kPA and an average overall shear strength of 35 kPA. The Board noted that these recorded shear strength results are typical of well drained peat which aligns with the drainage currently in place in connection with the planted commercial forestry.

The volume of excess peat required to be deposited on site includes 400,000 cubic metres proposed to be placed into the worked out borrow pit, 65,000 cubic metres proposed to be placed into a proposed peat repository while the remainder will be placed alongside access roads and used for landscaping purposes (25,000 cubic metres). The main concern raised by the inspector centred on the deposition of peat into the repository and borrow pit (both referred to as repositories in the inspector's report) and during the Board's deliberations on the application, these elements of the proposed development were considered and assessed by the Board as outlined below.

Borrow Pit

The Board understands that the borrow pit will be formed from the excavation of rock to serve the construction of the windfarm and also noted that the excavation of the

borrow pit will involve significant excavation works. The methodology and sequencing of the rock removal from the borrow pit is detailed in Section 7.4 of the Peat and Spoil Management Plan and typical construction details are presented in Figure 7.1 (Borrow Pit – Plan and Cross Section Detail) of the plan. The Board was satisfied that the construction of the borrow pit is an inherent part of the earthworks phase of the project and the principle of infilling a worked out borrow pit void with peat and other unusable soils is an appropriate and sustainable response. The planning authority, in its submission on the file, noted that the proposed borrow pit represents an efficient use of on-site resources and eliminates the need to transport large volumes of material along the public road network. It is not unusual that such a borrow pit would be placed on a sloped part of a site. In this regard, and in view of the inspector's concern on this matter, the Board noted that the base of the borrow pit void, once the rock and suitable material are excavated, will itself be level, and the floor of the borrow pit will be founded on a competent in-situ rock layer. The unusable peat and spoil material will for the most part be placed within the borrow pit void space directly from source, without stockpiling or double handling and on completion, the filled borrow pit will be shaped to allow run-off of surface water. The only exception for stockpiling will be the holding of Acrotelm (top 0.3 to 0.4m layer) that will be lighter and less humified peat and the Acrotelm will be temporarily stored locally for use in connection with landscaping.

A rock buttress at the downslope edge of the borrow pit void, up to 8m in height, will be constructed to safely retain the infilled peat. This buttress will be formed on a competent strata and will be constructed of course boulder fill with a high permeability or alternatively, drains will be placed through the buttresses to allow excess water to drain. It is proposed to leave upstands of intact rock in place within the borrow pit, or create upstands, which will allow the borrow pit to be infilled in cells. Of key note is that the excavation and infilling will be undertaken and supervised by an experienced contractor and suitably qualified personnel and the founding stratum for the rock buttresses and the stability of the rock faces within the borrow pit will be inspected and approved by the appointed project geotechnical engineer.

Peat and Spoil Repository

The Board reviewed the location and design of the proposed Peat Repository as shown on Figure 7.3 (Plan and Cross Section details) of the Peat and Spoil

Management Plan. While it will encompass a large surface area, the Board was satisfied that this is not unusual for a large scale project of this nature. The single repository will be located in an area of gently sloped topography, measured as a slope angle of two degrees by reference to Table 6.1 of the plan (Peat Depth & Slope Angle at Proposed Turbine / Infrastructure Locations). It is noted that the maximum height of 1m of peat and spoil will be placed in the repository which is a shallow depth of peat and spoil. An interceptor drain will be installed around the perimeter of the repository which will have the effect of diverting any surface water away from the repository and prevent ponding arising. It is proposed that the surface of the peat and spoil will be shaped to allow run-off of surface water and the edge of the stored peat and spoil will be shaped at a slope of 1(v):5(h) using more intact peat from the top peat layer (Acrotelm). The Board noted that the construction is proposed to take place using low ground pressure machinery and bog mats to place the peat and spoil in the repository. Of note, the construction of the repository will be supervised by the project geotechnical engineer.

Geotechnical and Peat Stability Assessment Report

The applicant submitted a geotechnical assessment of the stability of the peat on site. The assessment followed the Scottish Government's 2017 guidance document, 'Peat Landslide Hazard and Risk Assessments: Best Practice Guide for Proposed Electricity Generation Developments'. This guidance document outlines best practice for conducting peat landslide hazard and risk assessments in Scotland and the Board was satisfied that it is appropriate to be used as a framework to assess peat-related hazards for the planning and development of windfarm proposals in the Irish context, including the windfarm proposal that is currently before the Board for consideration.

As part of this assessment, the factor of safety (FoS) for a peat landslide occurrence, in the undrained state (short-term stability until construction induced pore water pressures dissipate) and drained state (long-term stability including an examination of the effect of in particular, the change in groundwater level as a result of rainfall on the existing stability of the natural peat slopes) was calculated at 220 locations across the site to determine the stability of the peat slopes encountered on site. The FoS in the context of slope stability is a measure of the ratio of resisting forces (shear strength) to the driving forces (shear stress) in engineering terms. A FoS of less than one indicates a slope is unstable and a FoS greater than one

indicates a slope is stable. An acceptable FoS for slopes is generally taken as a minimum of 1.3 (rather than 1) in order to further minimise the risk of failure. This was the applicant's adopted approach for the current windfarm proposal.

The Board was satisfied with the applicant's methodology that involved scientifically calculating the FoS using the Broomhead formula, an established formula that is used to estimate the slope stability in peat soils.

In determining the FoS (drained and undrained state), a conservative value for the undrained shear strength (C_u) value of 8kPa was used which is below the lowest value encountered on site (10kPa). In the drained analysis, the level of the water table was assessed for dry to fully saturated peats to allow for the variability of water levels in blanket peat and that it can be recharged by rainfall to be taken into account. Two loading conditions were assessed for the undrained and drained states. These included Condition (1) – no surcharge and Condition (2) – a surcharge of 10kPa, the latter which is equivalent to the stockpiling of peat up to a height of 1m (worst case scenario), being a maximum depth of peat loading proposed in the repository, where a shallow layer of peat would be placed across the existing ground. It was evident to the Board that the determination of the FoS was informed by detailed information gathered on site and its calculation at each location was founded on an appropriate engineering methodology.

The Geotechnical and Peat Stability assessment uses the results of the stability analysis, the FoS, in combination with relevant qualitative factors. A construction buffer zone plan based on qualitative factors identified during the site walkover is included as Figure 4.2 (Construction Buffer Zone Plan). The results of the stability assessment are set out as Risk Rating and Risk Rating Categories.

The findings of the assessment concludes that the site has an acceptable margin of safety and is suitable for the proposed windfarm development and this includes the excavation of peat and spoil and subsequent deposition of the unusable peat and spoil to their permanent locations in both the borrow pit and peat and spoil repository. The assessment includes recommendations and control measures for construction work in peat to ensure that all works adhere to an acceptable standard of safety. A small number of locations were found to have a slightly elevated construction risk (due to marginally localised lower FoS) and these were noted to require localised control and mitigation measures to control surface water flow and

prevent build up on water in drains. No evidence of instability was recorded by the applicant team at these or any locations across the development site.

Overall, the Board was satisfied that the soils environment, including the type and volume of peat and spoil requiring excavation and placement within the site, is well understood and was further satisfied that the development has been designed to take account of this environment with a low risk of a peat failure or landslide occurrence or significant effects on the environment arising as a result. It is also of relevance to note that the design and layout of the windfarm took account of previous peat failures that have occurred on peatland sites (such as recent failures at Shass Mountain 2020, Co. Leitrim and Meenbog 2020, Co. Donegal and the Derrybrien failure in 2003). The lessons learned from both peat slide events have been incorporated into the design of this project and the construction methodologies to be implemented.

Updated Planning Policy for Wind Energy relevant to the soils environment

The Board took into account Map 9.2.1 (Wind Energy) contained in Appendix B of the current County Donegal Development Plan 2024-2030 which came into effect since the lodgement of the application with An Bord Pleanála. Within the current plan, the majority of the site is deemed 'Open for Consideration'. Some small pockets of the site are deemed 'Not Normally Permissible'. Turbine 2 and a portion of access track are to be sited within one such 'Not Normally Permissible' area. It is noted that Map 9.2.1 (Wind Energy) was prepared following a sieve analysis undertaken by the planning authority with regard to environmental sensitivities across the county and this was informed in part by Geological Survey of Ireland (GSI) landslide susceptibility mapping data.

Notwithstanding that Turbine number 2 and a portion of access track would be sited in an area 'Not Normally Permissible' under the current plan and associated Wind Energy Map 9.2.1, the Board was satisfied that the applicant's Peat and Spoil Management plan and the Geotechnical and Peat Stability Assessment Report both provide detailed and compelling technical evidence, that affirm that the proposed windfarm site has an acceptable margin of safety and is suitable for the proposed windfarm development of 15 turbines, with a resultant low risk of peat failure and avoidance of significant effects on the environment as a result. The Board was satisfied to agree with the findings presented with the application that the proposed development, including Turbine 2 and associated infrastructure and portion of

access road, would not have an adverse impact on soils or drainage or result in any peat failure or landslide risk accordingly. The Board also notes that a 'Not Normally Permissible' category does not preclude wind energy development as an absolute and it is reasonable to allow permit Turbine 2 when all of the detail outlined above is taken into account.

Drainage

With regard to the drainage design, the Board noted that it is intended to maintain the surface water flow paths that already exist within the existing forestry component on site. There will be no alteration of the catchment size contributing to each of the main downstream watercourses. It is proposed that all drainage water captured within individual site sub-catchments will be attenuated and released within the same sub-catchments.

Drainage mitigation include the use of interceptor drains installed up-gradient of all proposed infrastructure, to minimise suspended sediment becoming entrained will be employed. Use of swales / road side drains to collect runoff from access roads and turbine hardstanding areas of the site and channel it to settlement ponds for sediment settling are proposed and check dams will be used along sections of access road drains to intercept silts at source.

With regard to the Borrow pit, the drainage design proposal is for a single point outlet constructed to manage runoff from the borrow pit. Regarding the Peat and Spoil Repository, surface water will be directed to an oversized swale with a silt pond with a 24-hour retention time, prior to discharge to on-site drains. The repository will be re-vegetated and will become stabilised and no longer be a source of silt laden runoff.

The effectiveness of drainage measures designed to minimise runoff entering works areas and capture and treat potentially silt-laden water from the works areas, will be monitored continuously by the Environmental Clerk of Works (ECoW) on-site. The ECoW or project hydrologist will respond to changing weather, ground or drainage conditions on the ground as the project proceeds, to ensure the effectiveness of the drainage design is maintained.

Overall, the Board noted and was satisfied with the drainage proposals that centred around maintaining existing flows across the site.

Conclusion on Inspector's recommended refusal reason No.1

Having regard to the above, the Board was satisfied that the excavation and subsequent deposition of peat and spoil have been adequately considered in the application and EIAR. Furthermore, the risk of failure of the peat and spoil has been adequately considered and when control/mitigation measures outlined are in place, the Board was satisfied that a low risk of peat failure is the appropriate rating and this finding is backed up by the technical and compelling evidence presented in the applicant's documentation. This conclusion aligns with that of the planning authority who noted that the Geotechnical and Peat Stability Assessment illustrates that there is a low risk of peat failure as a result of the proposed development and subject to the implementation of proposed control measures.

A key mitigation measure is the proposal to engage experienced contractors and trained operators to carry out the work using appropriate plant and equipment and the supervision/monitoring of critical elements of the works by qualified and experienced geotechnical engineer(s). Accordingly, the Board did not share the view of the inspector that there would be an elevated risk to contain the spoil in either the repository or borrow pit or that there are inadequacies in the site drainage design and that the proposed development would pose a serious threat to the environment from a risk of such a failure. This does not align with the engineering information put forward with the application. Furthermore, notwithstanding the low risk of failure, in the event of such an occurrence, environmental emergency response procedures have been outlined by the applicant in Appendix 4-3 (Construction and Environmental Management Plan) of the EIAR where excessive peat movement or onset of a peat landslide occurrence.

The Board was also satisfied that the conclusion of the submitted Geotechnical and Peat Stability Assessment Report that the peat characteristics and ground conditions on the windfarm site are similar to that encountered on successfully developed wind farm sites in the area as reasonable.

Inspector's recommended refusal Reason No. 2

In disagreeing with the Inspector's recommended refusal reason no. 2 the Board carried out an appropriate assessment and concluded that the proposed development would not adversely affect the integrity of European Sites Lough Swilly Special Area of Conservation (Site Code: 002287), Lough Swilly Special Protection

Area (Site Code: 004075), Lough Foyle Special Protection Area (Site Code: 004087), and Lough Foyle Special Protection Area (Site Code: UK9020031), or any other European Site, in view of the Sites' conservation objectives and there is no reasonable scientific doubt as to the absence of such affects. The reasoning for disagreeing with the Inspector in relation to this refusal recommendation No. 2 is detailed in the Board's Appropriate Assessment above.

Inspector's recommended refusal Reason No. 3

In disagreeing with the Inspector's recommended refusal reason no. 3, the Board noted and considered the Inspector's concerns in relation to potential impacts on birds and bats arising from the proposed development. The Board subsequently decided to seek further specialist advice on these specific concerns to assist in its decision making. In that regard the Board considered the Inspectorate Ecologist's report (dated 11th day of December 2024). Having regard to the assessment and conclusions within that report and subject to conditions, the Board was satisfied that there would not be significant adverse impacts on the ornithological importance of the area or on bats.

Inspector's recommended refusal Reason No. 4

In disagreeing with the Inspector's recommended refusal reason no. 4, the Board did not concur with the Inspector's assessment of the landscape and visual impacts arising from the proposed development. The Board noted that almost the entirety of the site is in an area where wind energy developments are 'open for consideration' in the recently adopted Donegal County Development Plan 2024-2030, and that that statutory plan was subject of Strategic Environmental Assessment (SEA), including SEA on impacts of new developments such as windfarms on landscape and visual features, elements and characteristics. In their submissions to the Board the planning authority did not raise any concerns in relation to landscape or visual impacts arising from the wind energy development at this location. The planning authority stated that the amenity value of the landscape at this location allows consideration of the proposed wind farm development and the Board concurs with this assessment. Submissions received through the Strategic Planning Directorate of the Department for Infrastructure in Northern Ireland did not raise any concerns in relation to visual impacts arising within that jurisdiction from the proposed

development. The Department of Communities in Northern Ireland stated that while the turbines may be visible in distant views from historic sites and monuments in that jurisdiction, they would not provide any adverse impact upon the setting of these sites and monuments. Furthermore, no observer submissions on file raised any concerns in relation to landscape and visual impacts arising from the proposed development.

In carrying out an environmental impact assessment of the landscape and visual impacts arising from the development, the Board, having considered the totality of the documentation on file, including the Inspector's report, disagreed with the Inspector's assessment and conclusions on landscape and visual impacts, and agreed with, and adopted, the applicant's assessment in this regard. The Board did not share the Inspector's interpretation of the applicant's assessment. The Board considered the applicant's assessment to be reasonable, clear, accurate and robust. The Board did not consider that the proposed development would be incompatible with, or conflict with Natural Heritage and Landscape Policy of the County Development Plan 2024-2030 and did not consider that effects on designated scenic views warranted refusal. Given the nature of the receiving environment, which includes existing wind energy developments and extensive areas of commercial forestry, the Board did not concur with the Inspector's assessment that the landscape would be radically altered by the proposed development.

In completing an Environmental Impact Assessment with regards to landscape and visual impacts, the Board concluded that impacts would arise during the operational phase from the insertion of the turbines in the landscape. However, given the existing modified character of the receiving environment which includes coniferous commercial forestry and existing operational wind energy developments to the east and west, the Board concluded that the development will not change the character of the landscape and will not adversely impact the visual amenities of the area.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application and in the applicant's response to the observations received by An Bord Pleanála on the 10th day of May, 2023, except as may otherwise be required in order to comply with the

following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report and other plans and particulars submitted with the application, as updated by response to observations received by An Bord Pleanála on the 10th day of May, 2023 shall be implemented.

Reason: In the interest of clarity and the protection of the environment during the construction, operational phases and decommissioning of the proposed development.

3. The mitigation measures contained in the Natura Impact Statement submitted with the planning application as updated by response to observations received by An Bord Pleanála on the 10th day of May, 2023 shall be implemented.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of European sites in the vicinity.

4. The period during which the development hereby permitted may be carried out shall be ten years from the date of this Order.

Reason: Having regard to the nature and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

5. This permission shall be for a period of 30 years from the date of the first commissioning of the wind farm.

Reason: To enable the planning authority to review its operation in the light of the circumstances then prevailing.

6. The following design requirements shall be complied with:

- (a) The wind turbines shall have a total tip height in the range of 162 metres minimum to 173 metres maximum, a hub height in the range of 96 metres minimum to 107 metres maximum, and a rotor diameter in the range of 132 metres minimum to 140 metres maximum
- (b) Cables within the site shall be laid underground;
- (c) The wind turbines shall be geared to ensure that the blades rotate in the same direction;
- (d) No advertising material shall be placed on or otherwise be affixed to any structure on the site without a prior grant of planning permission.

Reason: In the interest of visual amenity and for reasons of clarity.

7. The construction of the proposed development shall be managed in accordance with a final Construction Environment Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. The final Construction Environment Management Plan shall be subject to ongoing review throughout the construction phase of the proposed development through regular environmental auditing and site inspections.

Reason: In the interests of environmental protection.

8.

- (a) The developer shall review usage by birds of the wind farm site and document bird casualties through an annual monitoring programme which shall be submitted by the developer to, and agreed in writing with the planning authority prior to commencement of development. This programme shall be developed following consultation with the Department of Housing, Local Government and Heritage, and shall cover the entire period of the operation of the wind farm.

(b) The developer shall provide for the use of trained dog search teams for bat carcasses for a minimum of 3-years post-construction on site and all turbines shall be searched at least once each season as part of the post construction monitoring.

Reason: To ensure appropriate monitoring of the impact of the development on birds and bats.

9. Prior to the commencement of the development, the developer shall prepare an Invasive Species Management Plan for the written agreement of the planning authority and all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

Reason: In order to prevent the introduction or spread of invasive species within the footprint of the works.

10. Noise levels generated by the windfarm following commissioning by itself or in combination with other existing or permitted wind energy development in the vicinity, when measured externally at noise sensitive locations, shall not exceed:

(a) For the daytime period 7am to 11pm, in quiet environments, where background noise is less than 30dB(A)L90 T10, a maximum noise level of 40dB(A)L90 T10, For daytime periods, 7am to 11pm, where the background noise level exceeds 30dB(A)L90 T10, the greater of 45dB(A)L90 T10, or 5dB(A) above background levels,

(b) For the night time period 11pm to 7am, for all noise environments, 43dB(A)L90 T10.

(c) The wind farm shall not give rise to amplitude modulation, tonal or impulsive noise at noise sensitive locations.

Prior to the commissioning of the windfarm, the developer shall submit and agree in writing with the planning authority a Noise Compliance Monitoring Programme (NCMP) for the operational windfarm. The NCMP shall include a detailed methodology for all sound measurements, including frequency of

monitoring and recording of results, which shall be made publicly available. The NCMP shall be fully implemented during the operation of the windfarm.

Reason: In order to protect the amenities of noise sensitive properties in the vicinity of the development.

11. The developer shall comply with the following shadow flicker requirements:

- (a) Cumulative shadow flicker arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors.
- (b) The proposed development shall be fitted with appropriate equipment and software to control shadow flicker in accordance with the above requirement. Details of these control measures shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.
- (c) A report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority, indicating compliance with the above shadow flicker requirements at dwellings. Within 12 months of commissioning of the proposed wind farm, this report shall be submitted to, and agreed in writing with the planning authority. The developer shall outline proposed measures to address any recorded non-compliances, controlling turbine rotation if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

Reason: In the interest of residential amenity.

12. In the event that the proposed development causes interference with telecommunications signals, effective measures shall be introduced to minimise interference with telecommunications signals in the area. Details of these measures, which shall be at the developer's expense, shall be submitted to, and agreed in writing, with the planning authority prior to commissioning of the turbines and following consultation with the relevant authorities.

Reason: In the interests of the protection of telecommunications signals and of residential amenity.

13. Details of aeronautical requirements shall be submitted to and agreed in writing with the planning authority prior to commencement of the development. Prior to the commissioning of the turbines, the developer shall inform the planning authority and the Irish Aviation Authority of the as-constructed tip heights and co-ordinates of the turbines and the wind monitoring mast and shall notify the Irish Aviation Authority of intention to commence crane operations at least 30 days prior to the erection.

Reason: In the interest of aviation safety.

14. The construction stage and filling of the repository and borrow pit on site shall be supervised by a qualified and appropriately experienced geotechnical engineer. Details of terms of reference of the supervision, including site visits and reporting and contractual arrangement shall be agreed in writing with the planning authority prior to the commencement of the development.

Reason: In order to minimise risk of peat instability.

15. The developer shall facilitate the archaeological appraisal of the site, and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development;
 - (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works; and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the planning authority considers appropriate to remove.

In default of agreement or any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any archaeological remains that may exist within the site.

16. The delivery of large-scale turbine components for the construction of the windfarm shall be managed in accordance with a finalised Construction Traffic Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of the road network to be used by construction traffic, including over-sized loads, and detailed arrangements for the protection of bridges, culverts or other structures to be traversed, as may be required. The plan should also contain details of how the developer intends to engage with and notify the local community in advance of the delivery of oversized loads.

Reason: In the interests of traffic and road safety and residential amenity.

17.

(a) On full or partial decommissioning of the wind farm, or if the wind farm ceases operation for a period of more than 1 year, the turbines and all decommissioned structures shall be removed, and foundations covered with soil to facilitate revegetation. These reinstatement works shall be completed to the written satisfaction of the planning authority within three months of decommissioning or cessation of operation.

(b) Prior to the commencement of development, a detailed Site Restoration Plan providing for the removal of the turbines and all ancillary structures, and a timescale for its implementation, shall be submitted to and agreed in writing with the planning authority.

Reason: To ensure a satisfactory reinstatement of the site upon cessation of the project.

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of the site.

19. Prior to commencement of development, the developer shall lodge with the planning authority, a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of the site.

20. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and

the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to this permission.

Note: The Board ordered that the sum of €44,765 be refunded to the applicant.

Board Member



Date: 14/02/2025

Peter Mullan