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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Donegal County Council**

**Planning Register Reference Number: 22/51393**

**Appeal** by Maas Wind Limited care of Jennings O'Donovan Consulting Engineers of Finisklin Business Park, Sligo against the decision made on the 13<sup>th</sup> day of October, 2022 by Donegal County Council to refuse permission for development comprising a 10 year planning permission for a renewable energy development with a 40-year operational life from the date of commissioning. The development will consist of (1) construction of three wind turbine generators and associated hardstands areas within the following parameters (a) a total tip height in the range of 145 metres minimum to 150 metres maximum, (b) hub height in the range of 82 metres minimum to 87 metres maximum, and (c) rotor diameter in the range of 121 metres minimum to 126 metres maximum; (2) upgrading of existing site access tracks and roads and provision of new site access track and roads; (3) widening of three number existing site entrances and provision of a new site entrance; (4) widening of four number bends and one number junction along the public road L2563; (5) construction of (a) a control building/substation with a fenced compound previously permitted under planning register reference number 14/50553 and extended under planning register reference number 19/51227, and (b) a new temporary site compound for use during construction; (6) site drainage network; (7) installation of internal wind farm underground power and communications cabling; (8) all associated site development and ancillary works all at Massloughderryduff, Lackaghatermon, Ardara, County Donegal.

## Decision

**GRANT permission subject to conditions for Turbine 1 and the associated infrastructure to facilitate same including the substation permitted under planning register reference number 14/50553 and extended under planning register reference number 19/51227, temporary compound and cabling and all other associated infrastructure in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.**

**REFUSE permission for Turbine 2 and Turbine 3 and associated infrastructure, based on the reasons and considerations marked (2) under.**

## Reasons and Considerations (1)

In coming to its decision the Board had regard to the following:

- (a) the nature, scale, and extent of the proposed development,
- (b) the provisions of the Project Ireland 2040 National Planning Framework,
- (c) the provisions of the Climate Action Plan 2023 – Changing Ireland for the Better,
- (d) the provisions of the Wind Energy Development Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in 2006,
- (e) the policies of the Northern and Western Regional Assembly Regional Spatial and Economic Strategy (RSES) 2020-2032,
- (f) the provisions of the Donegal County Development Plan 2018-2024, including variations to same;

- (g) the documentation submitted with the planning application and appeal, including the Environmental Impact Assessment Report (EIAR), as amended and the Natura Impact Statement (NIS), as amended,
- (h) the submissions received on file including from the planning authority and observers,
- (i) 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 on European sites,
- (j) the pattern of development in the area, including the existing Loughderryduff wind farm and the separation distance to houses, and,
- (k) the report of the Inspector.

### **Appropriate Assessment Screening**

The Board agreed with and adopted the screening assessment and conclusions carried out in the Inspector's report that the only European sites in respect of which the proposed development has the potential to have a significant effect are West of Ardara/Maas Road Special Area of Conservation (Site Code: 000197), Sheskinmore Lough Special Protection Area (Site Code: 004090), Inishkeel Special Protection Area (Site Code: (004116), Lough Nillan Bog Special Protection Area (Site Code: 004110), West Donegal Coast Special Protection Area (Site Code: 004150), Roaninish Special Protection Area (Site Code: 004121), Derryveagh and Glendowan Mountains Special Protection Area (Site Code: 004039), and Illancrone and Inishkeeragh Special Protection Area (Site Code: 004132) in view of the sites' conservation objectives and for which Appropriate Assessment is, therefore, required.

## Appropriate Assessment

The Board considered the Natura Impact Statement (NIS) as submitted with the grounds of appeal, and other associated documentation, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment as it related to Turbine 1 and its associated infrastructure. The Board completed an Appropriate Assessment of the implications of the proposed development on the following European sites, West of Ardara/Maas Road Special Area of Conservation (Site Code: 000197), Sheskinmore Lough Special Protection Area (Site Code: 004090), Inishkeel Special Protection Area (Site Code: (004116), Lough Nillan Bog Special Protection Area (Site Code: 004110), West Donegal Coast Special Protection Area (Site Code: 004150), Roaninish Special Protection Area (Site Code: 004121), Derryveagh and Glendowan Mountains Special Protection Area (Site Code: 004039), and Illancrone and Inishkeeragh Special Protection Area (Site Code: 004132) in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) the mitigation measures which are included as part of the current proposal, and,
- (c) the conservation objectives for the European sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development of Turbine 1 and the associated infrastructure to facilitate same, by itself or in combination with other plans or projects, would not adversely affect the integrity of

European sites 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 account of:

- (a) the nature, scale, location, and extent of the proposed development,
- (b) the Environmental Impact Assessment Report, as amended and associated documentation submitted in support of the application and appeal,
- (c) the submissions received from the applicant, planning authority, prescribed bodies, third parties and observers/submitters in the course of the application and appeal, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, as amended, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed renewable energy development, and identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment. The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report, as amended and associated documentation submitted by the applicant and submissions made in the course of the application and appeal.

## Reasoned Conclusion on the Significant Effects

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated where relevant, as follows:

- Biodiversity – There would be minor habitat loss of wet heath habitat of local importance and of minor significance to facilitate the development of Turbine 1 and the associated infrastructure to facilitate same including the cable trenching required. Measures have been designed to mitigate potential negative and harmful effects as a result of the proposed development on the general key ecological receptors identified as part of the impact assessment. Measures for the construction and operation phases are set out relating to for example water quality and aquatic fauna, non-volant mammals, birds, bats, and habitat management.
- Landscape and Visual Amenity – The site is in a relatively exposed location though the proposed turbine would likely be read as an extension to the existing nine turbine wind farm, notwithstanding the greater height of the proposed turbine. While the proposed development would result in additional landscape and visual change, it is not considered to be significant, given the proximity of the proposed turbine to the operational windfarm.
- Air and Climate – There would be a minor positive impact on the environment as a result of the increase in renewable energy resources.
- Population and Human Health – Development of the type proposed is common in Ireland and is strongly supported by the planning framework at all levels. The potential for the proposed development to adversely impact the health of the population is not likely, whether through health impacts or risk of accident. Limits on, for example, noise and technology to address shadow flicker, can be conditioned to protect the amenity of the local population.

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, as amended and subject to compliance with the conditions set out below, the effects of the proposed development of Turbine 1 and associated infrastructure to facilitate same on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the inspector as they relate to Turbine 1 and the associated infrastructure to facilitate same.

Overall, the Board is satisfied that the proposed development of Turbine 1 and the associated infrastructure to facilitate same would not have any unacceptable effects on the environment.

### **Proper Planning and Sustainable Development**

The Board considered that the proposed development of Turbine 1 and the associated infrastructure to facilitate same, subject to compliance with the conditions set out below, would be in accordance with national, regional, and local planning policy including the relevant provisions of the Donegal County Development Plan 2018-2024, and variations to same, would make a positive contribution to Ireland's move to a low-carbon energy future, would be acceptable in terms of impact on the visual amenities and landscape character of the area, would not seriously injure the amenities of property in the vicinity, would not be prejudicial to public health, would not pose a risk to water quality or affect the natural heritage of the area, would not adversely impact the road network in the area and would, otherwise, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and in the grounds of appeal received by An Bord Pleanála on the 9<sup>th</sup> day of November 2022, 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. This permission shall be for a period of 30 years from the date of commissioning of the proposed development.

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

3. The period during which this element of the proposed development hereby permitted may be constructed shall be 10 years from the date of this Order.

**Reason:** In the interest of clarity.

4. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, as amended through the course of the application and appeal, and other plans and particulars submitted with the application, shall be implemented in full.

**Reason:** In the interests of clarity and the protection of the environment during the construction and operational phases of the proposed development.





5. The mitigation measures contained in the Natura Impact Statement, as amended during the course of the application and appeal, shall be implemented in full.

**Reason:** In the interests of clarity, ensuring the protection of European sites, and the proper planning and sustainable development of the area.

6. (a) The turbine shall have maximum hub height of 87 metres, rotor diameter of 126 metres, and blade tip height of 150 metres.
- (b) The wind turbine including hub and blades shall be externally finished to match the colour of the existing turbines in the Loughderryduff wind farm.
- (c) Cables within the proposed development site shall be placed underground except as noted at the one water crossing to facilitate connection of proposed turbine T22 to the previously permitted substation.
- (d) The wind turbines shall be geared to ensure that the blades rotate in the same direction.
- (e) No advertising material shall be placed on or otherwise affixed to any structure on the site without a prior grant of permission.

**Reason:** In the interests of clarity and visual amenity.

7. Details of the materials, colours, and textures of all the external finishes of the proposed substation building and enclosing fence shall be submitted to and agreed in writing with the planning authority, prior to commencement of the development.

**Reason:** In the interest of the visual amenities of the area.



8. The developer shall appoint a suitably qualified ecologist to monitor and ensure that all avoidance/mitigation measures relating to the protection of flora and fauna are carried out in accordance with best ecological practice and to liaise with consultants, the site contractor, the National Parks and Wildlife Service, and Inland Fisheries Ireland, where necessary. A report on the implementation of these measures shall be submitted to the planning authority and retained on file as a matter of public record.

**Reason:** To protect the environmental and natural heritage of the area.

9. The developer shall retain the services of a suitably qualified bird specialist to undertake appropriate pre-construction and post-construction bird monitoring surveys of the site. Details of the surveys to be undertaken and associated reporting requirements shall be developed following consultation with the National Parks and Wildlife Service and shall be agreed in writing with the planning authority prior to commencement of development. The surveys shall be completed annually for a period of five years following commissioning of the proposed development and copies of the report shall be submitted annually to the planning authority and to the National Parks and Wildlife Service.

**Reason:** To ensure the appropriate monitoring of the impact of the proposed development on the avifauna in the area.

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

**Reason:** To ensure appropriate monitoring of the impact of the development on the avifauna of the area.



11. The operation of the development permitted by this Order, by itself or in combination with any other permitted wind energy development, shall not result in noise levels, when measured externally at nearby noise sensitive locations, which exceed:

- (a) Between the hours of 0700 and 2300:
  - (i) the greater of 5 dB(A)  $L_{90,10\text{min}}$  above background noise levels, or 45 dB(A)  $L_{90,10\text{min}}$ , at standardised 10 metres height above ground level wind speeds of seven metres per second or greater,
  - (ii) 40 dB(A)  $L_{90,10\text{min}}$  at all other standardised 10 metres height above ground level wind speeds, and
- (b) 43 dB(A)  $L_{09,10\text{min}}$  at all other times.

Prior to commencement of development, or as otherwise agreed in writing with the planning authority, the developer shall submit to and agree in writing with the planning authority a noise compliance monitoring programme for the subject development, including any mitigation measures such as the de-rating of particular turbines. All noise measurements shall be carried out in accordance with ISO Recommendation R 1996 'Assessment of Noise with Respect to Community Response', as amended by ISO Recommendations R 1996-1. The results of the initial noise compliance monitoring shall be submitted to, and agreed in writing with, the planning authority within six months of commissioning of the wind farm.

**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 protecting telecommunication 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, or as otherwise agreed in writing with the planning authority. Prior to the commissioning of the turbine, the developer shall inform the planning authority and the Irish Aviation Authority of the as-constructed tip height and co-ordinates of the turbine.

**Reason:** In the interest of air traffic safety.

14. (a) Cumulative shadow flicker arising from the proposed development shall not exceed 30 minutes in any day or 30 hours in any year at any existing or permitted house, or other sensitive receptor.
- (b) The proposed turbine shall be fitted with appropriate equipment and software to control shadow flicker at houses and sensitive receptors.
- (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. Within 12 months of commissioning of the proposed turbine 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.

15. Prior to commencement of development a detailed Construction Management Plan for the construction stage shall be submitted to, and agreed in writing with, the planning authority, generally in accordance with the proposals set out in the Environmental Impact Assessment Report. The Construction Management Plan shall incorporate the following:

- (a) a detailed plan for the construction phase incorporating, inter alia, the construction programme, supervisory measures, noise management measures, construction hours, and the management of construction waste,
- (b) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the construction period,
- (c) an emergency response plan, and,
- (d) proposals in relation to public information and communication.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority.

**Reason:** In the interests of environmental protection and orderly development.

16. Details of the Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to operational controls for dust, noise and vibration, waste management, protection of soils and groundwaters and surface waters, protection of flora and fauna, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

**Reason:** In the interests of environmental protection and orderly development.

17. During the construction phase a complaints register shall be maintained to record any complaints regarding but not limited to noise, odour, dust, traffic, or any other environmental nuisance. The complaint register shall include details of the complaint and measures taken to address the complaint and prevent repetition of the complaint. This register shall be available for inspection by the planning authority.

**Reason:** In the interest of orderly development.

18. On full or partial decommissioning of the proposed development, or if the wind turbine ceases operation for a period of more than one year, the turbine 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.

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

19. 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, and,
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and,
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on 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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

20. 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 roads. The form and amount of the security shall be as agreed between the relevant 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 delivery route.

21. 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 satisfactory reinstatement of the site.

22. 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 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





An Bord Pleanála 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 the permission.

## Reasons and Considerations (2)

1. Policy E-P-12 of the Donegal County Development Plan 2018-2024 (as varied) states that it is a policy of the Council that the principle of the acceptability or otherwise of proposed wind farm developments shall be generally determined in accordance with the three areas identified in map 8.2.1 'Wind Energy' and specific biodiversity related requirements. Proposed turbines 2 and 3 and their associated hardstandings and access tracks are located in an area identified as not normally permissible and the proposed development would not comply with the subsections 1(c) of the policy. It is considered that the proposed development would materially contravene Policy E-P-12 of the development plan, and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of Turbine 2 and Turbine 3, and the associated infrastructure to facilitate and access same, within the West of Ardara/Maas Road Special Area of Conservation (Site Code: 000197), the proposed development would result in the significant loss of northern Atlantic wet heaths with *Erica tetralix* [4010] and active blanket bog [7130] habitats which are included on Annex I of the European Union Habitats Directive of 1992. It is therefore considered that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the proposed development will not adversely affect the integrity of a European site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission for the totality of the proposal, the Board agreed with the Inspector in respect of the development plan wind energy policy considerations as they relate to Turbine 2 and Turbine 3. The Board also agreed with the Inspector in respect of the direct impacts on the West of Ardara/Maas Road Special Area of Conservation (Site code 000197) which would arise from the proposed location of Turbine 2 and Turbine 3 and the associated infrastructure to facilitate and access same. The Board noted the observation of the Inspector in respect of a split decision whereby it was stated that two-thirds of the number of turbines are considered not to be acceptable and while the Inspector considered that it would not be appropriate for the Board to consider a split decision it was noted by the Board that no reason was provided for this conclusion and in particular no planning or environmental consideration was provided to substantiate same. Furthermore, the Board agreed with the Inspector in respect of his conclusions in relation to landscape and visual impact. In this regard the Board considered that Turbine 1, which is located within an area where turbines are open for consideration and outside of the boundary of the aforementioned Special Area of Conservation, would form an extension of the existing wind farm and would therefore be in accordance with the proper planning and sustainable development of the area.



**Una Crosse**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**

Dated this 18<sup>th</sup> day of September 2023