



An  
Bord  
Pleanála

# Inspector's Report

## PL16.244033

### Development

10-year planning permission for a wind farm comprising of 7 no. wind turbines, with a maximum blade tip height of 156.5 metres, upgrade and extend existing road system including junctions with public road system, erect anemometry mast of 100 metres, peat disposal areas, temporary construction compound, underground electricity cabling including grid connection and ancillary works at Ballykinava/Cullmore, Claremorris, County Mayo.

### Planning Authority

Mayo County Council

### Planning Authority Reg. Ref.

P13/617

### Applicant:

PWWP Developments Limited

### Type of Application:

Permission

### Planning Authority Decision

Permission

### Appellant(s):

1. PWWP Developments Limited

(First Party v Conditions)

2. Marie Kilcullen
3. Peter Sweetman and Associates

**Observers:**

None

**Date of Site Inspection**

14<sup>th</sup> September 2016

**Inspector**

Paul Caprani

## Contents

1.0 Introduction and Background to the Report .....	5
2.0 Site Location and Description .....	7
3.0 Proposed Development .....	8
4.0 Planning Authority's Decision .....	11
4.1 Documentation Submitted with the Original Application .....	11
4.2 Additional Information Submission.....	13
4.3 Further Evaluation of the Application .....	14
5.0 Planning History.....	15
6.0 Grounds of First Party Appeal.....	16
7.0 Third Party Appeals .....	17
8.0 Appeal Responses.....	20
9.0 Further Submissions from Third Party Appellants.....	24
10.0 Original Planning Inspectors Report.....	26
11.0 Board Direction .....	26
12.0 Applicant's Response to Section 132 Notice.....	28
13.0 Board Direction of 27 <sup>th</sup> January, 2016.....	30
14.0 Further Third Parties and Prescribed Bodies Submissions .....	30
<i>Further Submission from Environmental Action Alliance Ireland.....</i>	<i>31</i>
15.0 Planning Policy and Context .....	33
16.0 Planning Assessment of Third Party Issues .....	37
17.0 Planning Assessment of First Party Appeal .....	55
18.0 Environmental Impact Assessment .....	61
18.1 <i>Specific Issues raised in the Grounds of Appeal in Respect of the EIS .....</i>	<i>67</i>

19.0	Appropriate Assessment .....	72
20.0	Conclusions and Recommendations.....	82
21.0	Decision .....	83

## **1.0 Introduction and Background to the Report**

An application was lodged with Mayo County Council on 19<sup>th</sup> December, 2013 for a proposed wind farm comprising of seven wind turbines and associated works in the townlands of Ballykinava and Cullmore, Claremorris, County Mayo. On the same date two separate applications were received for similar sized wind farms (six turbines and seven turbines) at sites 2 and 5 kilometres north of the subject site. Mayo County Council granted planning permission for all three wind farms in October, 2014. All three developments were subject to multiple third party appeals and a first party appeal against a number of conditions (Reg. Ref. PL16. 234033, PL16.244034 and PL16.244055). All these applications were assessed and reported upon by Senior Planning Inspector Mr. Robert Ryan. In the case of all three appeals the inspector recommended that planning permission be refused on the basis of a recent legal ruling in respect of O’Grianna and Others v An Bord Pleanála [2014] [EHC 632] where it was ruled that the proposed development in this instance does not include details of the proposed connection to the national grid and thus a cumulative impact of the likely environmental impacts has not been adequately assessed. The Inspector noted that insufficient information was provided in the application which did not enable the Board to carry out an assessment of environmental effects arising from any connection to the national grid. It was therefore recommended that permission be refused on this basis.

A Board meeting was held on 4<sup>th</sup> June, 2015 and the Board decided to defer a decision on the application in order to seek further information under the provisions of Section 132 from the applicant regarding the following:

- Further details in respect of the proposed connection to the grid network.

- Further information in respect of potential adverse impacts on migrating birds and in particular winter migrating birds primarily as the NPWS had expressed concerns in this regard.

The applicant submitted further information on 17<sup>th</sup> December, 2015 and this information included an EIS addendum and a revised Natura Impact Statement. This information was circulated to the various parties for comment.

A further Board Direction dated 13<sup>th</sup> May, 2016 sent the case to Inspectorate Management with the view to appointing a new inspector who should prepare a full report and recommendation on this file including the original documentation and submissions together with the significant further information and additional submissions received on foot of this information requested in the Board's Section 132 request. This report has been prepared in accordance with the above Board Direction.

In the interest of brevity, it is proposed to merely outline, primarily in bullet points, the information that was submitted with the original application as this information has been adequately detailed in the report prepared already by Mr. Robert Ryan. The latter part of my report shall set out in more detail the further information submitted by the applicant and the responses to the cross-circulation of this material. The planning assessment and recommendation will evaluate the proposed development de novo and will relate to the entire application including the original documentation together with the further information submitted. The assessment should also be evaluated in the context of the sister applications under PL16.224034 and PL16.244055 particularly in relation to the potential cumulative impacts in terms of EIA and in-combination effects in terms of AA.

## 2.0 Site Location and Description

The 62-hectare site is located on the eastern side of Claremorris, immediately south of the N60 National Secondary Route (Claremorris to Ballyhaunis). The site is located approximately 4 to 5 kilometres east of Claremorris and 4 to 5 kilometres north of the smaller village of Ballindine. The site can be accessed off a number of local roads and laneways leading southwards from the N60 and R327 both of which run north of the site to the west of Claremorris. The wind farm development stretches over an entire area of approximately 2 kilometres by 2 kilometres. The lands generally comprise of gently undulating farmland, traversed by mature and semi-mature hedgerows comprising mainly of poor quality pastureland and areas of cutaway bog. It appears that extensive peat harvesting has historically occurred across much of the site and its surroundings. The overall topography of the subject site is characterised by largely flat and slightly undulating landscape with a relatively low elevation only a few elevated areas in the vicinity exceed 100 metres AOD in height.

In terms of site access there are a number of local roads and agricultural tracks particularly to the west of the site which provide the main access points through the development. There are also a number of local access roads which provide access to the site to the south-west and south. The R327 (Claremorris to Cloonfad Road) runs along the north-eastern boundary of the site.

In terms of surrounding settlements, the EIS submitted with the application lists a total of 90 houses within 1.65 kilometres of the subject site. These are indicated on Figure No. 4.8 of the EIS. One dwelling BH23 (one of the landowners participating in the project) is located within the boundary of the site off a local access road which links up at the junction of the R327 and the N60 approximately 150 metres north of this dwelling. There are a number of other dwellings located near this junction. Much of the settlement in the surrounding area is located adjacent to, and in the vicinity of the N60 but also along the network of roads to the south and south-west of the subject site.

### **3.0 Proposed Development**

Planning permission is sought for the erection of seven wind turbines with a maximum blade tip height from ground level at 156.5 metres. The EIS states that the exact make and model of the turbine will be dictated by competitive tender but will not exceed the maximum height referred to above. Turbine No. 1 is located in the northern portion of the site approximately 1 kilometre due west of the junction of the N60 and R327. A proposed 100-metre-high meteorological mast is to be located 400 metres to the south-west of Turbine No. 1. 400 metres south of the meteorological mast it is proposed to construct Turbine No. 2. Turbine No. 3 is located approximately 600 metres directly east of Turbine No. 2 and 550 metres south of Turbine No. 1. Turbine No. 5 is the most easterly of the turbines and is located approximately 450 metres south-east of Turbine No. 3 and 800 metres east/north-east of Turbine No. 4. Turbine No. 6 is located 500 metres south-east of Turbine No. 4 and Turbine No. 7, the most southerly of all turbines, is located a further 500 metres to the south-east. The ground level elevations of each of the turbines are between 61 and 80 metres AOD.

The turbines comprise of a foundation unit which will be up to 21 metres in diameter and of a circular configuration. The site of the foundation will be dictated by the turbine type selected and the foundation requirements. The tower and nacelle will be c.100 metres in height according to the indicative drawings submitted.

The turbines will be assembled in close proximity to the hardstanding areas where the turbines are to be erected. It is anticipated that the wind turbines will have a rated electrical power output from 2.0 to 2.4 megawatts depending on wind data analysis and the particular model to be used. According to the EIS the wind farm has the potential to produce up to 44.15 million kilowatts hours per year. This could produce sufficient electricity for approximately 20% of the households in County Mayo.

In terms of site roads and haul routes, the proposed development is accessed off the N17 National Primary Route to the west and along county roads to the site. From the



western site entrance, a proposed new site road will connect to existing roads and will traverse the site in an east and north direction. Maximum use would be made of the existing roadways in accessing the turbine locations. Straight sections of existing and proposed new roadways will require running widths of 6 metres to accommodate the transportation of the larger turbine components. The running widths will have to be extended at corners. It is proposed to use 1.87 kilometres of existing on-site roadways and these will be upgraded and subject to further widening. It is proposed to construct 2.74 kilometres of new roadways as part of the proposed development. These new roadways are indicated on Figure 3.1 of the EIS. Where there are shallow depths of overburden, it is proposed to construct new or improve existing roads on top of the solid foundations. In localised areas across the site it may be necessary to construct some floating roads over peat (where peat depth is in excess of 2 metres).

It is estimated that just under 18,000 cubic metres of peat and overburden will be required to be removed. Peat disposal areas are proposed within the site. These areas are indicated on Figure 3.1 and are primarily beside Turbine Nos. 1, 5 and 7.

Each turbine will be connected to an on-site switch via an underground 20 kV electricity cable. Fibre optic cables will also connect each wind turbine to the wind farm control building in the substation compound c.3.5 kilometres to the north of the site. This compound is to serve the three wind farm developments in the area.

A temporary construction compound is to be provided adjacent to Turbine No. 2 centrally within the site. The EIS indicates that some tree felling will also be required in and around the development footprint. Details of site management, site drainage, access and transportation are set out in the EIS.

### Grid Connection

With regard to grid connection, the original EIS (paragraph 2.3.1.4 – page 2 – 5) states that the application for the proposed wind farm does not include a connection to the electricity grid however this issue was subject of a further information request

issued by the Board. The EIS addendum submitted to the Board on 17<sup>th</sup> December, 2015 sets out details including a number of alternatives for connection to the national grid.

Within the windfarm site at Ballykinava, two off-site cable exit routes are presented in the EIS. **Alternative A** emerges from the western boundary of the proposed wind farm site via an excavated cable trench which will remain underground and will proceed along the western boundary of the site northwards until it arrives at the N60 where it will travel eastwards along the N60 approximately 1 kilometre. Here it meets a local road running northwards to Garryredmond, a townland c 2km north of the subject site.

**Alternative B** proposes a site cable exit onto the R327 near its junction with the N60. The cable again will be run along the public roadway along the R327 and the N60 in a westerly direction before meeting the same junction at the local road leading north to Garryredmond.

From this location at Garryredmond (arrived at either by alternative route A or alternative route B) two route cable options are considered for a grid connection.

**Cable route option 1** seeks to connect the windfarm to the committed Cloontooa substation grant by the Board on appeal under Reg. Ref. PL16. 237401 which is located approximately 2.5 kilometres to the north-east. The cables will be laid within the existing roads and laneways leading to the permitted substation. The EIS states that the current applicants have control of this previously permitted development and accordingly, the relevant consents are in place. The length of cable route option 1 ranges between 5.6 kilometres and 6.6 kilometres (depending on which exit option is taken from the Ballykinava Wind Farm).

Details of the grid connection from the permitted Cloontooa Substation to the existing Dalton Substation which is located on the eastern side of the N17 outside the village of Claremorris approximately 3 kilometres west of the subject, site is set out in Section 3.2.2 of the Addendum EIS.

**Cable route option 2** refers to the corridor from the common termination point at the site exit on the N60 to the existing Dalton Substation via the proposed Cloontooa Wind Farm Substation. This proposed substation is located in the townland of Carrowreagh, approximately 2.5km to the north west of the substation which has the benefit of planning permission under PL16. 237401. This proposed substation is the subject of the application and appeal PL16.244034. Again the cable will remain underground within the existing public road corridor as the route traverses along the local road for 1 kilometre before turning north-west and then north-eastwards toward the substation. Details of the routes are set out in Fig. 3.2 and Fig.3.3 of the Addendum EIS.

The grid connection from the proposed Cloontooa Substation to the Dalton Substation will run along the local public road westwards towards the N17 before turning southwards onto the N60 and then westwards towards Claremorris before terminating at the Dalton Substation (again details of the routes are indicated on Figures 3.1, 3.2 and 3.3 of the Addendum EIS). They are also described in detail in Section 3.2 of the EIS.

## **4.0 Planning Authority's Decision**

### **4.1 Documentation Submitted with the Original Application**

The planning application was submitted on 19<sup>th</sup> December, 2013. The following documentation was submitted.

- A Planning Application Cover Report
- An EIS
- An NIS.
- Letters of consent from various landowners whose lands form part of the planning application form are also contained on file.

A large number of observations were submitted objecting to the proposed development on grounds relating to noise, inadequate setback distances, shadow flicker, impacts on wildlife flora and fauna, health impacts, impacts on livestock and general devaluation of property.

A number of internal reports were prepared by Mayo County Council and reports were also received from Inland Fisheries Ireland and the Department of Heritage, Arts and the Gaeltacht.

On 20<sup>th</sup> February, 2014 Mayo County Council requested that the applicant submit additional information on a total of 18 separate issues relating to:

- Further details in respect of bird surveys and bird monitoring programmes.
- Further details in relation to habitat types particularly peatland habitats.
- Further comments are sought in relation to a fish population in the watercourses surrounding the site.
- The applicant was requested to carry out archaeological pre-development testing on site. The applicant is also requested to comply with a number of archaeological protocols in terms of submitting reports etc. in respect of any archaeological finds on site.
- Further details as to how the applicant proposes to protect the chemical and ecological status of water bodies in the vicinity.
- Further engineering details regarding road construction and foundation construction.
- Details regarding the applicant's legal interest.

## 4.2 Additional Information Submission

Further information was submitted on 14<sup>th</sup> August, 2014.

In relation to Bird surveys and monitoring, the applicant submitted more detailed information in respect of both and the details of these surveys are set out in the response. Details of the proposed monitoring to be undertaken are also set out.

Further specific information is provided regarding the flora and vegetation communities of peatland habitats.

Further details are provided in respect of impacts on fish populations. Further details of site hydrology and consultations which are undertaken with IFI are set out in the response. Mitigation measures to avoid potential impact on trout habitats are set out. Management details in relation to groundwater inflows, hydrocarbon usage, sanitation, watercourse crossings, and further details of site construction works are all set out in the response. It is stated that a water quality monitoring programme will be undertaken. Further details in relation to archaeological testing and protocols to be undertaken on foot of any archaeological testing are set out in the response. Further details in this regard are contained in an archaeological report as per Appendix 2.

Details as to how the chemical and ecological status of natural streams and rivers outside the site of the proposed development will be protected is set out in the response. Measures will include strict supervision from a suitably qualified hydrologist and drainage engineer.

A further analysis was undertaken regarding potential nutrient enrichment in receiving waters arising from peat excavation. It is noted that nutrient enhancement of bogs is mainly associated with forestry and an application of fertiliser. Nutrient enhancement of the bog within the Ballykinava site has not been carried out and the release of high level of nutrients associated with deforestation will not occur.

With regard to specific engineering details and the proposed sources of specific materials to be used in the roadway construction, it is stated that the source of the building material cannot be specified at this time and will be subject of a competitive tender process. Details of the type of stone required in constructing the foundations are set out. In terms of the depth of foundations, it is stated that the base of the turbine foundations will be 3 metres below the existing ground level with a further 0.5 metres below for a binding layer.

With regard to the issue of shadow flicker, it is stated that the turbines can be fitted with shadow flicker control units to allow turbines to be controlled in order to prevent the occurrence or limit of shadow flicker. All predicted instances of shadow flicker in excess of the daily or annual guideline thresholds can be pre-programmed into the wind farms control software.

In response to further information request no. 17 it is noted that the proposed wind farm operator does not own any lands at this location but has a contract to lease/purchase lands subject to proposed works with relevant landowners.

Details of all dwellings located within 500 metres of the wind farms are set out. Two houses are located within the 500 metre radius. It is noted that one of the houses (House BH88) has provided a letter of consent for the siting of turbines as proposed and this is attached in Appendix 3. House BH45 is a contributing landowner to the development.

#### 4.3 Further Evaluation of the Application

A report from the DAHG notes the further information response and states that concerns remain regarding the lack of detailed data on wintering bird species, particularly in locations peripheral to the current site. It is also stated that the information submitted does not constitute full details of the monitoring programmes for birds.

A final planning report was prepared in respect of the application. It sets out in detail the correspondence contained on file and also sets out the potential impacts and mitigation measures as set out in the EIS accompanying the application.

It concludes that the proposed development complies with the relevant policies, plans and standards contained in the development plan and any concerns in respect of potential adverse impacts have been appropriately addressed with the submissions on file. Both the Environmental Impact Statement and the Natura Impact Statement are deemed to be adequate. Mayo County Council in completing an appropriate assessment considered that the proposal on its own or in combination with other plans or projects would not adversely affect the integrity of a European site and would therefore be in accordance with the proper planning and sustainable development of the area. The planning report therefore recommended that planning permission be granted for the proposed development. Mayo County Council issued notification to grant planning permission on 8<sup>th</sup> October, 2014 subject to 46 conditions.

## **5.0 Planning History**

Notwithstanding what is stated in the local authority planner's report regarding the planning history of the site, it appears that there are no significant previous planning applications on the development site and specifically no applications relating to wind farms. Under PL16.237401 An Bord Pleanála on 14<sup>th</sup> September, 2011 granted planning permission for a wind farm consisting of four wind turbines, a mast, an electrical substation and associated works at a site approximately 2 kilometres to the immediate north of the subject site. This wind farm is generally known as the Cloontooa Wind Farm. Details of this application are contained in a box attached to PL 16.244034.

## 6.0 Grounds of First Party Appeal

The decision of Mayo Co. Council was the subject of a first party appeal against a number of conditions. The grounds of appeal are outlined below.

**Condition No. 5** relates to decommissioning of the development. It is argued that the requirement for decommissioning infrastructural works is excessive (it includes the removal of foundations and roads). It is argued that this may in itself create an unnecessary environmental impact. More standardised wording used by the Board in previous grants of planning permission is suggested in the grounds of appeal.

**Condition No. 41** relates to noise. The grounds of appeal argue that while the need for noise limits is acceptable to the applicant, the condition should be re-worded to allow for changes in technology which could result in lower level noise output for wind farms. The Board use a more appropriate wording condition where noise limits are set which cannot be exceeded. It is suggested that a similar wording be used in the current case.

**Condition No. 44** relates to a financial security condition of €80,000. The Board are requested to provide greater clarity particularly in relation to releasing the bond under this condition.

**Condition No. 46** is a financial contribution condition and requires an annual contribution of €10,000 per megawatt of electricity produced. It is requested that the principle amount of this contribution should be reviewed. It is argued that the imposition of a fund that is being established under Section 109 of the Local Government Act 2001, cannot be applied in place of a financial contribution scheme which was adopted by the Council under the Planning and Development Acts. It is also argued that the amount of the contribution sought is excessive in this instance.



## 7.0 Third Party Appeals

Two third party appeals were submitted in respect of Mayo County Council's decision. These are outlined below:

### Appeal by Peter Sweetman and Associates

- A single underground cable connects all three wind farm developments to a single substation but the connection to the grid is not included. Having regard to the recent O'Grianna judgement the application should be deemed invalid.
- In order to comply with European Law, An Bord Pleanála should amalgamate the three applications and refund the excess fee paid by the appellants.
- Mayo County Council failed to carry out AA or EIA in accordance with the tests set out in recent legal judgements (Sweetman and Others v An Bord Pleanála and Kelly v An Bord Pleanála).

Reference is made to the various conditions contained in the Mayo County Council decision which illustrates the inadequacy of the EIS. Many of the conditions require post-development consent in terms of compliance and this is contrary to the Directive.

Reference is specifically made to the following conditions:

- Condition No. 5 which required further details in relation to the decommissioning of the project.
- Condition No. 6 which relates to the lack of connection to the national grid.
- Condition No. 8 which requires protocols to be agreed post consent for radio television and other telecommunications reception.

- Condition No. 10 which relates to the requirement to survey the condition of the roads post consent.
- Condition No. 12 requires conditions relating to post development traffic control measures.
- Condition No. 16 relates to potential siltation arising from the development which could impact on the Yellow River which hosts Atlantic Salmon an Annex 1 species under the Habitats Directive. It is argued that the implementation of this condition circumvents a finding of “adverse significant effects on a European site”.
- Condition No. 17 requires a post consent environmental monitoring committee.
- Condition No. 20 - It is argued that the need for this condition which seeks to reduce potential impacts of siltation in receiving waters arising from construction is a tacit acknowledgement that the proposal will impact on an SAC.
- Condition No. 21 - This condition requires a post consent construction management plan. Again it is argued that the need for this condition illustrates an inadequate EIS.
- Condition No. 23 - The requirement for a post consent plan to address invasive species also supports the contention that the EIS is inadequate.
- Condition No. 31 - It is argued that this condition is very vague in terms of monitoring requirements.
- Condition No. 33 - It is argued that the purpose of this condition which relates to noise is unclear.
- Condition No. 37 - Again it is argued that this condition requires a post development consent in relation to waste management planning which again shows the inadequacy of the EIA process in respect of the application.

Appeal by Environmental Action Alliance on behalf of Ms. Marie Kilcullen

- This appeal also raises concerns in respect of project splitting with each project being sufficiently small to enable compliance with the designation in the Renewable Energy Strategy for County Mayo as a Tier 1 - Preferred Site for windfarm clusters. The splitting of the project into smaller components is contrary to the spirit of proper public participation and greatly increases the expense for the public in participating. Reference is made to the requirements of EU Directive 2011/92/EU codified under Article 192(1) of the Treaty on the functioning of the European Union. It is argued that the Planning Authority have failed to comply with the objectives of the Strategic Environmental Directive, the EIA Directive, the Public Participation Directive and the Aarhus Convention.
- The grounds also argue that, by failing to include grid connections as part of the project, there is a violation of the ECJ judgement in Case C-215/06 which clearly includes associated works and their environmental effects in accordance with Articles 5 and 10 of the Directive.
- Reference is made to various European Court judgements including the ECJ Case C50/90. It argues that the Board has not received an EIS from any of the three proposed wind farm projects that comply with the new definition of an Environmental Impact Statement under the most recent Directive. It is also argued that there are various weaknesses/deficiencies in the EIS including the incorporation of a non-technical summary which it is contended contains technical language. It is argued that no EIA was carried out by the Council.
- Concerns are expressed that the various provisions of the Public Participation Directive and the Aarhus Convention have not been adhered to in addressing

this application. It is also stated that the Planning Authority did not produce an appropriate assessment conclusion statement.

## **8.0 Appeal Responses**

### *Mayo County Council's Response to the Grounds of Appeal.*

The response sets out the site planning history and the wind farm planning history in close proximity. It also sets out the development plan policy as it relates to wind farms.

In dealing specifically with the grounds of appeal the following points are made:

- Mayo County Council confirms to the Board that an environmental impact assessment on this application was in fact carried out; the determination of which forms part of the planner's report.
- It is stated that for time related reasons, it was not possible to commit a text version of the EIA assessment report to the file. The planning authority have attached this assessment as Appendix 1 to its response.
- In terms of appropriate assessment, it is stated that an appropriate assessment of this planning application was in fact carried out. However again due to the statutory time limits it was not possible to commit the text version of the appropriate assessment report to file. This AA is contained in Appendix 2.
- In terms of projecting slicing, it is stated that the application has undergone EIA. Furthermore, the EIA included the assessment of cumulative effects arising from the three projects thus it is argued that projecting slicing did not take place.

- With regard to the adequacy of the EIS, it is stated that with the exception of Condition 17, all the matters subject of the conditions is adequately addressed in the EIS and the purpose of the Council's conditions is to indicate how the Council will deal at an operational level with the matters in the EIS.
- A strategic environmental assessment to the planning application or the sister applications is not required as those planning applications do not constitute a plan or programme within the meaning of Article 2(a) of the SEA Directive.
- With regard to the connection to the electricity grid, it is stated that the ultimate decision with regard to this connection lies with ESB/Eirgrid who do not usually consider a grid connection offer until permission has been granted for the wind farm.
- In this instance it is argued that the proposed development fully complies with the Aarhus Convention in terms of allowing appropriate public participation.
- With regard to the issues raised in the first party appeal, it is argued that the wording of Condition No. 5 is acceptable.
- With regard to the wording of Condition No. 41 which relates to noise, Mayo Co. Council state that, should the Board feel it necessary to reword the condition, the Council has no objection.
- With regard to the bond condition it is stated that date of release of the bond would be the date of the final completion of the project.
- With regard to Condition No. 46 the Council argues that it is not relevant as to whether or not the financial contribution accords with the adopted development contribution scheme or supplementary scheme as both schemes would apply in cases where infrastructure was or is to be provided which may

benefit the proposed development. Condition No. 46 relates to benefit contributions for the community as a result of the development and the principle of community gain has already accepted by the applicant.

#### Applicant's Response to the Grounds of Appeal

The appeal response details the history of the application to date and the various reports prepared by the Planning Authority in respect of the application. Then outlines the planning policy context as it relates to the development.

In terms of addressing the issues set out in the grounds of appeal the following is stated:

- In relation to the nature of the application, it is argued that the proposal does not constitute project splitting or project slicing. In this instance the three separate wind farms relate to three separate sites which are physically distinct from each other. An EIS has been prepared for each of the applications and the cumulative effects arising from each of the applications are set out in the EIS. Furthermore, the Planning Authority in pre-application consultations recommended the submission of three separate applications as opposed to one single application.
- There is no substance in the allegation that three separate applications have been lodged in order to achieve compliance with the provisions of the Mayo Renewable Energy Strategy which encourages the provision of clusters of wind farm development at appropriate designated locations.
- In relation to the issue of grid connection, it is stated that grid connection does not form part of the current application because while a preferred route and mechanism has been identified, this is subject of separate consent from Eirgrid/ESB Networks. Therefore, the final consent and technical requirements cannot be established and specified until such time as the scale and nature of the wind farm that is permitted is established. It is suggested

that this is best addressed by way of condition. Reference is made to Condition No. 15 of PL16.237401 to support this contention.

- In terms of the content of the EIS, it is argued that it has been carried in line with the requirements of Directive 2011/92/EU. The applicant also notes that the Planning Authority assessed each sections of the EIS and it is stated that the Planning Authority has carried out an EIA in support of its decision. It is also anticipated that the Board will undertake its own rigorous EIA in considering the appeal.
- The submission goes on to address each of the perceived deficiencies as set out in the grounds of appeal in relation to the various conditions attached to the notification to grant permission. It is argued that the relevant conditions have been imposed to clarify mitigation measures and to ensure that detailed requirements of the planning authority are properly implemented.
- In terms of public participation, the requirements of Section 34(1) (1a) has been fully complied with.
- In terms of Strategic Environmental Assessment, the applicant does not accept that SEA is mandatory in relation to the current proposal. The proposed development is required to undergo EIA and not SEA. The site selection process for the current application was fully informed by the SEA that was carried out by Mayo County Council in its Renewable Energy Strategy.
- Finally, the response addresses the contention that a proper appropriate assessment had not been undertaken by the Planning Authority. The planning recommendation states that the Planning Authority carried out its own AA and the contents of the NIS is assessed by Council staff. It is also noted that the Board will carry out its own appropriate assessment in accordance with the Habitats Directive.

- Appendix 1 of the response contains a protocol agreement between the applicant and 2RN in relation to the Transmission Network. Appendix 2 includes a preliminary construction and environmental management plan.

## 9.0 Further Submissions from Third Party Appellants

### Submission from Mr. Sweetman

The further submission by Mr. Sweetman reiterates that the proposed development constitutes project slicing and project splitting and is also contrary to many legal judgements. Specifically, reference is made to Kelly and Others -v- An Bord Pleanála and CJ EU Case 258/11. Mr. Sweetman also states that he partially agreed with many of the issues raised in the other third party appeal. Mr. Sweetman however is not in agreement with the issues raised in the AAE-I submission on the Aarhus Convention and the SEA Directive.

Concerns are expressed in respect of human health, particularly shadow flicker. In this regard reference is made to a report by Dr. Christopher Henning which concludes that wind farms have a significant impact on sleep disturbance.

Details of various legal judgements are also attached to the response.

A further letter was received from Mr. Sweetman dated 10<sup>th</sup> January, 2015 which makes reference to the recent judgement (December, 2014) from Mr. Justice Peart in the case of O’Grianna and Others.

### Further Submission on behalf of the First Party

A further submission from McCarthy, Kelvin and O’Sullivan was received by the Board on 16<sup>th</sup> January, 2015. It notes that the Planning Authority agreed that an EIA was carried out and that the EIA was adequate.

In relation to the recent O’Grianna Judgement, the applicant has submitted an addendum to the EIS to ensure that the Board can carry out the relevant assessment



in accordance with the criteria established under the recent High Court judgement. The addendum provides a brief description of the cable route and its potential impacts in terms of:

- Human beings.
- Flora and Fauna.
- Soil and Geology.
- Hydrology and Hydrogeology.
- Air and Climate.
- Noise and Vibration.
- Landscape.
- Cultural Heritage.
- Material Assets.
- Interactions.

It is envisaged that An Bord Pleanála will use the EIS addendum to inform it's EIA in the determination of the current appeal. The cable route and junction accommodation works do not form part of the current application as they will be subject to a separate consent procedure.

The original NIS submitted was also altered accordingly to take into account the grid connection route. In respect of the NIS, the main conclusion that no significant or indeterminate impacts are likely to result if the proposed development are arrived at. The addendum to the EIS ensures that there will be no project splitting as the cable route can be assessed.

Points made in previous submissions in respect of public participation, Aarhus Convention, the wording of condition and strategic environmental assessment are reiterated.

## **10.0 Original Planning Inspectors Report**

10.1 A planning report was prepared by Mr. Robert Ryan, Senior Planning Inspector in respect of the proposed development.

This report concludes that there are two flaws in the application. The information in relation to Birds is considered inadequate by the Department of Arts, Heritage and the Gaeltacht and accordingly further information would be appropriate should the Board consider granting planning permission.

The second issue relates to project splitting and reference is made to the recent High Court judicial review case in O’Grianna versus An Bord Pleanála. While the information submitted by the applicant by way of an addendum to the EIS is deemed to be helpful the fact remains that these revisions involve indicative proposals only and are unacceptable in light of the recent judgement in the Senior Inspector’s opinion. It is therefore recommended that planning permission be refused on the basis of the recent legal ruling. The inspector’s report was dated 23<sup>rd</sup> February, 2015.

## **11.0 Board Direction**

On a Board meeting held 4<sup>th</sup> June, 2015 the Board decided to defer consideration of the case and to issue a Section 132 notice to the applicant clarifying the following issues.

- *Figure 1.1 in the addendum EIS document would appear to illustrate a proposed grid connection from the applicant’s proposed wind farm at Magheramore (PL16.244055) rather than the proposed development the subject of the current applicant Ballykinava (Reg. Ref. 244033). The applicant*

*is requested to provide detailed and accurate drawings showing the proposed connection to the permitted substation and separately to the proposed substation on the Cloontooa Wind Farm. Details would need to be at a scale that would enable the Board to fully consider the impacts of the proposal. It is suggested that the drawings on a scale comparable to the submitted drawings of the proposed wind farm and its internal road system would be necessary.*

- The description of the route in Section 1.2 of the “addendum to the EIS” document refers to the route being shown on Figure 3.11 of the original EIS. Please confirm that this should be Figure 3.9.*
- Please confirm whether the “off-load cable route” as indicated on Figure 3.1 of the original EIS is intended to refer to the “off-road section of the proposed grid connection”. If so, please provide full details and analysis of the impact of such a cable on the archaeological enclosure illustrated on that figure. It is noted that no reference is made to any archaeological impacts in Section 9 of the addendum to the EIS and that very limited analysis is contained in Section 11 of the original EIS in respect of this matter.*
- The Board is not satisfied with the documentation submitted to date regarding the potential effects (direct, indirect and in-combination) of the proposed wind farm development on birds and in particular on wintering/migrating birds. Notwithstanding the further submission made by the applicant on 26<sup>th</sup> November the Board considers that further information may be necessary in order to fully address the points made in the letter from the Development Application Unit of the Department of Arts, Heritage and the Gaeltacht to the Planning Authority on 2<sup>nd</sup> September, 2014. You are invited following consultation with the Department to address these points and provide further surveys and information as appropriate in order to deal with the points made by the Department.*

- A further letter from the applicant was submitted specifically in relation to the second issues raised in the Board's Section 132 notice. The applicant has undertaken further bird survey work, but requires to carry on through the Autumn season to provide a more comprehensive assessment. This work will be completed in November, 2015. The applicant will intend to make a full response including a record of consultation with the NPWS as soon as possible after the completion of the additional survey work. The applicant therefore requests an extension until 23<sup>rd</sup> December, 2015.
- The Board granted this request.

## 12.0 Applicant's Response to Section 132 Notice

- On 17<sup>th</sup> December, 2015 the applicant submitted a detailed response to the Section 132 Notice. The covering letter submitted with the response deals specifically with a number of clarification points raised by the Board in respect of the previous information submitted. The response also includes an environmental impact statement addendum. The information is briefly summarised below:
- This **new EIS addendum** supersedes the previous EIS addendums submitted to the Board on foot of the O'Grinna judgement.
- The national grid connection point remains at the Dalton Substation c.1 kilometre east of Claremorris. However, the route connection points differ from those previously submitted.
- The proposed route connection has already been detailed in the project description set out earlier in this report however for the purposes of clarity it is briefly summarised below.

Option 1 from the subject site at Ballykinava via an underground cable along the public road corridor to the permitted substation in the townland of

Cloontooa c.1 kilometre north-west of the village of Brickeens and then back to the Dalton Substation.

Option 2 from the subject site at Ballykinava to the new substation proposed under the current application PL 16. 244034 in the townland of Carrowreagh c.4 kilometres north-west of Brickeens and then back to the substation at Dalton.

- A **revised Natura Impact Statement** has also been submitted.
- It is contended that the revised NIS has been prepared in relation to the updated cable route connection options and this addresses the entirety of the project.
- **Additional detailed drawings** have been submitted at a scale of 1:50,000, 1:15,000 and a series of detailed cable route drawings at a scale of 1:2,500.
- **A Bird Assessment Report.** This Bird Impact Survey includes:
  - A new desktop review and consultation together with Autumn surveys which were carried out in 2015.
  - The cumulative impacts are assessed in terms of extant permissions for wind farms in the vicinity, existing wind farms in the vicinity and the proposed wind farm.
  - A number of mitigation measures are proposed with regard to the construction schedule, pre-construction surveys and proposed monitoring programmes.
  - On foot of the additional surveys undertaken, further analysis of these surveys together with the proposed mitigation measures to be employed, the predicted impact of the development is deemed to be of low significance on bird populations in the area.

### **13.0 Board Direction of 27<sup>th</sup> January, 2016.**

The further information was considered at a Board meeting held on 22<sup>nd</sup> January, 2015. The Board decided to defer the case and direct the following:

- Cross-circulation of the entirety of the applicant's submission to all parties and prescribed bodies for their comments.
- Require the applicant to publish a notice in the newspaper noting the receipt by the Board of significant additional information and giving the public an opportunity to make submissions on this information.
- Further details of the revised public notice were submitted to the Board on 16<sup>th</sup> February, 2016.

### **14.0 Further Third Parties and Prescribed Bodies Submissions**

*Submission from the Department of Arts, Heritage and the Gaeltacht dated 10<sup>th</sup> March, 2016.*

- It states that the Department is not in a position to review the significant additional information except to note the summarised results of the additional bird surveys. The following observations are made.
- Representatives of the Department met with the applicant, on the advice of the Board, and draft minutes of the meeting are attached for the Board's information. From a nature conservation perspective, the key issue of concern is in relation to the likely significant effects on birds including cumulative effects as previously raised. The Bird Impact Assessment is noted and the additional bird surveys that were carried out between August and November, 2015 established significant occurrences on the site of the Annex 1 species Golden Plover.

- The presence and flight lines of a number of species of conservation concern are also recorded on the site. These include Curlew, Lapwing and Herring Gull. The results of these surveys and surveys carried out for this proposed development and for other nearby proposed wind farm developments and the potential direct, indirect and cumulative effects on birds should be included in the Board's consideration of the proposal.

*Further Submission from Environmental Action Alliance Ireland*

- It is argued that the description of the nature and extent of the project is misleading because the Ballykinava Wind Farm was never included in the list to be connected to any Gate 3 project.
- The application if granted would violate the rights of the public to effective public participation under the EU Directive and the Aarhus Convention.
- It is argued that the applicant cannot enjoy the benefit of previous permission as there is no environmental impact assessment carried out in accordance with Article 3 of the Directive.
- It is also argued that the furnishing of additional information to alter a planning application is ultra vires. (Reference is made to *Illium Properties Limited -v- Dublin City Council*). Thus the EIS and further information submitted violates various decisions of the Courts of Justice of the European Union in particular Case C50/09.
- The submission goes on to outline the various amendments and codifications to the EIA Directive from 1985 to the present. It is argued that the EIS for Ballykinava failed to contain the mandatory information specified in Annex 1(v) of the EIA Directive 2011/92/EU thus the Board cannot carry out an EIA in accordance with the Directive. If the Board were to grant development consent for the project it would have clearly failed to carry out EIA in

accordance with the requirements and obligations imposed under Section 172 of the Act and Article 3 of the Directive.

- It is also argued that the NIS is legally flawed. It is argued that many of the SACs which were screened out in the NIS should not have been screened out. Reference is made to various case law which states that there cannot be any lacunae in the information submitted, and the application must contain complete precise and definitive findings and conclusions. Reference is made to other Natura 2000 sites that should have been included in the NIS.
- It is also argued that the proposed development is in non-compliance with the European Landscape Convention. The EIS makes no reference to the European Landscape Convention or National Landscape Strategy for Ireland.
- Reference is also made to various objectives contained in the Mayo County Development Plan in relation to landscape. The EIS fails to incorporate a social impact assessment, an environmental health impact assessment and a cumulative effects assessment.
- Finally, it is argued that the proposed development fails to comply with the Aarhus Convention.

#### Submission from Marie Kilcullen

A separate submission from Marie Kilcullen (who is also represented by Environmental Action Alliance Ireland) makes a number of comments in relation to the additional information submitted. These are briefly summarised below.

- Some of the houses are not marked on the maps submitted.
- The conclusion to the addendum to the EIS that the area is not ecologically sensitive is contested.
- There are concerns in respect of the location of the turbines in such close proximity to the River Robe.



- Numerous photographs are submitted to indicate that there are a large number of swans in the area.
- It is also stated that the River Robe floods.

Further Submission by Peter Sweetman and Associates

- Concerns in relation to project splitting are reiterated. It is argued that the application is incomplete as it is not known whether there will be a grid connection and the route of the grid connection is also unknown. To specify alternative routes to two substations is not appropriate and is not in accordance with the spirit of the O’Grianna judgement.
- The Wind Energy Guidelines are out of date and have no relevance in EU Case Law.
- Wind turbines have severe negative effect on the CO2 emissions.
- Concerns are also expressed in relation to the information contained in the NIS. The NIS must contain complete precise definitive findings in order to remove all reasonable scientific doubt.
- A copy of a judicial review between Klaus Balz and Hanna Heubach -v- An Bord Pleanála and Cork County Council is attached.

## **15.0 Planning Policy and Context**

In the Mayo County Development Plan 2014 – 2020 the Landscape Protection Policy identifies all of the site and surrounding area as being within Policy Area 4 – ‘*Drumlins and Inner Lowland*’.

The site is not affected by any Scenic views and there are no designated Scenic Routes in the vicinity of the subject site.

Claremorris and Knock (c.8 kilometres to the north) are designated as Key Towns, which are second tier towns in the Settlement Hierarchy and both have Area Plans prepared.

The site and its environs does not form part of an SAC or SPA or NHA.

The plan makes several references to renewable energy stating that it will be promoted in appropriate locations and that natural resources should be developed, but protection of county's natural/landscape resource base is also of major importance. Therefore, it will only be permitted where there is no adverse impact on adjoining properties and the environment in particular.

#### *Renewable Energy Strategy for County Mayo 2011-2020*

This Strategy was adopted by Mayo County Council on the 9<sup>th</sup> May, 2011 and it is stated that the Strategy is underpinned by Strategic Environmental Assessment (SEA) and Habitats Directive Assessment (HDA). The Strategy clarifies the approach of Mayo County Council to renewable energy in supporting such development where it is environmentally appropriate. It continues that worldwide practice is to locate such developments outside designated or environmentally sensitive sites and areas.

It refers to Grid 25 which is a strategy to upgrade the electricity network by 2025 so as to take account of changing energy situation with special regard to renewable energy supply.

The Renewable Energy Strategy document will supersede all policies and objectives in relation to renewable energy in the County Development Plan – it has taken all policies and objectives contained in the Plan into consideration in its preparation.

Table 2 sets out advantages and disadvantages of Renewable Energy Developments.

The aim of this Strategy is to develop a plan led approach to the location of renewable energy.

Map 1 identifies potential areas for on-shore wind energy development. There are 4 classifications identified.

- Priority Areas – these are areas with planning permission and where on-shore wind farms can be developed immediately.
- Tier 1 – Preferred (Large Wind Farms) are areas where the potential for large wind farms is greatest.
- Tier 1 – Preferred (Cluster of Turbines) are areas identified as being most suitable for small clusters of wind turbines (clusters of up to 3 to 5 turbines depending on site conditions and visual amenity).
- Tier 2 – Open for Consideration identifies areas which may be considered for wind farms or small clusters of wind turbines but where the visual impact on sensitive or vulnerable landscapes, listed highly scenic routes, scenic routes, scenic viewing points and scenic routes will be the principal consideration. The Tier 2 classification will be reviewed by the Council following a determination by EirGrid of grid infrastructure for the County.

The appeal site is located within an area designated as Tier 1 – Preferred (Cluster of Turbines).

*Wind Energy Guidelines– DoEHLG – JUNE 2006*

Both planning authorities and An Bord Pleanála must have regard to these guidelines in the performance of their functions. These guidelines refer to various EU and Government Policy Documents including the National Development Plan, Sustainable Development – A Strategy for Ireland (1997), EU White Paper on Renewable Energy (November 1997), Green paper on Sustainable Energy (September, 1999), National Climate Change Strategy (2000) which sets out the

Government's National Climate Change Strategy over a period of 10 years for achieving the necessary greenhouse gas reductions in line with KYOTO Protocol.

The basic thrust of these documents is to encourage energy sources which are not reliant on fossil fuels.

The Guidelines also present advice and standards on potential environmental impacts on noise, shadow flicker, electromagnetic interference and visual impact. Guidance is also set out with regard to layout and design of windfarms in different landscape types. Where specific guidelines set out in this document are relevant they will be referred to in my assessment below.

### Regional Guidelines – West Region (Galway, Mayo and Roscommon)

CP33 – Supports the development of wind energy developments in suitable locations subject to normal technical and environmental considerations including Habitats Directive Assessment, where relevant and including the cumulative impact of such developments.

CO14 – Supports the identification of suitable wind energy developments through Habitats Directive Assessment, including consideration of cumulative and in combination effects, landscape character assessments or landscape management strategy and habitat designations.

CO15 – Objective to initiate a Regional Energy for the West Region in order to identify suitable and unsuitable locations for new energy projects including networks.

Section 1.5.3 – Future Investment Priorities include:

- Upgrade the energy supply and energy network infrastructure and support Renewable Energy development.

ED08 – Objective subject to Habitats Directive Assessment and/or other environmental assessment, to support the deployment of renewable energy infrastructure in appropriate locations.

### Section 5.5.3 – Renewable Energy

This section states that securing indigenous renewable energy supplies will generate a more sustainable economy, lower carbon emissions, combat climate change and meet national government and EU renewable targets. This is reflected in objectives 1053 and 1054.

#### Irelands Energy Policy Framework 2012-2020 (DCMNR)

This document states that under Directive 2009/28/EC the government are legally obliged to ensure that by 2020, at least 16% of all energy consumed in the state is from renewable sources, with a sub-target of 10% in the transport sector. It sets out five strategic goals including support delivery of the 40% target for renewable electricity through the existing GATE processes. It acknowledges that the growth of renewable energy and wind, in particular, requires the modernisation and expansion of the electricity grid.

## **16.0 Planning Assessment of Third Party Issues**

### **16.1 Introduction**

I note the Board's memorandum of the 18<sup>th</sup> May, 2016 which requires *"the appointment of a new inspector who should prepare a full report and recommendation on this file (and related cases) relating to all documentation on file, including the original documentation and submission together with the significant further information, addendum EIS, revised NIS and additional submissions that have been received and to carry out a full cumulative EIA and in combination AA in respect of the wind farm and associated grid connections"*.

My assessment constitutes a de novo evaluation of the entirety of the file and in no way relies exclusively on any of the conclusions reached in Mr. Ryan's report. Although where appropriate reference will be made to his report.

While the main thrust of the grounds of both third party appeals relate to the inadequacy of the EIA and AA process undertaken as part of the proposal, I propose to assess and evaluate the application in its entirety and in accordance with the proper planning and sustainable development of the area. Therefore, planning issues other than those raised in the grounds of appeal, will form part of my assessment of the application and appeal as if it were made to the Board in the first instance.

For the purposes of clarity and to avoid any ambiguity, I wish to state that I have read the entire contents of the file including the EIS and NIS including the various addendums submitted, I have visited the site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. I consider the Board in determining the application and appeal should have regard to the following issues:

- Principle of Development
- Impact on Amenity
- Peat Stability Assessment

With regard to the specific issues raised in the grounds of appeal the subsequent section of my assessment will deal with the issues of:

- Project Splitting
- Grid Connection Issues
- The Planning Authority's EIA and AA Assessments
- The Issue of Public Participation
- The Issue of Strategic Environmental Assessment

The final two sections of my assessment will deal with matters concerning the environmental impact assessment and appropriate assessment.

## 16.2 Principle of Development

The case for providing renewable energy infrastructure over the traditional reliance on fossil fuels has been well documented and does not need to be addressed in any great detail in this assessment. It is perhaps sufficient to note that the European Directive on the Use of Energy from Renewable Sources (Directive 2009/28/EC) seeks a binding target of 20% of energy to be derived from renewable sources by 2020. Similar targets are set out in the National Energy Policy Framework. Ireland has a target of 16% of energy to be derived from renewable sources by 2020. The Irish National Climate Change Strategy seeks to ratify and limit the growth in greenhouse targets to 13% above 1990 levels. There are many cited targets for renewable energy in the various national guidelines published. The common theme throughout these documents is the need to promote and enhance renewable energy in Ireland.

On a more local level the County Development Plan incorporates a number of policy objectives which likewise support the promotion of renewable energy in the county. Specifically, I would refer the Board to the statement on page 33 of the Plan which states "*the Council will also support innovation in infrastructure such as the development of renewable energy*".

Policy EY-01 states that it is an objective of the Council to support and facilitate the provision of reliable energy supply in the County, with emphasis of increasing energy supplies from renewable resources while seeking to protect and maintain biodiversity, wildlife habitats, the landscape, nature and conservation and residential amenity.

Policy EY-02 states that it is the objective of the Council to implement the Renewable Energy Strategy for County Mayo 2011-2020.

This latter document states that the majority of Mayo has wind speeds which are economically viable for the harvesting of wind energy at heights between 75 metres and 100 metres above ground level. It also notes that wind farms are generally cheap to build and produce little or no air pollution. On the other hand, it is acknowledged that there are some negative impacts such as visual, noise and potential impacts on bird life as well as electromagnetic interference. However, the strategy notes that it is common good practice to seek to identify and avoid environmentally sensitive areas. The Board will note that the subject site is not located in a designated Natura 2000 site or as an area designated as being environmentally, ecologically or visually sensitive in the context of the County Development Plan or the Renewable Energy Strategy for Mayo.

In terms of the future development of the national grid in County Mayo, under the Gate 3 process, Eirgrid and ESB Networks are to issue approximately 20 onshore wind farm Gate 3 connections in Mayo. According to the information contained on file, a Gate 3 grid connection has been secured for the project by the applicant. Mayo forms part of the north-west region in the overall Grid 25 strategy and this area has been identified as having the largest (35%) regional distribution of renewable energy capacity.

The subject site is also located within a designated as Tier 1 – ‘Preferred’ (cluster of turbines) in the Renewable Energy Strategy for County Mayo. It is therefore an objective of the Council to permit the development of wind turbines at this location subject to qualitative safeguards and good planning practice.

Therefore, having regard to the policies to promote renewable energy, including wind energy and local, national and European levels, and having regard to the fact that the subject site is not located in a Natura 2000 site or otherwise designated environmentally sensitive site and the fact that the Renewable Energy Strategy for



County Mayo designates the site as being a preferred site for clustered wind farm development, I consider the proposed development to be acceptable in principle.

### 16.3 Impact on Amenity

#### 16.3.1 Noise Impact

The potential noise impact arising from the proposed seven turbines was assessed in the original EIS submitted with the planning application. The baseline monitoring undertaken is deemed to be reasonable in terms of providing representative locations to establish a typical baseline rural environment. The L<sub>90</sub> levels recorded can be considered typical for a rural area. A detailed noise production model was undertaken for each of the 90 dwellings located in the overall study area. When compared with the noise criteria curves derived from the baseline survey undertaken which ranged from 37.5 dB(A) to 46 dB(A) for daytime and 43 dB(A) to 44.4 dB(A) at night-time no dwellinghouse exceeds the noise criteria curves adopted for the purposes of the assessment. The predicted noise levels according to the modelling undertaken as part of the EIA indicates that noise levels during the operational phase will be below the adopted day and night-time noise criteria and therefore the impact is deemed to be acceptable.

The Board will note that the noise modelling undertaken as part of the EIA presents noise levels based on a worst case scenario where wind speeds of 12 metres per second were modelled. Under this scenario only four of the 90 dwellings had predicted noise levels in excess of 40 dB(A). Two of these dwellings were dwellings belonging to landowners involved in the project. The model predicted that no instance where noise levels exceed 45 dB(A) at wind speeds of 12 metres per second.

Likewise, the construction impacts are deemed to be acceptable according to the EIS. The predicted noise levels for construction activities are in the range of 28 to 46 dB(A)  $L_{\text{eq}}$  (1 hour) when experienced at the nearest noise sensitive location (c.500 metres away). Some impact will occur due to increases in traffic etc. However, the increase will be short-term and temporary and will therefore be acceptable.

It can be reasonably included in my opinion that no impact in terms of vibration is expected having regard to the separation distances involved between the turbine location and the nearest sensitive receptors.

I have no reason to doubt the veracity of the information contained in the EIA in respect of the noise analysis undertaken. I further note that the issue of noise was not raised as a significant issue in the grounds of appeal. Appendix 18 of the EIS presents the various predicted noise contours for various wind speeds together with the cumulative impacts arising from the construction of all wind farms in the area. Again this impact is deemed to be acceptable when compared with the noise criteria curve presented in the noise model.

### 16.3.2 *Shadow Flicker*

The Board will note that shadow flicker only occurs under a combined set of certain circumstances. The Wind Energy Guidelines recommend that shadow flicker at dwellings within 500 metres of proposed turbines should not exceed a total of 30 hours a year at 30 minutes per day. The EIS assesses shadow flicker for all houses within a kilometre radius of the site under a worst case scenario (100% sunshine every day) and where turbine blades are constantly rotating and where there is no intervening vegetation to screen the potential shadow flicker. Under this worst case scenario, the 30 minutes per day limit set out in the guidelines is likely to be exceeded in no less than 55 of the 90 dwellings surveyed (five of which are landowners). Under the 30 hour per year limit a total of 67 of the 90 houses are expected to exceed this limit (six of which are landowners) under a worst case

scenario. The mitigation measures to be employed will include the incorporation of the use of wind turbine control system which will cease operation during certain conditions or times when shadow flicker is deemed to be problematic for various residences.

Having regard to the fact that the shadow flicker analysis was undertaken under a worst case scenario and the fact that shadow flicker will be the subject of on-going monitoring and, in the event that the shadow flicker exceeds the daily or yearly guidelines, SCADA technology will be employed to cease turbine operations. Provided that such software is incorporated into the wind turbine design and is employed where shadow flicker is determined to be an issue, I consider that the impact can be mitigated to an acceptable extent in terms of impact on amenity. I note that a similar conclusion was reached in the previous inspector's report relating to the subject application.

Finally, in relation to shadow flicker I note that the EIS also assesses the cumulative impact which could arise from the Cloontooa Wind Farm to the north. As this wind farm is located at its closest point c.2.2 kilometres away the EIS reasonably concludes in my opinion that due to the separation distances involved shadow flicker from the Cloontooa Wind Farm will not present a problem.

### 16.3.3 *Visual Impact*

Obviously the visual impact is a major consideration in determining the application. A key consideration adjudicating on the visual impact concerns the fact that the site and its surroundings have been the subject of robust and comprehensive visual assessment as part of the Renewable Energy Strategy for County Mayo and the Landscape Appraisal for County Mayo which was carried out as part of the Development Plan. The Renewable Energy Strategy considered this site and its surroundings as being suitable or a "preferred" site for wind turbine location. What is

proposed in this instance is seven turbines which is slightly above the recommended cluster of three to five turbines set out in the Guidelines.

The fact that the Board considered the wind farm development at Cloontooa c.2.5 kilometres to the north to be an acceptable development is also a material consideration in my view. The four turbines granted under Reg. Ref. PL16.237401 in 2011 were of a similar height c.150 metres to those proposed under the current application. Thus there is planning precedent for granting planning permission for turbines in the vicinity. By extension it could be reasonably concluded that the Board accepted the presence of wind turbines in this designated landscape type.

In terms of the Landscape Sensitivity Matrix which was carried out as part of the review of the Mayo County Development Plan and forms an integral part of the said Plan, the subject site is located in an area designated as Policy Area 4. Under this matrix a series of landscape policies are presented together with a rating in respect of the impact of the development on the landscape. The matrix suggests that in Policy Area 4 wind farms have a 'high to medium potential' to create an adverse impact on the landscape. It should be noted that all other policy areas designate wind farms as having a 'high potential' to create an adverse impact on the landscape. Therefore, of all the policy areas set out in the landscape sensitivity matrix, Policy Area No. 4 is deemed to be most suitable to accommodate a wind farm proposal.

I further note that there are no designated scenic routes or views designated in the County Development Plan in the vicinity of the site.

Therefore, from a planning precedent and planning policy point of view it would be reasonable to conclude that the landscape on which the proposed wind farm is to be located is deemed to be one of the more suitable landscape types within the county to accommodate such development.

The subject site has been the subject of a comprehensive visual and landscape analysis as set out in the EIS. The EIS provides a Zone of Theoretical Visibility (ZTV analysis) for both the Ballykinava Wind Farm in isolation and the wind farm in conjunction with other wind farms in the area proposed, permitted and constructed. The potential visual impact including the cumulative visual impact is by and large confined to Policy Area 4 which is deemed to be the most suitable part of the county for wind farm development.

13 vantage points were selected for the purposes of depicting the impact of the wind farm proposal on the surrounding environment. Having visited the site, I would agree with the conclusions arrived at in the previous inspector's report that the vantage points selected are representative and they correspond with locations where the public are most likely to visually encounter the turbines i.e. close to roads and in the vicinity of settlements such as Claremorris.

Due to the generally flat topography of the area in which the wind farm is situated, it is apparent that the turbines will be visible from a wide range of locations. However, I would again agree with the conclusions expressed in the previous inspector's report that the perceived visual impact is somewhat subjective. Nevertheless, the slim design incorporating a matt white or off-white finish would generally be acceptable.

I would also agree with the conclusion that the generally flat topography incorporating gentle undulation lends itself to small clusters of wind turbines within this landscape such as that proposed.

Finally, in relation to the issue of visual impact the Board should note that there are a number of constructed wind farms in the general area most notably the North Mace Wind Farm (see photo attached to this report) and the Cuillalea Wind Farm both of which are located to the north-west (c.10 kilometres and 20 kilometres away respectively). Furthermore, there are extant permissions for wind farms in the more immediate area including existing permissions at the site to the immediate north at

Cloontooa and further north at Maghermore. While these two sites are the subject of current appeals before the Board (Reg. Ref. 16.244034 and 16.244055) the previous grant of planning permission in the case of the Cloontooa wind farm could proceed regardless of any decision the Board makes in respect of the Ballykinava Wind Farm<sup>1</sup>. This fact should be borne in mind when assessing the current application. A grant of planning permission in the case of the current application and appeal would have a modest impact on the landscape having particular regard to the presence of other wind farms in the immediate and wider vicinity.

Arising from my assessment above I would conclude for various reasons including landscape designation, landscape sensitivity and precedent decisions that the visual impact arising from seven turbines on the subject site would be acceptable.

### 16.3.3 *Traffic*

The only potential adverse impact of any significance arising from traffic generation will be during the construction phase. The transportation of abnormally large loads will undoubtedly create some traffic disruption and may pose particular challenges on narrow road alignments. I note that the route assignment has been assessed together with the sweep path analysis in the EIS and it appears that abnormally large or extended articulated lorries can reach the subject site without significantly impacting on residential amenity. The fact that the site is located in such close proximity to a National Primary Route (N17) and National Second Route (N60) will be beneficial in terms of transporting turbines to site. The EIS estimates that trip generation will amount to an additional 28 HGV movements per day or c.67 pcus per day. Only 70 trips will involve larger extended articulated HGVs. These deliveries will take place over a period of three to four weeks. Thus it appears that the potential adverse impact on residential amenity in terms of construction of the wind farm will be temporary short-term and therefore in my view acceptable.

---

<sup>1</sup> The grant of permission in the case off the Magheramore wind farm expired in May 2015.

#### 16.3.4 *Property Values*

The EIS in Section 4.6 refers to a number of comparative analysis in respect of property prices and proximity to wind farms. The most extensive research was undertaken in the US with smaller studies in England and Australia. All studies found that the correlation between the proximity to wind farms and property prices were statistically insignificant. I can only conclude based on my analysis above that the proposed wind farm development either in isolation or in conjunction with other wind farms proposed, is unlikely to give rise to any material impacts on residential amenity particularly in terms of noise, shadow flicker, traffic or visual amenity, subject to appropriate mitigation measures being employed where appropriate. If residential amenity is not unduly affected as a result of the proposed development, it is unlikely that property values will decline to any material extent.

#### 16.4 **Peat Stability Assessment**

Although not specifically highlighted to any great extent in the grounds of appeal, I consider the issue of peat stability in terms of the construction of any wind farm to be a material consideration particularly having regard to the peat slippages which occurred in the case of the Derrybrien Wind Farm in 2003. Furthermore, I note that the Board asked the applicant for additional information on this matter in the case of planning appeal PL16.237401 prior to granting planning permission. The EIS in Section 6.5.3.4 includes a short section concerning peat instability analysis. It indicates that the Ballykinava site does not pose a risk in terms of peat instability. Reference is made to a more detailed analysis that was carried out which is contained in Appendix 6.1 according to the EIS. I cannot find this Appendix on file. The Board may wish to seek further information in this regard. However, having visited the site and noted the general flat topography I consider it to be reasonable conclusion that any excavation required for the foundations of the turbines is unlikely to give rise to peat instability. Table 6.4 of the EIS sets out the peat depths and mineral subsoils at the proposed turbine locations. Three of the seven turbines have

no peat substrate underlying the foundations. The other four turbines have peat depths of between 0.5 and 2.6 metres. During the construction management plan a number of measures will be put in place in order to minimise any potential risk. The peat stability assessment set out in Section 6.3.6 of the EIS assigns a probability of instability associated potential peat slippage. This is described as a factor of safety. The stability analysis results show that a factor of safety for the Ballykinava site are greater than the required minimum value of 1.3 at all the locations analysed therefore the probability of peat slippage occurring is described as negligible or none.

Finally, in relation to this issue I note that the EIS sets out a number of mitigation measures which will be put in place to minimise any potential risk.

## **16.5 Specific Issues raised in the Grounds of Appeal**

### *16.5.1 Introduction*

Many of the issues raised in both third party appeals relate to the general adequacy of the EIS and the appropriate assessment undertaken as part of the application. Both these issues are analysed and discussed in greater detail under separate headings below. This section will specifically deal with other issues raised in the grounds of appeal namely:

- Project Splitting
- The Issue of Grid Connection
- The Planning Authority's Assessment on EIA and AA



### 16.5.2 *Project Splitting*

The grounds of appeal argue that lodgement of three separate planning applications in this instance constitutes projecting splitting and project slicing. I do not consider this to be case. Under normal circumstances project splitting arises where an overall project is split into different components in order to circumvent the requirement to carry out EIA as each component of the project would be compartmentalised so as to fall below the threshold for which EIA would be required. The EIA Directive does not preclude projects from being subject to separate decisions provided that all the impacts have been properly assessed. In this instance the applicant has lodged three separate applications each with a standalone EIS and each of the EIS's assesses both the project individually and the cumulative impacts arising from the three wind farm developments proposed and where appropriate, the EIS also assesses the potential significant environmental impact which could arise from existing and other permitted wind farm developments in the area.

Furthermore, it appears in the information contained on file, that the applicant was advised by the Planning Authority in this instance to lodge three separate planning applications in respect of the three proposals. It appears therefore that the decision of the applicant to lodge three separate planning applications was predicated on the advice of the Planning Authority rather than being based on the applicant's own initiative.

It would appear quite reasonable that the applicant would lodge three separate planning applications as each application relates to a distinct site which is geographically separated from the other sites in question. In an instance where a large cohesive landholding was divided into three separate applications, this may give rise to questions as to why a single application was not lodged in the first instance. However, that does not appear to be case for the lands in question. The three separate wind farm developments at Ballykinava, Cloontooa and Maghermore

are geographically distinct and unconnected and for this reason the applicant in my opinion is justified in lodging three separate planning applications.

Finally, lodging three separate applications on three distinct sites permits the possibility of split decisions thereby leaving the applicant scope to pursue the developments where planning permission has been obtained. This approach is reasonable in my view. The key consideration in respect of this issue is the fact that environmental impact assessments have been carried out for all three developments and as such the separation of the projects into three distinct parcels have in no way undermined or circumvented the EIA process.

### *16.5.3 Grid Connection*

The O’Grianna judgement prompted the Board to seek additional information regarding the proposed grid connection. This judgement established that the connection to the national grid is an integral part of the overall development for the purposes of assessing the proposals in a holistic manner. The initial inspector’s report noted that the additional information submitted by the applicant in response to the grounds of appeal attempted to provide requisite information in terms of the grid connection. The inspector however concluded that the additional information submitted has resulted in new issues being thrown up particularly with regard to landownership, drainage and consultation.

On foot of a Section 132 request a more comprehensive addendum to the EIS was submitted specifically dealing with the issue of grid connection. In preparing the addendum report the applicant has consulted with ESB and the EIS addendum has been cross-circulated to all parties for comment. Thus many of the concerns outlined in the original inspector’s report concerning the grid connection have in my opinion been addressed. The environmental impact arising from the grid connection has in my opinion been adequately described and assessed in detail in the addendum to the EIS and has also been assessed under the following headings:

- Impact on Human Beings
- Impact on Flora
- Impact on Soils and Geology
- Impact on Water
- Impact on Air and Climate
- Impact on Noise and Vibration
- Impact on Landscape
- Impact on Cultural Heritage and Archaeology
- Impact on Material Assets
- The Addendum EIS also assesses the interactions between potential environmental impacts.

The main anticipated impacts arise from construction which would almost exclusively take place within the public roadway. It is acknowledged that this may have a temporary impact on human beings in terms of traffic and noise. No long-term impacts will arise in terms of flora and fauna, air, landscape, soils and geology or cultural heritage. These are reasonable conclusions in my view based on the relatively modest nature and extent of works to be undertaken as part of the grid connection.

Mr. Sweetman argues in the grounds of appeal that the grid connection involves alternative routes and as such amounts to an application for outline planning permission. It is also argued that the purpose of the EIS is to assess the environmental impact arising from the project and not a series of alternatives. I do not accept the above arguments. It is reasonable in my view that the applicant assesses the potential impact of the proposal in the case where planning permission for the Cloontooa Wind Farm is forthcoming and a new location for the substation is

permitted as proposed under the current application before the Board under Reg. Ref. PL16.244034. However, if the Board decide to refuse planning permission for the Cloontooa Wind Farm, it is equally appropriate in my view that the applicant assess the environmental impact arising from connecting to the substation for which planning permission has already been granted under Reg. Ref. PL16.237401. The alternative route options are assessed in sufficient detail and are summarised in Table 3.3 of the Addendum EIS. The potential impacts particularly in relation to river crossings, excavation and duct installation within the roads are sufficient in my view to enable the Board to assess the environmental impact arising from the grid connection to either substation.

#### *16.5.4 Local Authority Assessment of AA and EIA*

The grounds of appeal argue that the Planning Authority's assessment is invalid as Mayo County Council failed to carry out AA and EIA in respect of the development. The Planning Authority, in response to the grounds of appeal, state that an EIA report and an AA report was prepared in respect of the application and copies of the report are attached. The Planning Authority state that due to the statutory time limits and the fact that three contemporaneous EIAs were submitted at the same time it was not possible to "commit a text version of the EIA report to the file". The same argument is presented in respect of AA.

In the interest of effective public participation and to comply with the provisions of Section 38(1)(c) of the Act, a copy of the EIA report and AA report should have been made available for public comments from the outset. However, this is a matter for the Planning Authority and not for the Board. Furthermore, I note that the Board in receiving the Planning Authority's response to the grounds of appeal have in the interest of natural justice circulated the report to the relevant parties for comment. Thus all parties have had an opportunity to comment on the full contents of the EIA and the AA assessment carried out by the Planning Authority. Finally, the Board will

also carry out its own EIA and AA in respect of the proposed development and these are set out in more detail in headings below:

#### *16.5.5 Public Participation*

The issue of effective public participation was raised in the appeal by EAA-I particularly in relation to Ireland's obligations under the Aarhus Convention. The Aarhus Convention lays down a set of three basic rules to promote citizen's involvement in environmental matters and improve enforcement of environmental law. The three pillars are:

- Access to Information
- Public Participation in Decision Making
- Access to Justice

Under Article 4 of the Convention members of the public are entitled to request environmental information from all public authorities. I have already mentioned above and acknowledged that initially full details of the EIA and AA assessment appear not to have been made available on Mayo County Council's public file. In its response to the grounds of appeal the Planning Authority made available copies of the EIA and AA assessment and this information was cross-circulated to all parties involved in the appeal for comment. While it is acknowledged that this information should have appeared on the file from the outset the Board have endeavoured to ensure that all environmental information has been made available for public scrutiny.

With regard to the second pillar relating to public participation and decision making under the Convention, the public had a right to participate in decision making in environmental matters. I consider this pillar of the Aarhus Convention has been fully

complied with as members of the public have been permitted to comment on the development at initial Planning Authority stage and again at appeal. The fact that the applicants in this instance have been afforded the opportunity to comment on all information submitted by the applicant during the grounds of appeal would in my opinion ensure effective public participation in the decision making process.

The third pillar of the Aarhus Convention relates to access to justice which permits any member of the public the right to seek redress when environmental law is infringed and the right to access review procedures to challenge decisions that have been made. This third pillar of the Aarhus Convention is open to the public in the form of the current planning appeal on the Planning Authority's decision.

Furthermore, if any member of the public seeks redress in a Court of Law he or she is not precluded from doing so at any subsequent stage.

I am therefore satisfied that Ireland's obligations under the Aarhus Convention have not been in any way compromised in the course of dealing with this application.

With regard to the issue of site notices which was raised by the same appellant, I am satisfied as indicated in the applicant's response to the grounds of appeal, that the content of the site notice is in accordance with the provisions of the 2000 Act and the Planning and Development Regulations and therefore no issues arise in this regard.

#### *16.5.6 Strategic Environmental Assessment*

The appeal by EAA-I asserts that SEA is mandatory in relation to the current proposal. I do not agree with this assertion. In accordance with Directive 2001/42/EEC, Article 2(a) of the SEA Directive requires a strategic environmental assessment to be carried out in respect of plans or programmes. The current proposal constitutes a project and not a plan or programme. The proposed development should be assessed within the context of the Mayo County Development Plan, the Renewable Energy Strategy for County Mayo and other

national plans and programmes in relation to wind energy all of which have been subject to SEA. Finally, in relation to this issue I note that the other third party appellant, Mr. Peter Sweetman also states in his submission dated 30<sup>th</sup> November, 2014 that “*there is no obligation on any private developer to prepare an SEA*”.

## **17.0 Planning Assessment of First Party Appeal**

### **17.1 Condition No. 5**

Condition No. 5 as worded by the Planning Authority was as follows:

*“Prior to the commencement of development, a detailed reinstatement programme for the decommissioning of the wind farm shall be submitted to Mayo County Council for written agreement. The said programme shall apply to full or partial decommissioning of the wind farm or if the wind farm ceases operation for a period of more than 1 year. The said programme shall provide for the dismantling and removing from the sites of mass turbines and buildings including foundations and roads. The site shall be reinstated in accordance with the said programme (including all access road and all decommissioned structures shall be removed within three months of the decommissioning).*

*Reason: To ensure satisfactory decommissioning of the project.”*

The grounds of appeal argue that leaving the turbine foundations in situ it is considered to be a more environmentally prudent option in terms of decommissioning as removing that volume of reinforced concrete from the ground could result in significant environmental nuisance such as noise, dust and vibration. In relation to site roadways it should be noted that several of these roadways are currently in existence and in use by landowners to access and service the lands. It is therefore requested that the Board amend the wording of this condition to provide for agreement of a decommissioning programme that would allow the removal of above ground elements of the turbine structures.

I consider the applicant has raised valid issues in respect of the amount of decommissioning works required. The Planning Authority's response to the grounds of appeal argues that the proposed development could give rise to problems in relation to the management of surface water run-off and drainage channels if the road etc. were left in place. I consider that the removal of foundations and roads are more likely to give rise to environmental impacts in terms of surface water drainage than leaving the structures in situ.

I further note that the DoEHLG Guidelines (2006) in relation to decommissioning note the following '*Issues to be addressed include restorative measures, the removal of **above ground structures and equipment** (my emphasis), landscaping and/or reseeded roads. It may be appropriate to allow tracks to remain, e.g., as part of a walking route after decommissioning*'. This indicates that the guidelines do not recommend the total removal of all works associated with the development.

Finally, in relation to this issue I note that the previous inspector's report considered that the removal of foundations and roads would be unnecessary and would be counter-productive and recommended that the condition be reworded. I would agree and consider that the Board should reword the condition in accordance with the model conditions as follows:

*"The permission shall be for a period of 25 years from the date of the commissioning of the wind turbines. The wind turbines and related ancillary above ground structures shall then be decommissioned and removed unless prior to the end of this period, planning permission shall have been granted for the retention for a further period of time.*

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



17.2 Condition No. 41

Condition No. 41 relates to noise and vibration levels. The wording of the condition is as follows:

*“Noise and vibration levels shall be at the level stipulated in Section 9 of the EIS submitted to Mayo County Council on 19<sup>th</sup> December, 2013.*

*Reason: In the interest of residential amenity.”*

The grounds of appeal argue that this condition does not allow for a lower level of noise to be achieved at the site should turbine or acoustic technology improve. It is therefore recommended that a wording be altered to state that some noise limit criteria should not be exceeded.

Again I consider that the re-wording of this condition would be appropriate and would better serve to protect residential amenity. I therefore recommend that the condition be reworded as follows:

*Wind turbine noise arising from the proposed development by itself or in combination with other permitted wind farm developments in the vicinity shall not exceed the greater of:*

- (a) 5 dB(A) above background noise levels or*
- (b) 43 dB(A) L<sub>90</sub> 10 min*

*when measured externally at dwellings or sensitive receptors.*

*Prior to the commencement of development, the developer shall submit to and agreed in writing with the planning authority a noise compliance monitoring programme for the subject development. All noise measurements shall be carried out in accordance with ISO Recommendation R1996 “Assessment of Noise with Respect to Community Response” as amended by ISO*

*Recommendations R1996 – 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 the commissioning of the wind farm.*

**Reason:** *In the interest of residential amenity.*

Finally, in relation to this condition I note that the Planning Authority did not have any objection to the rewording of the condition and that the previous planning inspector's report also considered that the rewording of the condition as requested in the grounds of appeal to be appropriate.

### 17.3 Condition No. 44

Condition No. 44 relates to the application of a bond for security purposes. It is requested that An Bord Pleanála's consideration of this condition provides greater clarity in relation to the wording of this bond condition to add clarification on the releasing of this bond.

I consider the condition could be reworded as follows:

*Prior to the commencement of development, the developer shall lodge with the Planning Authority a case deposit of €80,000, a bond of an insurance company, or any other such security as may be acceptable to the Planning Authority to secure the satisfactory reinstatement of the site upon the 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 security shall be as agreed between the Planning Authority and the developer or in default of an agreement shall be referred to An Bord Pleanála for determination.*

**Reason:** *To ensure the satisfactory reinstatement of the site.*

It is clear from the wording of the above condition that the bond would be released following the satisfactory reinstatement of the site upon the cessation of the project. This in my view provides appropriate clarity in respect of the releasing of the bond.

#### 17.4 Condition No. 46

Condition No. 46 requires that an annual contribution must be made to a community fund established by Mayo County Council and the developer shall pay to the Council an annual contribution of €10,000 per megawatt.

The reason for this condition is as follows:

*“It is considered reasonable that the developer should contribute towards the costs of environmental recreation or community amenities which will help mitigate the impact of the transport of waste peat on the local community.”*

The applicant challenges the condition on two levels. Firstly, the grounds of appeal note that the nature of the community fund was established by the Council under the provisions of Section 109 of the Local Government Act 2001, is countywide in its scope and shall not be funded through the application of planning conditions.

Secondly, it is argued that the scale of the contribution at €10,000 per megawatt is excessive. Examples are provided where the Board attached conditions where financial contributions were attached of between €500 and €1,000 per MW produced.

The Board will note from section 3.2 of the EIS that the applicant is willing to pay a financial contribution towards a community gain fund to support local environmental improvements of recreational, social and community amenities and in initiatives in the locality of the proposed development. The amount offered in total is €525,000.

It is intended that the applicant will make an initial contribution of €6,250 per megawatt upon commissioning of the proposed wind farm. Should the maximum capacity of 16.8 megawatts be installed this initial payment could total €105,000.

Further payments of €1,000 per megawatt will be paid into the fund on an annual basis and over a 25-year period this could yield a further €420,000 in local funding.

I have a number of concerns in relation to applying a financial contribution requirement under the policy on community benefit contributions required for certain major projects as adopted by Mayo County Council on 14<sup>th</sup> April, 2014.

Firstly, this policy was adopted subsequent to the lodgement of the application and therefore the developer would not have been aware of the financial contribution provisions adopted under this policy.

Furthermore, Section 1.3 of this policy document states:

*“The developer of any projects outlined in paragraph 4.1 of this document will be required to enter into an agreement with Mayo County Council to make a contribution towards the community fund and prior to submitting a planning application for the proposed development the amount to be contributed will be calculated in accordance with Table 1.”*

As the particular document was adopted subsequent to the lodgement of the planning application the applicant was not in a position to enter into an agreement prior to submitting the planning application and clearly contest the financial contribution levied under the provisions of this policy.

All parties accept that a community gain fund would be appropriate and beneficial for the local community. The applicant has indicated his willingness to provide c.€525,000 in local funding for the purposes of community gain. This in itself is a substantial sum. I can find no guidelines specifically in relation to calculating appropriate limits in respect of financial contributions for the purposes of community gain. However, I would consider a contribution of €525,000 in this instance to be a reasonable amount in order to provide appropriate facilities and services in the area of sport, amenity, heritage and environmental projects. Based on a windfarm generating 16.8 MW per annum over a period of 25 years (i.e. 420 MW) the community gain would equate to a financial contribution of €1,250 per MW produced. This amount is in excess of what was levied on similar type developments quoted in the grounds of appeal. The Board should also bear in mind that if such a

contribution were requested in respect of the three wind farm projects the potential benefit for the local community could be significant. Finally, I note that the previous inspectors report likewise concluded that “*in the event of the Board granting permission, condition No. 46 should be retained but with the figures set out in the EIS*”. I also recommend that the Board consider levying a total contribution of €525,000 in respect of the development.

## **18.0 Environmental Impact Assessment**

I am of the opinion that the EIS together with the various addendum submitted is comprehensive and complies with the statutory requirements set out in Article 94 and Schedule 6 of the Planning and Development Regulations (as amended). I am also satisfied that the document submitted is generally in accordance with the requirements set out in the EPA Guidelines as they relate to environmental impact assessment. The EIS has in my opinion identified and described and assessed the key likely significant environmental impacts relating to the proposed development and these are assessed below. I have in the assessment above, identified, described and assessed the key likely significant effects particularly in relation to noise, visual impact, the proposed grid connection and traffic and I have assessed the quality of the EIS in the context of these issues. I therefore do not intend to repeat the above assessment in any great detail.

**Human Beings:** In terms of human beings, the main impacts identified include the potential impact of the development on visitors’ perceptions of the area. It is noted that on the whole, surveys previously carried out in respect of general windfarm development, indicate that windfarms have had a positive impact on people’s enjoyment of an area. The EIS sets out details of the tourist numbers in the area.

Another major impact identified on human beings is the issue of shadow flicker. This issue has already referred to and assessed in my report. The potential impacts of shadow flicker have been adequately described and assessed. Mitigation measures

are also proposed to ensure that any residual impacts arising from shadow flicker will be acceptable. Other impacts on human beings identified and described in the EIS include health and safety, employment and issues regarding noise, dust, traffic and interference with telecommunication systems. Where negative impacts have been identified, appropriate mitigation measures are also described and included to ensure that residual impacts arising from the windfarm are acceptable. The EIS has in my view correctly identified the potential socio-economic impacts which could arise from the proposed windfarm development and I would agree with the conclusion that residual impacts would be slight with the employment of appropriate mitigation measures during both the operational and construction phase. I am also satisfied that the EIS has adequately addressed cumulative impacts as they may arise on human beings.

**Flora and Fauna:** With regard to flora and fauna the EIS has surveyed both flora and fauna through direct observation and habitat and species were identified. A Bird Survey was carried out in 2012 and 2013 and this was augmented by an additional Autumn survey in 2015. I also note that a separate Natura Impact Statement has been prepared in order to examine the likely effects on Natura 2000 sites. Both it and the Bird Assessment Report are assessed separately below. The study area is appropriately described in the EIS and the habitats are classified. It is acknowledged that there are habitats of ecological significant within the study area. However, there are also areas that would be considered to be of low – medium ecological value. Details of the species of birds and general bird activity are set out and details of the number of birds recorded. Bats surveys were also carried out. The results show that the activity within the study area was moderate. Only three mammal species the Irish Hare, the Fox and the Rabbit were identified during the survey. No signs of otter activity were recorded. With regard to birds, the survey work on site did not indicate that the study area is of sufficient importance for either a foraging habitat or as part of a commuting route to result in significant negative impacts on bird species.

The White Clawed Crayfish was shown to be present in the tributary streams of the River Robe downstream of the study area. Water qualities in these watercourses were described as moderate. Detailed mitigation measures are set out in the EIS to ensure that the construction works undertaken do not result in an adverse impact on the watercourses in the vicinity so as consequential impacts to not arise on The White Clawed Crayfish or any other aquatic species.

The impacts on flora and habitats were determined as being permanent/slight negative impact. The habitats to be affected include improved agricultural grassland and wet grassland. The permanent removal of these habitats will arise from the construction of the bases of the wind farms and the construction of new roadways. There will be no loss of any Annex I habitat types designated under the EU Habitats Directive. In terms of fauna, there is a potential for slight disturbance to fauna during the construction phase however this will be short term and a number of mitigation measures will be put in place to address these impacts. The potential impacts on flora and fauna are appropriately identified and described in the EIS and various mitigation measures are set out in order to reduce the potential adverse impact.

Section 5.5.3 of the EIS specifically deals with the cumulative impacts which could arise from the proposal. These impacts are described as negligible during the construction and operational phases. The EIS in my view has correctly identified the potential impacts which could arise on flora and fauna from the proposed wind farm development and with the incorporation of appropriate mitigation measures as set out in the EIS, I would agree that the residual impacts would be slight during the construction and operational phases.

**Soils and Geology:** In terms of soil and geology, baseline site investigations were undertaken and the existing receiving environment is described. A peat stability assessment was also carried out and has been described previously in my report. The potential impacts of the proposal are identified as being peat, subsoil and in some cases bedrock excavation. The residual impact is described as a slight permanent impact and proposed mitigation measures are set out specifically in

relation to peat removal and storage. In terms of cumulative impacts, the removal of soil and peat for the three wind farms are estimated to be a total of 75,700 m<sup>3</sup> which would require relocation. I consider the EIS has correctly identified, described and assessed the potential impact of the proposed development on soils, subsoils and geology and the conclusions in relation to the same are reasonable.

**Water and Hydrology:** In terms of water and hydrogeology, the EIS describes the relevant legislation and guidance surrounding the water environment. The survey methodology and site investigations are set out and the regional and local hydrology are described in detail in the EIS. The main potential impacts identified is water pollution and alterations in the surface water hydrochemistry. Flood risk also identified as a potential adverse impact. The hydrogeology of the site is also described as is the groundwater vulnerability. The EIS includes an assessment of potential changes in site run-off volumes arising from the proposed road network and windfarm bases. Mitigation measures proposed include the incorporation of buffer zones, silt traps, drain inspection and maintenance and surface water quality monitoring. The residual impact is described as being slight short-term. Various mitigation measures by avoidance and by design are also set out in the EIS. Section 7.4.7 also addresses the issue of cumulative impacts. Again these are identified as potential increased siltation arising from construction works. In terms of construction it is stated that works will be staggered thereby removing the potential for cumulative impacts to occur. The major potential impacts on the hydrological environment are more likely to occur during the construction as opposed to the operational phase. The potential impacts arising from the proposed development have adequately been described, identified and assessed in the EIS and appropriate mitigation measures have been put forward which should ensure in my opinion, that no significant adverse residual impacts will arise.

**Air and Climate** In respect of air and climate the EIS sets out the air quality standards as they relate to the subject development. The existing air quality is described in terms of major pollutants (SO<sub>2</sub>, PM<sub>10</sub>, O<sub>3</sub>, NO<sub>2</sub>, CO and fugitive dust).



The renewable energy project is described as having a long-term significant positive impact in isolation and cumulatively. It will also contribute positively towards our obligations in respect of climate change and greenhouse gases. Some short-term slight negative impacts are likely to arise during the construction phase particularly through dust emissions. It is estimated that almost 24,000 tonnes of carbon dioxide will be displaced per annum as a result of the wind farm. The EIS has in my view adequately identified, described and assessed the potential impact arising from the proposed development on air quality and climate.

**Noise:** Based on my assessment set out previously in my report, I am satisfied that the EIS has carried out appropriate baseline studies in respect of noise. Noise generation from the proposed wind farm in isolation and cumulatively with other wind farms in the area has been modelled and I have argued above that the modelling exercise undertaken suggests that the impact both individually and cumulatively is acceptable and will not have a material adverse impact on residential amenity. I note that the EIS has assessed noise both during the construction phase and operational phase.

**Landscape and Visual Impact:** Chapter 10 of the EIS relates to landscape. I refer the Board to my evaluation of the visual impact previously carried out in this report. I consider the EIS has correctly described and depicted the visual impact arising from the wind farm both individually and cumulatively from a wide variety of vantage points in the surrounding landscape. A zone of theoretical visibility has also been presented in the EIS. I am satisfied that the visual impact has been adequately assessed in the EIS and I would agree with the conclusions contained in the study which suggest that the impact is acceptable particularly in light of the existing permissions for wind farms in the area.

**Cultural Heritage and Archaeology:** In terms of cultural heritage, the EIS sets out a detailed desktop study and describes the cultural heritage of the existing environment. The EIS notes that that most of the archaeological remains date to medieval times however there are some monuments in the vicinity dating from the

Bronze Age. There is one recorded monument (MA102-033) located within the appeal site, a Ringfort. The proposed off-road cable will respect a 30 metre buffer zone around this enclosure. The proposed development will not have any known direct impact on the cultural heritage sites in the area. There may be the possibility of unrecorded subsurface features or finds. The proposed mitigation measures include archaeological testing and archaeological monitoring. As in the case of the previous section of the EIS, I am satisfied that the study undertaken has correctly identified, described and assessed the potential adverse impacts which could arise as a result of the proposed development. Subject to the mitigation measures to be employed namely the archaeological testing and monitoring, I consider the impacts to be acceptable.

**Material Assets:** In terms of material assets, I have noted previously in my report that the main potential impact arises from traffic, particularly during the construction phase. This impact has already been assessed in my report and it is sufficient to say that I consider that the EIS has identified, described and evaluated the potential impact arising from the proposal in terms of traffic and this impact will only occur during the construction phase and will be short term and temporary and therefore acceptable. The other material asset identified and assessed in the EIS are telecommunications and aviation. Details as to how it is proposed to prevent any electromagnetic interference as it may arise is set out in the EIS.

**Interactions:** Finally, the EIS evaluates the interaction between the various environmental impacts identified in the EIS. These are set out in Table 13.1 of the document.

**Grid Connection:** The addendum to the EIS submitted in December, 2015 specifically relates to the grid connection. As in the case of noise, traffic, shadow flicker and visual impact, I have already assessed the contents of the EIS in respect of the grid connection and I consider that the EIS has identified, described and evaluated all potential environmental impacts which could arise resulting from the grid connection, namely potential pollution from excavations works particularly at

river crossings. I would agree with the conclusions set out in the EIS that the environmental impact arising from the works to be undertaken as part of the grid connection would be acceptable, with the employment of appropriate mitigation measures to prevent pollution of adjoining watercourses. It should also be noted that these impacts would only arise during construction.

**Conclusions:** In summary therefore, having regard to the contents of the EIS and the various other submissions by the applicant including the EIA addendum, I am satisfied that there is sufficient information in respect of this application to carry out a full environmental impact assessment and would agree with the conclusions set out in the environmental impact statement that the proposed development would not have a significant adverse impact on the receiving environment either individually, cumulatively, directly or indirectly during the construction or operational phases of the proposed development subject to the employment of the mitigation measures set out. The residual impacts are therefore deemed to be acceptable

#### 18.1 Specific Issues raised in the Grounds of Appeal in Respect of the EIS

I have concluded above that the EIS satisfies the requirements of the Directive in that it appropriately identifies, describes and evaluates all potential significant environmental impacts which could arise on foot of the proposed development. However, for the purposes of completeness, I propose to briefly comment upon the specific issues raised in the grounds of appeal regarding the inadequacies of the EIS.

The appeal by Mr. Peter Sweetman argues that the various conditions attached to the Planning Authority's notification to grant planning permission is testament to the inadequacy of the EIS. These conditions are briefly commented upon below.

Condition No. 5 relates to the provision of a reinstatement programme for the site. Section 3.10 of the EIS specifically deals with the issue of decommissioning. I consider that the intent Condition No. 5 requires that matters of detail in respect of

decommissioning would be agreed between the Planning Authority and the applicant. It does not in my view imply any shortcomings in the EIS.

Condition No. 6 relates to a connection to the national grid. The applicant has provided detailed arrangements in respect of connections to the national grid on foot of the O’Grianna Judgement and this information has been submitted in the form of an addendum to the EIS. Any issues regarding specific consents or agreement to connection to the national grid is a matter between the applicant and Eirgrid. The Board can in my view be satisfied in this instance that the EIS has adequately assessed the potential environmental impact arising from the grid connection in the context of the overall proposal.

Condition No. 8 refers to the need to enter into a protocol agreement in relation to potential radio television or telecoms interference. This issue was dealt with in Section 12.2.3.3.1 of the EIS (page 12-15). The applicant in his response to the grounds of appeal has submitted a revised protocol agreement a copy of which is appended to the response to the grounds of appeal. This issue has been assessed and 3<sup>rd</sup> parties have had opportunities to comment on this protocol agreement.

Condition No. 10 relates to a requirement to carry out a roads condition survey of the transport route of the proposed development. I note that Section 12.1 of the EIS includes a survey of the transport route and the adequacy of the road network has therefore in my opinion been assessed for the purposes of EIA. Again the wording of the condition merely requires details in this regard to be agreed with the Planning Authority. In this regard I would refer the Board to the judgement of Mr. Justice Hogan of 18<sup>th</sup> July, 2012 (2011 No. 1079JR). This case relates to the adjoining wind farm in Cloontooa (Reg. Ref. 16.237401) which was the subject of a judicial review on the grounds that the local access roads and bridges in the immediate vicinity of the site were not adequately surveyed as part of the EIA undertaken in respect of this application. The judgement in this instance dismissed the challenge to the validity of the Board’s decision to grant planning permission on the grounds that the Board adequately identified and assessed the range of risks presented by the

development application. I consider the same holds true in the case of the current application and appeal before the Board. Section 12.1.6 of the EIS sets out in detail the route assessment including detailed movements required at junctions.

Condition No. 12 – This condition relates to traffic control measures and requires details of traffic management plan to be forwarded and agreed with Mayo County Council. Again Section 3.5 and Section 12.1 of the EIS provide adequate details of traffic management. The impacts in terms of traffic have been anticipated and assessed in the EIS. Any specific aspects of the traffic management plan that need to be agreed between the applicant and the Planning Authority in advance is a reasonable requirement in my view and does not imply any inadequacies in the EIS.

Condition No. 16 requires the applicant to obtain agreement with Mayo County Council for a monitoring plan in relation to surface water, groundwater, dust and noise. Again the mitigation measures set out in the EIS incorporate monitoring in relation to each of these potential environmental impacts. These issues have been appropriately addressed in my view in the EIS as the applicant points out in his response to the grounds of appeal, the Wind Energy Guidelines of Planning Authorities specifically require that effective monitoring is necessary to provide evidence of compliance with environmental conditions. Condition No. 16 reflects that requirement in my view. Notwithstanding this point, the applicant has submitted in his response to the grounds of appeal a detailed Preliminary Construction and Environmental Management Plan as an Appendix. Therefore, in addition to the information contained in the EIS, a separate document has been prepared and submitted containing details of the proposed environmental management plan. This document has been made available for all parties to comment upon.

Condition No. 17 relates to the establishment of an environmental monitoring committee. The grounds of appeal suggest that this committee would serve no purpose. I would consider it reasonable that an environmental monitoring committee would be set out comprising of various stakeholders in order to fully ensure that appropriate monitoring is undertaken.

Condition No. 19 requires the developer to agree a management plan for construction works on site. I consider that the Planning Authority in this instance is ensuring that best practice is followed in agreeing any such management plan. I also note that the applicant in his response to the grounds of appeal has submitted a Preliminary Construction Management Plan therefore details in relation to the proposed management plan has been provided during the course of the application and can be adequately assessed by the Board. The Board will also note that details of the proposed construction management are contained throughout the EIS particularly in Section 3 of the EIS. Again I consider that Condition No. 19 does not imply that the EIS is inadequate.

Condition No. 21 relates to the spread of invasive species. The spread of invasive species did not present itself as a significant environmental impact in the EIS. I have no reason to believe that the construction of a wind farm would present a significant or real threat in terms of spreading invasive species. I assume the Planning Authority included this condition to ensure best practice. Notwithstanding this, Section 3.1.13 of the Environmental Management Plan submitted in the applicant's response to the grounds of appeal specifically relates to invasive species and a series of mitigation measures are set out to address this issue.

Conditions Nos. 24 and 29 relate to water quality monitoring. Condition No. 24 requires that water quality monitoring locations, parameters and schedules should be agreed with Inland Fisheries Ireland. This is a reasonable condition in my view and while the grounds of appeal suggest that Inland Fisheries are not the competent authority for the purposes of the Habitats Directive, the Board will note that the subject site is not located within a designated Natura 2000 site or is unlikely to affect a designated Natura 2000 site (see section below) and for this reason Inland Fisheries Ireland as a prescribed body would be an appropriate body to advise on such matters. With regard to the suspended solids limit set out in Condition No. 29 (25 mg/l) this in my view is a reasonable condition and does not in any way infer inadequacy in the EIS.

The grounds of appeal suggest that Condition No. 30 is vague as details of the monitoring to be submitted to Mayo County Council is not specified. Again I would refer the Board back to Condition No. 16 which provides details of all monitoring to be provided on site. Condition No. 30 merely specifies that this monitoring is to be submitted to Mayo County Council on a monthly basis in both hard copy and electronic format. Again I consider this condition to be reasonable.

Condition No. 33 relates to noise levels during the construction phase. Again I have assessed the noise section of the EIS and I consider it to be reasonable. I note that the condition in relation to noise is also the subject of a first party appeal and therefore it is possible that the wording of this condition may be altered on foot of the first party appeal. I refer the Board to the section of my assessment on the first party appeal set out above.

Condition No. 36 requires the applicant to submit and obtain for agreement a plan containing details of the management of waste and in particular recyclable material. Again the grounds of appeal suggest that this reflects inadequacy in the EIS. Section 3 of the EIS provides relevant details in respect of construction activities and the construction and environmental management plan submitted with the applicant's response to the grounds of appeal also address this issue. As in the case of other conditions above I consider that there is enough information on file to allow the Board adequately assess the environmental impact arising from the proposed development in terms of construction activities and any waste which may arise on foot of these activities. Again the Planning Authority in this condition requires specific points of detail to be agreed in respect of the information submitted as opposed to requiring large amounts of additional information by way of condition as is suggested in the grounds of appeal.

In conclusion therefore I consider that most of the conditions are reasonable in this instance and are not incorporated into the decision in order to seek further information or address any perceived deficiencies in the EIS but merely seek to tie-down detailed specifics by way of condition which in my view is appropriate and

would not contravene the spirit of the EIA Directive. It is not the purposes of an EIS to attempt to slavishly anticipate all the detailed and specific requirements that the planning authority may require by way of condition. The purpose of an EIS is to identify, describe and evaluate the potential impact of a development on the receiving environment.

The **submission from EAA-I** also made a number of specific assertions in respect of the adequacy of the EIS.

It is suggested that the information set out in Schedule 6 of the Planning and Development Regulations 2001 has been superseded by information under Annex 1V of the EIA Directive 2011/92/EU. I consider that the EIS submitted addresses all the issues required in the latter directive (please see page 5 of submission by EAA-I received by the Board on 30<sup>th</sup> March, 2016). The Board will note that page 5 of this submission sets out in diagram form the list of information required under the Regulations and the New Directive. I consider that the EIS submitted with the application fully addresses the information set out under Annex 1V of the latter directive. I also note that the appellant in this instance has failed to specifically state what aspects of the requirement set out in the latter Directive have not been complied with in the EIS submitted with the application.

Finally, the submission by EAA-I suggests that the EIS is legally flawed as there is no specific reference to the European Landscape Convention in assessing the environmental impact. I can find no requirement under the current EIA Directive which specifically requires projects to refer to this convention in carrying out EIA. I therefore reject the appellant's assertion that the EIA is flawed on these grounds.

## **19.0 Appropriate Assessment**

An NIS has been prepared in respect of the subject application, this NIS has been revised on foot of the Board's request for additional information requiring an appropriate assessment of the grid connection also. The applicants have also



submitted a revised Bird Impact Assessment based on more comprehensive bird surveys, particularly winter birds (Waterbirds, Waders and Raptors).

The NIS sets out in detail the receiving environment including details of the flora and fauna, hydrology and hydrogeology. Natura 200 sites with the likely zone of impact are identified in the NIS and as a precautionary measure Natura 2000 sites located outside the 15km buffer zone were also taken into account. The Board will note that no part of the site or the proposed grid connection lies with, contiguous or adjacent to a Natura 2000 site. Many of the sites identified in the potential zone of impact have been screen out primarily in the grounds that they are not hydrologically connected with the subject site. The only Natura 2000 site that is identified as being hydrologically connected is the Lough Carra / Mask SAC, which, as the crow flies is located c. 18 km from the subject site. But in terms of hydrological distance the site is located in excess of 30 km away. The NIS assess the impact of the proposal on each of the qualifying interests associated with this Natura 2000 site. The NIS also assesses cumulative, indirect and in-combination effects. The NIS in my opinion has adequately identified and assessed the impact of the proposal on the Natura 2000 network in the vicinity in my opinion. My appropriate assessment is set out in more detail below.

The nearest SAC to the subject site is the **Lough Corrib SAC** (Site Code 000292) which is located, at its closest point 5.2 km from both the subject site and the proposed grid connection.

The qualifying interests for Lough Corrib (Site code 00297) are as follows:

- Oligotrophic waters containing very few minerals.
- Hard oligo-mesotrophic waters with benthic vegetation
- Water courses of plain montane levels with benthic vegetation
- Semi-natural dry grasslands and scrubland facies on calcareous substrates
- Molina meadows on calcareous, peaty or clayey-silt-laden-soils
- Active raised bog (priority habitat)

- Degraded raised bog still capable of natural regeneration
- Depressions on peat substrates of the Rhynchosporion
- Calcareous fens with *Cladium mariscus* and species of the Caricion davalianae (priority habitat)
- Petrifying springs with tufa formation (priority habitat)
- Alkaline fens
- Limestone Pavements (priority habitat)
- Old sessile oak woods with *Ilex* and *Blechnum*
- Bog woodland (priority habitat)
- Freshwater pearl mussel
- White clawed crayfish
- Sea Lamprey
- Brook Lamprey
- Salmon
- Lesser Horseshoe Bat
- Otter
- Slender green-feather moss
- Slender Naiad

The Corrib SAC is covered by the generic conservation objective '*To maintain and restore the favourable conservation condition of the Annex I habitats and Annex II species for which the SAC has been selected*'.

While the Corrib SAC is the closest Natura 2000 site to the appeal site and has a large number of qualifying interests, many of this qualifying interests relate to habitats, some of which are priority habitats. The windfarm site is sufficiently removed from the SAC in question so as to ensure that none of the habitats will be in any way affected from the works to be undertaken on site, during the operational phase and particularly during the construction phase. Furthermore, the works to be carried out as part of the windfarm development including the grid connection, will on the whole be confined to existing roadways and the margins of the existing roadway. It is not conceivable in my view that the works to be undertaken will in anyway impact on the habitats associated with the above SAC as there is no physical connection between the works undertaken and the habitats in question.

In terms of impacts on species, theoretically there is potential for the proposed development to impact on the Lough Corrib SAC mainly through sediment run-off from the construction works entering surface waters in the vicinity of the site. The key issue however is the fact that the subject site drains into the River Robe which is in a separate catchment area from the Lough Corrib SAC as such any potential discharges from the works undertaken will not find its way into the Lough Corrib SAC and as such no adverse impacts can arise.

The **River Moy SAC** (Site Code 002298), is a very important fishery and incorporates a large network of surface water rivers and streams within its catchment at its closest point is just less than 7 km north of the windfarm and 3.8 km north of the grid connection at its closest point.

The qualifying interests associated with the River Moy SAC are:

- Active raised bog (priority habitat)
- Degraded raised bog still capable of natural regeneration
- Depressions on Peat substrates of the Rhynchosporion
- Alkaline Fens
- Old sessile oak woodlands with *Ilex* and *Blechnum* in the British Isles
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (priority habitat)
- White Clawed Crayfish
- Sea Lamprey
- Brook Lamprey
- Salmon
- Otter

This SAC is covered by the generic conservation objective '*To maintain and restore the favourable conservation condition of the Annex I habitats and Annex II species for which the SAC has been selected*'

The windfarm site is sufficiently removed from the River Moy SAC so as to ensure that none of the habitats will be in any way affected from the works to be undertaken

on site, during the operational phase and particularly during the construction phase. Furthermore, the works to be carried out as part of the windfarm development including the grid connection, will on the whole be confined to existing roadways and the margins of the existing roadway. It is not conceivable in my view that the works to be undertaken will in anyway impact on the habitats associated with the above SAC as there is no physical connection between the works undertaken and the habitats in question.

In terms of impacts on species, theoretically there is potential for the proposed development to impact on the River Moy SAC mainly through sediment run-off from the construction works entering surface waters in the vicinity of the site. The key issue however is the fact that the subject site drains into the River Robe which is in a separate catchment area from the River Moy SAC as such any potential discharges from the works undertaken will not find its way into the River Moy SAC and as such no adverse impacts can arise.

In my view other SAC's can be screened out for similar reasons set out above. There are a number of Turloughs in the wider area which are designated SAC's these include:

- Carrowkeel Turlough (Site Code 00475 – 8.6km southwest)
- Balla Turlough (Site Code – 00463 – 15km north west)
- Kilgassan/Caheravoostia (Site Code 00504 – 13 km south west)
- Greaghans Turlough (Site Code 00503 – 13 km south west)
- Arkill Turlough (Site Code 00461 – 14 km to the south west).

All these Turloughs are seasonal lakes and are located a considerable distance from the proposed development. Any potential hydrological connection will be restricted to groundwater only. Again the proposed windfarm will have no impact on the Turloughs during the operational phase. The construction phase could possibly lead to silt/sediment surface water run-off; which in-turn could percolate to groundwater.

Any sediment laden waters would be suitably attenuated along the soil and sub-soils pathway before reaching any of the Turloughs referred thereby negating any potential adverse impact.

Both **Towerhill House SAC** (Site Code 002197 c.17km to the west) and **Ballinfad SAC** (Site Code 002081 – 18 km to the north west) have the sole qualifying interest of the Lesser Horseshoe Bat. Due to the separation distances involved it is extremely unlikely that the proposed windfarm will in anyway impact on this species.

The site is hydrologically connected to the **Lough Carra/Mask Complex SAC** (Site Code 001774), via the River Robe which runs to the south of the site. While this SAC is located c 18km to the west of the subject site, in terms of hydrological connectivity the SAC is located in excess of 30 km away. The qualifying interests associated with the SAC are as follows:

- Oligotrophic waters containing very few minerals and sandy plains
- Hard oligo-mesotrophic waters with benthic vegetation
- European dry heaths
- Semi-natural dry grasslands and scrubland facies on calcareous substrates
- Calcareous fens with *Cladium mariscus* and species of the Caricon davaliana (priority habitat)
- Alkaline fens
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*
- Lesser Horseshoe Bat
- Otter
- Slender green-feather moss

This SAC is covered by the generic conservation objective '*To maintain and restore the favourable conservation condition of the Annex I habitats and Annex II species for which the SAC has been selected*'

The windfarm site is sufficiently removed, in excess of 18km from the Lough Carra / Mask SAC so as to ensure that none of the habitats will be in any way affected from

the works to be undertaken on site, during the operational phase and particularly during the construction phase. Furthermore, the works to be carried out as part of the windfarm development including the grid connection, will on the whole, be confined to existing roadways and the margins of the existing roadway. It is not conceivable in my view that the works to be undertaken will in anyway impact on the habitats associated with the above SAC as there is no physical connection between the works undertaken and the habitats in question.

In terms of impacts on species, theoretically there is potential for the proposed development to impact on the Lough Carra / Mask SAC mainly through sediment run-off from the construction works entering surface waters in the vicinity of the site. The main qualifying interests that could potentially be at risk include the Otter and to a lesser extent the Slender Green Feather-Moss and the lesser horseshoe bat. With regard to the potential impact on the Otter, the Board should note that no in stream works are proposed as part of the windfarm development. Furthermore, the EIS incorporates a host of mitigation measures to ensure that any surface run-off from the works undertaken will not result in any pollution of water courses in the vicinity and as such there will be no consequential threats in terms pollution to any SAC situated downstream, particularly as in this instance the SAC is located over 30km downstream.

#### Indirect Effects

In terms of indirect effects, the only potential effects which could possibly occur relates to impacts on feeding grounds for species which are qualifying interests of the SAC. As the proposed development will not have any material impact on water or groundwater pollution in the area, it will not adversely affect the feeding regime of any of the qualifying species associated with the various Natura 2000 sites in the vicinity.

### In-combination Effects

I note that the NIS submitted assesses the potential cumulative impacts which could possibly arise as a result on the existing and proposed windfarm developments in the surrounding area on European sites. Again the potential impact is most likely to arise during the construction phase of the development which could give rise to the pollution of watercourses in the vicinity of the windfarms and the proposed grid connection. The EIS's submitted with the applications set out a host of mitigation measures which will be employed to ensure that the potential impact on surface watercourses are minimised for construction works associated with all three developments. One of the more important mitigation measures includes staggering the construction works at each of the wind farms so as to ensure that cumulative impacts do not arise during the construction phase.

I am satisfied based on my own analysis that the that no in-combination effects will arise from the proposed wind farm developments based on my own assessment above. I the basis of my assessment I would concur with the conclusions set out in the NIS. The potential cumulative impacts on avifauna is set out in a separate sub-heading below.

#### 19.1 *Specific Issues Raised in the grounds of Appeal in Respect of Appropriate Assessment*

The Submission from EAA-I argues that the AA undertaken by the applicant lacks comprehensiveness in that there was no justification for screening out the potential impacts on the following SAC's

- The Lough Corrib SAC
- The River Moy SAC
- The Balla Turlough SAC
- The Lough Carra Mask SAC.

In respect of the first three SAC's listed, the applicant reasonably screened out these Natura 2000 sites on the grounds that the only potential impact that could arise would be through the subject site being hydrologically connected to the European sites in question. It is clear from the information contained in the NIS that the subject site is in a different hydrological catchment area and therefore is not hydrologically connected to the SAC's in question. The screening out of these SAC's was therefore appropriate in my view.

With regard to the last European site listed, the NIS did not screen this European site out. This European site was 'screened in' on the grounds that it was hydrologically connected to the windfarm development. The potential impact of the proposed development on each of the qualifying interests was adequately assessed in Table 6.1 of the NIS.

#### 19.2 *Conclusions in relation to Appropriate Assessment*

On the basis of the information provided with the application and appeal, including the Natura Impact Statement and the addendum to the Statement, and in light of the assessment carried out above, I am satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European sites, in the vicinity and specifically the Lough Carra /Mask SAC, Site Code 001774, in view of the site's Conservation Objectives.

#### 19.3 *Submissions from the Department of Arts Heritage and the Gaeltacht*

It should be stated from the outset that the Department has not objected to, or appealed the subject application but merely expressed some reservations in respect of the initial bird surveys undertaken in respect of the proposed development. These reservations were expressed initially to Mayo Co Council in letters dating 11/02/2014 and again on 02/09/2014. The initial inspectors report also noted the DAHG's



concern in respect of the lack of data particularly in relation to wintering birds and the lack of data for the autumn migration period. This issue formed the basis of the part of the Boards additional information request and the applicant responded by providing a more detailed analysis in the form of a Bird Impact Assessment. This assessment was prepared on foot of:

- The original bird surveys carried out for the purposes of the EIS during the winter and summer of 2012 / 2013.
- Details of an additional surveys carried out on various dates between 27/10/2012 and 19/03/2013.
- Details of bird monitoring programme submitted to the planning authority as unsolicited additional information on 7<sup>th</sup> of October 2014
- Additional surveys carried out in autumn 2015.
- It also appears from the last submission of the DAHG that the applicant met with the Department in order to seek its advice in respect of any additional survey work which may be required.
- The assessment also included wetland waterbird surveys around lake areas and flight line assessments. The Bird Assessment submitted assesses the direct and indirect impacts as well as the cumulative impacts.

The DAHG's response to the Bird Assessment can be described as neutral, neither expressing satisfaction or dissatisfaction with the findings. It states that '*the Department is not in a position to review this significant information, except to note the summarised results of the additional bird surveys*'. It is noted that there are significant occurrences of Annex I species in the area including Curlew, Lapwing and Herring Gull. It further notes that the '*potential direct indirect and cumulative effects*

*on birds, should be included in the Boards considerations when the EIA, and the appropriate assessment, if necessary, are carried out'.*

I have read the entire contents of the Bird Impact Assessment and I consider that the field survey data is sufficient to enable the Board to assess the potential impact on bird populations in the wider area. The assessment comprehensively assesses the direct, indirect and cumulative impacts arising from the entirety of the wind farm projects proposed including potential impacts from arising from the grid connection (which are deemed to be negligible). It notes that no significant large flocks of migrating birds, particularly migratory waterfowl were recorded commuting through the study area hence the potential barrier effects arising from the totality of turbines proposed are deemed to be low. A number of mitigation measures are proposed, including the scheduling of construction works, the commencement of a pre-construction bird survey, the provision of bird boxes for common passerines in areas of conifer woodlands and a detailed bird monitoring programme (Appendix 4 will monitor bird interactions for years 1,2,3,5,10 and 15).

The overall conclusion that the proposal will result in a residual impact of low significance on the bird population is a reasonable conclusion in my opinion.

## **20.0 Conclusions and Recommendations**

Arising from my assessment above I consider that the proposed development is in accordance with the proper planning and sustainable development of the area and I therefore recommend that planning permission be granted for the proposed development in accordance with the reasons and considerations and conditions set out below.

## 21.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

### REASONS AND CONSIDERATIONS

In making its decision the Board had regard to:

- (a) national policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions of greenhouse gases;
- (b) the provisions of the “Wind Energy Development Guidelines – Guidelines for Planning Authorities” issued by the Department of Environment, Heritage and Local Government 2006;
- (c) the policies and provisions of the planning authority as set out in the Mayo County Development Plan 2014-2020 and particularly the Landscape Appraisal Policies contained in the said Plan;
- (d) the policies and provisions contained in the Renewable Energy Strategy for County Mayo 2011-2020 and the fact that the subject site is located within an area designated as Tier 1 – Preferred (Cluster of Turbines);
- (e) the character of the landscape and the absence of any ecological designation on or in the immediate environs of the site or proposed grid connection;
- (f) the pattern of existing development in the area including other wind farms in the vicinity;

- (g) the distance of the proposed development to dwellings and other sensitive receptors;
- (h) the range and mitigation measures set out in the documentation received including the environmental impact statement as amended; the Natura Impact Statement as amended and the Bird Impact Statement;
- (i) the planning history of the site and the planning history of surrounding sites;
- (j) all the submissions made in connection with the planning application and appeal;
- (k) the report of the inspector;

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities or landscape character of the area, would not seriously injure the amenities or property in the vicinity, would be acceptable in terms of traffic safety and convenience and would not give rise to an unacceptable risk of environmental pollution or have an adverse impact on the ecology of the area and would, therefore, 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, as amended by the further plans and particulars submitted to the planning authority on 14<sup>th</sup> day of August 2014, and the 7<sup>th</sup> day of October 2014, together with the additional information submitted to the Board on 17<sup>th</sup> December 2015, except as may otherwise to 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 the 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. (a) All mitigation measures set out in the Environmental Impact Statement (EIS) as amended and the Natura Impact Statement (NIS) as amended and the mitigation measures set out in the Bird Impact Assessment submitted as part of the planning application on the 19<sup>th</sup> day of December, 2013 as amended by the information submitted to the Board on the 17<sup>th</sup> day of December, 2015 shall be implemented in full except as may be required by the terms of conditions herein.  
  
(b) Prior to the commencement of development the developer shall submit a schedule of mitigation measures identified in the Environmental Impact Statement and Natura Impact Statement (including amendments) to the planning authority for its written agreement.

**Reason:** To safeguard the amenities of the area and in the interest of orderly development.

3. The period during which the development is hereby permitted to be carried out shall be 10 years from the date of this order.

**Reason:** Having regard to the nature of the proposed development, the Board considered it reasonable and appropriate to specify a period of validity of the permission in excess of 5 years.

4. The permission shall be for a period of 25 years from the date of the commissioning of the wind turbines. The wind turbines and related ancillary above ground structures shall then be decommissioned and removed unless prior to the end of this period, planning permission shall have been granted for the retention for a further period of time.

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

5. Construction operations shall be restricted to between 0800 hours and 2000 hours Monday to Friday and 0800 and 1800 hours on Saturday.

**Reason:** In the interest of orderly development and to protect the residential amenities of the area.

6. Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Subsequently the developer shall inform the planning authority and the Irish Aviation Authority of the co-ordinates of the as constructed positions of the turbines and the highest point of the turbines to the top of the blade spin.

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

7. Facilities shall be installed to minimise interference with radio or television reception in the area. Details of the facilities to be installed, 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 interest of residential amenity.

8. All cabling associated with the wind turbines to the substation shall be placed underground.

**Reason:** In the interest of visual amenity.

9. (a) The wind turbines shall be geared to ensure that the blades rotate in the same direction.

(b) Transformers associated with each individual turbine and mast shall be located either within the turbine mast structure or at ground level beside the mast.

**Reason:** In the interest of visual amenity.

10. (a) Shadow flicker arising from the proposed wind farm 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) Within 12 months of the commissioning of the proposed wind farm, a report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority and submitted to the planning authority

for its written approval. The report shall indicate the level of compliance achieved with the above requirements. The developer shall outline proposed measures to address any recorded non-compliances, including control of turbine rotation using SCADA control systems or any other such system if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

**Reason:** In the interests of residential amenity.

11. Prior to the commencement of works on site the developer shall submit, at his own cost, a bridge and road structural survey report to the satisfaction of the planning authority prepared by a chartered engineer incorporating an assessment of the current structural condition and geometry and adequacy or otherwise of all roads, bridges and level crossings on all roads other than national primary routes, national secondary routes and regional routes. The report shall outline any proposed consequent remedial actions to facilitate the development. Any such works may be subject to licensed permit or a separate planning permission.

**Reason:** In the interest of preserving the standard of the surrounding public roads.

12. Any traffic control measures necessitated by the development shall be carried out in agreement and under the supervision of the planning authority. Road signage within the site shall comply with the requirements of the planning authority.

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



13. (a) Prior to the commencement of development full details of a Traffic Management Plan (TMP) shall be submitted to, and agreed in writing with the planning authority. The traffic management plan shall be prepared by the developer in consultation with An Garda Síochána and where appropriate in liaison with local residents and businesses. The traffic management plan shall take cognisance of updated route assessments undertaken in the knowledge of the make and model of the turbine being installed and shall also take account of departure routes and manoeuvres for delivery and transport vehicles.
- (b) The traffic management plan shall be reviewed/updated as required by the planning authority during the construction phase of the development and temporary or localised traffic management plans shall be prepared and implemented as required by the area engineer.

**Reason:** In the interest of orderly development and road safety.

14. Wheelwash facilities shall be provided on site. The design and location of these facilities shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** To keep roads free from dirt and debris and to preserve the visual amenities of the area.

15. 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:** In the interest of road safety and the proper planning and sustainable development of the area.

16. The construction of the development shall be managed in accordance with a construction management plan, which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. This Plan shall provide details of intended construction practice for development including:

(a) The location of the site and materials compound including areas identified for the storage of construction waste.

(b) The location of areas for construction site offices and staff facilities.

(c) Measures providing for access for construction vehicles to the site, including details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include in particular proposals to facilitate and manage the delivery of oversized loads.

(d) Measures to prevent the spillage or deposit of clay, rubble or other debris on the road network.

(e) Alternative arrangements to be put in place for pedestrians and vehicles in the case of closure of any public roads or footpaths during the course of site development works.

- (f) Details of appropriate mitigation measures for the construction stage, noise, dust and vibration and monitoring of such levels.
- (g) Containment of all construction related fuel and oil within specifically constructed bunds to ensure that fuel spillages are fully contained, such bunds shall be covered to exclude rainwater.
- (h) Appropriate provision for the refuelling of vehicles.
- (i) Off-site disposal of construction waste and construction stage details of how it is proposed to manage excavated soil.
- (j) Means to ensure that surface water run-off is controlled in accordance with mitigation measures proposed in the submitted documents.

Prior to the commencement of construction proposals for the environmental monitoring of construction works on site by an ecologist and by an environmental scientist or equivalent professional including the monitoring and implementation of construction stage mitigation measures and illustrating compliance with requirements set out above shall be submitted to and agreed with the planning authority together with associated reporting requirements.

**Reason:** In the interest of protection of the environment and the amenities of the area.

17. Silt traps shall be provided on all surface water drainage channels. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** To prevent water pollution.

18. Prior to the commencement of development an environmental monitoring committee shall be established to assess and monitor any potential environmental impacts or other environmental issues that may arise during the period of construction. The environmental monitoring committee shall comprise two representative of the developer, two representatives of the planning authority and an invitation shall be extended to Inland Fisheries Ireland and the National Parks and Wildlife Service to provide representatives for the committee. In addition, one representative from the local community selected in accordance with procedures to be agreed with the planning authority shall be invited to serve on this committee. The committee shall have the right to co-op other members as required.

**Reason:** To ensure effective monitoring during the construction phase.

19. Wind turbine noise arising from the proposed development by itself or in combination with other permitted wind farm developments in the vicinity shall not exceed the greater of:

- (c) 5 dB(A) above background noise levels or
- (d) 43 dB(A) L<sub>90</sub> (10 min)

when measured externally at dwellings or sensitive receptors.

Prior to the commencement of development, the developer shall submit to and agreed in writing with the planning authority a noise compliance monitoring programme for the subject development. All noise measurements shall be carried out in accordance with ISO Recommendation R1996 “Assessment of Noise with Respect to Community Response” as amended by ISO Recommendations R1996 – 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 the commissioning of the wind farm.

**Reason:** In the interest of residential amenity.

20. Emergency response procedures shall be prepared in conjunction with Inland Fisheries Ireland who shall be included as a notifiable body in the case of an environmental emergency.

**Reason:** In the interest of protecting environmental amenities.

21. All instream works shall be carried out between May and September during dry weather conditions in accordance with Inland Fisheries Ireland approval method statements. Method statement for works such as drainage channel diversion/installation should be provided 1 month prior to works commencing on site.

**Reason:** In the interest of proper environmental control during earthworks and construction phase.

22. A 50 metre buffer zone should be established prior to construction along all open drains with direct connectivity to fishery watercourses.

**Reason:** To control water pollution and in the interest of environmental amenity.

23. A 30-metre-wide buffer zone shall be established around the identified enclosure located 550 metres north-east of Turbine No. 5 in advance of construction by a suitably qualified archaeologist. The buffer zone shall be cleared of vegetation and delineated using appropriate temporary boundary

fencing and signage. No construction works, stockpiling of topsoil, or any development or landscaping or planting shall take place within the designated buffer zone. Subsequent to the completion of the development, the buffer zone shall remain around the archaeological monument. Planting within this buffer zone shall be limited to shallow rooted plants or grass.

**Reason:** To preserve items of archaeological importance.

24. The developer shall facilitate the archaeological appraisal of the area affected by any roadways and/or foundations associated with the turbines 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 operations (including hydrological and geotechnical investigations relating to the proposed development) and
- (b) Employ a suitably qualified archaeologist prior to the assessment 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 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 any archaeological excavation) prior to the 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 the protection of any archaeological remains that may exist within the site.

25. The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate surveys of this site for wintering birds (including water birds, waders and raptors) and migratory water fowl and other birds of conservation concern. Details of the surveys to be undertaken shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** To monitor the impact of the development on the local population of wintering birds/migratory water fowl and other birds of conservation concern.

26. 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 agree in writing with, the planning authority prior to the commencement of development. This programme shall be developed in consultation with the Department of Arts, Heritage and the Gaeltacht and cover the entire period of the operation of the wind farm.

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

27. The developer shall pay to the planning authority a financial contribution of €103,782 (one hundred and three thousand seven hundred and eighty-two euro) 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. 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. The application of any indexation required by this condition 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.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

28. 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.



29. The developer shall pay a financial contribution to the planning authority of €525,000 towards the provision of environmental improvements, recreation or community amenities, cultural and heritage facilities and social inclusion and community development in the locality.

**Reason:** It is considered reasonable that the developer should contribute towards the costs of environmental recreational or community amenities which will help mitigate against any potential adverse impact arising from the proposed development.

---

**Paul Caprani**  
**Senior Planning Inspector**

**21st September, 2016.**

**sg**