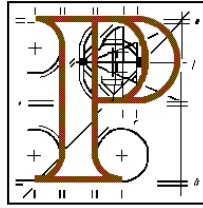


# An Bord Pleanála



## 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 and ancillary works at Ballykinava/Cullmore, Claremorris, County Mayo.

### **PLANNING APPLICATION**

<b>Planning Authority:</b>	Mayo County Council
<b>Planning Authority Reg. No.</b>	P13/617
<b>Applicant:</b>	PWWP Developments Limited
<b>Application Type:</b>	Permission
<b>Planning Authority Decision:</b>	Permission

### **APPEAL**

<b>Appellant(s):</b>	(a) PWWP Developments Limited (b) Marie Kilcullen (c) Peter Sweetman and Associates
<b>Type of Appeal:</b>	1st v. Conditions and 3 <sup>rd</sup> Party
<b>Observers:</b>	None
<b>DATE OF SITE INSPECTION:</b>	22.1.2015
<b>INSPECTOR:</b>	Robert Ryan

## **CONTENTS**

- 1.0 Site Location and Description**
- 2.0 Development Plan for Mayo 2014 – 2020**
- 3.0 Renewable Energy Strategy for County Mayo 2011 – 2020**
- 4.0 Planning Authority’s Decision**
- 5.0 Planning Authority’s Technical Reports**
- 6.0 First Party Appeal**
- 7.0 Third Party Appeal**
  - (a) Peter Sweetman and Associates**
  - (b) Environmental Action Alliance Ireland**
- 8.0 Planning Authority to Board**
- 9.0 Developer to Board in Response to Third Parties**
- 10.0 Submission from Peter Sweetman and Associates**
- 11.0 Second Submission from Developer**
- 12.0 Submission to Board from Department of Arts, Heritage and the Gaeltacht**
- 13.0 Submission from Peter Sweetman and Associations**
- 14.0 Planning History**
- 15.0 Regional Guidelines – West – 2010 – 2022**
- 16.0 Wind Energy Development Guidelines – 2006**
- 17.0 Assessment**
- 18.0 Conclusion and Recommendation**

## **1.0 SITE LOCATION AND DESCRIPTION**

The appeal site is located to the south of the N60 (Claremorris – Ballyhaunis) NSR c.4 kilometres east of Claremorris and c.4 kilometres north of Ballindine – it generally comprises of gently undulating farmland at a relatively low level (c.60-80mOD) with scattered low density housing/farm buildings and some forestry plantations plus peaty areas. The site has an irregular configuration and is stated to be 62 hectares. The northern boundary consists of the R327 (Claremorris – Cloonfad) Regional Route whilst the other major road is the N17 (Galway – Sligo) National Primary Road c.3 kilometres to the west. The site can be accessed by minor roadways to the south and west. The River Robe runs alongside the eastern site boundary and all streams/drainage channels within the site drain into this important channel which leads south-westwards to Ballinrobe and ultimately Lough Mask.

The proposed development primarily involves the erection of seven wind turbines with a maximum blade tip height from ground level of 156.5 metres plus a 100 metre met mast, upgrade of 1.87 kilometres of existing roadways and provision of 2.74 kilometres of new access roads, a temporary construction compound, peat disposal areas and improvements to junctions.

The proposed turbines would consist of cylindrical towers with a white or off-white matt finish and three blades for each propeller.

An EIS has been lodged with the application and this includes an Appropriate Assessment – Natura Impact Statement.

The developer has requested a 10 year planning permission with the construction phase taking approximately 18 months.

It is important to note that there are two more concurrent appeals (viz. PL16.244034 (Ref. P13/633) and PL16.244055 (Ref. P13/631) by the same developer involving proposals for 6 and 7 wind turbines plus ancillary works on separate landholdings c.2 kilometres and 5 kilometres to the north of this appeal, each with a separate EIS.

## **2.0 DEVELOPMENT PLAN**

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.

It is not affected by any Scenic views and there are no Scenic Routes nearby.

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.

## **3.0 RENEWABLE ENERGY STRATEGY FOR COUNTY MAYO 2011-2020**

This 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 Strategic clarifies the approach of Mayo County Council to renewable energy and is intended to reduce uncertainty on these matters. 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).

#### **4.0 PLANNING AUTHORITY'S DECISION**

The planning authority decided to grant permission subject to 46 conditions including:

1. The permission is subject to submission of 19/12/2013 to include Natura Impact Statement and Environmental Impact Statement together with further information lodged on 14/8/2014 and 7/10/2014, except as amended by attached conditions.
2. The permission period for implementation is 10 years from the date of this order.
3. The development shall be for 25 years from the date of commissioning of the wind farm.

5. Need for a detailed reinstatement programme for the decommissioning of wind farm to be agreed prior to commencement of development.
6. there is no agreement/permission to connect the national grid or routing thereto.
9. All cabling from the turbines to substation shall be underground.
10. Condition survey of roads and bridges along the proposed haul route shall be undertaken.
15. Development shall be in accordance with all lodged documents including the EIS and NIS.
16. Need for monitoring plan to be agreed concerning surface water, groundwater, dust and continuous noise.
17. An Environmental Monitoring Committee shall be established.
18. Site preparation and construction works shall conform to the Inland Fisheries Ireland Guidance 'Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites'.
19. Need for a Management Plan to be agreed during construction period on site.
20. Need for an Emergency Response Procedure, with Inland Fisheries Ireland included as a notifiable body in the case of an environmental emergency.
21. Measures required in order to prevent spread of invasive species.
- 22/26. Environmental management measures.
27. Requires a buffer zone of 15 metres from fishery watercourses.
28. Concerns preparation of a Schedule of Works regarding drainage measures to be in place prior to ground works commencing.
29. An emission limit value of 25mg/l suspended solids shall apply prior to ground works commencing.

30. Monitoring programme to be lodged with planning authority on a monthly basis.
31. Need for suitably qualified scientist or engineer to supervise earthworks and construction phase.
32. Concerns noise levels during construction period, which shall be minimised.
33. Sets out dust level parameters.
34. Bunding requirements.
35. Need for oil abatement kits on site.
36. Waste management.
37. Site development works to be in line with DoEHLG best practice recommendations.
38. No stream diversions, culvert installations or replacements to be carried out without the consultation and agreement of the IFI.
39. Construction period shall not occur during the bird-nesting season and a monitoring programme shall be undertaken.
40. Need for preparation of a detailed Conservation Plan for rehabilitation of the site.
41. Noise and vibration levels shall comply with Section 9 of the EIS.
42. Archaeological requirements.
46. Need to contribute €10,000 per megawatt of electricity annually to a Community Fund.

## **5.0 PLANNING AUTHORITY AND OTHER TECHNICAL REPORTS**

A Cover Report from the applicant's agents McCarthy Keville O'Sullivan (Planning and Environmental Consultants) states that the exact turbine model has yet to be determined. The turbines however will be standard 3 blade design rotating in the same direction in a white or off-white colour.

They refer to two sites to the north which will be the subject of turbine applications (by their client), but point out that both already have outstanding permissions for 7 and 4 turbines respectively.

They consider that this site is suitably placed to share a large bulk of the underground cabling with the other two wind farms, thus avoiding duplication.

The site is within an area designated Tier 1 – Preferred Cluster in the Mayo Renewable Energy Strategy, which was subject to SEA and Habitats Directive Assessment prior to adoption. The site is a mixture of hilly and flat farmland plus peat bog. It is located within the ‘South East Mayo Plains – L’ in the Landscape Character Assessment in the Plan and this is the least sensitive landscape area. They state that existing permissions are for turbines of 145 metres whereas this is for 156.5 metres, which is not significantly different.

Tier 1 refers to clusters of 3 – 5 turbines depending on site conditions and visual amenity. This proposal is for 7 turbines, similar to Maghermore to the north.

A ZTV has been prepared including effect of cumulative impacts and in addition, 13 photomontages have been produced.

They point out that mechanical noise has been considerably reduced in recent years. The second source of noise is aerodynamic noise due to the passage of blades. Monitoring after construction would be acceptable, but no houses exceeded guidelines.

Shadow Flicker generally relates to properties within 500 metres of turbines, but in this case there are no houses within this area who are not landowners. 90 houses were checked using modelling techniques of which 82 would be affected by shadow flicker. The DoE Guidelines state that a house should not exceed 30 hours per year or 30 minutes per day. Their research indicated that 55 houses would exceed 30 minutes per day of which 5 are owned by contributing landowners. Moreover, the annual figure of 30 hours would be exceeded at 67 houses of which 6 are participating landowners. However, mitigation measures set out in the EIS will ensure that existing guideline limits would not be exceeded.

They state that there are no known negative health impacts and property devaluation would not occur. The road impacts are generally acceptable subject to various improvements.



In relation to peat the depth varies from 0 to 3.8 metres with an average of 0.7 metres. Proposed access roads would generally be less than 1 metre. The proposed turbines would vary from 0 to 2.7 metres with an average of 0.9 metres. Slope inclinations would be 1-4 degrees, which is low risk in their view.

In relation to drainage there would be no direct discharges to any watercourses. Two distinct methods are proposed viz.

- (a) Avoid disturbance to existing natural drainage features, minimise any works around artificial drainage features and divert clean water around excavations and construction areas.
- (b) Collecting any drainage waters from works areas that may carry silt or sediment, to allow attenuation and settlement prior to controlled diffuse release.

Their drainage design maximises erosion control, which is more effective than having to control sediment during high rainfall. This system requires less maintenance with the area of exposed ground minimised. They outline various measures (p.16) which include interceptor drains, swales, check dams, level spreaders, piped stone drains, vegetation felters, stilling ponds, culverts and silt fences etc.

As regards Ecology an NIS was prepared with likely effects, both alone and in combination with other projects analysed. From the information available the competent authority can conduct an Appropriate Assessment. The closest SAC (Lough Corrib) is 5.3 kilometres away whilst other SACs within 15 kilometres are outlined viz. River Moy, Carrokeel Turlough, Kilglassan/Cahevavoostia Turlough Complex, Greagan's Turlough and Ardkill Turlough. The NIS concludes that there would be no significant or indeterminate impacts which would affect the integrity of any Natura 2000 sites.

There were 16 habitat types within the study area, the majority of which were generally agricultural grassland. The entire area is part of a rural working landscape primarily consisting of grazing plus some forestry. The proposed development would result in a permanent loss of 3.35 hectares of improved grassland, wet grassland and conifer plantation with a low overall impact.

They conclude that proposal would have a low impact on fauna.

A grid connection would involve a route running north-west of turbine no. 5 across fields and lane to meet to the R327 from where it will continue underground along the public road network to connect with either the existing permitted or proposed substation at Cloontooa Wind Farm.

They conclude by stating that the proposed wind farm has been designed to reduce environmental impacts and no third party dwellings are located within 500 metres of any of the turbines.

The report of the Area Engineer (5/1/2014) notes proximity of turbine no. 4 to a private access road and continues that access to site needs to be clarified.

The archaeologist's report recommends pre-development testing.

The report of Inland Fisheries Ireland (31.1.2014) notes that the site is situated within the River Robe catchment, which is an important trout angling amenity and the main recruitment source of trout for the Lough Mask fishery. The River Robe is not specifically protected under Habitats Directive, but Lough Mask is a candidate SAC. The river also supports protected species such as the lamprey and white-clawed crayfish.

The tributary which drains this site has 'poor ecological status' whilst the Robe has 'bad ecological status'.

They consider that all the mitigation measures set out in the EIS must be implemented and they set out the basis for a comprehensive set of conditions relating to environmental management and monitoring.

A report from Dr. Karol Donnelly (Environment) dated 6.2.2014 endorses the EIS Flora and Fauna section, but states that mitigation measures set out in NIS should be combined with EIS to provide a clearer and more concise report.

The report of the Department of Arts, Heritage and the Gaeltacht dated 11/2/2014 considers that more information on birds is required. White-clawed crayfish, which is confirmed to be present on the site, is a Habitats Directive Annex II Species and is legally protected under the Wildlife Acts.

They continue that specific information regarding the flora and vegetation communities of peatland habitats on the site is lacking in Section 5 of the EIS. The losses of peatland habitats in the peat/spoil disposal areas would appear substantial but are not quantified or qualified.

In response to a great many objections lodged on the file including from local representatives McCarthy Keville O'Sullivan submitted unsolicited additional information on the 18/2/2014. This covered such issues as noise, health risk, shadow flicker, visual impact, turbine locations, flora and fauna etc. and essentially considered that all those concerns were addressed in the EIS submission.

A report from Mr. L. Walsh of the Environment Section dated 18/2/2014 recommended additional information regarding watercourse setbacks/protection, impact of peat excavation on water bodies, materials (including sources) of road materials, turbine foundation depths and control of turbines in order to prevent/reduce shadow flicker.

The OPW report dated 17/2/2014 encloses map indicating all Mask Robe CDS channels in vicinity of the site and stating that no flooding should occur or be exacerbated. They also refer to the need for adequate setbacks from arterial drainage channels.

The Planning Report dated 18/2/2014 sets out 18 points of additional information relating to birds, flora and vegetation, fish, archaeology, drainage, peat excavation, roadway construction, turbine foundation depths, shadow flicker, map of all lands owned by the developer located within 500 metres of each turbine and map of all houses within 500 metres of each turbine.

A reply was lodged by McCarthy Keville O'Sullivan on the 14/8/2014 and new public notices were published.

The Roads Report dated 20/8/2014 has no objection to routes proposed, but an assessment of roads/bridges should occur prior to commencement. A cash deposit of €80,000 per mile for maintenance/repairs to any damage to public network to be lodged.

The Department of Arts, Heritage and the Gaeltacht submission of 2/9/2014 states that concerns remain regarding bird impacts and cumulative impacts on birds as a result of the wind farm and other permitted/proposed wind farms.

They state that the Council is advised against conditioning the future development or agreement of any required monitoring, such as the bird monitoring programme; any such requirements should be agreed and in place prior to project approval.

The report of the Archaeologist (3/9/2014) confirms the need for archaeological monitoring.

The report of the Environment Section (30/9/2014) considers that responses in relation to Items 12, 13, 14, 15 and 16 of additional information request re: watercourse buffers, impact of peat excavation, road materials, turbine excavations and shadow flicker to be generally acceptable. It states that some environmental impacts will occur during the construction phase, but these are transient and of a temporary/short term nature. They enclose 14 conditions that would be considered appropriate in regard to environmental issues.

A further submission dated 7/10/2014 relating to bird monitoring programme was lodged by McCarthy Keville O'Sullivan on behalf of applicant.

The final Planning Report dated 7/10/2014 outlines the project, planning objections (summarised as being noise, setback distance, shadow flicker, visual impact, impact on wildlife, waterways, flora and fauna, health impacts, impact on bloodstock, property prices and saleability, future plans for sites, lack of public consultation, not indigenous to surrounding area). Further points of objection included inadequate bat survey, turbines out of character, impact on Knock Shrine, project splitting, non-compliance with SEA, impact on nearby national school, reduction in milk productivity leading to financial loss, inadequate EIS, possible interruption of phone lines, guidelines out of date, negative tourism impact, impact on Claremorris, location of turbine 4 raises concerns, drainage impacts, flooding and inadequacy of photomontages. The report summarises all internal and external technical reports and the EIS – it continues with local development plan criteria relating to renewable energy which includes compliance with government wind energy guidelines of 2006.

It concludes by recommending that permission should be granted.

## 6.0 FIRST PARTY APPEAL

McCarthy Keville O'Sullivan (Planning Consultants) state that this is one of three wind farms which in total would deliver 40.8MW with Grid 3 connection to the Dalton substation just outside Claremorris – this refers to connection to the national grid.

While they welcome the decision of the planning authority they are specifically objecting to condition nos. 5, 41, 44 and 46, which read as follows:

5. Prior to commencement of development, a detailed reinstatement program for the decommissioning of the wind farm shall be submitted to Mayo County Council for written agreement. They said program shall apply to full or partial decommissioning of the wind farm, or if the wind farm ceases operation for a period of more than one year. The said program shall provide for the dismantling and removal from the site of masts, turbines and buildings including foundations and roads. The site shall be reinstated in accordance with the said program (including all access roads) and all decommissioned structures shall be removed within three months of decommissioning.  
**Reason:** To ensure the satisfactory decommissioning of the project.
41. Noise and vibration levels shall be at the levels stipulated in Section 9 of the EIS submitted to Mayo County Council on the 19/12/2013.  
**Reason:** In the interest of residential amenity.
44. The developer shall lodge a cash deposit of €80,000 (eighty thousand euro) to Mayo County Council to provide for maintenance/repairs to any damage caused to existing public road network.  
**Reason:** To safeguard the existing public local road network.
46. The developer shall pay to Mayo County Council an annual contribution of €10,000 per megawatt of electricity produced from the development, to a Community Fund to be established by Mayo County Council in accordance with the policy on community benefit contributions required for certain major developments adopted on 11/4/2014, towards the cost of the provision of environmental improvements, recreational 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 cost of environmental, recreational or community amenities which will mitigate the impact of the transport of waste peat on the local community.

They consider that these conditions are inappropriate in terms of their wording, content and/or clarity.

They divide the appeal into two parts – Part A relates to condition numbers 5 and 41 whilst Part B relates to condition numbers 44 and 46.

In relation to condition no. 5 they acknowledge the need for decommissioning, but state that the scale of the infrastructure conditioned to be removed and demolished is excessive and may in itself create unnecessary environmental impacts. They suggest what is regarded as a more standard wording that has been used by the Board.

Removal of foundations and roads is questioned due to such factors as noise, dust, concrete to be removed. They argue that turbine foundations should remain in-situ and be covered with earth. The new roads may benefit existing land users. Condition No. 5 does not allow any flexibility or more appropriate decommissioning, as suggested in the EIS. Removal of above ground elements would be acceptable, but roads and foundations could be retained. Therefore revised wording is requested.

### **Re C41 – Noise Levels**

They accept the need for noise limits at the operational phase, but argue that the condition should be reworded to that used by the Board in other wind farm cases. This would set a defined noise limit, but would allow for improvements (i.e. reduction) in noise levels emanating from the site through technological improvements.

### **Part B – Financial Conditions**

C. 44 - €80,000 bond.

They do not argue about the scale or the principle of this condition. However, the condition lacks clarity and does not specifically refer to a bond nor do we know when such a bond would be released. They

request the Board to reword the condition and add clarification as to when the bond would be released.

### **C. 46 – Communal Fund**

Their concerns relate to the following:

- Application of Local Authority Section 109 Funding through planning conditions; and
- Scale of the contribution.

Section 109 should ensure that funding is not by means of planning conditions. Secondly the scale proposed is excessive.

Mayo County Council's Policy on Community Benefit was adopted by the County Council on the 11/4/2014. Section 109 permits a local authority to make a resolution establishing a fund for the purposes of supporting community initiatives – this is separate to a local fund.

The current application was lodged before the community funding policy was adopted. However, in the EIS a community contribution and liaison committee has been proposed (Section 3.2). They point out that the Community Fund is a nationwide scheme with only 75% of funds raised being used in a local area – it is not targeted or proportional to any specific projects.

They reiterate that there is no objection to community funding or entering into an agreement with the local authority. However, they query whether a planning condition represents the best approach. The Renewable Energy Strategy refers to community benefit as a 'goodwill' contribution whereas in their view Condition 46 is not a goodwill contribution to the local community nor does it constitute an agreement with the applicant company.

They refer to contributions set out under the Planning Act (as amended) and state that this is not applicable here. In any event, the scale at €10,000 per MW is considered excessive and unrealistic. On the other hand they would fully comply with a contribution in line with that indicated in Section 3.2 of the EIS.

## **7.0 THIRD PARTY APPEAL**

### **(a) Peter Sweetman and Associates**

They refer to the three wind farm submissions viz. P13/63, P13/633 and P13/617 and to the planning reports. They point out that a single underground cable connects all three developments to a single substation, but the connection from this substation to the grid is not included. In their view this represents 'project slicing' rather than 'project splitting'.

They argue that in order to comply with European Law the Board should amalgamate the three applications into one and return surplus fees. If they do not do this they will be in contravention of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters.

They continue that the County Council failed to carry out an Appropriate Assessment or an Environmental Impact Assessment.

It is further stated that information supplied is inadequate for the Board to carry out an EIA and they refer to planning authority conditions viz. nos. 5, 6, 8, 10, 12, 16, 17, 20, 21, 23, 26, 31, 33 and 37 outlining their inadequacies. They quote from Circular Letter PD 2/07 which states that under no circumstances should planning authorities use compliance conditions to complete an inadequate EIS.

Various legal cases are attached as appendices.

### **(b) Environmental Action Alliance Ireland on behalf of Ms. Marie Kilcullen**

They also refer to project splitting having been undertaken with each project being relatively small thus enabling compliance with the designation in the Renewable Energy Strategy for County Mayo as a Tier 1 – Preferred (Cluster of Turbines).

This division is to the detriment of proper public participation and makes everything very expensive.

They refer to EU Directive 2011/92/EU; codified under Article 192(1) of the Treaty on the Functioning of the European Union.



They state that the planning authority failed to comply with the objectives of the SEA, EIA or Public Participation Directives and with the Aarhus Convention.

They indicate that by failing to include grid connections as part of the project there is violation of 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 EIA Directive.

They outline various weaknesses/deficiencies in the EIS including Non-Technical Summary, which in their view contains technical language. They state that no EIA was carried out by the Council.

They illustrate how public participation as set out by Aarhus Convention and Implementation Guidelines has not been achieved.

They claim that the planning authority did not produce an Appropriate Assessment Conclusion Statement.

## **8.0 PLANNING AUTHORITY TO BOARD dated 24/11/2014**

In response to the first and third party appeal submissions the planning authority state that this appeal relates to a site located south of two permitted clusters of wind turbines at Cloontooa (4 turbines) and Magheramore (7 turbines), the maximum distance being 10 kilometres. They provide details of planning history and set out various development plan policies relating to renewable energy with which they consider that the project complies with, in particular Volume 1 – Section 3 and Section 4, Volume 2 – Renewable Energy Section 54.

It also complies with the Council's Renewable Energy Strategy 2011-2020 as the site is within Tier 1 – Preferred (cluster of turbines), which is most suitable for a small cluster of turbines.

They outline main objections (including 1<sup>st</sup> party) in a tabular format and state that an Environmental Assessment was undertaken – see planning report. However, due to time and logistical constraints (three concurrent submissions) it was not possible to commit text version of EIA Assessment report to the file (see Appendix 1).

Likewise, they state that Appropriate Assessment was carried out, but again it was not possible to commit it to file (see Appendix 2).

In response to 'Project Slicing' they say that this is generally undertaken in order to avoid having to prepare an EIA. In this instance however three have been submitted and cumulative impacts were addressed.

In reply to P. Sweetman's submission it is stated that except for Condition 17 all the issues were undertaken in the EIS. These conditions refer to operational matters on foot of the EIS. For instance Condition 10 relates to haul routes – the planning authority had no objection to these routes or improvements, but a before/after road and bridge survey is required. Similarly Condition 26 is a product of Section 5.4.3 of the EIS which states that no salmonid species occur on drains/streams within the site, but the River Robe which traverses the site is salmonid river. Therefore precautions are necessary and the developer must treat these watercourses as if they were salmonid.

They consider that there is adequate information in the EIS and on file to allow the Board to carry out an EIA.

In relation to objections that an SEA was not undertaken they contend that it was not required as these applications do not constitute a plan or programme within the meaning of Article 2(a) of SEA Directive 2001/42/EC. However, SEAs were carried out for the current county development plan and for the renewable energy strategy, both of which form the framework for future development consent for the wind farm proposed in this planning application.

As regards Project Splitting they state that the EU Commission has clarified on several occasions that the EIA Directive does not preclude projects from being subject to more than one decision and EIA provided that all the relevant impacts are fully and properly assessed.

A connection to the national grid ultimately lies with ESB/Eirgrid, who normally require a permission to be in place before deciding a route. Normally a 38KV is required. In this case a Grid 3 connection is in place at Dalton, Claremorris. The likely route is stated by applicant to be via an underground cable running alongside the public roadway from the site.

In response to inadequate public notices they state that Section 34(1A)(c) of the Planning and Development Act, as amended, is a notice to be published after a planning authority has made its decision and is therefore not relevant.

Regarding non-compliance with the Aarhus Convention on Public Participation they state that this is already enshrined in Irish planning law, which includes site and public notices and an appeal system.

### **Re: 1<sup>st</sup> Party Appeal**

Condition 5 – They contend that this is standard wording that has previously been used by the Board. They do not accept that underground works or building should be left on site as future drainage management would be left unresolved. Also it would be visually unacceptable.

Condition 41 – They would not object to the Board rewording this condition, but point out that noise levels indicated in the EIS did not exceed required limits.

Condition 44 – They note that the developer accepts the imposition of a bond, but expresses concern regarding ‘application’ of the cash deposit and the date of release.

The cash deposit refers to the need to provide for maintenance/repairs to any damage caused to existing public road network. The date of release would be the date of final completion of the project.

### **Condition 46 – Community Benefit**

They refer to Section 3.2 of the EIS, which includes a proposal for Community Gain and thus accepts the principle involved. The appeal submission states that there is no objection to contributions as per Section 3.2 and thus this is further acceptance of such a condition.

Community Benefit contributions were adopted by the Council on 14/4/2014 (see Appendix 2) and Condition 46 confirms this policy. Condition 46 relates to benefit contributions for the community as a result of the proposed development, a principle already accepted by the appellant. It reflects a Council resolution and does not fall within Section 48 or Section 49 of the Planning Act. The figure imposed is that set out on 14/4/2014 by the Council.

They conclude by stating that proposal complies with the development plan and renewable energy strategy. They refer to outstanding permissions and state that the three schemes appear visually in the landscape as one unified development. Moreover, connection to the national grid is available. The environmental impact assessment does

not highlight any significant adverse effects on the environment nor does appropriate assessment identify any significant impacts on Natura 2000 sites. They request the Board to uphold their decision and enclose Environmental Assessment and Appropriate Assessment in appendices.

## **9.0 DEVELOPER TO BOARD RE: THIRD PARTY APPEALS**

In response McCarthy Keville O'Sullivan state that these appeals do not raise site specific issues. They outline the application, additional information request and their response and then review internal and external reports received by the planning authority. Many meetings took place with officials throughout the process in order to clarify and resolve various issues that had been raised. The planning report recommended permission subject to 46 conditions and subject to revisions to wording of four conditions was acceptable to the applicant. It is in line with plan policies/objectives at a suitable location for such an enterprise. They refer to local, regional and national energy policies including 'Strategy for Renewable Energy 2012-2020', 'Regional Planning Guidelines for the West Regional 2010-2022', the Mayo County Development Plan and the Renewable Energy Strategy.

In response to claims of Project Splitting/Project Slicing they point out that each of the three applications is a discrete site. A public information meeting regarding the three proposals was undertaken. All three have the same applicant and were lodged with the planning authority on the same day; indeed 3 EIS's were also lodged with cumulative impacts fully set out. They acknowledge that the Board must carry out its own EIA prior to issuing a decision.

Before the application was lodged pre-planning discussions were held with the planning authority who recommended the submission of three applications with separate EIS's, each site specific, but with cumulative impact analysis outlined. This had the advantage of allowing independent analysis for each site of such matters as shadow flicker, noise etc. which would be easier to understand from a public participation viewpoint as it would be site specific.

As regards substation they argue that a substation has already been permitted at Cloontooa under PL16.237401 (Reg. Ref. 09/663) – dated September, 2011 and this lasts for 10 years. It is standard practice for wind farms to be assessed separately to the connection route as this route can depend on the permission ultimately granted.

The Renewable Energy Strategy does not specifically define clusters in terms of extent of such areas and how many clusters each can accommodate. It is a strategy document that contains guidance on strategy issues in terms of identifying areas that have ‘...no or low planning constraint’ (Section 6.4).

Their layout takes account of site constraints and sensitive receptors such as landscape. While it is a distinct application it will fulfil the Grid 3 connection capacity that has been secured for the project by their clients.

They repeat that grid connection has yet to be finalised and a condition has been included in the planning authority’s decision on this issue. These conditions are relatively standard and indeed one is included in the Board decision PL16.237401. Their preference is for an underground routing, but this has still to be determined. The Wind Energy Guidelines (Section 7.12) cover this point.

Regarding content of the EIS they state that both the EIS and Additional Information lodged fully comply with legal requirements. This was accepted by the planning authority and while they requested additional information this did not raise any fundamental issues in regard to the EIS. The Non-Technical Summary is also in compliance with the legislation. Section 2.13 of the EIS outlines scoping process, which involved 39 consultees.

They discuss various conditions raised by the appellants as inadequate/inappropriate viz. nos. 5, 6, 8, 10, 12, 16, 17, 19, 20, 21, 24, 30, 32 and 36. They continue that the information is either presented/available within the EIS, or that relevant conditions have been imposed to clarify mitigation measures and ensure that they are properly implemented within the overall development. They consider the planning authority conditions follow best practice either from nearby permissions or from the Wind Energy Guidelines. Under Appendix 2 they have submitted a Preliminary Construction and Environmental Management Plan.

All public notices are compliant with the relevant legislation and public participation is reflected in over 100 submissions being lodged with the planning authority.

They state that Strategic Environmental Assessment (SEA) is not required, but was undertaken in the Renewable Energy Strategy.

The Appropriate Assessment is considered to be comprehensive and in any event the Board will be carrying out its own appropriate Habitats Directive Appropriate Assessment.

They conclude by referring to the site's Tier 1 location, its close proximity to Gate 3 grid connection, its compliance with renewable energy objectives/policies at local and national level and its compliance with public notice requirements. It does not consist of project splitting/slicing and planning authority conditions generally conform with best practice methodology. The application should therefore be in a position to be granted permission by the Board.

#### **10.0 2<sup>nd</sup> SUBMISSION FROM PETER SWEETMAN AND ASSOCIATES**

They repeat concerns regarding Appropriate Assessment and Environmental Impact Assessment referring to previous European Court Decisions and consider that insufficient information is available upon which to make a decision. This is a case of project splitting/slicing.

Health issues such as sound or shadow flicker have been inadequately addressed (see their appendices and technical reports on these matters) and properties will be devalued.

The lack of grid connection represents a major flaw legally. Impacts of peat removal are also problematic as is the overall case for wind farm development. The proposed development at this location is not sustainable in their opinion.

Subsequently in a letter dated 11/12/2014 Mr. Sweetman's solicitors O'Connell and Clarke sought a time extension in order to resubmit a revised appeal but in a letter dated 12/12/2014 this was rejected by the Board. O'Connell and Clarke then wrote to the Board on the 16/12/2014 seeking access to local authority documentation, but in a letter dated 23/12/2014 the Board replied that it was not in a position to grant access to the documentation requested.

#### **11.0 2<sup>nd</sup> SUBMISSION BY MCCARTHY KEVILLE O'SULLIVAN dated 12/1/2015**

This is in response to planning authority submission on 1<sup>st</sup> and 3<sup>rd</sup> party appeals.

They concur with the planning authority's viewpoint that the proposed development complies with both the Mayo County Development Plan 2014-2020 and the Mayo Renewable Energy Strategy 2011-2020.

They also concur that the planning authority Environmental Impact Assessment review is acceptable. This concludes by stating that the proposed wind farm development, subject to mitigation measures proposed in the EIS would not be likely to have any significant adverse effects on the environment.

They also refer to a recent legal case involving a Judicial Review viz. O'Grianna v. An Bord Pleanála, which occurred after the planning authority had made its decision in this case. This judgement concluded that a cable route connection from a proposed wind farm should be included within the EIA of the consenting authority. In response to this they have lodged an addendum to the EIS so that the Board can carry out a relevant assessment using the criteria established in the recent High Court judgement. In effect this has already been referred to within the EIS, but new additional details in relation to this element has been provided. In their view, no significant adverse environmental impacts would occur and the EIS findings have not been altered. Various mitigation measures have been put forward. They confirm that the cable route and junction accommodation works do not form part of the current planning application as they will be subject to separate consent procedures.

In the light of recent legal findings they have updated Article 6(3) Appropriate Assessment Natural Impact Statement – this includes underground cable route and junction accommodation works. Revised wording is highlighted in green. It concludes that there would be no significant or indeterminate impacts that would adversely affect the conservation objectives or overall integrity of any Natura 2000 site in the vicinity of the site of the proposed development.

They agree with the planning authority that this is not a case of 'Project Slicing'.

The planning authority submission states that conditions imposed relate to subjects within the EIS and indicate how the planning authority will deal at an operational level with matters in the EIS.

They agree that SEA is not appropriate and that public notices are in line with legislation.

Regarding response of planning authority to 1<sup>st</sup> party appeal condition re condition 5. They do not accept that removal of foundations or roads is necessary as they would have no significant adverse visual or drainage impacts.

Re condition 41 – The planning authority acknowledge that noise levels could be established as an upper limit not to be exceeded if considered suitable as they have requested.

Re condition 44 – They accept planning authority's clarification regarding date of release of the bond upon final completion of the project.

Re condition 46 – The planning authority accept that community benefit fund does not come under Section 48 or Section 49 of the Planning Act and confirms their view that it should not be imposed as a planning condition. However, they accept that a community benefit scheme as outlined in the EIS would be reasonable, but the planning authority's figures are excessive and unrealistic.

As stated above an addendum to the EIS and an updated NIS are enclosed including maps and synopsis information.

## **12.0 SUBMISSION FROM THE DEPARTMENT OF ARTS, HERITAGE AND THE GAELTACHT, dated 9/1/2015**

This states that from a nature conservation perspective, the key outstanding issue of concern is in relation to the likely significant effects on birds. Their previous observations continue to stand.

## **13.0 SUBMISSION FROM PETER SWEETMAN AND ASSOCIATES, dated 10/1/2015**

This refers to the Judgement of Mr. Justice Peart in the case of O'Grianna and others v. An Bord Pleanála (copy enclosed) which refers to the need to include a grid connection rather than allow it to be treated as a separate application. In his view the Board has no option but to refuse the application and award him his costs.



## **14.0 PLANNING HISTORY**

There is no planning history concerning wind farms at this location.

PL16.237401 (Reg. Ref. 09/663) – By order dated 14/9/2011 the Board granted permission for a wind farm consisting of 4 wind turbines, anemometry mast, an electrical substation, associated access tracks, underground cabling and works at Cloontooa, Claremorris.

This site is to the north of current appeal site (c.2 kilometres) and the permission is for 10 years from the date of this order. The turbines would have a hub height of 100 metres.

Reg. Ref. P09/664 – Permission granted by planning authority for 7 wind turbines (up to 100 meters hub height) and a blade length of up to 45 metres at Magheramore c.6 kilometres north of current appeal site.

## **15.0 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.

## **16.0 WIND ENERGY DEVELOPMENT 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.

### **Strategy for Renewable Energy 2012-2020 – Department of Communications, Energy and Natural Resources**

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.

## **17.0 ASSESSMENT**

### **Third Party Appeal**

- **Principle of Development**

It is fair to say that the broad thrust of Government policy is to support renewable energy growth and in particular wind energy. It is also widely

accepted that climate change is an on-going reality that will have major environmental impacts and that a key component of this problem is increasing use of fossil fuels throughout the world. Government policies are reflected in regional, county and local plans which were quoted above.

In 'Strategy for Intensifying Wind Energy Deployment' the recommended plan-led approach sees spatial planning considerations as crucial in determining suitable areas where wind farms may be accommodated.

The 'Renewable Energy Strategy for County Mayo' was adopted in 2011 by the Council and is thus a relatively recent document which provides locational guidance for renewable energy development within the county. Avoidance of sensitive landscape and environmental designations is an integral consideration of this document. The appeal site is located within an area designated Tier 1 – Preferred (Cluster of Turbines) and is thus included within an area where such development is considered to be reasonable. The site is not an SAC, SPA or NHA nor are its environs.

Having regard to the above I would consider that the proposed development is acceptable in principle.

- **SEA**

It has been argued that a Strategic Environmental Assessment should have been undertaken, but this proposition has been rejected by both the developer and the planning authority on the basis that it (the application) does not constitute a plan or programme. Incidentally this would also appear to be the view of Mr. Sweetman. In my view the legislation does not require an SEA for this type of development and the argument is therefore rejected that such is necessary. In any event SEA was undertaken in relation to both the development plan and the RES.

- **Landscape/Visual Impact**

Mayo is rightly recognised as a county which contains many places of great natural beauty and is a prime tourism destination. The development plan contains a Landscape Appraisal for County Mayo with attached maps and a Landscape Sensitivity Matrix.

The appeal site is located within area L – South – East Mayo Plains, which is stated to be an area of high quality pasture with distinct paddocks divided by rock walls and well maintained hedgerows.

The only 'Vulnerable Area' at or close to the appeal site is the River Robe. There are no scenic routes or scenic views in this area nor are there any prominent slopes or ridgelines.

The county is divided into four landscape categories of which the site is within Area 4 – Drumlins and Lowlands. It is fair to say that the appeal site is not within a particularly scenic part of the county as found along the coastal or mountain areas.

The Visual Impact Assessment in the EIS has selected thirteen viewing points from a wide variety of locations which I consider to be representative, including cumulative impact with other wind farms. The EIS provides, in accordance with the guidelines, ZTV's with 20 kilometres and 25 kilometres radii. The nearest major routes are the N17 (c.3.5 kilometres) to the west, the N60 (c.0.5 kilometres) to the north and the N83 (c.10 kilometres) to the east. In addition there is the R327 (along northern boundary) and R328.

Given the topography these turbines will be visible from a wide range and the overall impact will be increased when other wind farm developments are included. Undoubtedly turbines have been increasing in height and capacity, but large blade diameters involve a slower rotation speed which is visually better. There is a subjective element to such tall structures appearing, but their tall slim design involving a matt white or off-white colour is to a high aesthetic standard which in my view would be acceptable at this location. It is also fair to say that the increasing size of turbines is difficult to perceive, as there are very few comparable scale indicators within such landscapes. This means that larger wind turbines do not necessarily result in significantly greater visual impact than smaller models. Indeed they can lead to less turbines being proposed due to increased capacity.

In this type of area consisting of variable or gently undulating landform the landscape lends itself to smaller clustered windfarms rather than large uniform groupings. Essentially this is acknowledged in the Renewable Energy Strategy wherein it is classified as Tier 1 – Preferred (Cluster of Turbines).

While there can be argument as to appropriate locations for photomontages it is my contention that having inspected the site and surrounding area they represent a reasonable perspective of the proposed development from a variety of roads and distances. In addition, cumulative impacts are also illustrated. Given the distance and topography the proposed turbines do not unduly dominate the landscape, but they will be visible from quite lengthy distances. I would also state that related infrastructure such as roads and compounds should not be visually disruptive with good use made of existing routes.

- **Lack of Environmental Assessment and Appropriate Assessment undertaken by the Planning Authority**

In their submission to the Board the planning authority under Appendix 1 have enclosed an Environmental Impact Assessment Report and under Appendix 2 an Appropriate Assessment Report. It would appear that neither were made available to the public, but this is a procedural matter for the planning authority. From the information submitted I am satisfied that the planning authority did undertake appropriate examination as required. The Board must also carry out such an assessment.

- **Public Participation/Notices**

The notices indicated in the application were validated by the planning authority and on inspection some were still in place. I am satisfied that the notices comply with the relevant legislation and provide a comprehensive outline of the intended development. In addition reference is made to EIS and NIS, which may be inspected and that submissions or observations in relation to the application may be made to the planning authority.

The planning process in Ireland allows for and encourages public participation. A simple perusal of the file indicates that numerous objections were lodged with the planning authority outlining a wide variety of concerns. ON foot of additional information more objections were submitted. Subsequent to the decision of the planning authority two third party appeals have been lodged, so it is quite clear that there was considerable public knowledge and engagement with the proposed development. Indeed a public meeting was undertaken prior to lodgement. I would therefore reject this contention regarding participation.

- **Project Slicing or Splitting**

The appellants have argued that the three concurrent applications by the same developer involving twenty turbines in total plus ancillary works including roadways, a substation, anemometers and compounds should have been the subject of a single application and in addition the subsequent connection to the national grid should have formed part of this scheme.

In reply the developer's agents have indicated that pre-planning meetings took place with the planning authority and it was considered that three separate applications represented the better option. From their point of view it necessitated the preparation of three separate EIS's so that not only the appellants, but the developer incurred more expense.

As stated in the documentation project splitting has been done in the past in order to avoid preparation of an EIS, but this has not happened here. While a case can be made for one application the proposals involve three distinct landholdings with varying impacts on the landscape, residents and environment such as noise, shadow flicker, drainage, roadways etc. Given the amount of information lodged I do not consider that these objections have any merit.

In relation to grid connection it is stated that the three applications form part of an aggregate approval to connect 40.8MW Gate 3 connection to the Dalton substation just outside Claremorris. Section 4.3 of the Wind Energy Guidelines deals with this aspect stating that where connection is not exempt, it will be necessary to submit a planning application to the planning authority. Best Practice would suggest that an integrated planning application that combines grid interconnection information together with details of the wind energy development should be submitted to the planning authority. However, if this is not possible, then the planning authority should agree in advance with the developer the information on the grid connection that they consider necessary to enable them to make a full planning assessment.

Due to various considerations including number and location of turbines plus ancillary works such as exact line of roadways most wind farm developments have not included grid connection as part of a single unified submission. However, a recent legal judgement concerning O'Grianna and others v. An Bord Pleanála specifically related to this issue (project-splitting due to omission of grid connection).

Mr. Justice Michael Peart states that 'I am satisfied that the second phase of the development in the present case, namely the connection to the national grid, is an integral part of the overall development of which the construction of the turbines is the first part'. He continues that 'the connection to the national grid is fundamental to the entire project, and in principle at least the cumulative effect of both must be assessed in order to comply with the Directive'. He concludes that this is one project only and should not be sub-divided into separate elements.

Mr. Sweetman's submission of 10/1/2015 specifically refers to this judgement and requests the Board to refuse permission on this basis.

I would also refer to the submission received from McCarthy Keville O'Sullivan dated 12/1/2015.

In the light of the O'Grianna judgement they submitted revised information concerning the grid connection and road junction improvements in the form of an Addendum to EIS and NIS.

Section 2.12.5.2.3 of the EIS is entitled Electricity Substation and Grid Connection.

This section outlines three options the first of which involved a separate substation for each site, which was considered unnecessary replication; the second involved a substation outside any of the three sites and the third involved location at the middle site (Cloontooa). This site already has permission for a substation albeit in a different location to current proposal. The substation would serve all three sites and then connect to the substation at Dalton and the national grid. This represented the preferred choice via undergrounding, but would not form part of current application.

Section 3.4.5 also deals with Grid Connection with Figure 3.9 outlining grid connection options, but this is indicative only the intention being to run an underground cable alongside the public road.

While the information submitted is informative the proposed routing and junction works are indicative only. In other words they do not form part of the current application/appeal and would not be subject to condition in the event of a decision to grant permission by the Board.

The Board could circulate the submission of 12/1/2015 for comments by other parties, but in the circumstances it would be of limited value and could involve considerable delay. In addition to this being an indicative

route problems arise as to view of the planning authority regarding ownership of land, issues of drainage/road stability, maintenance etc. Likewise, Eirgrid/ESB Networks would need to be consulted along with appellants and the public at large (new notices) together with prescribed bodies such as IFI and the Department of Arts, Heritage and the Gaeltacht.

- **EIS**

An Environmental Impact Assessment and Appropriate Assessment accompanied the application and was supplemented by further information from McCarthy Keville O'Sullivan. The EIS involves a grouped format which deals with separate descriptions of the proposed development as separate chapters and there is a non-technical summary.

The EIS outlines the location, nature and background of the proposed project and provides information on energy policy and targets. In addition to the 7 turbines (maximum height 156.5 metres) existing roads would be upgraded and new roads installed, the site access junction would be improved, an anemometry mast erected (100 metres), 4 peat disposal areas, underground electricity cabling, temporary construction compound and ancillary works would be undertaken.

Various constraints and alternative options were considered. Existing roads (1.87 kilometres) would be upgraded and 2.74 kilometres of new roads constructed. Table 3.2 relates to peat management and its depth at turbine locations (0 – 2.5 metres maximum). Various peat disposal areas would be formed throughout the site with a maximum height of 1.5 metres. No material will need to be exported out of the site. The temporary construction compound will be 2,300 square metres in areas – all wastewater will be tankered off site. Approximately 0.35 hectares of trees will need to be felled, but replanting will take place elsewhere on the landholding.

All site activities will be subject to an Environmental Management Plan which would be overseen by a suitably qualified person. The site would have two access points. Construction period would be approximately eighteen months. Various drainage issues are set out. The farm would have an operational life of 25 years.



- **Human Beings**

This covers population density, public perceptions of wind farms (generally positive), tourism, health impacts (no adverse impacts from scientific studies), property values (no Irish studies undertaken, but devaluation is rejected citing international sources).

In relation to shadow flicker 90 houses were mapped in the vicinity (Fig. 4.8) together with separation distance from nearest turbine. Modelling was undertaken (Wind Farm Version 4.1.2.3) and this concluded that 82 houses would experience shadow flicker with 55 exceeding the daily guidance of 30 minutes, but five belong to local landowners participating in the project. Cumulative impact was also researched but found no additional impacts. Of the 90 houses 67 houses would exceed the wind guideline limit of 30 hours, but 6 are participant's properties. This figure would reduce to 3 when regional sunshine data is taken into account, but mitigation measures will ensure that no house exceeds guideline – these include planting/screening, use of blinds and site-specific measures. This would involve on-going monitoring and they point out that figures presented represent a worst case scenario. In any event use of SCADA technology can ensure turbine does not operate at certain periods.

In relation to noise they outline controls during construction phase and state that there is only one house within 500 metres of a turbine and this is owned by a participant.

There would be no interference with Communications Systems.

It concludes that no negative impacts are anticipated in regard to human beings with mitigation measures available.

- **Flora and Fauna**

Detailed surveys were undertaken. Most of the land consists of managed agricultural grassland. This section also outlines details of SAC and NHA areas within 15 kilometres of the study area the nearest being Lough Corrib SAC (5.3 kilometres South-East), but as this is not connected hydrologically to the appeal site no significant impacts are envisaged. This also applies to River Moy SAC (6.8 kilometres to North) whilst separation distances of 8.9 kilometres or more to Carrowkeel Turlough SAC, Kilglassan/Cahevavoostia Turlough Complex SAC and Ardkill Turlough SAC are considered to provide adequate buffers. This also applies to NHA's (see Figure 5.1).

As stated previously a Natura Impact Statement was lodged with the EIS (Appendix 6).

In relation to birds no Red Grouse or Hen Harriers were encountered. Golden Plover, Snipe and Kingfisher were recorded on site. There was also a herd of Whooper Swans beside the River Robe possibly on a migratory passage.

Bat activity (4 species) was considered to be moderate. No badgers or otters were seen.

White-clawed Crayfish were recorded – this is an Annex II species. Although butterflies were recorded there were no Marsh Fritillary identified on site.

Various mitigation measures are put forward.

- **Soils and Geology**

This states that geological mapping and site investigations were undertaken and were supplemented by geotechnical investigations and a peat stability assessment (see Appendix 6.1). There is a mixture of soil types with different drainage characteristics. The majority of the site is covered in limestone glacial till mineral subsoil. There are smaller areas of blanket bog. Peat depths vary from 0. to 3.8 metres with an average depth of 0.7 metres. Turbine foundations have an average depth of 0.9 metres peat. See Figure 6.1.

Excavation of bedrock from off-site borrow pits will provide material for access roads, turbine bases and general hardstanding areas.

The analysis of peat stability indicates that Factors of Safety for this site are acceptable and above the required minimum value of 1.3 for all locations.

Various mitigation measures are outlined for construction phase e.g. bunding, spill kits, absorbent materials, checking of vehicles. Avoidance of peat stripping during dry weather will occur and peat will be stored in fixed locations. Subject to compliance with mitigation measures no residual impacts on the soil and geological environment are anticipated.

- **Water**

The proposed wind farm is entirely situated in the River Robe surface water catchment. The limestone bedrock underlying the site is classified as regionally important and groundwater is classed as sensitive in terms of potential impacts from the proposed development. No wells are located in close proximity to the development areas and no impacts on wells will occur.

Avoidance of drainage problems is outlined and a surface water monitoring programme will be undertaken during the construction phase – see Section 7.4.1.1.1.

Surface water controls will continue during the operational phase to ensure good quality water is maintained. Therefore, overall impact is stated to be negligible.

- **Air and Climate**

It is considered that the proposed development would be unlikely to have a negative impact on local air quality.

- **Noise and Vibration**

This section identified 3 noise monitoring locations (see Figure 9.2) with background noise recorded for both day and night periods with varying wind speeds occurring. Cumulative impact was also undertaken. The conclusion was that noise generated would comply with criteria set out in the guidelines. However, monitoring is recommended after commissioning.

- **Landscape**

This has been referred to in other sections of the report. Local policies and designations are outlined and ZTV's undertaken. Photomontages have also been prepared including cumulative impacts.

Overall, the visual impact of the proposed wind farm is not considered to be significant given the level of visual screening provided by roadside hedgerows resulting in intermittent visibility. This is stated to be a rural, working landscaped with commercial forestry, agriculture and peat harvesting all contributing to existing land-use and character.

- **Cultural Heritage**

Field and desk surveys were undertaken with one recorded monument (MA 102-33 – Ringfort) within the site boundary. Archaeological testing on the site of each proposed turbine and ancillary structures together with archaeological monitoring of all peat removal is recommended as mitigation, but no direct impacts are envisaged.

- **Material Assets**

The turbine haul route was indicated (large vehicles), traffic generated by construction period analysed and operational traffic (3 employees) set out. Except for the 7 days involving turbine delivery the overall impact will be slight.

In relation to telecommunications and Aviation possible interference is acknowledged and can often be dealt with by various mitigation measures. Consultation with various operatives is advised and has been undertaken including the Irish Aviation Authority although no response was received.

- **Interaction and Foregoing**

The EIS outlines the potential for interaction of the foregoing and a matrix has been produced to identify interactions. This highlights various positive or negative impacts during construction and operational phases and where necessary, mitigation is identified.

- **Environmental Impact Assessment**

It is appropriate for the Board to carry out an Environmental Impact Assessment of the proposed development in order to determine environmental impact and whether such is satisfactory. In doing so it is appropriate to rely on the information submitted under the application including that contained within the applicant's EIS, which has been summarised above together with further information lodged. This will be carried out in accordance with the Guidelines for Planning Authorities and An Bord Pleanála for carrying out Environmental Impact Assessment (Department of Environment, Community and Local Government, March 2013).

Section 171A of the Planning and Development Act, 2000 (as amended) sets out in detail, using wording similar to the EIA Directive,

what the assessment must comprise. The assessment must include an examination, analysis and evaluation and it must identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of the EIA Directive, the direct and indirect effects of a proposed development on the following:

- (a) human beings, flora and fauna,
- (b) soil, water, air climate and the landscape,
- (c) material assets and the cultural heritage, and
- (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).

As there is confusion between an EIA and EIS it is worth repeating that Environmental Impact Assessment is the process or method for anticipating the effects on the environment caused by a development. The baseline or existing environmental conditions are recorded and these are then compared with predicted conditions arising from the proposed development. The difference between the two is termed the impact. The result of an EIA is assembled in a document known as an EIS which looks at all the positive and negative effects or impacts of a particular project on the environment.

- **Adequacy of EIS**

The EIS lodged with the planning authority and supplemented by additional information follows a relatively standard format and the qualification/experience of the team members is outlined in Section 1.7.2. In my view the information submitted including the non-technical summary does identify the likely significant direct and indirect effects of the proposed development on the environment and is therefore acceptable in principle.

- **Human Beings**

The key issues here would involve noise, shadow flicker and devaluation of property.

The Wind Energy Guidelines refer to the need for separate noise limits for day-time and night-time. In general, noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres. A lower fixed limit of 45dB(A) or a maximum increase of 5 dB(A) above background noise at nearby noise sensitive locations is generally considered appropriate to provide protection to wind energy development neighbours.

The additional information response stated that there are two dwellings within 500 metres of a turbine one of which has given a letter of consent whilst the other is a contributing landowner (see map attached to Point 18).

From the information submitted I am satisfied that subject to monitoring noise is considered to be such as to not cause adverse impacts on existing residential properties.

- **Shadow Flicker**

The Wind Energy Guidelines state that this occurs where the blades of a wind turbine cast a shadow over a window in a nearby house and the rotation of the blades causes the shadow to flick on and off. This effect lasts for only a short period and happens only in certain specific combined circumstances. It is recommended that shadow flicker at neighbouring dwellings within 500 metres should not exceed 30 hours per year or 30 minutes per day.

At distances greater than 10 rotor diameters from a turbine, the potential for shadow flicker is very low. Turbine diameter in this case would not exceed 117 metres, such that 10 rotor diameters would equate to a maximum distance of 1,170 metres. Shadow flicker is subject to many variables including amount of sunshine, wind speeds affecting rotor blades, whether rotor is directly facing the viewer and screening in place. However, modern technology permits use of software packages that would monitor and control impacts so as to meet criteria including turning off of turbine creating the flicker. Alternatively various screens or planting can be undertaken. While the impact will clearly vary depending on weather conditions the system is subject to sophisticated controls which can be enforced by way of condition.

- **Devaluation**

Loss of property value is difficult to determine. This is a relatively low density rural area that is not subject to intense development pressures. While the construction period may cause problems of disamenity and disruption once completed a wind farm does not generate significant traffic. It is also true to say that wind farms generate mixed views from the public with many considering them to be disruptive industrial style developments whilst many people regard them as being symbolic of sustainable development with a positive sculptural image. Given the low

density with low attendant property sales and relatively small scheme (7 turbines) it is not considered that the Scheme would have a negative impact on property prices in the medium/long term.

- **Flora and Fauna**

It is acknowledged that this is not a Natura 2000 site nor is it in close proximity to one. Possibly the key issue relates to bird impacts. The Department of Arts, Heritage and the Gaeltacht raised concerns regarding detail of the data on wintering bird species, particularly in locations peripheral to current site. They stated that in pre-consultation meetings they raised the need for winter and breeding bird surveys. Their submission of 2/9/2014 refers to the absence of bird survey data for the autumn migration period, and the general lack of consideration of cumulative effects on birds, their flight lines and migratory routes. They do not consider that additional information adequately addresses bird monitoring. They advise against conditioning as this should be done prior to decision. Their subsequent submission of 9/1/2015 again refers to concerns regarding likely significant effects on birds.

Although the developer did provide more information and specifically refers to this issue in their appeal response it would appear to be not fully resolved and it would be inappropriate to deal with it by way of condition unless and until further clarification was provided.

- **Water and Drainage**

Given the nature of the land and relatively limited scale of development other impacts are considered to be relatively minor. The key environmental concern relates to water and drainage. In my view the EIS is comprehensive and has set out detailed mitigation measures including an Environmental Management Plan, use of qualified personnel to supervise the construction and a variety of measures to prevent any direct discharges. These are considered to be comprehensive and acceptable. The loss of land relates to improved grassland, wet grassland and forestry with low impact in my opinion. The IFI has no objection subject to detailed conditions being applied.

Again the land is such that bog slides and peat stability is not considered to be a factor for concern.

- **Landscape**

This has been dealt with previously and is considered to be acceptable in terms of impacts.

- **Air**

The only real concern would occur at construction stage when dust would be generated. I am satisfied that the applicant is proposing adequate mitigation measures and that this can be addressed by way of condition.

- **Material Assets**

Again the key concern would relate to traffic generated during construction period, in particular long slow moving vehicles carrying turbine parts. This will require various junction improvements and condition surveys will be undertaken. A Traffic Management Plan will be undertaken. I would conclude that given that the impacts are short term and subject to the provision of remedial measures the impact on roads and traffic is appropriately mitigated.

- **Archaeology**

There is only one recorded monument on the site and this is over 500 metres from any of the turbines. A standard condition relating to monitoring would be appropriate.

- **Interactions and Cumulative Effect**

There is potential for interaction of the foregoing. However, I am satisfied that the mitigation measures proposed by the applicant for each of the various issues outlined above are sufficient to prevent adverse environmental impact in isolation or in conjunction with others.

- **Conclusion**

With the exception of information pertaining to bird impacts the Environmental Impact Statement is considered to be acceptable.



## **Appropriate Assessment Report**

The EU Habitats Directive (92/43/EEC) Article 6(3) requires that ‘any plan or project not directly connected with or necessary to the management of the (European) Site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of conclusions of the assessment of the implications for the site and, subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

The proposed development as described earlier involves, inter alia, the erection of 7 wind turbines (maximum blade tip height of 156.5 metres), upgrade and extension of road system, anemometry mast (100 metres), peat disposal areas, temporary construction compound, underground cabling and ancillary works.

In the context of the appeal site there are a number of Natura 2000 sites within 15 kilometres viz.

- Lough Corrib SAC
- River Moy SAC
- Carrowkeel Turlough SAC
- Kilglassan/Cahevavostia Turlough Complex SAC
- Greaghans Turlough SAC
- Ardkill Turlough SAC

The closest site is Lough Corrib SAC at 5.3 kilometres, but this has no direct hydrological connection. Likewise, the River Moy SAC is 6.8 kilometres away and is not hydrologically connected. The four turloughs are also quite distant (8.9 – 14.9 kilometres). The proposed development involves a construction period of 18 months with works including new roads, bases for turbines and associated drainage. Cumulative impacts are also considered to be negligible. Various mitigation measures have been outlined above and are considered to be practicable.

Having examined the site synopsis information and having had regard to the mitigation measures proposed, the separation distances and the

nature and extent of the proposed development, it is considered that the proposed development will not adversely impact any of the above sites in terms of integrity and conservation status.

However, as stated above in relation to EIS the Department of Arts, Heritage and the Gaeltacht have raised concerns regarding bird impacts. In my view these issues would need to be resolved before a Board decision can issue.

### **3<sup>rd</sup> Party v. Conditions**

Both of the 3<sup>rd</sup> parties have objected to various conditions arguing that they reflect an overall lack of information which should have resulted in either a refusal or in a request for further information.

The conditions imposed are in themselves relatively standard reflecting proposals set out in the application and the EIS and comments received in the various technical reports. In my view such conditions are appropriate and provide clarification as to monitoring, various time periods, production of plans, supervision by qualified personnel and reinstatement etc. Their inclusion does not mean that the information lodged is unacceptable or inadequate.

### **1<sup>st</sup> Party Appeal v. Four Conditions viz No. 5, 41, 44 and 46**

#### **Re: No. 5 – Decommissioning**

This condition specifically includes dismantling and removal of turbine foundations and roads in addition to removal of turbines and other above ground elements.

I would sustain the appellants' arguments that removal of foundations and roads would be unnecessary and quite probably counterproductive, especially after such a lengthy time period. Clearly proper screening of turbine bases is necessary, but the roads have a certain local value and their removal could involve extensive site works which could have negative environmental impacts. I would therefore recommend that this condition could be reworded.

**Re: No. 41 – Noise and vibration levels to be as per Section 9 of EIS**

Again I would consider the appeal submission to be reasonable and would recommend that a condition stipulating specific noise limits be included and subject to monitoring.

**Re: No. 44 – Bond**

The planning authority submission has clarified the release date of the Bond and this is agreeable to developer. A revised wording would suffice.

**Re: No. 46 – Community Fund**

This is a contentious issue between the parties and it is fair to say that the application had been already lodged with the planning authority prior to the Policy on Community Benefit Contributions being adopted by the Council.

Nevertheless, Section 3.2.2.2 and Section 3.2.2.3 of the EIS specifically refers to community funding with figures set out potentially yielding €525,000 in local funding.

Conditions relating to community funding have been attached to other similar projects and their inclusion within the planning decision permits a comprehensive easily understandable approach for everyone concerned. I would therefore recommend that in the event of the Board granting permission condition no. 46 should be retained, but with figures set out in the EIS.

## **18.0 CONCLUSION AND RECOMMENDATION**

The case for utilisation of Wind Energy continues to grow in that it reduces reliance on fossil fuels and addresses the problem of climate change arising therefrom. It is in line with Government and EU policies for renewable energy and is in accordance with the principles of sustainable development. The site is within an area considered suitable for such a project in the Renewable Energy Strategy and is not within a sensitive landscape setting or within or in close proximity to a Natura 2000 site.

Nevertheless this report has indicated that there are two flaws to this application. The information in relation to birds is considered to be

inadequate by the Department of Arts, Heritage and the Gaeltacht and accordingly, further information would be appropriate should the Board consider granting permission.

The second issue relates to project splitting. The recent High Court Judicial Review in the case of O’Grianna and others v. An Bord Pleanála also relates to a wind farm development and concludes that the wind farm and its connection to the national grid is one project, which needs to be subject to cumulative assessment in order to ascertain environmental impact.

It is possible that this decision could be appealed to the Supreme Court, but as of now I am not aware that it has. It is also acknowledged that indicative routes have been shown in the EIS and by the developer’s agents in their submission to the Board dated 12/1/2015. This also included an EIS Addendum and a revised Natura Impact Statement.

While the information lodged is helpful the fact remains that these revisions involve indicative proposals only and are unacceptable in the light of the recent judgement in my opinion. I would therefore conclude by recommending that permission be refused.

## **REASONS AND CONSIDERATIONS**

On the basis of the information lodged and that of a recent legal ruling (O’Grianna and others v. An Bord Pleanála) it is considered that as the proposed development does not include as part of the application a proposed connection to the national grid as one project the EIS lodged is inadequate in that a cumulative assessment of the likely environmental impact cannot be undertaken. It is therefore considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

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**Robert Ryan,  
Senior Planning Inspector.**

**23<sup>rd</sup> February, 2015.**

**sg**