



An  
Bord  
Pleanála

## Inspector's Report PL16.244055

### 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 and the provision of new internal access roads including, upgrading of two access junctions and the provision of two new accesses, erect anemometry mast of 100 metres, peat storage areas, temporary construction compound, underground electricity cabling including grid connection, temporary construction compound and ancillary works at Magheramore and Creeganbrack, Bekan, Claremorris, County Mayo.

**Planning Authority**

Mayo County Council

**Planning Authority Reg. Ref.**

P13/633

**Applicant:** PWWP Developments Limited

**Type of Application:** Permission

**Planning Authority Decision** Grant Permission

**Appellant(s):**

1. PWWP Developments Limited  
(First Party v Conditions)
2. James Johnson
3. Michael Lyons
4. Brenda Johnson
5. Peter Sweetman and Associates
6. Our lady's Shrine Knock

**Observers:** None

**Date of Site Inspection** 30th September 2016

**Inspector** Paul Caprani

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## **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 Magheramore and Cregganbrack, Bekan, Claremorris, County Mayo. On the same date two separate applications were received for similar sized wind farms (comprising of 6 & 7 turbines) at sites 2 km and 5 km south 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 against the development 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] [IEHC 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 PL16.224033 and PL16.244034 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 subject site is located in the townlands of Magheramore and Cregganbrack, between 6 and 8 km north-east of the town of Claremorris and 3 km south and south-east of the town of Knock in south-east Mayo. The town of Ballyhaunis is located approximately 8 km to the east of the subject site. The site covers an area of approximately 424 ha and is situated on lands that generally comprise of gently undulating farmland and cut away bog traversed by mature and semi-mature hedgerows and trees. Areas of lowland peat and raised bog are also apparent, mainly centrally within the site. The overall topography of the subject site is characterised by largely flat and slightly undulating landscape with a relatively low elevation of between 70 and 90 metres AOD. There is a ridge of more elevated lands between 100 and 120 metres AOD approximately 1 km north of the site to the west of Knock.

The site is irregularly shaped and is c. 2 km in length north to south, and less than 3 km in length from its most westerly and easterly point. The main access road leading to the site traverses the centre of the site and links up with a local access road which runs in an east-west direction to the south. The site itself extensively accommodates cut over bog, some of which has been extensively drained. Areas to the south and north-east of the site, comprise of wet grassland and semi-improved grassland. There are no designated Natura 2000 sites either within or contiguous to the subject site. The closest Natura 2000 site is the River Moy SAC which is located approximately 2.5 km to the north west of the nearest turbine. There are a number of Turloughs in the wider area which are also designated Natura 2000 sites.

In terms of surrounding settlement figure 4.8 of the EIS shows the location of the nearest 94 houses to the proposed windfarm. These 94 houses are located between 440m (one of the landowners involved in the project) and 1.94 km from the nearest turbine. Two houses are located within the site (MH 81 and MH82 both of which are landowners involved in the project these dwellings are located 440 and 450 m from the nearest turbines). In general, the houses are clustered along the network of

roads to the north of the site and a large number of single dwellings clustered around the local road network to the south of the site.

### **3.0 Proposed Development**

Planning permission was granted for 7 turbines on the subject site under Reg. Ref. 09/664. These turbines had a hub height of 100m and a blade height of an additional 45 m. Planning permission was also granted from ancillary works including access tracks, a substation and an anemometry mast. This permission expired in May 2015. The current application seeks to amended the location of the permitted turbines and seeks to increase the height of the turbines to 156.5 m. Turbine No's 1, 2 and 3 are located in the southern portion of the site with turbines 1 and 3 located on the western side of the main access road which traverses the site. Turbine 3 is located on the eastern side of the access road. Turbines 5,6 and 7 are located in the north eastern part of the site, to the east of the access road, while turbine no. 4 is located on the western side of the access road. The separation distance between two adjacent turbines ranges from 500 to 700 meters. A meteorological mast is to be located in this area between turbines 3 and 4 adjacent to the western boundary of the site. Figure 3.1 of the EIS indicates the positions of the proposed turbines. It also indicated that positions of the previous turbines granted under 09/664.<sup>1</sup>

The turbines will have a maximum blade tip height from ground level and 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. The ground level elevations of each of the turbines are between 68 and 82 metres AOD.

The turbines comprise of a foundation unit which will be up to 21 metres in diameter and of a circular or hexagonal configuration, depending on the turbine selected. The

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<sup>1</sup> The Board will note that the history file attached, actually relates to the Cloontooa windfarm to the south (09/663 and PL16 244034) and not the subject site.



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 44,150,000 kilowatts hours per year. This according to the EIS could produce sufficient electricity for approximately 8,800 households or approximately 20% of the households in 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 the R329 regional road, after which the local country roads will be used in the townlands Eskerymorilly, Churchfield and Cregganbrack. Maximum use will be made of the existing roads which traverse the site. It is proposed to upgrade some of the existing roads (1.27 km) that traverse the site as well as constructing new roads to each of the turbines and turbine assembly areas. It is proposed to construct 2.33 km of roadway (of which 405m were previously permitted) to the various turbine foundations. 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 33,000 m<sup>3</sup> of peat and overburden will be required to be removed. Turbine no. 3 will require the most peat removal (c.8.300 m<sup>3</sup>) and peat depths in the vicinity of this turbine ranges from 3.5m to 6m in depth. Peat disposal areas are proposed adjacent to each of the turbines. These areas are indicated on Figure 3.1.

Each turbine will be connected to an on-site switch via an underground 20 kV electricity cable. A temporary construction compound is to be provided adjacent to

the access road serving turbines 1& 2 in the southern part of the site. 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 3.4.5 – page 3 – 13) 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. Two options are provided for the grid connection, depending on whether or not planning permission is granted for the proposed new substation at the Cloontooa windfarm to the south of the appeal site, or whether the applicant will be reliant on the extant permission for the substation granted under Reg. Ref PL.16. 237401.

**Cable Route Option 1:** Refers to the route within the public road corridor from the site at Magheramore to the Dalton substation via the permitted substation in the western part of the Cloontooa wind farm site. The cable will emerge at the southern boundary of the site and travel south within the road corridor and then will meet the Bekan/Barnycarroll Road at the townland of Srah. It will then turn west for a distance 1.38 km along the roadway before again turning south through the townland Cloongawnagh before entering the Cloontooa Wind Farm site along permitted on-site access tracks and terminating at the permitted sub-station. The length of this route is approximately 4.87 km. The Cable then follows the road to the Dalton substation, east of the town of Claremorris through the townlands Garryredmond, Knockatober, Cartronnacross and Ballinsmaula before turning south through Crantahar and then west terminating at the Dalton sub-station compound in the townland of Clare, a total distance of 9.22 km.

**Cable Route Option 2:** Refers to the route within the public road corridor from the site at Magheramore to the Dalton substation via the proposed substation in the northern part of the Cloontooa wind farm site. The cable will emerge at the southern boundary of the site and travel south within the road corridor and then will meet the

Bekan/Barnycarroll Road at the townland of Srah. It will then turn westwards along the Bekan/Barnycarroll Road for a distance of 2.6 km before turning south onto an existing track road into the Cloontooa Wind Farm site for 350m and terminating at the proposed substation. The length of the proposed cable under option 2 is 4.06 km.

The cable will travel to the Dalton substation within the existing access tracks proposed in the Cloontooa Wind Farm before joining up with a local road within the townland of Caraun, and then on via the same route as option 1 to the Dalton substation a total distance of 7.84 km.

There is a combined total of 18 watercourses/culvert crossings along both of the cable route options according the EIS, 9 of which are stream crossings and 9 are culverts. The EIS addendum sets out a number of options for the stream/culvert crossings (see Table 3.3).

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

##### *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, lack of proper consultation

with locals, impacts on livestock, potential impact on the setting of Knock Shrine 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 and the OPW.

#### Additional Information Request

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

- Further details in respect of bird surveys and bird monitoring programmes.
- Further details regarding the occurrence of the Marsh Fritillary, an Annex II species on site and a map or drawing indicating the location of this species and how it can be avoided.
- Further details in relation to flora and vegetation types particularly on peatland habitats and details on the amount of peatland lost as a result of the development.
- Further comments are sought in relation to a fish population in the watercourses surrounding the site.
- Further clarification as to the occurrence of Annex 1 habitat 'Alkaline Fen' [7230] occurs on site.
- The applicant is requested to carry out archaeological pre-development testing and reporting 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, particularly through any potential nutrient and siltation release resulting from the construction of the foundations.

- Further engineering details regarding road construction and turbine foundation construction including the depth of foundation required.
- Further details as to how the turbines can measure sunlight and where necessary stop rotating in order to avoid shadow flicker.
- Details regarding the applicant's legal interest in the lands in question.
- Further details of dwelling located within 500m of each of the turbines.
- The applicant is also requested to liaise with the Area Engineer at Claremorris regarding site access and with the OPW regarding Arterial Draining schemes in the area.

#### 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.
- With regard to the Marsh Fritillary Butterfly, two areas of potentially good breeding and feeding sites were identified to the north of the subject site but not within the site.
- 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. Mitigation measures are set out to ensure that no impacts arising on potential trout habitats in the area. Further details of site hydrology and consultations which are undertaken with IFI are set out in the response. 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 detailed drainage management under strict supervision from a suitably qualified hydrologist and drainage engineer.
- A small area of rich fen and flush habitat was identified within the north western corner of the study area 0.065ha (650 sq.m.). The closest component of the proposed development will be the peat storage area associated with turbine No. 4, approximately 240m away. No anticipated impacts are likely to arise.
- 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 Magheramore site has not been carried out to any significant extent. No woodland is to be felled to make way for the turbines and the release of high level of nutrients associated with deforestation will not occur. Mitigation measures are set out to ensure that there will be no significant release of contaminants.
- 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. A number of likely quarries where aggregate could be sourced is set out in the response. 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. Turbine No.3 is located in deep peat and a piled foundation will be required.

- 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. Both houses are owned by consenting landowners.
- In respect of the two advice notes attached to the planning authority's additional information request, details of the new access arrangements are provided. The route has been the subject of an auto track analysis and this demonstrates that turbines can be delivered to the site. A letter is also provided from the OPW (appendix 3 stating no it has no objection in the proposal in the context of proposed arterial drainage schemes in the area.

#### 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 report from the Council's Roads Engineer states that there is no objection subject to conditions.
- A report from the Council's Senior Archaeologist states that there is no objection subject to conditions.
- A report from the Council's Senior Executive Scientist states that there is no objection subject to conditions.
- On October 7<sup>th</sup> 2014 submitted further unsolicited information with regard to bird survey monitoring work.
- 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 additional information submissions and the conditions to be attached. Both the Environmental Impact Statement and the Natura Impact Statement are deemed to be adequate. It is noted that there is an existing permission on site. 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 47 conditions.



## 5.0 Planning History

Details of the planning history is set out in section 2.2 of the EIS. The Board will note that there are two concurrent applications and appeals for two similar sized windfarms on two separate sites to the south. In relation to the subject site, planning permission was secured for a wind farm development comprising of 7 turbines on lands which comprise of the south western portion of the subject site. The application (Reg. Ref. 09/664). Planning permission was granted in May 2010 and expired in May 2015

## 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. 42** relates to noise. The grounds of appeal argue that while the need for noise limits is acceptable to the applicant, the condition should 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. 45** 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. 47** it 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 could 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

Five 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 recently 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 EIA 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. 26 and 30 require post development consent conditions in respect of water quality when again indicates inadequacies in the EIS
- 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 On behalf of Our Lady's Shrine Knock

This appeal was lodged on behalf of the appellants by A & D Wejchert & Partners Architects. The following points were raised in the appeal.

- Visual impact
- Noise
- Impacts on wildlife flora and fauna
- Shadow flicker
- The landowners who have given consent to the lands for the development do not live in affected areas
- Property Values
- Impact on residential and other amenities.
- Concerns are expressed in terms of excessive height. The turbines are twice the height of the tallest buildings in Ireland and are directly comparable with the Cliffs of Moher.
- Our Ladies Shrine of Knock is an extremely sensitive location and it world renowned and since 1879 has been an important place of pilgrimage with 1.5 million visitors annually.
- There are numerous facilities for pilgrims (listed in the grounds of appeal) which offer quiet spiritual reflection and prayer and healing. These facilities will be greatly impacted upon with the provision of noisy and excessively large turbine structures.

#### Appeal by Brenda Johnson

- Concern is expressed in relation to the information contained in the EIS regarding peat stability. It is suggested that the calculations used in determining the FoS (factor of safety) have underestimated the potential for peat slides. Peat slides are most likely to create major pollution episodes to water courses.
- Concern is expressed that the peat storage areas which are likely to be underlain by gravelly sands, could give rise to unstable peat storage areas which would result in peat slippage. It is also suggested that the quantity of peats required to be stored may have been underestimated.
- Further information on the floating roads is required particularly in relation to water diversion and peat subgrade suppression which could adversely affect the eco-hydrology.
- The lands within which the site is situated is an important habitat for birds including Curlews, Mallards Duck, Snipe and Cuckoo. It is reasonable to assume that the proposal represents a hazard to all these species. The surveys undertaken as part of the EIS was not representative as it was unusually cold. It was also noted that high numbers of Golden plover were recorded at the site. The area has the potential to be a very important bird habitat.
- Badgers, hares, rabbits and frogs have all been observed on site as has Dingy Skipper, a near threatened species of butterfly and the White Clawed Crayfish, Irish stocks of which are considered to be of great conservation importance (photographic evidence are attached to the grounds of appeal). The development poses a real risk to these species.
- Concerns are expressed in relation to visual impact. It is argued that the rural character will be changed forever. The area around Knock Basilica will likewise be fundamentally altered. This is an internationally renowned centre for religious pilgrimage. It is suggested that the EIS does not adequately depict the potential impact on the environment. Views are obscured and photomontages are taken from dips in roads. Very detailed visual impact assessment is contained in the appendices of this 3<sup>rd</sup> part appeal.

- The submission also contains a detailed noise assessment carried out by Mr. Dick Bowdler an acoustic consultant in an appendix. It is suggested that the level of noise at the nearest noise sensitive receptors have been underestimated by between 2 and 3.5 dB. It is further suggested that ambient noise levels will increase by up to fourfold as a result of the windfarm development. The net effect is that between 100 and 200 properties will exceed the DoEHLG Guidelines in relation to noise.
- The proposals will have adverse social and economic impacts in terms of tourism, and references are made to surveys of visitor's perceptions in Scotland and Wales to support this contention. The proposal will give rise to almost no employment and will adversely impact on property values.
- The proposed 3 windfarms constitute project splitting which makes public participation more difficult and contravenes the spirit of the Aarhus Convention.
- The proposal is contrary to the County Development Plan by way of impacting on residential amenity in terms of night-time noise exposure.
- It also contravenes many policy objectives in the Knock Village LAP.
- Reference is made to the Frascati Judgement in that the applicant does not have sufficient legal interest to carry out the development. Furthermore, the proposal could interfere with turbary rights in the area.

*Appeal by Michael Lyons and Others*

- Concerns are expressed in relation to impacts on Turbary Rights
- The provision of floating roads could adversely affect drainage in the area, and could affect access for persons who have turbary rights in the area.
- Changes in drainage could lead to flooding and could reduce the quality of fuel produced.
- There is insufficient information to ensure that peat slides do not occur in the peat storage areas.

*Appeal by Environmental Action Alliance on behalf of Mr. James Johnson*

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 in the planning process. Reference is made to the EU Directive 2011/92/EU codified under Article 192(1) of the Treaty on the functioning of the European Union. It is argued therefore 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 of appeal 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 Observations**

### Knock Tidy Towns

This observation objects to the development because of the excessive height of the turbines, the loss of amenity particularly in relation to the loss of tranquillity and peace for pilgrims visiting the shrine. The red lights which will be mounted on the windfarms will also impact on the amenity. It is also argued that the proposal is contrary to objectives KTKK-05 and KTKK-07 of the Knock LAP.

### Theresa Byrne

Ms Byrne is a land owner and turf cutter in the lands in question. Concerns are expressed in relation to impacts on turbary rights, damage to access roads and paths during the construction phases and reduced access to turf banks during the cutting season.

No details of folio maps have been submitted with the letters of consent accompanying the application. The applicant's legal entitlements to make the planning application is questioned. Reference is made to the Frascati Judgement in this regard. The stability of the peat deposit areas is also of concern.

## **9.0 Appeal Responses**

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

The response sets out the site planning application details, the planning history and the development plan policy as it relates to wind farms. Mayo Co Council is satisfied that the proposed development complies with the development plan policy and the Renewable Energy Strategy for the area.

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.
- It is reiterated that the proposal will not result in project splitting. 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. 42 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. 47 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. 47 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.
- With regard to the issue of turbary rights, it is stated that the applicant has provided letters of consent to demonstrate sufficient legal interest in the lands in question. Turbary rights are not a planning matter and the Board's attention are drawn to PL 16. 231189 and PL 16. 241506 in respect of the issue of turbary rights.
- With regard to the issue of Annex II species in the study area namely the White Clawed Crayfish, it is stated that the presence of such species is not in itself a barrier to development. The applicant has demonstrated sufficient mitigation measures to ensure that impacts are unlikely.

- Many of the issues raised in the grounds of appeal in respect of residential amenity, shadow flicker, impact on property values etc. have been adequately addressed in the EIS in the planning authority's opinion.
- The planning authority do not consider that the proposal contravenes the Knock Local Area Plan.

*Second Submission from Brenda Johnson Dated 27/11/2014*

The appellant undertook her own detailed surveys on peat depths on site. It is the appellant's conclusion that the amount of peat to be excavated has been significantly underestimated in the EIS. It is also contended that the site is not suitable for heavy vehicles. A significant amount of wildlife was also observed, particularly avifauna during the survey. A bog body was also unearthed at this site in 1955.

*Second Submission from Peter Sweetman and Associates Dated 30/11/2014*

- 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 appeals including the submissions by Our Lady's Shrine, Michael Lyons and Brenda Johnson. Mr. Sweetman however is not in agreement with the issues raised in the AAE-I submission on behalf of James Johnson in respect of the Public Notices, the Aarhus Convention and the SEA Directive.
- It is argued that turf cutting rights are material assets and as such should have been subject to EIA.
- Concerns are expressed in respect of human health, particularly shadow flicker and noise. In this regard reference is made to a report by Dr.

Christopher Hanning which concludes that wind farms have a significant impact on sleep disturbance and pose a risk of inducing photosensitive seizures.

- Research indicates that wind farms have an adverse impact on property values.
- It is argued that windfarm development is not sustainable and wind farms on under graded peatlands are unlikely to reduce CO<sub>2</sub> emissions.
- Details of various legal judgements, and the articles referred to are also attached to the response.

#### 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.

- 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.
- In relation to turbary rights the following is noted:
  - The applicant does not have any legal authority to prevent turbary rights
  - The applicant has secured the relevant consents for facilitate the construction of the development.
  - The proposal will increase accessibility to the bog areas.
  - The drainage proposals will ensure that there will be no impact on the surface water regime in the area.
- In terms of impacts on rights of way, the proposal will not in any way fence of land. It is also noted that this is a civil matter and not a planning matter.
- Drainage matters are dealt with in the EIS and are designed to mimic natural run off characteristics. All on site drainage features will be the subject to on-going mitigation features.
- In terms of peat stability issues, it is argued in the response that the FoS (Factor of Safety), it is argued that using peat strength alone does not account for the level of peat stability in bogs. It is stated that the peat strength s at the Magheramore site is relatively high (averaging 26 Pa). Where peat slides have occurred the peat strength has been much lower (2.5Pa to 6 Pa). The

applicant argues that if the figures used in the grounds of appeal were correct, peat slides would have occurred naturally.

- The peat disposal areas will be designed in accordance with guidelines within containment berms. Given the low peat height and the relatively low lateral thrust from stored peat, the storage area would act as a gravity retaining structure.
- The surveys in the EIS, regarding peat depths are on the whole accurate and figures quoted by the appellant will not result in any significant increase in peat storage volumes.
- The EIS details comprehensively how floating road construction will be carried out.
- With regard to the White Clawed Crayfish, the development will be constructed so as to ensure that there is no damage to habitat of this species. It is reiterated that there will be no in-stream works.
- The visual and landscape studies carried out as part of the EIS has demonstrated that the impact, particularly on knock shrine will be acceptable. Photomontage 10.8 was taken from within the grounds of the Basilica.
- The concerns in relation to noise and resulted in a re-evaluation of the noise survey by the applicant's consultants and this is contained in appendix 3. The re-valuation confirms the initial conclusion in the EIS, that the development is acceptable in terms of noise emissions, and that the development can be designed to comply with relevant noise standards set out in the DoEHLG Guidelines.
- With regard to the impact on tourism, the conclusions of surveys on tourist's attitudes to wind farms carried out by the NI Tourist Board and Failte Ireland are referred to which state that tourist attitudes towards wind farm are generally positive.

- Finally, the response that the proposal is fully in accordance with the development plan.
- 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 First and Third Party Appellants and Proscribed Bodies**

### *Third 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.

### *Third Submission from Brenda Johnson dated 09/01/2015*

- In relation to FoS for peat stability, reference is made to research articles which emphasise the important of the precautionary principle in calculating peat stability and she concludes that a prudent approach would be to adopt a best-practice reduction factor on peat-vane strength.
- In relation to peat depth and floating road construction significant concerns still exist.
- More recent surveys undertaken indicate that tourists view wind farms in a negative light.
- And additional report by acoustic consultant Mr. Dick Bowders, reiterates the previous concerns expressed in relation to noise.
- Concerns in relation to the impact on fauna and specifically the white clawed crayfish are reiterated.



- Concerns are reiterated in respect of project splitting, turbary rights and lack of effective public participation.
- In terms of the visual impact the submission set out some of the perceived shortcomings in the photomontages produced in the EIS, and specifically the photomontages from the grounds of the Basilica.

Submission from the Department of Arts Heritage and the Gaeltacht Dated

09/01/2015

- 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.
- They also refer to Conditions 17-32 relating to watercourses and aquatic species which need to be taken into consideration in the context of risks of significant effects on a European site, in view of its conservation objectives, where Annex I habitats or Annex II species are among the qualifying interests of the site.

Second Submission on behalf of the First Party

- A further submission from McCarthy, Kelvin and O'Sullivan was received by the Board on 12<sup>th</sup> January, 2015.
- It argues that the development is fully compliant with development plan policy.
- It notes that the Planning Authority agreed that an EIA was carried out and that the EIA was adequate. The Planning Authority also carried out AA in respect of the development.
- The Planning Authority's views are consistent with the applicant's views regarding the issue of project splitting, the wording of conditions SEA and the Aarhus Convention.

- 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.
  - Water.
  - 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 their 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.

## 10.0 Original Planning Inspectors Report

- A planning report was prepared by Mr. Robert Ryan, Senior Planning Inspector in respect of the proposed development.
- It concludes that there is a strong case for the utilisation of wind energy, and the site is considered to be in an area suitable for such a project. It was also noted that at the time of writing his report the site had the benefit of an extant planning permission. It was also considered that the proposed revisions do not have any material impact in terms of landscape, environmental or residential issues. The proposal is therefore considered to be in accordance with the proper planning and sustainable development of the area.
- However, in relation to the issue of project splitting 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 12<sup>th</sup> March, 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.

- *Please provide detailed and accurate drawings at a suitable scale showing the proposed connection to the Dalton substation from the permitted substation and separately to the proposed substation at the Cloontooa wind farm.*

- 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 and to the Board on the 9<sup>th</sup> of January 2015. 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, 2016 the applicant submitted a detailed response to the Section 132 Notice. 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'Grianna judgement.

- The national grid connection point remains at the Dalton Substation c.1 kilometre east of Claremorris. The route of the entire 38 kV cable that will run between the Magheramore wind farm and the permitted substation (option 1 - described in S.3 of my report above) at the Cloontooa wind farm, and the proposed substation at the Cloontooa wind farm (Option 2 – described in S.3 of my report above) and the Dalton substation is described and assessed under the following headings:
  - Human beings.
  - Flora and Fauna.
  - Soil and Geology.
  - Water.
  - Air and Climate.
  - Noise and Vibration.
  - Landscape.
  - Cultural Heritage.
  - Material Assets.
  - Interactions.
- A **revised Natura Impact Statement** has also been submitted (including a separate binder contain Appendix 4-4 of the revised NIS. Appendix 4-4 contains the EIS addendum referred to above
- The revised NIS has been prepared in relation to the updated cable route connection options and this addresses the entirety of the project. It concludes that the entirety of the project, including the proposed grid connection will not adversely impact on the integrity of any of the European Sites in the vicinity.

- **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 27<sup>th</sup> January, 2016. The Board decided to defer the case and direct the following:

- *Cross-circulation of the entirety of the applicants submissions 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 Our Lady's Shrine, Knock

A letter from the appellant's agent, A&D Wejchert and Partners Architects, stated that the appellant will not be making a response in respect of the further information submitted.

Further Submission from Environmental Action Alliance Ireland on behalf of James Johnson

- 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.

*Further Submission by Brenda Johnson*

- The submission primarily concerns itself with the bat study, and to a lesser extent the bird study contained in the revised NIS. It notes that bat detectors only confirm the presence of bat and not the numbers of bats.
- Details in relation to the calibration of the bat detector was queried.
- No details are contained in the NIS regarding the weather on the night of the survey. It is contended that moonlight can have a very significant effect on bat activity. Also it is suggested that no bat activity occurs at temperatures of less than 6 degrees Celsius and high wind speeds
- There NIS includes limited assessments of bat roosts in the area. And further details are required in terms of how many persons were involved in the bat survey.
- The submission suggests that there have been significant sightings and recording of Curlew, Snipes Golden Plover and Starlings in the area of the site.

- A number of appendices are attached to the submission including Met Eireann data, published articles on bat surveys, and bird collisions etc.

*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**

*Mayo County 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*’.

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. Specifically, in relation to the settlement of Knock the development Plan has the following policy objectives:

It is an objective of the Council to encourage development that gives effect to the Opportunities and Solutions outlined in Table 13 where it can be demonstrated the development will have no significant adverse impacts on the environment including the integrity of any Natura 2000 site.

**KTKK-03** It is an objective of the Council to support and facilitate the development of Knock as a world renowned religious tourist destination.

**KTKK-04** It is an objective of the Council to support and facilitate the development of the town's religious tourism products to the highest international standards, in a manner that respects, builds on, protects and enhances the cultural, built and natural heritage and local amenities of the town.

**KTKK-05** It is an objective of the Council to ensure that all new development makes a positive contribution to the built and natural environment of the Plan area by ensuring that it is absorbed into the surrounding streetscape/landscape so that it does not impinge in any significant way on the character, integrity or uniformity of the town and does not undermine or interfere with the iconic status of Knock Basilica.

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 appropriate specific reference is made to the Guidelines in my assessment below.

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).

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.

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**

### **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 two of the third party appeals (appeals by Mr. Sweetman and on behalf of Mr. Johnson) and on be relate to the inadequacy of the EIA and AA process undertaken as part of the proposal. Specific appeals also express concerns in respect of potential impacts on turbary rights, impact on the context and setting on Knock Shrine, peat stability and storage assessment, surveys of flora and fauna and potential noise impacts. 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.

I wish to reiterate 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 with specific reference to
  - Noise Impact
  - Shadow Flicker
  - Visual Impact
  - Traffic
- Peat Stability Assessment
- Road Construction
- Turbary Rights
- Impact on Fauna, specifically White Clawed Cray Fish and Bats
- Contravention of the Development Plan
- 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. While the appeal lodged by Peter Sweetman, disputes the role of wind farms as a sustainable renewable energy source, the fact remains that both national and European policy wind farms subject to qualitative safeguards. 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 north-eastern portion of the subject site is also located within a designated as Tier 1 – ‘Preferred’ (cluster of turbines) in the Renewable Energy Strategy for County Mayo. The south-western portion of the site is designated as a priority area where wind farm applications have been permitted but not constructed (see figure 2.6 in the EIS). 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 and a priority site for clustered wind farm development, I consider the proposed development of a windfarm on the site in question 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 Chapter 9 of the original EIS submitted with the planning application. It was again the subject of a reassessment in the applicant's response to the grounds of appeal (see appendix 3). The third party appeal submitted by Brenda Johnson contains a critical assessment by Dick Bowdler of the noise survey undertaken in the EIS. It argues that:

- The turbine noise levels as shown are not calculated in accordance with good practice.
- The guidance for low noise has been misinterpreted by the applicant and so a large number of properties fail to meet the guidelines.
- There is no description of residual noise effects.
- There is no assessment of ambient noise levels as required by the regulations.

The baseline monitoring undertaken is deemed to be reasonable in terms of providing representative locations to establish a typical baseline rural environment. The locations indicated on Fig. 9.2 of the EIS are to the west, north and south of the subject site. Any locations which fell within the 35 dB(A) noise limit were considered

suitable and typical for a rural environment. Derived noise levels for various wind speeds are set out 9.7 of the EIS 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 95 dwellings located in the overall study area. 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. There are no locations where the proposed development exceeds the adopted day or night-time criteria under the various wind speeds. In all cases the sound pressure and the nearest noise sensitive locations surveyed was less than 40 dB(A) under a worst case scenario, with the exception of 2 landowners (MC 81 and 82 where noise levels associated with the windfarm under a worst case scenario are predicted to be 41.8 and 42.4 dB(A) respectively).

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 2 of the 95 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 42.4 dB(A) at wind speeds of 12 metres per second. The vast majority of the dwellings would experience sound pressures of between 30 and 40 dB(A) directly attributed to the wind turbines.

'While concerns have been expressed in the grounds of appeal regarding the methodology used in the noise modelling, the key issue is whether or not the noise impact which could be specifically attributed to the wind farm would be acceptable in this rural environmental. The DoEHLG Guidelines state in relation to noise:

*In general, a lower fixed limit of 45 dB(A)<sup>10</sup> or a maximum increase of 5dB(A) above background noise at nearby noise sensitive locations is considered appropriate to provide protection to wind energy development neighbours. However, in very quiet areas, the use of a margin of 5dB(A) above background noise at nearby*

*noise sensitive properties are not necessary to offer a reasonable degree of protection and may unduly restrict wind energy developments which should be recognised as having wider national and global benefits. Instead, in low noise environments where background noise is less than 30 dB(A), it is recommended that the daytime level of the LA90, 10min of the wind energy development noise be limited to an absolute level within the range of 35-40 dB(A).*

*Separate noise limits should apply for day-time and for night-time. During the night the protection of external amenity becomes less important and the emphasis should be on preventing sleep disturbance. A fixed limit of 43dB(A) will protect sleep inside properties during the night. 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.'*

The proposal in my view meets all the criteria set out above, and more importantly the applicant has indicated that through the modelling under taken that the wind farm can meet these criteria set out in the guidelines. And if the Board are minded to grant planning permission it is recommended that a suitable condition be attached which is reflective of the noise limits set out in the guidelines. I have no reason to doubt the veracity of the information contained in the EIA in respect of the noise analysis undertaken notwithstanding this conclusion, there will be an onus on the applicant to comply with best practice as per the guidelines in relation to noise generation regardless of any perceived shortcomings in relation to noise modelling as suggest in the grounds of appeal.

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.

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.

It can be reasonably concluded 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.

### 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 100 houses within a 1.96 km radius of the site under a worst case scenario (100% sunshine every day, with no vegetation screening, the sun is always behind the turbine blades and facing the house and the turbines blades are moving). 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 42 of the 86 dwellings surveyed (four of which are landowners). Under the 30 hour per year limit a total of 29 of the 100 houses are expected to exceed the DoEHLG Guideline limit (two of which are landowners) under a worst case scenario.

In terms of the cumulative impact, if the wind farm in Cloontooa is added, the number of houses expected to exceed the 30 min limit per day would increase to 31 dwellings. In terms of the 30 hour per year limit, it is estimated that 24 houses would exceed this limit. Meteorological data suggests that in the west of Ireland the sun shines in daylight hours 24% of the time (Claremorris meteorological data 1971-2000). When this data is taken into account the number of houses likely to exceed the annual limit of 30 hours per year would be one. 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. Having regard to the separation distances involved with the adjoining windfarms over 2 km away, the EIS reasonably concludes in my opinion that due to the separation distances, shadow flicker from the adjacent Wind Farm will not present a significant problem particularly having regard to the mitigation measures involved.

### *16.3.3 Visual Impact*

Obviously the visual impact is a major consideration in determining the application. It was a major issue raised in the appeals submitted by Brenda Johnson and Our Lady's Shrine of Knock. Wind Turbines by their very nature will give rise to significant visual impacts particularly in the immediate and intermediate vantage points surrounding the wind farm. The Board will note in its deliberations on visual impact that the site obtained the benefit of planning permission for a wind farm consisting also of 7 turbines rising to a maximum height of 145m in a more concentrated layout in the south western portion of the site. Permission was granted in April 2010 and

was not subject to any appeal. This permission has now expired, but the precedent set by this grant of permission should be a key consideration in determining the current application.

Another key consideration in adjudicating on the visual impact of the proposal 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 and a “priority area” 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.

In terms of the Landscape Sensitivity Analysis 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 each Policy area, a landscape matrix and 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 Magheramore 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. In terms of the impact on Knock Shrine, photomontage 10.8 depicted the views of the wind farm from Knock Basilica. While any visual impact assessment is somewhat subjective, I consider the impact to be acceptable. The turbines are located c. 2.5 km from the Basilica and only the blades are visible. In terms of the impact on the peacefulness and serenity Knock as a place of pilgrimage, I do not consider, having regard to the separation distances that the wind farm will unduly impact on the ambience of the area. Wind farm noise will not be detectable at such separation distances. The Board will also note that the Basilica is located within a bustling town which has a population of over 800, and if the hinterland is included, a population of over 2,000. Furthermore, according to the grounds of appeal, over 1.5 million persons visit the shrine every year. I would that the traffic and trade associated with the existing town would be more likely to upset and impact on the serenity and peacefulness of the shrine and basilica rather the development of 7 wind turbines c. 2.5 km away. Likewise, the aviation lights required for safety purposes will not in my opinion have an undue impact on the shrine or the Basilica having regard to their location within the town and the concentration of artificial lighting within this area.

The appeal by Brenda Johnson also expresses concerns in relation to the photomontage methodology employed, making specific reference to the type of lens used etc. I cannot comment on the technical aspects of the photomontage production, but I have visited the site and its surroundings on a number of occasions (as part of this application and the sister applications in the vicinity). I have assessed the visual impact from various vantage points in the vicinity and I would primarily base my conclusions in respect of visual impact based on these site visits. 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. I note that many of the photomontages are taken from vantage points where all three wind farms are in view and therefore a good perspective is provided in respect of the cumulative impact arising from all three developments.

The grounds of appeal suggest that the photomontages have been selected deliberately as an attempt to obscure the potential visual impact arising from the development, i.e. taken from dips in the roadway or behind vegetation etc. Having visited the site and the areas surrounding the site, I noted that many vantage points are obscured by mature hedgerows along roadways and by extensive conifer planting in the wider area. Furthermore, with perhaps the exception of photomontage 10.12, I do not consider that views of the wind farm are in any way screened by intervening vegetation. I further note that the photomontages were undertaken in winter/early spring time with little or no tree canopy.

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 with regular and staggered linear layouts are most acceptable 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 c.3.5 km away and the Cuillalea Wind Farm c 14km both of which are located to the north-west. Furthermore, there are extant permissions for wind farms in the more immediate area including existing permissions at the site and further north at Maghermore. While the latter site is the subject of current appeal (16.244055) previous grants of planning permission could proceed regardless of any decision the Board makes in respect of the current wind farm application. 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 permitted and developed 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 an increase in four to six turbines on the subject site would be acceptable.

#### *16.3.4 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) will be beneficial in terms of transporting turbines to site. 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.

### *16.3.5 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.

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

### *16.5.1 Peat Stability Assessment*

I consider the issue of peat stability in terms of the construction of any wind farm to be a material consideration, and it has been raised as a significant issue in the grounds of appeal, particularly having regard to the peat slippages which occurred in the case of the Derrybrien Wind Farm in 2003. The grounds of appeal specifically that the derived figures regarding the Factor of Safety (FoS) in terms of peat stability have under estimated the potential for peat slippage. It should be noted that applicant carried out a detailed site investigations during the original application regarding peat stability (see S. 6 and Appendix 10 of EIS and S 4.9 of applicant's

response to the grounds of appeal). The analysis undertaken indicates that the Magheramore site does not pose a risk in terms of peat instability. 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. The grounds of appeal specifically argue that the FoS have been overestimated and that the shear vane overestimates the true strength of the peat material. The applicants have pointed out that there are a range of factors other than peat strength which are involved in assessing peat stability (these include sub-peat water flow, peat depth, surface water flow, slope, vegetation, evidence of mechanically cut peat, presence of bog pools etc.). I am satisfied that the applicant has carried out suitable site investigations and an associated risk assessment to illustrate that the construction of the turbine foundations will not give rise to peat stability issues. While the grounds of appeal argue that the FoS may have been somewhat overestimated, the site investigations carried out indicate there is a resident peat strength (typical value of c. 26kPa) within the peat of the Magheramore site which is typically 10 times the strength of the bog burst associated with the Derrybrien wind farm. 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. Because of the technical nature of this issue, it is always open to the Board to seek independent expert advice prior to determining this issue in the application and appeal.

#### 16.4.1 Estimation of peat Volumes

Table 6.6 of the EIS sets out the peat depths and mineral subsoils at the proposed turbine locations. All six turbines have peat substrate of between 0.5 and 6 metres in depth underlying the foundations<sup>2</sup>. It is estimated that this will give rise to c. 33,000 m<sup>3</sup> of peat removal in conjunction with roads and the sub-station. The grounds of appeal argue that the amount of peat to be excavated and stored on site has been

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<sup>2</sup> The peat stability analysis did indicate a spot depth of 7.3m at turbine no. 3.

under estimated, primarily on the grounds that the peat stability analysis recorded a depth of 7.3m at T3. While I acknowledge that there is some discrepancy in the figures presented, it should not be fatal to the overall application. It is likely that some levels of underestimation/overestimation of overburden removal will occur. It will have a negligible impact on the overall requirements in terms of peat storage. With regard to stability concerns expressed in the peat storage area, the response to the grounds of appeal indicate that the peat storage/deposition areas will be contained within free draining mounded berms. The peat will be deposited and stored at low heights with consequential low lateral thrusts which would militate against slippage. The absence of gradients within the storage areas will also militate against peat slippage within the storage areas. During the construction management plan a number of measures will be put in place in order to minimise any potential risk.

#### 16.5.3 Floating Road Construction

The submission from Brenda Johnson argues that the construction of the floating roads over deep areas of peat could suppress the peat and thereby alter the surface and subsurface water regime in the site with consequential ecological impacts. The EIS in section 3.4.2.3, Figure 3.6, section 3.6.7 and S.3.8.5 details the drainage arrangements associated with floating road construction. The construction includes the installation of cross-drains to ensure the hydrogeological connections are maintained between both sides of the road. A series of detailed construction methods are set out in S.3.8.5 in relation to the construction of floating roads which should allay any concerns in terms of environmental impact.

#### 16.5.4 Turbary Rights

In relation to the issues of turbary rights, I note that the applicant is not the owner of the lands in question but has the option to lease /purchase the lands in question. Where the lands are purchased the issue of turbary rights in my view becomes a legal matter between the parties concerned and as such it would not strictly be a planning matter. Any obstruction with roads or impact on turbary rights would be a

civil law issue and in any event Section 34(13) of the Planning and Development Act, as amended, states that ‘a person shall not be entitled solely by reason of a permission under this section to carry out any development’. Rights of way will not be interfered with and no barriers will be erected on the land. The applicant has indicated that turbary rights will be fully respected. Finally, in relation to this matter I would fully agree with the conclusions set out in Mr. Robert Ryan’s report which states:

*‘Clearly turbary rights are important and need to be respected. However, in my view, they do not preclude a landowner from applying for planning permission and then it is a matter between the parties to clarify any points of contention. The Development Management Guidelines for Planning Authorities (DoEHLG June, 2007) states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. They refer to Section 34(13) quoted above and I would consider that the Board has little or no jurisdiction in relation to this issue.’*

#### 16.5.5 Flora and Fauna Issues

Issues in relation to flora and fauna are dealt with in subsequent sections of my report specifically under the heading of ‘Environmental Impact Assessment’, and where it relates to Annex I habitats and Annex II species under the heading of Appropriate Assessment.

Specifically, in relation to the White Claw Cray Fish, the appellant states that this species was found within a watercourse which flows through part of the site. While the surveys carried out as part of the EIS, did not encounter this species, I have no reason to doubt the veracity of the appellant’s contention that white clawed cray fish are present within the watercourses on and near the appeal site.

However, pointed out by the planning authority in its response to the grounds of appeal, the presence of such species does not in itself present an obstacle for granting planning permission in this instance. It is only where it is found that the development would impact on the integrity of this Annex II species would an issue arise. I am satisfied that the applicant has demonstrated that sufficient mitigation

measures will be put in place to ensure appropriate surface water management practices will be put in place so as not to pollute any watercourses on site and in the vicinity of the site. These are set out in detail in S 3.6 of the EIS and the response to the planning authority's request for additional information (specifically items 5,14,15, &16).

The final submission by Brenda Johnson in response to the further information furnished to the Board on December 17<sup>th</sup> 2015 also made a number of comments in relation to the bat survey methodology contained in the revised NIS. It suggests a number of shortcomings in the methodology undertaken. These SAC's are a considerable distance away (c. 17 and 18 km from the SAC), and I consider that the proposal is unlikely to impact the population or habitats of the lesser horseshoe bat. I further note that the NPWS have not raised any concerns regarding the lesser horseshoe bat. The Board could, if it considers it appropriate, request further information with regard to the bat survey methods used. However, based on the grounds of appeal I do not consider that it has been demonstrated that the proposal in anyway represents a threat to the lesser horseshoe bat.

#### 16.5.6 Contravention of the Development Plan

The grounds of appeal submitted by Brenda Johnson and Our Lady's Shrine, Knock argues that the proposal contravenes numerous policies contained in the development plan, particularly the policies and provisions in the plan as they relate to Knock. Firstly, it should be noted that the subject site is located beyond the town boundaries of Knock, and as such it could be reasonably argued that the specific policies relating to the village are not strictly pertinent to the wind farm application site. Secondly I have argued above (under the headings of 'Principle of Development' and 'Visual Impact') that the proposal fully accords with the policies as they relate to renewable energy, and the site is the most appropriate location for a wind farm development in the context of the Landscape Appraisal section of the development plan. The proposal is also in accordance with the Renewable Energy Strategy for Co. Mayo.



Finally, in relation to this issue, if the Board agree with the appellant's assertion that the proposed development would adversely impact on the built environment and Knock's importance as a place of religious worship, and as such would be contrary to the policy objectives set out in the plan, these policies must be balanced against the wider and more strategic policies set out in the plan to foster and encourage renewable energy. I would submit that the proposal would have a minimal impact on the town of Knock and as such would not therefore contravene Policy KTKK, 3 KTKK4 or KTKK5 of the County Development Plan.

#### 16.5.7 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 from 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 Magheramore 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 this assessment included cumulative impacts arising from all wind farm developments in the area 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 applicant has already secured planning permission for the original substation under the Board's decision in respect of PL 16 237401. This permission was secured before the O Grianna Judgement. 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 within the roadways and access tracks 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 both 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, and the impact arising from connection to the substation that has the benefit of an existing permission. 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 the new proposed substation or the substation that has the benefit of permission.

#### 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 EIA's 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 under the Aarhus Convention

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 contents of the site notice are 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 Grounds of First Party Appeal**

#### 17.5 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 reseeding 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”.*

#### 17.6 Condition No. 42

Condition No. 42 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 a noise limit criterion 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.

#### 17.7 Condition No. 45

Condition No. 45 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.

#### 17.8 Condition No. 47

Condition No. 47 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 €450,000.

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 contests 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 Environmental Impact Assessment**

I am of the opinion that the EIS together with the various addenda 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, shadow flicker, traffic and the proposed grid connection, and I have assessed the quality of the EIS in the context of these issues. I therefore do not intend to repeat the above assessments 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 been 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 phases. I am also satisfied that the EIS has adequately addressed cumulative impacts as they may arise from other wind farms in the area on human beings.

**Flora and Fauna:** With regard to flora and fauna, the EIS has surveyed both flora and fauna through direct observation and the habitats and species present 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 in accordance with appropriate nomenclature. It is acknowledged that there are habitats of ecological significant including patches of raised bog (which would not be

considered capable of natural regeneration and therefore would not fall under the EU Habitats Directive Annex 1 Habitat), and a small area of rich fen and flush at the north western corner of the site. However, there are also areas that would be considered to be of low – medium ecological value. The biggest land uses in the area are pasture and forestry which generally support a relatively poor diversity of species. Details of the species of birds and general bird activity are set out and details of the number of birds recorded. The sampling of two surface water streams downstream of the site was undertaken. The streams were given relatively high Q-values 3-4 and 4 respectively. Baseline data was derived from which any changes in water quality can be measured. It appears that no aquatic species other than micro-invertebrates were recorded in the surface waters. Bats surveys were also carried out. While a number of bat species were recorded, the lesser horseshoe bat was not one of the species recorded. The results show that the activity within the study area was moderate. An otter spraint was also recorded 180 m from the nearest turbine T5. 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 EIS concludes that the impact on flora and habitats during the construction phase will be ‘permanent slight negative’ and the impact on fauna will be ‘short term slight negative’. The proposal will have a negligible impact on birds.

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 adequately described the baseline environment and correctly identified, described and evaluated 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 particularly in relation to the protection of watercourses, 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 and assessed in my report. The potential impacts of the proposal are identified as being peat, subsoil and in some cases bedrock excavation. Peat storage measures are also assessed, and I consider these measures to be adequate. 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 and storage within the site and adjacent to the windfarms. 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. The potential adverse impacts are again 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 identified, described 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>, PM<sub>2.5</sub>, NO, 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 adequately in my view 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 am satisfied based on the noise modelling exercise, that noise emissions can comply with the limits set out in the DoEHLG Guidelines of 2006. 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 strategic designations in plans and guidelines and existing permissions 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 are no recorded monuments located within the appeal site. There are four recorded monuments within 1 km of the site. These are indicated in figure 11.1 of the EIS. There is little architectural heritage in the area, just a few surviving elements of pre-famine clachans. 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 in the bog areas surrounding the turbines. The proposed mitigation measures include archaeological testing and archaeological monitoring. As in the case of the other sections 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 that 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, as numerous mitigation measures will be put in place in order to address the potential pollution and siltation issues in surrounding watercourses arising from trench excavation and ducting. These potential impacts would only arise during construction period. The vast majority of construction works arising from the grid connection would be confined to the existing roadways in the area and as such would have a limited impact on the natural environment.

**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.

### 18.5 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 by Mr. Peter Sweetman 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. of the EIS (page 12-17). 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 in my view 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 12.6 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 previous application for a 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, and 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 addresses 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 purpose 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 significant impacts that may arise as a result 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 pages 7-8 of submission by EAA-I received by the Board on 5<sup>th</sup> April, 2016). The Board will note that pages 7 and



8 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 requirements 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 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 2000 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 sites that are identified as being hydrologically connected are the Lough Carra Lough Mask SAC and the River Moy SAC. The NIS assess the impact of the proposal on each of the qualifying interests

associated with these Natura 2000 sites. The main potential impacts identified relate to the aquatic species that form part of the qualifying interests (Otter, White Clawed Crayfish, Salmon and Lamprey,) the main pressures and threats are listed to each of these species. The NIS goes on to discuss the potential for residual impacts on conservation objectives for each of the species listed taking into account best practice and design features. 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 **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 1.9 km north of the windfarm and 1.9 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. The proposed wind farm development will not result in the loss or reduction of habitat area nor will it potentially result in habitat or species fragmentation. 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 north part of the site drains into the headwaters of the Yellow River which forms part of the River Moy SAC. As the crow flies the Yellow River is situated 1.9km away from the subject site, hydrologically the site is c. 3 km from the Yellow River. There is nevertheless a potential pathway between the subject site and the Yellow River and therefore for the purposes of appropriate assessment, the River Moy SAC in my view should be 'screened in'. The aquatic species that are qualifying Interests which could potentially be affected by polluted run-off from the proposal are Otter, White Clawed Crayfish, Atlantic Salmon and Sea and Brook Lamprey. The pathways which would allow such impacts to occur have been carefully considered in the design of the scheme. A series of drainage mitigation measures have been put in place. These measures include;

- detailed environmental and construction plans (see appendix of applicant's response to grounds of appeal for details or Appendix 4.4 of NIS addendum),
- detailed peat management plans,
- The provision of cable trench drainage

- The incorporation of silt fences
- The extensive use of interceptor drains
- refuelling protocols,
- the incorporation of interceptor swales
- The incorporation of check dams to reduce flow velocity
- The incorporation of diffuse sheet flows and the end of drain interceptors
- The creation of stilling ponds
- The incorporation of vegetation filters
- The incorporation of silt busters where necessary.

A very detailed water monitoring programme will be incorporated as part of the environmental management plan.

I am satisfied having regard to the mitigation and avoidance by design measures to be incorporated into the development that the proposed windfarm development will not result in pollution of the pathways which could potential impact on the qualifying interests associated with the SAC in question.

**Lough Corrib SAC** (Site Code 000292) is located, at its closest point 9.8 km from the subject site and 7.9 km 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, in terms of loss of habitat or fragmentation of habitat 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 Yellow River in the

northern catchment area of the site and the River Robe in the southern catchment area of the site which are both separate catchment areas 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.

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 – 13.2 km southwest)
- Balla Turlough (Site Code – 00463 – 12 km north west)
- Kilgassan/Caheravoostia (Site Code 00504 – 12 km south west)
- Greaghans Turlough (Site Code 00503 – 19 km south west)
- Arkill Turlough (Site Code 00461 – 20 km to the south west)<sup>3</sup>.

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.

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<sup>3</sup> The distances referred to relate to the wind farm development and not the grid connection.

**Derrinea Bog** (Site Code 00604 c.14.5 km to the north east) and the Carrowbehy/Caher Bog (Site Code 00597 – c.14.3 km to the north) only accommodate habitats, and not species which are listed as qualifying interests. Because of the separation distances involved and the lack of any direct pathway it can be reasonable concluded that the above bogs can be screened out for the purposes of Appropriate Assessment.

**The Urlar Lakes SAC** (Site Code 001571) – c.11.3 km to the north east has the sole qualifying interest of ‘hard-mesotrophic waters with benthic vegetation of *Chara* spp.’ These lakes are most vulnerable to eutrophication through increased nutrient loadings. Any potential threat from windfarm construction on surrounding water courses will arise from suspended solids. More importantly any such impact in the case of the current wind farm will not arising as the windfarm is not located in the same hydrological catchment areas as the subject SAC.

**Errit Lough SAC** (Site Code 000607) – 12.5 km to the north east also has the sole qualifying interest of ‘hard-mesotrophic waters with benthic vegetation of *Chara* spp.’ These lakes are most vulnerable to eutrophication through increased nutrient loadings. Any potential threat from windfarm construction on surrounding water courses will arise from suspended solids. More importantly any such impact in the case of the current wind farm will not arising as the windfarm is not located in the same hydrological catchment areas as the subject SAC.

The site is hydrologically connected to the **Lough Carra/Mask Complex SAC** (Site Code 001774), as the southern portion of the site is located in the River Robe catchment and drains towards the River Robe which runs to the south of the site. While this SAC is located c 20 km to the west of the subject site, in terms of hydrological connectivity the SAC is located in excess of 45 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 20 km from the Lough Carra / Mask SAC as the crow flies, and c. 45 km hydraulically from the wind farm site, 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 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 of pollution to any SAC situated downstream, particularly as in this instance the SAC is located over 45 km downstream. These measures include;

- detailed environmental and construction plans (see appendix of applicant's response to grounds of appeal for details or Appendix 4.4 of NIS addendum),
- detailed peat management plans,
- The provision of cable trench drainage
- The incorporation of silt fences
- The extensive use of interceptor drains
- refuelling protocols,
- the incorporation of interceptor swales
- The incorporation of check dams to reduce flow velocity
- The incorporation of diffuse sheet flows and the end of drain interceptors
- The creation of stilling ponds
- The incorporation of vegetation filters
- The incorporation of silt busters where necessary.

A very detailed water monitoring programme will be incorporated as part of the environmental management plan.

I am satisfied having regard to the mitigation and avoidance by design measures to be incorporated into the development that the proposed windfarm development will not result in pollution of the pathways which could potentially impact on the qualifying interests associated with the SAC in question.

### 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's. 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.

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
- Carrowkeel Turlough SAC
- Ballinafad SAC
- Kilgassan/Caheravoostia SAC
- Greaghans Turlough SAC
- Arkill Turlough SAC
- The Errit Lough SAC
- The Ulaur Lakes SAC
- The Towerhill SAC
- The Balla Turlough SAC

In respect of the 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 a considerable distance from the above site and is also 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.

19.5 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 River Moy SAC (Site

Code 002298 and the Lough Carra /Mask SAC, Site Code 001774, in view of the site's Conservation Objectives.

*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. The appeal submitted by Brenda Johnson also expressed some concerns regarding the bird surveys undertaken. These reservations by the DAHG 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 under S132 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 water bird 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. The submission 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 mitigations 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 not have a significant effect on the bird population is a reasonable conclusion in my opinion.

## **20 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 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, including the previous grant of planning permission under Reg. Ref 09/664 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

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

12. (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.

13. (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.

14. 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.

15. 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.

16. (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.

17. 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.

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

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

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

**30th September, 2016.**

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