



An  
Bord  
Pleanála

## Inspector's Report PL11.248518.

### Development

Permission for 11 no wind turbines, each with a maximum height of up to 136.5 metres and all associated site development and ancillary works, including a 110kv electricity substation, switchroom and equipment compound; two single circuit strain towers with a maximum height of up to 26.5m, turbine foundations, crane hardstandings, 5.4 kilometres of site access tracks; underground electricity and communications cabling; site drainage works, 7 no. site entrances a permanent meteorological mast with a maximum height of up to 85metres and temporary upgrade to the R430/L7800 road junction.

The proposed development is part of a larger development which also extends onto lands in the townland of Crutt County Kilkenny.

### Location

Lands at Knockardugar, Boleybawn, Garrintagfgart, Ironmills (Kilrush) and Graiguenahown Co Laois.

### Planning Authority

Laois County Council.

### Planning Authority Reg. Ref.

16/260.

### Applicant(s)

Pinewood Wind Ltd.

### Type of Application

Permission.

### Planning Authority Decision

Refuse Permission.

<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Pinewood Wind Ltd.
<b>Observer(s)</b>	Peter Sweetman. Martin Gorman Board of Management Knock National School John Brophy, Avril Twiss, Tom O Connor and others.
<b>Date of Site Inspection</b>	21 <sup>st</sup> September 2017
<b>Inspector</b>	Brid Maxwell

## **Introduction**

This report should be read in conjunction with concurrent appeal report PL10.248392 which refers to an application for permission for 2km of site access tracks, underground electricity cabling and site drainage works. The overall development is referred to within the documentation as the Pinewood Windfarm.

### **1.0 Site Location and Description**

- 1.1 The appeal site which has a stated area of approximately 39.96 hectares forms part of a larger development which straddles the county boundary between County Laois and County Kilkenny in the townlands of Knockardugar, Bolebawn Garrintaggard, Ironmills (Kilrush) and Graiguenahown, County Laois and Crutt County Kilkenny. The appeal site within County Laois is in two parts. The main body of the appeal site lies approximately 17km south-west of Portlaoise and 25km north of Kilkenny City and is part of the Castlecomer Plateau, a broad upland area which straddles the boundaries between Laois, Carlow and Kilkenny. The nearest towns are Abbeyleix approximately 8km northwest and Castlecomer approximately 8km to the south-east. The village of Ballinakill is circa 4km to the southwest and there are also a number of small crossroads settlements and numerous dispersed one-off dwellings within the environs. The nearby community of Knock contains a primary school a church and a number of scattered dwellings. Bolebeg is a small community to the west containing a branch of Glanbia and a community field.
- 1.2 The main body of the appeal site itself is relatively flat within the wider upland area on the northwestern edge of the Castlecomer Plateau with elevations ranging from 250-399mOD and consists in part of lands owned and operated by Coillte and the remainder comprises agricultural land used predominantly for cattle grazing. The terrain consists mainly of good to rough pasture with rushes prevalent and shrubs and small trees along with moderately large areas of dense juvenile forestry. A series of forest tracks and an extensive network of drains associated with forestry and third class roads cross the site. An 80 metre anemometer mast is currently erected towards the northwestern end of the on the site (Permission 12/339). A separate plot of agricultural land adjacent to the R430 / L7800 junction,

approximately 1km north of the main body of the site is separately delineated within the red line boundary. This is located to the norther of St Lazerian's Church, a protected structure NIAH Ref 12802409 and Knock Primary school is located a short distance to the west.

- 1.3 The topography in the wider environs of the site is dominated by the upland area known as Castlecomer Plateau, characterised by undulating hills and steep escarpments at its fringes. Dissecting the lowlands on either side of the plateau are the rivers Barrow and Nore which lie to the east and west respectively. The lowlands are a mixture of pasture and tillage with fields typically bordered by mature broadleaf tree lines and hedgerows. Marginal grazing lands with scrubby hedgerow field boundaries extend into the upland areas. Extensive commercial conifer plantations emerge on the higher slopes and throughout the Castlecomer plateau. There are also occasional small patches of woodland associated with demesne landscapes within the lowlands as well as narrow strips of riparian vegetation in the margins of streams and rivers. A number of quarries are also present within the wider area.
- 1.4 The N7/M8 Motorway between Dublin Cork/Limerick and M9 Dublin Waterford are located to the west and east of the site respectively. The N78 National secondary road is located 8km to the southwest of the site at its nearest point. Running perpendicular to the N78 is the N80 national secondary road. Access to the main body of the site is via local roads from the Regional Road R430.

## **2 Proposed Development**

- 2.1 The proposed development involves permission for 11 no wind turbines, each with a maximum height of up to 136.5metres and all associated site development and ancillary works, including a 110kv electricity substation, switchroom and equipment compound; two single circuit strain towers with a maximum height of up to 26.5m, turbine foundations, crane hardstandings, 5.4 kilometres of site access tracks; underground electricity and communications cabling; site drainage works, 7 no site

entrances, a permanent meteorological mast with a maximum height of up to 85metres and temporary upgrade to the R430/L7800 road junction.

- 2.2 The proposed development is intended in conjunction with development proposed in concurrent planning appeal 248392 within the jurisdiction of Kilkenny County Council involving development of 2 Kilometres of site access tracks, underground electricity and communications cabling and site drainage works. The overall combined development 248518 and 248392 within County Kilkenny and County Laois comprises 11 no wind turbines each with a maximum height of up to 136.5m and all associated site development and ancillary works including a 110kV electricity substation, switchroom and equipment compound, two single circuit strain towers with a maximum height of up to 26.5m, turbine foundations, crane hardstandings; 7.4 kilometres of site access tracks; underground electricity and communications cabling; site drainage works, 7 no site entrances; a permanent meteorological mast with a maximum height of up to 85metres and temporary upgrade to the R430/L7800 road junction.
- 2.3 A ten-year permission is being requested to ensure that all the grid connections and relevant consents are in place and a 25-year operational period is envisaged. Given the available wind resource the GE 3.2MW-103 turbine is proposed as the most suitable and efficient turbine for this site and the total output generated will be 35.2MW.
- 2.4 As regards grid connection it is intended that the turbines will be connected to the proposed single storey substation and from there electricity will be exported to the national grid via the 110kV Laois- Kilkenny Grid Reinforcement Project which will pass through the site. Two single circuit strain towers of up to 26.5metres in height will be required to connect into this 110kV transmission line. The substation will be approximately 20.3m<sup>2</sup> with an overall height of 6m. The switchroom is 90m<sup>2</sup> and has an overall height of 6m. The substation and switchroom are of blockwork construction, finished in sand and cement render, slate roof covering and steel doors. A compound, will be enclosed by 2.4m high steel palisade fencing and

screened with landscaping to reduce visual impact. An alternative grid connection option will be via underground line along the public road to the existing substation at Ballyragget.

- 2.5 The temporary anemometer existing on site is to be replaced with a permanent mast 85m in height and consisting of a steel lattice structure. T1 T3 T4 T7 T11 and the met mast and substation are situated in agricultural pastureland. T2 is located within an area of rough “boggy” land adjacent to agricultural pastureland. T5 and T6 are positioned within juvenile forestry while T8 T9 and T10 are within more established forestry.
- 2.6 A temporary construction compound is proposed to be located adjacent to proposed T3 which will comprise temporary cabins, welfare facilities, parking area, storage bunded storage. The construction phase is likely to last 12-18 months.
- 2.7 The application is accompanied by an Environmental Impact Statement and Natura Impact Statement addressing the entirety of the project PL11.248518 and PL10.248392. Following a request for additional information the nature of the proposed development was further outlined in supplementary documentation including a preliminary construction environmental management plan and surface water management plan.

### **3 Planning Authority Decision**

#### **3.1 Decision**

- 3.1.1 By order dated 19<sup>th</sup> April 2017, Laois County Council issued notification of its decision to refuse permission on the following grounds:

- 1. The Planning Authority is not satisfied, on the basis of the information submitted with the application, in particular the Construction Environmental Management Plan (CEMP), having regard to the precautionary principle, that*

*the proposed development would not have a significant adverse effect on the maintenance of the favourable conservation status of bats which are listed in Annex IV of the EU Habitats Directive (92/43/EEC) transposed into Irish Law with the European Communities (Birds and Natural Habitats) Regulations 2011, in the vicinity of the proposed turbines due to uncertainty in relation to the amount of hedgerow required to be removed during construction and the extent of associated impacts on the foraging habits of bats on the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

2. *In the absence of both:*

- a) *A permission for 2 kilometres of site access tracks, underground electricity, communication cabling and site drainage works in the townland of Crutt in Co Kilkenny, all necessary infrastructural works to ensure the components of turbines 7,8,9, 10 and 11 can be transported to their location on the site and that these turbines can have access to the proposed grid connection; and*
- b) *Consent from the third party landowner for works to be carried out on her landholding to upgrade the L7800/R430 junction, necessary works to facilitate the transport of components of the proposed turbines to the overall site;*

*The Planning Authority considers that to grant permission for the proposed development in the absence of same would be premature and would therefore, be contrary to the proper planning and sustainable development of the area.*

- 3. *The Planning Authority considers that turbines no 6, 8, 9 and 10 contained within the proposed development, would significantly and adversely impact upon the existing residential amenities of a number of dwellings on the L-78002 to the south east of the site in Co Kilkenny by reason of visual intrusion, impacts that would be made even more acute if the forest area were felled or cleared into the future. The proposed development would therefore seriously injure the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.*

## **3.2 Planning Authority Reports**

3.2.1 Fire Officer's report indicates no objection subject to conditions.

3.2.2 Environment Section report indicates no objection subject to conditions.

3.2.3 Water Services report requests confirmation that development will not impact negatively on water source and zone of contribution of Ironmills GWS, Graiguenahoun GWS, Garrentagget No 1 and 3 GWS and Moyadd No 1 GWS.

- 3.2.4 Roads Design report recommends seeking further information in respect of haulage routes, a detailed drainage design and precondition photographic survey, specification of proposed temporary upgrade of R430 /L7800 junction and a stage 1 safety audit and a traffic assessment for the construction phase.
- 3.2.5 Dr Fiona MacGowan, Consulting Ecologist was engaged by Laois County Council to inform the Appropriate Assessment of the application. The report expresses the view that the NIS is comprehensive and thorough and the general mitigation section is well thought out however additional editing is required and some parts of the text are not coherent. Stream surveys were carried out in September 2014 when on site streams were dry and in order for a full assessment of potential impacts on qualifying interests of the SAC analysis of the watercourses at wetter times of the year should be carried out. Analysis of stream drainage is confused and incomplete. There are inconsistencies in relation to separation distances and species of Freshwater Pearl Mussel population. A preliminary Construction Environmental Management Plan is required and cumulative impacts section should be complete specifically with reference to cumulative impacts on bird population, cumulative assessment of future changes to forest plantations. Detail of proposed crossing of Graiguenahown stream to access T4 and T6 should be outlined.
- 3.2.6 The second report by Dr Fiona MacGowan asserts that clarification is required with regard to the extent of hedgerow clearance. As junction upgrade works are immediately adjacent to the flood meadows of the Owenbeg River which are included within the SAC (Site Code 002162), specific mitigation of at least a temporary berm should be provided during construction works. Bat buffer zone should be 62.47m in accordance with Carlin C and Mitchell Jones T 2012 Bats and Onshore Wind Turbines – Interim Guidance (2<sup>nd</sup> edition) Technical Information Note TIN051. Natural England, Peterborough UK.
- 3.2.7 Initial Planner's report sets out a requirement for a number of items of additional information in relation to visual impacts particularly on dwellings on the L78001 to the south east, details of Laois Kilkenny Grid Reinforcement Project on the site, confirmation of survey of dwellings within 1,030m (10 rotor diameters) of the site, a



traffic impact assessment and confirmation of no impact on zone of contribution of local group water schemes. The report recommends a revision to the environmental impact Statement to include a tables and figures Preface, an amended and comprehensive human beings and community section, noise monitoring programmes, vibration chapter and detail of shadow flicker mitigation and details in relation to Gardai, emergency services, radio communication links and wireless broadband.

3.2.8 The final Planner's report asserts that significant adverse effect on the maintenance of the favourable conservation status of bats on the site arising from the amount of hedgerow removal and resultant impact on foraging and breeding habitats of bats on the site cannot be ruled out. The principle of the development is acceptable given the location of 9 of the 11 proposed turbines on lands designated "preferred area" and remaining 2 within an area "Open for consideration". The withdrawal of consent with regard to the lands required for upgrade of L7800/ R430 junction by the relevant landowner is noted and the development is considered premature in the absence of this consent and of permission for 2km of site access tracks underground electricity. (concurrent application within the adjoining jurisdiction of Kilkenny County Council 248392). In relation to visual impact, serious concern is expressed in regard to the significant impact of Turbines 6, 8, 9 and 10 on a number of dwellings on the L-78001. It is asserted that location of dwellings below a concave slope providing full visual exposure to the southeast of the site will be made more acute when forestry is felled. Refusal is recommended.

### **3.3 Prescribed Bodies**

3.3.1 Inland Fisheries Ireland recommends a number of conditions in the event of permission.

3.3.2 Irish Aviation Authority submission notes location just over 1km from the aerodrome located at Ballinakill, known as midlands Heliport<sup>1</sup>, but currently operating as a

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<sup>1</sup> 051742 Conditional permission granted on 14/9/2006 to erect a helicopter landing / takeoff and refuelling facility. Change of use of existing farm shed to hangar facility. Change of use of dwelling to office / reception rooms and all associated site works. Aughnacross. Spink. Co Laois

runaway catering for fixed wing aircraft. The site is not licensed but is approved by the IAA as part of the approval for the Registered Training Facility (RTF) for Microlight Training on the site. Should the windfarm be given permission it is most likely that the RTF at the aerodrome site would have to cease operations due to the safety implications of the adjacent windfarm as the turbines would be significant obstacles to aircraft flying to and from the site. In addition, should consent be granted, the applicants should be conditioned to provide an agreed scheme of aviation obstacle warning lights for the wind turbines, coordinates and elevation details of the built turbines for charting purposes. The Authority should be notified at least 30 days prior to the erection of development.

3.3.3 An Taisce submission is critical of the EIS indicating that it fails to provide up to date and true evaluation of the conservation status of important birds. Bird surveys carried out in spring summer and winter 2010-2011 and evaluation of ornithological impact assessment at time of writing and should have been provided in accordance with the updated Birds of Conservation Concern in Ireland 2014-2019. Notably red listed Golden Plover and meadow pipit and amber listed Goldcrest and Mistle Thrush were recorded. The integrity of an EIS is dependant on a true and accurate evaluation of potential adverse impacts and the submitted EIS is deficient in this regard. The NIS and EIS do not give any consideration to the cumulative impacts which may arise when the mature forestry and second rotation forestry are felled with regard to further habitat loss and disturbance in particular for priority birds. This aspect should have been assessed in the EIS to ensure for example that the decommissioning phase of the development does not coincide with the felling of the second rotation forest or any other felling in the area.

3.3.4 Kilkenny County Council submission notes that the development plan designation of this area “rest of the county” provides that large scale wind energy developments will not be considered favourably and will only be considered in ‘preferred’ areas. The area in County Kilkenny immediately adjacent to the development would be sensitive to proximate wind farm developments of a significant nature within County

Laois and as such will most likely suffer undue visual consequences arising from a permission.

3.3.5 Transport Infrastructure Ireland (TII) submission relies on planning authority to abide by official policy in relation to development on/affecting national roads as outlined in DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities 2012 Development shall be undertaken in accordance with the recommendations of the Transport Traffic Impact Assessment.

3.3.6 Environmental Health Officer's report makes no comment on the application.

3.3.7 Department of Arts Heritage and the Gaeltacht notes location immediately adjacent to the River Barrow and River Nore SAC Site Code 002162 and has potential to impact negatively on the site primarily through deterioration of water quality from siltation / pollution during the construction phase. Laois County Council must consider the impact of the above when making a decision on this application taking into consideration the in combination effects of this and other developments in the area. Robust mitigation measures must be put in place to prevent any deterioration of the SAC including but not limited to the moving of turbines if deemed necessary.

3.3.8 Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs in relation to heritage related observations notes location close to recorded monument (RMP LA030-029 – Cist) and recommends archaeological mitigation strategy including pre development testing and licensed archaeological monitoring.

3.3.9 The Commission for Energy Regulation acknowledges receipt of referral notification.

### 3.4 Third Party Observations

3.4.1 Numerous third party submissions from local residents and businesses and other interested parties raise issues of common concern. To avoid unnecessary repetition in the interest of focus and for ease of reference, I have summarised the range of issues raised as follows:

- Devaluation of property.
- Impact on residential amenity arising from shadow flicker, noise, negative visual impact. Undue proximity to residential properties.
- Ecological impact, Impact on wildlife.
- Health and safety issues.
- Stress of ongoing uncertainty in relation to repeat applications.
- Impact on walking routes, and Impact on landscape character,
- Inadequate local consultation. Third party rights to effective public participations denied.
- Negative impact on equine bloodstock industry.
- Laois County Council does not have jurisdiction to consider the application as it should have been made to the Board under Section 37B given location in Laois and Kilkenny requiring submission of an EIS and potential for significant effect on more than one planning authority.
- Impact on local airfield.
- EIS is non-compliant with EIA Directive 2011/92EU. No consideration to European Landscape Convention. Non-compliance with the seventh Community Environmental Action Programmes in relation to climate change

issues or the European Directive 2009/28/EC on use of energy from renewable sources.

- Project is not sustainable development as it fails to deal in a balanced way with the objectives of economic environmental and social issues.
- Notably Eirgrid in Oral Hearing ref PL11VA0015 indicated that no wind farms would be connected to the Laois Kilkenny Grid Reinforcement Project.
- Overdevelopment of windfarms. Development premature pending new guidelines.
- Impact on walking routes.
- Adverse impact on thoroughbreds and negative impact on financial viability of local thoroughbred industry.
- NIS and EIS inadequate.
- Absence of national strategic plan addressing cumulative impact of multiple windfarms.
- Growing and compelling evidence that wind turbines are not cost effective.
- Impact on Knock National School, and church (protected structure). Photomontage insufficient none taken from Graiguenahown or Coolade Roads where most houses are.
- Approximately 300 acres of land locally planted or entered into Glas in the last 3 years changing the wildlife. Surveys carried out are out of date and irrelevant.
- Can this be built with zero silt as directed by High Court in Cullenagh Windfarm. Impact on fish salmon and freshwater pearl mussel. Note refusal by the board PL01.243364 Carlow relevant.

- Impact on derelict buildings.
- Submission from Julia Ann Dayton originally consented to use of lands in respect of the application at L7800 / R430 junction, now wishes to object.
- Draft County Development Plan policy for 1.5km setback from nearest dwelling school or community centre.

#### 4.0 Planning History

**12/339** Permission granted to retain an existing meteorological mast for the purpose of monitoring and recording wind speed.

**13/256** Application for 8 no turbines with a hub height up to 100m and rotor diameter of up to 104m maximum tip height 152m and all associated site development works including temporary site compound turbine foundations, crane hardstand areas site access roads, underground cabling site entrances, 100m anemometer mast construction of a switch room and control facility with associated equipment and compound area enclosed by 2.4m high palisade fencing. Withdrawn prior to determination.

**02/683** Permission granted to erect 1 no 40m high wind anemometer mast and 1 no high 10m high wind anemometer mast and all ancillary site works.

**PL10.248392** (17/62 Kilkenny County Council ref) Pending appeal before the Board. The application seeks permission for 2 kilometres of site access tracks, underground electricity and communications cabling and site drainage works. Kilkenny County Council refused permission on the following grounds.

*“The proposed development of access tracks, underground electricity and communications cabling and site drainage works, which forms part of a large wind-farm development is located within an area which has not been designated as*

*suitable as per the Wind Energy Development Strategy in the Kilkenny County Development Plan 2014-2020.*

*The subject development which would be part of and facilitate the development of a large wind farm would be contrary to the Wind Energy Development strategy and policies of Kilkenny County Council in relation to Wind Energy as set out in Section 10.5 and Appendix J of the Kilkenny County Development Plan 2014-2020, and would thus be contrary to the proper planning and sustainable development of the area.”*

**PL11VA0015** Laois Kilkenny Grid Reinforcement Project – The route passes through the northern section of the site.

## **5.0 Policy Context**

### **5.1 National Policy**

#### **5.1.1 Circular Letter PL5/2017 Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change and Wind Energy Development Guidelines 2006 – Update on Review.**

The circular letter reiterates advice of circular letter 20-13 on the review of wind energy and renewable policies in development plans which issued on 20 December 2013 advising local authorities to defer amending their existing development plan policies in relation to wind energy and renewable energy generally as part of the normal cyclical six yearly review or plan variation process and should instead operate their existing development plan policies or objectives until completion of a focused review of the wind energy development Guidelines 2006. The circular letter acknowledges that the review of the Wind Energy Development Guidelines 2006 has taken considerably longer to conclude than initially envisaged however notes considerable progress on the review. The correspondence notes that where local authorities break statutory requirements in the development plan process or fail to adopt policies that reflect the overall national policy position, the Minister has the powers under Section 31 of the Act, which allow him to direct a planning authority to amend a statutory development

plan and notes that “Where a local Authority includes provisions considered to be incompatible with established national policy on renewable energy development and the statutory Guidelines, including the Wind Energy Development Guidelines (2006) or these Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017) consideration will be given to the use of those powers to direct the local authority to remove the incompatible provisions.” In relation to the review of Wind Energy Development Guidelines Update refers to the “preferred draft approach” announced on 13<sup>th</sup> June 2018 and its key aspects including:

- The application of a more stringent noise limit consistent with World Health Organisation Noise Standards, in tandem with a new robust noise monitoring regime.
- A visual amenity setback of 4 times the turbine height between a wind turbine and the nearest residential property subject to a mandatory minimum distance of 500 metres.
- The elimination of shadow flicker.
- The introduction of new obligations in relation to engagement with local communities by wind farm developers along with the provision of community benefit measures.

The update outlines that the next stage of the focussed review will be the commencement of scoping for SEA and this will be followed in due course by the publication of detailed draft guidelines accompanied by relevant environmental reports for public consultation in Autumn 2017 with a view to concluding and publishing the final revised Guidelines in Q1 2018.

#### **5.1.2 Interim guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change. Department of Housing, Planning, Community and Local Government, July 2017.**

These guidelines were issued under Section 28 of the Planning and Development Act 2000, as amended. Under this provision, the Planning Authority and An Bord Pleanála are required to have regard to the guidelines and to apply any specific planning policy requirements of the guidelines, in the performance of their



functions. The guidelines focus on administrative procedures and do not amend or replace the existing Wind Energy Development Guidelines 2006 which remain in place pending the completion of the ongoing review. The guidelines refer to the need for planning authorities to have regard to the relevant national plans policies and strategies when making reviewing varying or amending development plan or local plan policies or objectives that relate to renewable energy and in particular wind energy developments. The guidelines set out a specific planning policy requirement when making reviewing varying or amending a development plan or a local area plan with policies or objectives that relate to wind energy developments the relevant planning authority shall

- (1) Ensure that overall national policy on renewable energy is acknowledged.
- (2) Indicate how the implementation of the relevant development plan or local area plan will contribute to realising overall national targets and the potential wind energy resource in megawatts and
- (3) Demonstrate detailed compliance with (2) in any proposal to introduce or vary a mandatory setback distance for wind turbines. It shall also be a material consideration in SEA when taking into account likely significant effects on climatic factors in addition to other factors such as landscape and air, if a mandatory setback or variation to a mandatory setback proposed by a planning authority in a development plan or local area plan would create a significant limitation or constraint on renewable energy projects including wind turbines, within the administrative area of the plan.

### **5.1.3 For the purpose of the interim guidelines four key national plans policies and strategies are referenced, namely:**

- The National Renewable Energy Action Plan 2010.
- The Government Strategy for Renewable Energy 2012-2020 (DCENR)
- The Government's White Paper on Energy Policy – Ireland's Transition to a Low Carbon Energy Future 2015-2030 (DCENR)
- The Government's National Mitigation Plan, July 2017 (DCCAE)

#### **5.1.3.1 *National Renewable Energy Action Plan 2010***

This Plan implements EU Directive 2009/28/EC on the promotion of the use of energy from renewable sources, which sets out agreed new climate and energy

targets- 20-20-20 by 2020 – 20% reduction in greenhouse gas emissions; 20% energy efficiency, and 20% of the EU's energy consumption to be from renewable sources. In relation to the electricity sector, the plan has set a target of 40% electricity consumption from renewable sources by 2020.

### **5.1.3.2 The Government Strategy for Renewable Energy 2012-2020 (DCENR)** ***Strategy for Renewable Energy, 2012–2020***

The Strategy for Renewable Energy, 2012–2020 reiterates the Government's view that the development of sources of renewable energy is critical to reducing dependency on fossil fuel imports, securing sustainable and competitive energy supplies and underpinning the move towards a low-carbon economy. The Strategy sets out specific actions the Government will take to accelerate the development of wind, ocean and bio-energy, R&D, sustainable transport energy, and supporting energy infrastructure. Strategic Goal 1 aims to achieve progressively more renewable electricity from onshore and offshore wind power for the domestic and export markets.

### **5.1.3.3 The Government's White Paper on Energy Policy – Ireland's Transition to a low Carbon Energy Future 2015-2030 (DCENR)**

The White Paper is a complete energy policy update which sets out the framework to guide policy to 2030. Its objective is to guide a transition to a low carbon energy system which provides secure supplies of competitive and affordable energy to our citizens and business. The Ireland 2020 renewable energy target is to increase the share of final energy consumption made up from renewable energy sources (RES) to 165. This target is broken into 3 key sectors with individual targets for each sector 40% electricity supply, 12% heating and 10% transport. The strategy permitted the widening of opportunities for citizen participation in energy matters. On shore wind energy will continue to make a significant contribution to renewable energy generation. The 2020 target of 40% is likely to require a total of 3,500-4,000 mW of on shore renewables generation capacity compared to 2,500mW available at end December 2014, of which wind accounted for 2,200mW. To achieve the target the average rate of build of

onshore wind generation will need to increase to up to 260mW per year (current rate c170mW per year).

5.1.3.4 The first **National Mitigation Plan** represents an initial step to set us on a pathway to achieve the level of decarbonisation required. It is a whole-of-Government Plan, reflecting in particular the central roles of the key Ministers responsible for the sectors covered by the Plan – Electricity Generation, the Built Environment, Transport and Agriculture, as well as drawing on the perspectives and responsibilities of a range of other Government Departments.

The measures that we implement through this first Plan will lay the foundations for transitioning Ireland to a low carbon, climate resilient and environmentally sustainable economy by 2050. To support this ongoing work, the Plan also includes over 100 individual actions for various Ministers and public bodies to take forward as we move to implementation of what will be a living document. Importantly, the Government recognises that this first Plan does not provide a complete roadmap to achieve the 2050 objective, but begins the process of development of medium to long term mitigation choices for the next and future decades. Annex 1 Contains National Mitigation Plan Actions. Action 18 is to finalise Wind Energy Guidelines with a timeline of 2018.

#### **5.1.2 *Guidelines for Planning Authorities on Wind Farm Development and Wind Energy Development 2006***

The Guidelines offer advice on planning for wind energy through the Development Plan process, and in determining applications for planning permission, and are intended to ensure consistency of approach in the identification of suitable locations for wind energy developments, and acknowledge that locational considerations are important. These considerations include ease of vehicular access and connection to the electricity grid. It is acknowledged that visual impact is amongst the more important issues when deciding a particular application. Whilst there is no set-back distance specified, it is indicated at section 5.6 that noise is likely to a problem at less than 500m. In relation to shadow flicker, section 5.12 states that impact at neighbouring offices and dwellings within 500m should not exceed 30 hours per year or 30 minutes per day. It goes on to state that at

distances greater than 10 rotor diameters, the potential for shadow flicker is very low. Section 5.13, dealing with 'windtake', states that distances between turbines will generally be 3 rotor diameters in the crosswind direction and 7 rotor diameters in the prevailing downwind direction. This section goes on to state- 'Bearing in mind the requirements for optimal performance, a distance of not less than two rotor blades from adjoining property boundaries will generally be acceptable, unless by written agreement of adjoining landowners to a lesser distance. However, where permission for wind energy development has been granted on an adjacent site, the principle of the minimum separation distances between turbines in crosswind and downwind directions indicated above should be respected'.

## **5.2 Development Plan**

5.2.1 The Laois County Development Plan 2017-2023 was adopted on 26<sup>th</sup> June 2017 and effective from 24 July 2017. I note that the previous Laois County Development Plan 2011-2017 was in force at the time of the decision of the planning authority) Appendix 5 is the Wind Energy Strategy.

The Strategy based on the methodology of superimposing wind data maps with other designation maps, taking into account the amount of existing and approved wind energy developments the suitability of County Laois in terms of wind energy generation is subdivided into four district area classifications namely

- Strategic Areas (It is considered that there are no such areas in County Laois)
- Areas not open for consideration.
- Preferred Areas (one such area has been identified and comprise Bord na Mona cutaway bog sites and lands adjacent at area straddling the Laois Tipperary Kilkenny border between Rathdowney and Templetuohy and due northeast of the recently completed windfarm at Lisheen County Tipperary and Bruckana Co Tipperary.
- Areas open for consideration. I note that there are no such areas indicated on Map although the plan text indicates that applications in these areas will

be treated on their merits with the onus on the applicant to demonstrate why the development should be granted permission.

#### **WES 1D Development of Renewable Energy Generation**

It is the policy of the Council to support, in principle and in appropriate scales and locations, the development of wind energy resources in County Laois. The future sustainable development of the County is dependent on a secure supply of energy. There is a need to promote the development of renewable energy to reduce dependency on fossil fuels and to comply with national and European policies with regards to renewable energy resources and to address the challenge of climate change. It will be an objective of the Council to ensure the security of energy supply by accommodating the development of wind energy resources in appropriate areas and at appropriate scales in the county.

#### **WES 4 Community Involvement and Gain**

Laois County Council will seek to promote community involvement and require community benefit where possible in proposed windfarm development.

Development Control Standards for Wind Farms are set out at Chapter 6 and include the following:

6.1 Buffer zones - Ensure a setback distance of 1.5km of wind turbines from schools, dwellings, community centres and all public roads in areas open for consideration for windfarm development.

6.2 Boundary The impact of proposed wind farms on the development potential of adjacent sites will be considered. Turbine distances from the boundaries of adjacent landholdings will be assessed on a case by case basis.

Requirements in relation to shadow flicker and noise and environmental monitoring.

Chapter 7 entitled Guidelines on wind farm development constraints in County Laois refers to pre planning consultations, pre-application discussion and consultation, siting and design guidelines with reference to the DoEHLG Planning Guidelines

As noted above at the time of making the application and the decision of the local authority the relevant development plan Laois County Development Plan 2011-2017 was in force. Under this 2011 plan the main body of the Site 9 of the proposed 11 turbines was within an area designated as “Preferred Area” for wind energy development while the remaining two turbines were located within an “Area Open for Consideration”.

### **5.3 Natural Heritage Designations**

5.3.1 The appeal site is located outside any Natura 2000 site however there are five Natura 2000 sites within 15km of the appeal site, namely;

- River Barrow and River Nore SAC (Site Code 002162)
- Ballyprior Grassland SAC (Site Code 2256)
- Lisbigney Bog SAC (Site Code 000869)
- River Nore SPA (Site Code 004233)

## **6 The Appeal**

### **6.1 Grounds of Appeal**

The first party grounds of appeal are summarised as follows:

- Welcome conclusions in the Planner’s report that the proposed development is acceptable in principle. Given the highly suitable location, high quality design and layout, comprehensiveness of the environmental and other information refusal is unwarranted.
- Site is in a highly favourable location for wind energy development given immediate proximity to national grid, available grid capacity, ability to connect directly to the permitted 110kV Laois- Kilkenny Grid Reinforcement Project PL1A0015), remoteness from population centres, convenient access to motorway network and good quality road access.

- Note low ecological sensitivity of the site and reasonable scientific certainty as to the absence of impacts on any designated nature conservation sites particularly in respect of hydrological pathway connectivity.
- Site layout achieves minimum 500m setback from all dwellings.
- In light of concurrent appeal PL10.248392 a single assessment for the entirety of the proposed development which has been subject to a single EIS and NIS should be undertaken by the Board.
- Notably further information request did not address the issue of potential impact on bat species or bat foraging hedgerow habitats.
- The planning authority was satisfied that the information submitted is capable of removing all reasonable scientific doubt as to the absence of any impact on the designated sites for nature conservation particularly the downstream freshwater pearl mussel populations.
- Scientific evidence shows that the site is generally an unimportant site for wildlife and specifically is not an important site for bat species. Likely impact on bat species is generally insignificant and notwithstanding the precautionary principle does not meet a substantive critical threshold that would warrant a negative assessment pursuant to the Habitats Directive. In accordance with best practice guidance, turbines will be placed a minimum of 36metres from hedgerows (assuming a maximum feature height of 4 metres) Where this setback distance is not physically feasible the EIS mitigation measures provide that hedgerows within a 36m radius of a turbine will be removed and replaced to maintain or improve the linear hedgerow network and habitat availability. Accordingly, there will be no net loss of hedgerow. Indeed, development likely to improve hedgerow foraging habitat across the site as part of the habitat and species management plan. Should the Board consider it appropriate the applicant is happy to accept a condition of consent to implement the planting of any required new linear hedgerow features in advance of the removal of any existing hedgerow.
- Total affected hedgerow length of 561m at 62.5m setback is not significant. The applicant willing to accept a condition of consent requiring a 62.5m hedgerow setback distance and replacing of new linear hedgerow where such setback is not possible. The Board is fully entitled in reaching a determination that the proposed

development will have no adverse impact on bats on the basis of imposing stringent binding conditions but leave technical details to be agreed in the post consent process.

- In relation to reason for refusal 2a the Development Management Guidelines<sup>2</sup> advise that prematurity should only be used as a reason for refusal where there is no realistic prospect of the necessary infrastructure being completed within a reasonable timeframe.
- Legislation provides a specific mechanism for planning authorities to deal with the issue of temporality in planning applications with discrete physical elements by way of Section 34(13) of the Act.
- In respect of reason for refusal 2b all interactions between the applicant and Ms Dayton were conducted via both parties' solicitors and freely entered into. Initial agreement first concluded in 2012 four years before the application was lodged. At no time was the applicant made aware that Ms Dayton was withdrawing her consent. Letter dated 16<sup>th</sup> May 2017 demonstrates full consent. Refer to legal interpretation of Justice Cregan following judicial review. *Buckey & Anor v An Bord Pleanála* [2015] IEHC 572 regarding applicable law in respect of the requirements of Article 22(2)(g) and letters of consent. It relates to the consent to make and application and it is not a consent to the actual grant of planning permission. The regulations do not require the written consent of the landowner to the substantive planning decision sought or indeed to the subsequent development or implementation of the planning permission on the landowner's lands. Accordingly, as a letter of consent has been submitted and application validated there is no prohibition on granting permission. Reason for refusal is unwarranted and ultra vires the powers of the planning authority.
- In relation to the reason for refusal no 3 and the issue of potential visual impact of Turbines 6,8,9 and 10 on dwellings to the southwest this was addressed in detail in response to request for additional information. Comprehensive report from Macroworks Landscape Consultants concluded that the medium visual impact magnitude judgement at this location was appropriate.

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<sup>2</sup> Development Management Guidelines for Planning Authorities, Department of the Environment Heritage and Local Government, June 2007.



- The site has been designated at a strategic policy level as a highly suitable location for wind energy development due to the robustness of the landscape and relatively low sensitivity to wind development avoidance of designated viewpoints or sensitive landscapes and sparse population and visual receptors.
- All dwellings in excess of 500m from the proposed turbines and all dwellings along the L78001 are in excess of 740m from the nearest turbine. A range of alternative layouts and designs were considered and the proposed layout is considered to represent the optimum design and spacing.
- The more extensive and expansive views from the dwellings along the L78001 are to the southeast away from the proposed wind turbines. These views over the Dinin River Valley will have a significant moderating influence on how 'dominant' the proposed turbines would be perceived in the overall visual context. Views towards the site from the L78001 are uphill and will be significantly screened by the background topography and intervening vegetation, including hedgerows along the narrow L78002 itself and only partial glimpses of the proposed development will be generally available.
- Visual prominence does not equate to visual impact. In the case of VRP LC7 as has been submitted in response to request for additional information the increased visibility of turbines with clear fell forestry will actually bring about a reduction in visual impact.
- The proposed development will not to any significant degree adversely impact on the visual amenity or character of the area. As an additional mitigation measures the applicant would be willing to accept a condition of consent which requires a forestry management plan to manage commercial felling operations on the site in tandem with the proposed wind farm development. This will ensure that intervening forestry screening cover is maintained permanently in situ between the dwellings along the L78001 and the proposed turbines throughout the lifetime of the permission.

## **6.2 Planning Authority Response**

6.2.1 The Planning Authority did not respond to the appeal.

## **6.3 Observations**

6.3.1 Submission by Martin Gorman. Moate, Ballinakill Co Laois requests that An Bord Pleanála reject the appeal on the grounds of negative impact on livestock and livelihood due to potential interference with drinking water supply for cattle. Submission notes that a derelict cottage and outhouse on the land in close proximity to the site is intended for future refurbishment.

6.3.2 Observations by Peter Sweetman and Associates on behalf of Kieran Brophy and others. Application and appeal are ultra vires as on the basis that the development is in the area of both Laois and Kilkenny, requires the submission of an Environmental Impact Statement and would have a significant effect on more than one planning authority it should have been made to the Board under Section 37E.

6.3.3 Knock NS Board of Management submission request the Board to refuse permission on grounds of negative impact on school, health and safety issues during the construction and operational phase. Notes no opportunity was afforded to the school to participate in decision making process and the application demonstrates a clear lack of consultation.

6.3.4 Submission on behalf of John Brophy, Avril Twiss, Tom O Connor and others signatures provided. Note additional potential reasons for refusal on grounds of impact on birds, hen harriers, red kites and curlews. Question the consent of Local landowner involved at junction L7800 / 430. Garden area across from junction which is being looked after by the community as a park is partly owned by Tom O Conner junior. Adjoining fields are part of GLAS as a bee sanctuary and proposed use of this area will affect his income and the bees. Lack of consultation. Notable adverse impact on houses in Co Laois. One dwelling has turbine proposed 603m from house. The Spink area is not suitable for this type of development. Cost to

third parties in relation to reapplication. 100% of homes not involved within 1km of the proposed turbines are against them even though they were offering €500 per year for each household.

## **7 Assessment**

7.1 Having examined the file, considered the prevailing local and national policies, the planning history in the area and having inspected the site and assessed the proposal and all submissions, I consider the key issues to be considered in the Board's assessment of the proposed development can be addressed under the following headings:

- Legal and Procedural Matters.
- Policy Compliance – Principle of Development
- Landscape and visual impact
- Impacts on the residential and other amenities of the area including archaeology and roads.
- Ecological Impact
- Appropriate Assessment.
- Environmental Impact Assessment

### **7.2 Legal and Procedural Matters**

7.2.1 It is submitted by one of the third party observer parties that the appeal and concurrent appeal PL10.248392 are invalid as a combined application should have been made under Section 37B as the development is in the area of both Laois and Kilkenny planning authorities, requires the submission of an EIS and would have a significant effect on more than one planning authority. The first party addressed this issue in response to the Council's request for additional information correctly outlining that for the purposes of Section 37(A) of the Planning and Development Act 2000 (as amended), only those categories of development specified in the Seventh Schedule can be considered for a direct application to An Bord Pleanála in

accordance with the SID provisions. The relevant class within the seventh schedule is “*An installation for the harnessing of wind power for energy production (a wind farm) with more than 25 turbines or having a total output greater than 50 megawatts*” It is clear that to qualify as strategic infrastructure development a proposed development must first come within the scope of the classes and comply with the thresholds contained within the seventh schedule and it is only then that the assessment stipulated in Section 37(A)(2) arises. As the proposed development does not fall within the seventh schedule the appropriate forum for the application is via Section 34 of the Act. In any event as both appeals are subject to concurrent assessment by the Board, I note that holistic assessment of the development in its entirety is achieved.

7.2.2 The issue of sufficient legal entitlement arises further to the apparent withdrawal of consent by Ms Dayton, the landowner in respect of the property forming part of the appeal site adjacent to the junction of R430 and L7800. The issue gave rise to the Planning Authority’s reason for refusal 2b, in effect determining that development would be premature in the absence of such consent. I note the first party’s reference, within the grounds of appeal to the development management guidelines<sup>3</sup> and the limited circumstances within which development may be deemed to be premature development (7.16.1). I would concur that the issue of prematurity would not arise in this context. The evidence with regard to the consent of the landowner Ms Dayton is somewhat contradictory and inconclusive. A second letter of apparent consent submitted with the appeal dated 14/5/2017 expresses the desire to “*reiterate my consent for Pinewood Limited to apply for planning permission to construct a windfarm and to undertake any other ancillary works as may be necessary within Folio LS1670F*”. Reference is made to previous agreement put place and signed on 21 August 2012 and it is stated that this agreement remains valid. The correspondence confirms that this letter supersedes interim submissions made to Laois County Council and seeks to withdraw all claims of intimidation made against the developer. It is not possible to verify the circumstances of the various submissions however I note the legal interpretation of

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<sup>3</sup> Development Management Guidelines for Planning Authorities, Department of the Environment Heritage and Local Government. June, 2007.

Justice Cregan following judicial review, *Buckley and Anor v An Bord Pleanála* [2015] IEHC 572 in respect of the requirements of Article 22(2)(g) of the Planning and Development Act 2001 as amended. Article 22(2)(g) provides that “A planning application shall be accompanied by *“(g) where the applicant is not the legal owner of the land or structure concerned the written consent of the owner to make the application.”*”

7.2.3 The statutory interpretation of outlined by Justice Cregan confirmed that the requirement refers to a consent to make the application and such consent does not commit the landowner to consenting to or facilitating the development. Based on this statutory interpretation, I conclude that the applicant has complied with the legislative requirements and the validity of the application is not therefore in question. I would refer the Parties in this regard to Section 34(13) of the Planning and Development Act 2000, as amended, which states that a person shall not be entitled solely by reason of a permission to carry out any development.

7.2.4 A substantial number of third party observers have strongly criticised the level of public consultation carried out by the applicant regarding the proposed development. Many express the view of no meaningful engagement with the local community. The extent of public consultation was outlined in Chapter 1 of the EIS in terms of scoping and is also outlined in detail within the separately bound report “Community Consultation Stakeholder Engagement Report” dated April 2016. Engagement included a public consultation event between 20<sup>th</sup> and 21<sup>st</sup> July 2015 and direct contact with residential and business property owners within 2km of the site. I note that there is no statutory obligation in respect of consultation however I consider that the methods outlined comply with good practice. I note that one public consultation event had to be cancelled for health and safety reasons. I acknowledge the level of angst arising within the local community with regard the difficulties in terms of deciphering the exact nature and scale of the proposed development based on the considerable volume of material and complexity of issues arising. Third parties further criticise the cost of objection and anxiety arising from ongoing uncertainty in respect of repeat applications and development

iterations on the site however this is an expected result of the iterative process of wind energy developments of this nature.

### **7.3 Policy Compliance. – Principle of Development.**

7.3.1 The proposed development is in accordance with national and EU policies which seek to promote the reduction of greenhouse gases and the advancement of renewable energy resources. The Wind Energy Development Guidelines<sup>4</sup> which remains the primary<sup>5</sup> National Policy on wind energy Developments, emphasise the importance of wind energy as a renewable energy resource and in general there is a presumption in favour of wind farm development in suitable circumstances.

7.3.2 I refer to the recent advice within Planning Circular Letter PL5/2017 and accompanying attachments, Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change, July 2017 and Information Note: Review of the Wind Energy Development Guidelines 2006 “Preferred Draft Approach”. The circular letter acknowledges the considerable length of time for review of the Wind Energy Development Guidelines 2006 including due to the undertaking of extensive public consultation exercises. The circular letter re-iterates the goal of transitioning Ireland to a low carbon economy by 2050. The “Interim Guidelines for Planning Authorities on Statutory Plans Renewable Energy and Climate Change” refer to the key national plans and policies relating to renewable energy and wind energy. These key policy documents confirm that on shore wind energy remains to be envisaged as a significant contributor to renewable energy generation. The interim guidelines are issued under Section 28 or the Act. Under these provisions planning authorities and An Bord Pleanála are required to have regard to the guidelines and to apply any specific planning policy requirements of the guidelines in the performance of their functions. I have noted at section 3.0

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<sup>4</sup> Wind Energy Development Guidelines for Planning Authorities, Department of the Environment Heritage and Local Government 2006.

<sup>5</sup> Para 1 Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change, Department of Housing, Planning, Community and Local Government, July 2017.

above the reminder within Circular Letter PL5/2017 of the obligations of local authorities in relation to the adoption of policies to reflect the overall national policy position. In terms of chronology I note that Interim Guidelines for Planning Authorities on Statutory Plans Renewable Energy and Climate Change” is dated July 2017 and Circular Letter PL5/2017 issued on 3 August 2017. The Laois County Development Plan 2017-2023 was adopted on 26<sup>th</sup> June and effective 24<sup>th</sup> July 2017.

7.3.3 In relation to the Laois County Development Plan 2017, Wind Energy Policy is provided in Appendix 5, Wind Energy Strategy. In terms of the broad policy context it is stated that there is support for renewable energy in general and wind energy developments in particular. The policy includes:

***“WES 1: Development of Renewable Energy Generation***

*It is the policy of the Council to support, in principle and in appropriate scales and locations, the development of wind energy resources in County Laois. The future sustainable development of the County is dependent on a secure supply of energy. There is a need to promote the development of renewable energy to reduce dependency on fossil fuels and to comply with national and European policies with regards to renewable energy resources and to address the challenge of climate change. It will be an objective of the Council to ensure the security of energy supply by accommodating the development of wind energy resources in appropriate areas and at appropriate scales in the county.*

***WES 2: Development of Low Carbon Economy***

*Laois County Council will seek to promote itself as moving towards becoming a low carbon County by 2018 as a means of attracting inward investment to the County and the wider Midlands region.*

***WES 3: County Partnership Approach***

*Laois County Council will seek to promote wind energy in appropriate sites in the County and will work with agencies such as the Laois County Development Board, I.D.A, Enterprise Ireland to encourage investment in research and technology associated with windfarms and other renewable energy technology.*

***WES4: Community Involvement and Gain***

*Laois County Council will seek to promote community involvement and require community benefit where possible in proposed windfarm developments.”*

I further note the required minimum setback of 1.5km from schools, dwellings community centres and all public roads.

7.3.4 The Strategy whilst referring to four area classifications namely Strategic Areas, Areas Not Open for Consideration, Preferred areas and Areas Open for Consideration however the wind energy map provides only two of classifications namely areas not open for consideration (to which the majority of the County belongs) and preferred areas (comprising a small area of Bord na Mona cutaway bog at an area straddling the Laois Tipperary, Kilkenny border between Rathdowney and Templetuohy and due northeast of the windfarm at Lisheen County Tipperary and Bruckana County Kilkenny. The appeal site therefore lies within an area identified as “not open for consideration”. WES 7 provides that *“These areas are not considered suitable for wind farm development due to their overall sensitivity arising from landscape. Ecological, recreation and / or cultural and built heritage resources as well as their limited wind regime.”*

As outlined above at the time of the Council’s decision 10/4/2017 the relevant plan was the Laois County Development Plan 2011-2017 which displayed quite a significant contrast in relation to its wind energy area classification. Specifically, the appeal site fell within an area identified as “a preferred area” (9/11) and “area open for consideration” (2/11). I note the wind energy methodology for both plans is similar in terms of being informed by the planning history of wind energy developments in County Laois, available wind data and transmission network settlement patterns and population densities as well as relevant environment and landscape policies, reference to wind energy strategies of adjoining counties and planning guidelines. The only apparent addition in terms of the informing methodology in the 2017 plan is reference to the potential for other renewable energy options including solar.

7.3.5 I note the exceptional criteria set out in Section 37 2(b) of the Planning and Development Act 2000, as amended, whereby the Board may decide to grant permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates. These include where the proposal would be considered to (i) be



of strategic or national importance (ii) where there are conflicting objectives in the development plan or the objectives are not clearly stated insofar as the proposed development, is concerned, or (iii) that permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under Section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or finally (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the areas since the making of the development plan.

7.3.6 In regard to the foregoing I do not consider the proposal to be of strategic or national importance, however I do consider that the objectives within the development plan insofar as the development is concerned are not clearly stated and are conflicting given that there is apparent support for wind energy however wind energy map precludes wind energy development save within a limited area of cutaway bog bordering the Laois Tipperary Kilkenny border. The genesis of the current wind energy policy and its evolution from the previous plan (particularly transformation from preferred area for wind energy and an area open for consideration to an area not open for consideration) further suggests conflicting objectives. As regards government strategies and guidelines to address renewable energy, I have noted above the most recent advice Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change, July 2017, Planning Circular Letter PL5/2017 and the key national documents referenced therein which would lend support for the case in hand.

7.3.7 On the basis of the foregoing analysis of the policy context I note that that the provision for the proposed wind farm development on the site would contravene the adopted wind energy policy for the County. I have outlined however that the case can be made that there is a basis for the proposed development to come within the scope of the exceptions (i-iv) set out in Section 37(2)(b) of the Planning and Development Act 2000. I note that the question of policy compliance is a “new issue” in terms of the appeal as the Laois County Development Plan 2017 was adopted subsequent to the decision of the local authority.

## **7.4 Landscape and Visual Impact**

- 7.4.1 On the issue of landscape and visual impact, this is addressed within Chapter 8 of the submitted EIS. The zone of theoretical visibility for the 20km study area demonstrates that theoretical visibility is strongly influenced by the edge of the Castlecomer plateau with relatively extensive theoretical views extending to the edge of the study area from within the lowland landscape to the north and west of the plateau perimeter where the proposal is located. Relatively consistent views are afforded from the upland landscape of the plateau in all directions within 5km of the site. Views from the northeast and south are screened by the crest of the plateau beyond 5km in these directions. To the southeast theoretical visibility is extensive and consistent out to 10km from the site but becomes more sporadic beyond this distance.
- 7.4.2 Within the EIS visual impacts are assessed based on 23 no varied viewpoints that generally range in sensitivity between medium and low with the majority classified as medium. The absence of any wide variation in visual receptor sensitivity reflects the uniform nature of the landscape.
- 7.4.3 In relation to the detailed analysis of the Viewshed reference points DR1 and DR2 representative of designated scenic views / routes of significance and visual impact arising is deemed to be moderate and slight respectively. In relation to Community view CP1 from the settlement of Ballyroan, CP2 from Ballycolla, the significance of visual impact is deemed to be slight. Similarly, CP4 from Durrow and CP5 from the settlement of Clough and CP6 from Castlecomer the significance of visual impact is deemed to be slight whilst CP3 from Ballinakill the significance of visual impact is deemed to be moderate. As regards views from major routes, six viewshed reference points are classified in terms of significance of visual impact ranging from imperceptible to slight.
- 7.4.4 Nine local community views are presented and the significance of visual impact is classified as generally being substantial moderate or moderate. I note that the local authority questioned the classification of magnitude and significance of visual

impact from LC7 taken from the local road to the east and south at a distance of 0.61km. The EIS analysis deemed the magnitude of visual impact to be medium although it was suggested that this would change to high in the case of forest clearance and the significance of visual impact is deemed to be moderate. I consider that the derived classifications as set out in the EIS are well founded and I would tend to accept the first party arguments in terms of the robustness of the landscape and the relatively low sensitivity to wind development. I would further accept that in terms of the local view LC7, having regard to the expansive views from the local road to the southeast of the site towards the southeast away from the proposed turbines, the potential dominance of the proposed wind turbines is mitigated by the predominant view to the southeast. I note the indication of willingness of the developer within the grounds of appeal to the implementation of a forestry management plan to manage commercial felling operations in tandem with the proposed wind farm development to ensure that intervening forestry screening cover is maintained permanently in situ between the dwellings along the L78001 and the proposed turbines throughout the lifetime of the plan. I note however that the limits of the redline site boundary would mean that much of the established forestry is outside the site boundary and in part outside the landownership boundary, therefore the ability to provide this mitigation is in question. Substantial moderate is the highest magnitude of visual impact occurring at four VPR locations all within 5km of the proposal. The majority of these local views result in a dominant visual presence typically arising with commercial scale wind energy developments.

7.4.5 In terms of landscape sensitivity, the judgement proffered by the first party is of low sensitivity. Whilst it is acknowledged that the landscape has a relatively high integrity in terms of the uniformity of its component features and patterns, these are also fairly unexceptional. It is asserted that overall the site and wider study area has a productive rural landscape character that is relatively robust with respect to absorbing new development. I consider that this assessment is reasonably based. The magnitude of the landscape impact is considered to be low on the basis that the proposed windfarm represents a new but not unfamiliar feature in the immediate landscape context of the site and an emerging characteristic landscape feature within the wider study area. The proposed turbines will not conflict thematically with

the productive rural landscape context. It is argued that the robustness of the landscape and views of it as well as the appropriate siting, scale and design of the proposed windfarm in accordance with the DoEHLG Wind Energy Development Guidelines 2006.

7.4.6 As regards cumulative assessment this takes account of Gortnahile 8 turbine windfarm located 14km to the southeast of the site and three permitted windfarms Kilcarrig (5 turbines 17km southeast). Listodowney (4 turbines 17km southwest) and Cullenagh (18 turbines 18 km to the north). I note that single turbine proposal at Knocklead Timahoe was refused by the Board (247143 15/401). The cumulative ZTV map demonstrates a vast degree of visibility and intervisibility scenarios between the proposed development and the other existing and permitted windfarms. The greatest area of intervisibility is indicated in regard to the Cullenagh windfarm due to its proximity to the proposal. However, based on analysis of this it is asserted that the distance and intervening vegetation minimise cumulative visual impact and in so far as the Cullenagh scheme is visible. The spatial integration of the two windfarms also reduces the possibility of perceived proliferation. The submitted EIS concludes that the additional cumulative impact is low. The generally open expansive landscapes as viewed from most of the VROs have the capacity to visually accommodate a number of spatially contained windfarms and I would tend to concur with this view. This is not to discount the extent of third party opposition and I note that visual impact is cited as a central basis for objection in all submissions. Clearly a commercial scale windfarm of this nature has a significant visual presence.

7.4.7 I would accept the arguments made that in terms of the landscape impacts, visual impacts and cumulative impacts. On this basis I would concur that the proposed windfarm will not give rise to any significant landscape or visual impacts and therefore I consider that the visual impact of the development does not present as an impediment to development of a windfarm on the site.

## **7.5 Impacts on the Residential and Other Amenities of the Area Including archaeology and impact on roads.**

**7.5.1** The submitted EIS demonstrates that there are significant number - 33 dwellings within 10 rotor diameters or 1030m of the proposed turbines. Additionally, Knock National school is located 1.3km north of proposed T1. All dwellings are in excess of 500m from a proposed wind turbine. I note that the recommendations within the targeted review<sup>6</sup> and preferred draft approach<sup>7</sup> recommend a minimum 500m setback between any commercial scale wind turbine and the nearest point of the curtilage of any property in the vicinity in order to provide for amenity considerations eg. visual obtrusion. Notably an exception may be provided to the minimum setback where the owner of the relevant property is content for the proximity of turbines to be less than the minimum setback. Written confirmation to demonstrate agreement to the reduced setback is recommended in such cases. As noted the Laois County Development Plan 2017-2023 specifies a minimum setback of 1.5km from dwellings, schools, community centres and all public roads.

**7.5.2** To predict the noise generated at these proximate properties, noise modelling was conducted using WindPRO software, Version 2,8,579. The noise prediction model was run from 4 to 12m/s at 1m/s intervals. All criteria are based on L<sub>A90</sub> levels. The predicted noise levels fall within the noise level limit for involved houses 45dB<sub>L<sub>A90</sub></sub> and 43dB<sub>L<sub>A90</sub></sub> non-involved houses. On the basis of the details it is evident that the noise impact of the proposed development is in accordance with the relevant standards. Post development noise monitoring is proposed in accordance with international noise standards. It is proposed that a warranty agreement will be drawn up with the manufacturer of the turbines to ensure that the noise output does not contain any significant audible tones. Detailed construction noise mitigation measures are outlined in chapter 10 of the EIS and supplemented by a construction noise mitigation plan submitted in response to the request for additional information.

**7.5.3** Shadow Flicker is addressed in Chapter 11. The worst case results indicate that 21 receptors out of 33 within ten rotor diameters exceed 30 minutes per day, however, this calculation would only occur under exceptional circumstances. De-rated

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<sup>6</sup> Proposed Revisions to Wind Energy Development Guidelines 2006, Targeted Review in relation to noise, proximity, and Shadow Flicker, December 11th 2013. Department of Environment Community and Local Government.

<sup>7</sup> Preferred draft approach to address the review of the wind energy guidelines announced 13<sup>th</sup> June 2017.

calculations indicate that no receptors experience shadow flicker in excess of 30 hours per annum. The highest prediction of shadow flicker relates to H26, H13 and H14 of approximately 18.07 hours, 15.49 hours and 14.46 hours per annum respectively. All of these receptors are economically involved in the development. A small amount of turbine curtailment may be required to ensure no dwellings experience more than 30 minutes per day and this can be achieved through technological mitigation.

7.5.4 Telecommunications is addressed in Chapter 12 of the EIS. It is not anticipated that there will be any likely impacts on telecommunications resulting from the proposed development. In the event of interferences this can be overcome by the installation of signal amplifiers, active deflectors or relay transmitters.

7.5.5 Transport and access is addressed in Chapter 13. The likely haul route from the M9 to the N78 at Exit 3 and to R340 junction where it turns right towards the village of Swan. From the R340 the haul route will turn left onto the L7800 local road which connects to the site. Temporary junction upgrades (R438 / L7800 junction / Chapel Cross Roads) will be required to facilitate turning movements, to accommodate construction traffic and abnormal load vehicles. The main site entrance is an existing forestry access points to be upgraded. In total approximately 7.4km of access tracks will be required. The proposed layout has been designed to make best use of these established tracks where possible. A stage 1 road safety audit submitted in response to the request for additional information assesses the R430 / L7800 junction which recommends a number of measures in relation to road markings, surface treatment, gates and signage. A Traffic Impact Assessment also submitted in response to request for additional information compiled by Jennings O Donovan and Partners Ltd. concludes that on the basis that the impact is temporary and associated with short term construction and decommissioning, it is not significant and can be mitigated. During the anticipated 32-week construction period a total of 6541 HGV deliveries will be made to the site. The maximum daily HGV deliveries will be 75 during peak construction which will coincide with the construction of turbine foundations. This will be carried out over 11 non consecutive

days within a 12-week period. There are 45 concrete deliveries associated with the construction of a turbine foundation and normal HGV traffic outside these peak periods will be in the region of 30HGV deliveries per day. Components for each individual turbine will be delivered to site in 3 separate abnormal load convoys over the period of 1 week. Whilst the proposed development will clearly give rise to traffic impacts, disruption and delay during construction and decommissioning phases, having regard to the short term duration and subject to detailed mitigation as outlined the proposal is acceptable from a roads and traffic perspective.

7.5.6 On the issue of windtake I note that as outlined above the Wind Energy Guidelines 2006 sets out at S5.13 that “in general to ensure optimal performance and to account for turbulence and wake effects, the minimum distances between wind turbines will generally be 3 times the rotor diameter in the cross wind direction and 7 times the rotor diameter in the prevailing downwind direction. Bearing in mind, the requirements for optimal performance, a distance of not less than to rotor blades from adjoining properties will generally be acceptable unless by written agreement of adjoining landowners to a lesser distance.” The rotor blade length of the proposed turbines is 51.5m therefore a minimum distance of 103m would be required from the adjoining property boundary. I note that given the confined nature of the site the layout does not achieve the minimum two rotor blade distance from the landholding boundary as required by the current guidelines. T6, is within 60m of the landholding boundary, T11 is within 65m and T10 within 80m the landholding boundary.

7.5.7 As regards potential for negative impact on livestock and equine industry I note that the Board has previously determined that proximity to established equine business would not preclude wind energy development having regard to the lack of specific evidence that wind turbines pose a threat to the welfare of horses<sup>8</sup>.

7.5.8 On the issue of potential devaluation of property there is no evidence to demonstrate that such an impact would arise. I consider that subject to appropriate

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<sup>8</sup> 09 PA 0041

design and layout and measures to mitigate amenity impacts no such devaluation should arise.

7.5.9 I note submission of the Irish Aviation Authority in reference to Midlands Heliport, located approximately 1km from the site and currently operating as a runway catering for fixed wing aircraft. The submission notes that the site is not licensed but is approved by the IAA as part of the approval for the Registered Training Facility for Microlight Training on the site. The submission of the IAA is that should the windfarm be given permission it is most likely that the registered training facility at the aerodrome site would have to cease operations due to safety implications as the wind turbines would be significant obstacles to aircraft flying to and from the site. The submission recommends that if consent is given an agreed scheme of obstacle warning lights be provided and co-ordinates and elevation details provided for charting purposes. The submission of the first party in the response to the request for additional information questions the assertion that operations should cease and notes that the grass 'runway' is on a north-south alignment and the development would not impinge on approaches. The first party further indicated that enquiries made as to the status of the facility resulted in uncertainty as to whether it is currently in operation. I have also been unable to find any clarity in relation to this issue. I note a search of the Planning Authority's website permission ref 051742 Conditional permission granted on 14/9/2006 to erect a helicopter landing / takeoff and refuelling facility refers. This was permission for "Change of use of existing farm shed to hangar facility. Change of use of dwelling to office / reception rooms and all associated site works."

7.5.10 In terms of community benefit it is proposed that a community fund of €1000 per annum per MW generated will be provided to the local community. I note that this is in accordance with IWEA Best Practice Principles in Community Engagement and Community Commitment, March 2013, which sets out best practice principles for delivering extended benefits to local communities for windfarms of 5MW or above. The guidelines refer to support equivalent to a value of at least €1,000/MW of installed capacity per annum index linked for the lifetime of the project. The



proposed benefit scheme could lead to a total of €35,200 per annum being made available to fund local community projects. The developer also proposes to contribute €500 per annum to each household which is not a landowner economically involved in the proposed development within ten rotor diameters of a proposed wind turbine towards annual electricity costs. The main mitigation measures relating to potential impacts of the proposed development on the community during the construction phase relate to best practice good construction site development and management practices. As noted the submissions on file demonstrate vehement local objection to the proposed development.

7.5.11 As regards archaeological Impacts, no significant implications in terms of archaeological aspects are predicted. There are no significant direct impacts on any recorded cultural heritage sites. On the basis of the potential for previously unknown cultural archaeological heritage to be directly impacted on it is recommended that all groundworks associated with the development be archaeologically monitored under licence. I note that the submission from the Department of the Arts Heritage and the Gaeltacht concurs with the recommendation for archaeological monitoring and also requires pre development testing. As regards impact on architectural heritage I note that RPS Saint Lazerian's Catholic Church is c750m northwest of access track leading to T1. NIAH Reg 12802409 and given its proximity and scale of the proposed development there will be a visual impact on this protected structure.

7.5.12 Based on the detail provided within the submitted EIS, I consider that the impact on the residential and other amenities of the area is appropriately mitigated. The development will have significant short term impact on roads in terms of traffic, disturbance and inconvenience however on basis of short term duration and subject to the detailed mitigation as outlined the proposal will not have an unduly negative impact. As regards cumulative impact consideration is given the Laois Kilkenny Grid Reinforcement Project and existing and permitted wind energy developments in the vicinity. It is considered that impacts arising are appropriately mitigated.

## 7.6 Ecological Impact

- 7.6.1 Flora and Fauna assessments are outlined in Chapter 4 of the EIS and were informed by desktop review and a suite of flora and fauna field surveys. Habitats on site were classified in accordance with Fossit (2000). It is noted that there was little change in the habitats and results between initial survey in 2012 and subsequent survey in 2014. The site is described as elevated and rated as marginal from an agricultural point of view. The site is dominated by commercially planted coniferous forestry and agricultural grassland; habitats which are evaluated as being of local importance, lower value with respect to botanical diversity. Proposed Turbines T05, T06, T08, T09 and T10 are located in commercial forestry. The remainder in grassland habitats and some adjacent to commercial forestry / hedgerows. The coniferous plantations within the study area are evaluated as being of low local importance with regard to ecological interests as they are species poor with relatively poor understory vegetation and they are also too wet on the ground to support badger or other ground dwelling mammals. This habitat is rated as local importance, lower value with regard to botanical and habitat diversity. Improved agricultural grassland within the area is largely on shallow soils with poor drainage. Fields are currently used for cattle grazing and wet grassland is dominated by soft rush with gorse also encroaching occurring. Overall this habitat is rated as being of local importance lower value only. Hedgerows habitats are evaluated as being of local importance and higher value with respect to wildlife connectivity however hedgerow habitats within the study area are poorly connected and treelines within the site are infrequent. Small areas of scrub of local importance higher value in respect of the botanical diversity provides important forage and cover for both breeding bird species and mammalian fauna. Overall it is asserted that none of the habitats present within the site and adjacent are of significant ecological value.
- 7.6.2 The Graiguenahown Stream and the Knockbaun Stream are two first order watercourses which rise within the proposed development boundary and flow north into the Owenbeg River. These minor first order high gradient watercourses correspond with eroding upland watercourse habitat. Within the site they are rated as being of local importance lower value while further downstream and outside the

site the lower reaches of the Graiguenahown Stream and Knockbaun streams support salmonids and area rated as being of local importance higher value. The Owenbeg river drains the northern portion of the site and is designated as part of the River Barrow and River Nore SAC downstream of the site. This watercourse is of international importance downstream of the site. Drainage ditches within the site are of low local importance with regard to botanical and habitat diversity and are subject to drying out. As regards water impact mitigation strategy is outlined to prevent potential impact on hydrological and hydrogeological regime are addressed in chapter 6 and in the context of potential for sediment input from runoff and other pollutants such as hydrocarbons and cement based compounds no significant direct or indirect effect is predicted. A suite a mitigation measures are outlined to minimise adverse effect no water quality.

7.6.3 As regards assessment of impact on fauna the detailed surveys are outlined within the documentation. Non volant mammals recorded within the study area were found to comprise species common in the Irish Countryside including rabbit and hedgehog. Limited habitat was recorded for species listed on the Irish Red Data List and the Irish Wildlife Act 1976 and 2000 including badger and hare.

7.6.4 As regards impact on bats notably four bat species were identified were identified within the study area however these species had sparse distribution. Coniferous forestry is the dominant habitat type and is not suitable for bat roosting and the habitats in the area are suboptimal for bat foraging. I note that the Local Authority's first reason for refusal was based on potential for significant adverse effect on the maintenance of favourable conservation of bats Annex IV species due to the uncertainty in relation to the amount of hedgerow required to be removed during construction and the extent of associated impacts on foraging for bats on the site. The conclusions with respect to adverse impact arose further to report of consulting ecologist, Dr Fiona McGowan, with regard to the achievement of bat buffer zone in accordance with Carlin C and Mitchell Jones T 2012. This requires the provision of a 50m buffer between the rotors of the planned turbine and the nearest vegetation to reduce the risk of collision and/or barotrauma. The first party within the grounds of appeal reiterates that the site is sub-optimal for bats. No roosts were identified within the site and the closest roost was found approximately 170m east of the site

boundary within an occupied house within the townland of Crutt in excess of 600m from T-05 the closest turbine. Whilst some coniferous trees were seen as potential roosts during summer they would be used on an intermittent basis only. The site was further deemed to be poor habitat for bats in terms of insect production and foraging due to the dominance of commercial forestry, absence of buildings and mature native trees and commuting routes. It is calculated that the total affected hedgerow length of 561 metres at 62.5m setback is not significant and the first party is amenable to provision for replacement of replacement setback linear hedgerows as a condition of consent. I note that the limitations of the red line site boundary give rise to difficulties with regard to the provision for hedgerow replacement within the confines of the site.

7.6.5 As regards birds, the only red listed species found were woodcock and meadow pipit. Meadow pipit is a widespread and common passerine found in grassland. The study area was deemed to be suboptimal for woodcock given low density of woodland and only one bird was recorded. Thirteen amber listed species were also recorded. The only raptors that were recorded were sparrow hawk and kestrel. Overall a total of 56 bird species were recorded using the site in the 2014 survey (43 in 2012) which included wintering and breeding bird survey. In general, it is outlined that the site is poor for birds in winter. There are no berries for winter thrushes and there are no wetlands for winter waders and very little rank grass to support small mammal prey for raptors, and little seed for finches. The number of common birds present on the site in winter is low and would not be attractive to hunting hen harriers. In relation to curlew none were recorded during any of the surveys and it is not considered likely that they would use the site as it is not a suitable habitat for nesting or foraging. Overall it is outlined that the site holds bird community which would be typical of the habitats occurring on the site and is not of particular importance to birds with the species present likely to be similar to that occurring in the adjoining areas. The list of species recorded is consistent with large scale Irish study of breeding birds in second-rotation plantations. The sensitivity of the bird species recorded regularly using the habitat at the site is low and the site is not a significant site for the foraging, nesting, or passage of any significant population of any species of conservation concern.

7.6.6 Watercourses within the site were found to be insignificant in terms of salmonid production and unsuitable for the spawning and nursery requirements of salmonids and were almost dried out during summer 2014. Larger watercourses such as Owenbeg River downslope of the site support brown trout and salmon where suitable nursery and rearing areas occur. Atlantic salmon listed on Annex II of the EU Habitats Directive and occurs within the Owenbeg River within the River Barrow and River Nore SAC designation downstream of the proposed windfarm. This watercourse is evaluated as being Internationally important. Salmon can be expected to occur upstream of the cSAC designation but downstream of the proposed development site boundary. Brown trout and eel are evaluated as being of high local importance within the study area. Watercourses within the site are evaluated as being of local importance lower value with regard to fish communities. Frogs were recorded.

7.6.7 In assessing the impacts on ecology the submitted EIS states that the site is not of significant ecological value due to its generally degraded nature due to agricultural activities and extent of conifer plantation. It is not located within or adjacent to any site designated for nature conservation and is of no particular importance for mammals including badger and bats. The site does not contain any watercourses that support macroinvertebrates or fish. The site is not on any migration path or regular flyover for any bird species of conservation importance. Impacts of the proposed development on ecology are assessed as being slight to moderate negative with these being reduced down to slight at most with the provision of mitigation.

7.6.8 Apart from design mitigation other measures include provision of a surface water management plan will ensure no significant impacts on water quality. It is proposed that a habitat and species management plan will be drawn up to ensure that the ecological value of the site improves following development. Ecological monitoring will be undertaken pre-construction, during construction and post construction.

7.6.9 On the basis of analysis it is asserted that overall the residual impact on habitats will be slight positive taking account of loss of habitat and improvements and implementation of the habitat species management plan. The impact on non-volant mammals would be slight negative during the construction phase due to disturbance and possible disturbance to a secondary inactive badger sett. However, in the medium term there would be a positive impact on all mammals due to implementation of a HSMP. Impacts on bats would be slight negative during construction however the value of the site would improve for feeding commuting foraging bats through replanting, installation of bat boxes. Risk of Leisler's bat collision with turbine rotors cannot be eliminated. As regards impact on birds, the avoidance of the bird nesting season during construction would ensure no significant effects on the local bird population. There will be no significant habitat loss for species of conservation concern. Impact on birds is deemed to be imperceptible. The residual impact on fish and aquatic ecology is expected to be not significant during construction with potential for slight positive impacts with the implementation of Habitat Species Management Plan. Wetlands areas for attenuation of water and new drainage ditches will be of benefit to common frog and aquatic macroinvertebrates resulting in a slight positive impact.

7.6.10 As regards interaction of impacts and cumulative effects, a wide range of potential impacts are examined. No significant adverse impact emerges and all impacts anticipated are small, localised and can be managed and mitigated. On the basis of the information submitted, and the ecological surveys and consultations, I consider that the proposed development, subject to the detailed mitigation measures as set out is acceptable in terms of its impact on ecology.

## **7.7 Screening for Appropriate Assessment**

7.7.1 The obligation to undertake appropriate assessment derives from Article 6(3) and 6(4) of the Habitats Directive. Essentially it involves a case by case examination for a Natura 2000 site and its conservation objectives. Appropriate Assessment

involves consideration of whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures to avoid reduce or offset negative effects. This determination must be carried out before a decision is made or consent given for the proposed plan or project. Consent can only be given after having determined that the proposed development would not adversely affect the integrity of a European Site in view of its conservation objectives.

7.7.2 The Natura Impact Statement, version 25/1/17 provided in response to the Council's request for additional information is prepared by ecofact Environmental Consultants. The report examines the likely effects of the proposed wind energy development both alone and in combination with other projects on the conservation objectives of Natura 2000 sites within the zone of likely influence, that is within 15km of the proposed windfarm and considers whether any possible impacts on the conservation objectives of any Natura 2000 sites can be characterised as significant. The NIS takes account of the core windfarm site and the grid connection route.

7.7.3 In terms of step 1 of **Stage 1 Screening**, the European Sites which could potentially be affected using the Source-Pathway-Receptor model are identified as the five Natura 2000 sites, four of which are within a 15km radius of the proposed windfarm site and the associated grid connection route, namely:

Site Name	Site Code	Distance
River Barrow and River Nore SAC	Site Code 002162	0.04km to the north of proposed temporary junction upgrade. Main component of the development 0.73km north overland and 1.43km via Graiguenahown Stream where the Owenbeg River is part of the designated area.

Ballyprior Grassland SAC	Site Code 002256	c11.1km northeast of the site.
Lisbigney Bog SAC	Site Code 000869	4.5km west of the site.
Slieve Bloom Mountains SPA	Site Code 004160	22.5km northwest.
River Nore SPA	Site Code 004233	6.5km downstream via Boleybawn Stream.

#### 7.7.4 Step 2: Identify the Conservation Objectives for these sites.

7.7.4.1 The Qualifying interests for the **River Barrow and River Nore SAC** are as follows:

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive:

[1130] Estuaries

[1140] Tidal Mudflats and Sandflats

[1170] Reefs

[1310] Salicornia Mud

[1330] Atlantic Salt Meadows

[1410] Mediterranean Salt Meadows

[3260] Floating River Vegetation

[4030] Dry Heath

[6430] Hydrophilous Tall Herb Communities

[7220] Petrifying Springs\*

[91A0] Old Oak Woodlands

[91E0] Alluvial Forests\*

[1016] Desmoulin's Whorl Snail (*Vertigo moulinsiana*)

[1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)

[1092] White-clawed Crayfish (*Austropotamobius pallipes*)

[1095] Sea Lamprey (*Petromyzon marinus*)

[1096] Brook Lamprey (*Lampetra planeri*)

[1099] River Lamprey (*Lampetra fluviatilis*)

[1103] Twaite Shad (*Alosa fallax*)

[1106] Atlantic Salmon (*Salmo salar*)



[1355] Otter (*Lutra lutra*)

[1421] Killarney Fern (*Trichomanes speciosum*)

[1990] Nore Freshwater Pearl Mussel (*Margaritifera durrovensis*)

The specific conservation objectives for the River Barrow and River Nore SAC, Version 1, 19<sup>th</sup> July 2011, set out the detailed specific objective to achieve the overall aim of the habitats directive to maintain or restore the favourable conservation status of habitats and species of community interest. Favourable conservation status of a habitat is achieved when:

- its natural range, and area it covers within that range, are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable.

The favourable conservation status of a species is achieved when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

#### 7.7.4.2 The qualifying interest for the **Ballyprior Grassland SAC** is

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive:

[6210] Orchid-rich Calcareous Grassland\*

The conservation objectives version 5.0 dated 15/8/2016. Generic conservation objectives refer.

#### 7.7.4.3 The qualifying interest for **Lisbigney Bog SAC**. The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive:

[7210] Cladium Fens\*

[1016] Desmoulin's Whorl Snail (*Vertigo moulinsiana*)

The generic conservation objective 15/8/2016 to maintain or restore favourable conservation condition of the Annex 1 habitat and or Annex II species for which the SAC has been selected applies to the site.

7.7.4.4 The Qualifying Interests for the **Slieve Bloom, Mountains SPA** The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for Hen Harrier. Generic conservation objectives 15/8/2016 refer.

7.7.4.5 **The River Nore SPA** The site is a Special Protection Area (SPA) under the E.U. Birds Directive of special conservation interest for the following species: Kingfisher. Generic conservation objectives Version 5. 15/8/2016 refer.

7.7.5 **Step 3. Identify the potential a) likely and b) Significant effects (direct or indirect) of the project along on the European sites solely within the contexts of the sites conservation objectives**

7.7.5.1 No direct impacts are predicted to any Natura 2000 site. The potential indirect impacts with reference to the Natura 2000 sites' conservation objectives at various stages of the process include emissions to surface and ground water, run off, silt laden run off, hydrocarbon and other pollutants, fuels, construction materials to watercourses, loss of habitat for fauna, avoidance and disturbance.

7.7.5.2 I note that the Ballyprior Grassland SAC is located approximately 11.1km northeast of the site and there are no overland hydrological connections to this site. Lisbigney Bog is 4.5km west of the site and is not hydrologically connected to the development. The Slieve Bloom Mountains SPA is located 22.5 km northwest of the site and on the basis of distance significant effects can be discounted.

7.7.5.3 No direct impacts are predicted on any Natura 2000 site. In the scenario of a large release of suspended sediment or fuel spillage to the Boleybawn, Graiguenahown Stream, The Knockardagur Stream and Knockbaun there is potential for significant indirect impacts downstream to Owenbeg River and downstream areas

on aquatic dependent species. As regards the River Barrow and River Nore SAC is downstream there could be indirect impacts via water quality. Significant elevation of suspended solids could potentially have an effect on the Freshwater Pearl Mussel population.

7.7.5.4 As regard the River Nore SPA 4.2km (overland) 6.45 (surface water distance) downstream of the site via the Boleybawn Stream the qualifying interest of this site the Kingfisher. The Boleybawn Stream which originates at the southern boundary of the site represents an overland pathway which could result in in direct impacts on water quality and subsequent indirect impacts on fish and Kingfisher. The River Nore SPA is also connected to the proposed site by the Graiguenahown Stream which rises within the site and is 14.4km (surface water distance) upstream of the SPA. Suitable nesting for the kingfisher is not recorded within the site. Taking account of the small size of the streams draining the site their low carrying capacity and distance upstream it is argued that there is reasonable scientific certainty that the proposed development will not have any adverse effects on the conservation interest of the River Nore SPA (Kingfisher)

**7.7.6 Step 4. Identify the potential a) likely and b) Significant effects (direct or indirect) of the project in combination with other plans or projects on the European sites solely within the contexts of the sites conservation objectives**

7.7.6.1 Cumulative effects are considered with regard to proposed grid connection, road widening and rewidening works and other plans and projects. In the absence of mitigation, the potential for water quality impacts to the River Barrow and River Nore SAC the potential for significant cumulative effects cannot be discounted.

**7.7.7 Step 5. Evaluate Potential Effects identified above using the source pathway receptor model.**

7.7.7.1 No direct impacts on European sites are predicted. Indirect impacts however cannot be excluded. The identified pathways for potential impact on European sites are associated with the potential for water pollution and water quality impacts, during the construction and operational phase.

**7.7.8 Step 6 Determine whether or not likely significant effects, either individually or in combination with other plans or projects on the European Sites can be reasonably ruled out on the basis of objective scientific information.**

7.7.8.1 On the basis of the identified pathways for potential impacts in respect River Barrow and River Nore SAC having regard to the hydrological connection from the site.

7.7.8.2I note that in respect of the following sites significant effects are screened out on the basis of the qualifying interests for these sites and due to distance and absence of complete impact source pathway receptor chain.

- Lisbigney Bog SAC (Site Code 00896)
- Ballyprior Grassland SAC (Site Code 0002256)
- River Nore SPA. Taking account the small size and low carrying capacity of the streams connecting the site and distance upstream it the potential for significant effect to the River Nore SPA can be discounted.
- Slieve Bloom Mountains SPA. – On basis of distance 22.5km from the site.

**7.7.9 Appropriate Assessment.**

7.7.9.1The stage 2 NIS considers activities during each phase of the development (construction, operation, maintenance and decommissioning).

7.7.9.2 Steps 1-4 above from Stage 1 Screening are detailed above. The screening assessment identifies potential pathways for impact on the River Barrow and River Nore SAC through potential emissions to surface water.

7.7.9.3Proposed temporary junction upgrade is located c40m south of the River Barrow and River Nore SAC. The main body of the site is located approximately 1.4km surface water distance upstream of the River Barrow and River Nore SAC hydrologically connected via the Gariguenahown Stream which rises within the site. The site is in the catchment of the specified Freshwater Pearl Mussel population as set out in the First Schedule of the EC Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (SI 296 2009). Sedimentation poses the biggest threat to the

freshwater pearl mussel which is the qualifying interest of the River Barrow and River Nore SAC. In the scenario of a large release of suspended sediment during construction works there is potential for significant indirect impacts downstream of the development area. Indirect impacts via water quality on the key aquatic species for which the site has been designated. In the event of siltation or pollution of watercourses from the site the aquatic habitats and species of the River Barrow and River Nore SAC could be indirectly damaged by changes in water turbidity and water quality. Impacts such as elevated siltation levels could have adverse effects on the Nore Freshwater Pearl Mussel and the Freshwater Pearl Mussel. Reduction in water quality and habitat availability could affect population levels of qualifying interest species. Sediment and pollutants could potentially impact the habitat of watercourses of plain to montane levels with the Ranunculion fluitantis and Callitriche Batrachion vegetation, Brook Lamprey (*Lampetra planeri*) Atlantic Salmon (*Salmo salar*) White clawed crayfish (*Austropotamo bius pallipes*).

### **Mitigation Measures**

7.7.9.4 Noting the dilution provided by the ever increasing size of the Owenbeg river on its course to the River Nore, and subject to the implementation of appropriate mitigation, to include a construction environment management plan, construction method statement and surface water management plan water quality will be protected. It is evaluated that there are no indirect impacts with regard to habitat loss, habitat deterioration or disturbance affecting the conservation interests of the River Barrow and River Nore SAC which would have the potential to affect the conservation status of the qualifying interests or the conservation objectives of the site. All surface water run-off will be strictly controlled such that no silt or other pollutants enter watercourses and that no artificially elevated levels of downstream siltation or no plums or silt arise when substratum is disturbed in accordance with the fourth schedule of the EC Environmental Objectives Freshwater Pearl Mussel Regulation 2009 (SI NO 296 2009) The shortest overland hydrological distance from the proposed development to the River Barrow and River Nore SAC is 1.43km via the Graiguenahown Stream. I note as referenced within the report of the consulting ecologist informing the report of the planning authority further mitigation in the form of a temporary berm in the vicinity of the proposed junction upgrade within 40m of the SAC would be required. Good practice mitigation measures in respect of surface

water and groundwater are outlined including mitigation by avoidance, source controls and in line controls and treatment systems. Erosion and sediment control measures will be incorporated into each element of the works. Generally accepted best practice control measures will be employed during the construction phase. The first party outlines commitment to review of ecological mitigation measures. The development will follow best practice environmental management approaches which will include an ongoing iterative review of all mitigation measures throughout the lifetime of the project.

**Evaluation of potential effects of the projects on the conservation objectives of the sites taking account of mitigation.**

7.7.9.5 In terms of an evaluation of the potential effects of the project on the conservation objectives of the sites taking account of mitigation, the mitigation measures include the provision of a preliminary Construction Environmental Management Plan setting out environmental commitments, waste management plans. Best practice guidelines and codes of practice will be implemented at various stages. A preliminary surface water management plan is provided. On the basis of dilution factors and the fact that the tributaries rising and within the boundary of the site are small with limited conveyance capacity, and subject to the application of stringent mitigation measures, there is reasonable scientific certainty as to the absence of impacts to the Nore Pearl Mussel or the Freshwater Pearl Mussel for the proposed development. Cumulative impacts affecting the river barrow and River Nore SAC arising from the proposed development have been identified as being limited to in-combination water quality impacts and potential disturbance impacts affecting the water dependent Annex I habitat and Annex II species within the SAC complex. The primary pressures on Annex I habitat and Annex II species within the SAC are pollution and hydrological change. Modification of water quality and flow can arise from several sources, including agriculture commercial forestry, land clearance for housing, construction of paths and roads for fisheries and recreational activities. Artificial modifications to the river such as weirs on the river Nore impact on ecosystem function, and species migratory patterns. Drainage works and maintenance works on existing drains is a continual threat to water quality in the River Nore catchment.

7.7.9.6 On the basis of detailed mitigation measures for protection of water quality in the proposed drainage design and site management programme in addition to the nature of the qualifying interest and the hydraulic distance impacts on downstream habitats are unlikely. It is thus concluded that the project would not affect the integrity of the **River Barrow and River Nore SAC** either individually or in combination with other plans or projects.

7.7.9.7 Having considered the submitted report, I am satisfied that the methodology used in the NIS report is clearly explained and information sources set out. I consider that the level of information provided allows the Board as the competent authority to assess the impact of the proposed development on the integrity of the adjacent Natura 2000 sites. Having regard to the mitigation measures proposed I consider that the conclusion that the proposed development will not adversely impact the **River Barrow and River Nore SAC** is reasonably supported.

7.7.9.8 On the basis of the details provided I consider that it has been demonstrated that the cumulative impact of the development will not have adverse effect on the River Barrow and River Nore SAC in the light of their conservation objectives and that subject to the mitigation measures and habitat and species management plan, construction and environmental management plan and surface water management plan the proposed project will not adversely affect the integrity and conservation status of any Natura 2000 sites.

## **7.8 Environmental Impact Assessment (combined assessment 248518 248392)**

7.8.1 On the matter of the Environmental Impact Assessment, I note that Environmental Impact Assessment is required for “Installations for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total output greater than 5 megawatts”, as set out in Part 2, Schedule 5 - Development for the purposes of Part 10 (Environmental Impact Assessment) Planning and Development Regulations 2001. The proposed development is for 11 turbines and is intended to provide the 35.2MW capacity therefore is subject to mandatory Environmental Impact Assessment.

7.8.2 I note that as the EIA Directive 2014\*52/EU has not to date been transposed into Irish legislation. (Transposition date 16<sup>th</sup> May 2017) Circular Letter 1/2017 issued by the Department of Housing Planning Community and Local Government (DHPCLG) sets out the transitional arrangements in advance of the commencement of the transposing legislation. Circular Letter 1/2017 provides that “where an application was made for planning permission or a scoping opinion before 16 May 2017, the 2011 Directive will apply to the whole process.

### **7.8.3 Compliance with Requirements of Articles 94 & 111 of the Planning and Development Regulations 2001 (as amended)**

7.8.3.1 I consider that the EIS in overall terms, is in compliance with Articles 94 and 111 of the Planning and Development Regulations, 2001, as amended. To this extent I would observe that-

The EIS contains the information specified in paragraph 1 of Schedule 6 of the Regulations. The EIS-

- Describes the proposal, including the site and the development’s design and size;
- Describes the measures envisaged to avoid, reduce and, if possible, remedy significant adverse effects;
- Provides the data necessary to identify and assess the main effects the project is likely to have on the environment;
- Outlines the main alternatives studied and the main reasons for the choice of site and development, taking into account the effects on the environment.
- The EIS contains the relevant information specified in paragraph 2 of Schedule 6 of the Regulations. This includes-
- A description of the physical characteristics of the project and its land use requirements;
- The main characteristics of the wind energy process to be pursued;
- The emissions arising;
- A description of the aspects of the environment likely to be significantly affected by the proposal;



- A description of the likely significant effects on the environment resulting from the development's existence, the development's use of natural resources, the emission of pollutants and creation of nuisances, and
- a description of the forecasting methods used; and
- There is an adequate summary of the EIS in non-technical language.
- There is an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information (EIS 1.8 indicates that no specific technical difficulties were encountered).

7.8.3.2 The submitted EIS focuses on the significant direct and indirect effects arising from the proposed development. The main likely effects can be identified under the range of headings as follows:

**Human Beings & Community**

- Employment and economic impact at the construction stage and operational phase
- Health and Safety impacts during construction.
- Shadow flicker.
- Visual impact
- Traffic
- Community Benefit

**Noise and Vibration**

- Noise & other disturbance to residents.

**Ecology - Flora & Fauna**

- Effects on SPA, SAC pNHA
- Impacts on on-site habitats.
- Species impact.
- Avifauna disturbance.
- Displacement / collision

**Aquatic Ecology**

- Undermining water quality in streams during construction phase.
- Affecting important habitats downstream of the site.
- Fisheries.

**Soils, Geology and Hydrogeology**

- Removal of soil
- Peat stability.
- Impact on natural drainage patterns

**- Hydrology and Water Quality.**

- Sediment release
- Surface water runoff
- Water quality

**Landscape and Visual Impact**

- Scale, height and extent of visibility.
- Impact on landscape character.
- Impact on important views.
- Cumulative impact with other existing and permitted wind farms and grid infrastructure proposals

**Cultural Heritage**

- Effects on archaeology.
- Impact on structures of heritage significance.

**Air Quality and Climate,**

- Dust
- Climate Change.

**Material Assets**

- Tourism and amenity.
- Impact on local road network.
- Electromagnetic radiation
- Shadow cast shadow flicker
- Interference with telecommunications.
- Impact on land use

**7.8.3.3 Interactions Chapter 14 deals with the interaction of the foregoing.**

Matrix Table 14.1. seeks to identify interactions between various aspects of the environment.

The effects of the interactions between humans and noise, shadow flicker, air quality, the visual landscape, flora & fauna and water and soils; and landscape and the natural environment are implicit in the range of preceding issues listed.

7.8.3.4 As regards alternatives, 2.3 consideration is given to site selection, alternative site layout and design, alternative processes, alternative wind farm output, alternative turbine model and number, alternative site layout, alternative entrance and transport routes to the site alternative mitigation measures.

#### **7.8.3.5 Assessment of the Likely Significant Effects Identified having Regard to the Mitigation Measures Proposed**

The assessment preceding this section of the report under the relevant headings fully considers the range of relevant likely significant effects with due regard given to the mitigation measures proposed to be applied if the to address the range of potential significant impacts arising from the proposed development.

#### **7.8.3.6 Conclusions Regarding the Acceptability or Otherwise of the Likely Residual Effects Identified**

The conclusions regarding the acceptability of the likely main residual effects of this proposal are clearly addressed under the various headings of the main assessment. The principal areas of concern relate to visual impact and impact on ecology.

7.8.3.7 I consider that the EIS is adequate and is of an acceptable standard that the document is generally in compliance with the provisions of Article 94 and Schedule 6 of the Planning and Development Regulations 2001.

## **8.0 Conclusion and Recommendation**

8.1 Having considered the file, the planning history and all submissions and having visited the site, I consider that based on analysis of the appeal site location the

landscape has capacity to absorb development of this nature. The documentation submitted including the EIS provide a sufficient level of detail to enable analysis of the likely impacts of the development on environmental receptors and residential effects. The submitted NIS provides sufficient information to inform an appropriate assessment of the implications of the proposed development for nearby European sites in view of the site's conservation objectives.

8.2 I have noted the policy context as set out in the Wind Energy Strategy Appendix 5 of the Laois County Development Plan 2017 which designates the site as an area not open for consideration for new wind energy development. Development Control Standards set out within the current county development plan further require in terms of buffer zones that a setback distance of 1.5 km of wind turbines from schools, dwellings, community centres and all public roads in all areas open for consideration for windfarm development. As noted this is in significant contrast to previous policy which designated the site as a "preferred area" (9 of 11 turbines) and area open for consideration (2 of 22 turbines) in the Laois County Development Plan 2011-2017. The proposed development would therefore contravene the current wind energy policy adopted for the County given its location within an area not open for consideration whereby Policy WES 7 provides that "These areas are not considered suitable for windfarm development due to their overall sensitivity from a landscape, ecological, recreation and/ or cultural and built heritage resources as well as their limited wind regime." The proposal further fails to meet the 1.5km setback distance from dwellings, schools, community centres and public roads. I note that the issue of the policy context is a "new issue" as the Laois County Development Plan 2017 was adopted since the decision of the local authority. The Board may therefore decide to refuse permission on the grounds of material contravention of the development plan.

8.3 I have set out above that the argument can be made that there is a basis for the proposed development to come within the scope of the exceptions (i-iv) set out in Section 37(2)(b) of the Planning and Development Act 2000 in relation to Guidelines under Section 28 and conflicting objectives within the development plan.

- 8.4 I have noted highlighted issues within regard to the confined nature of the appeal site (red line boundary) with reference to the ability to control lands outside the boundaries of the site in terms of the provision of the mitigation strategy particularly with regard to visual impact mitigation and replacement planting to mitigate impact on bat species.
- 8.5 The issue of the confined nature of the appeal site further arises in relation to windtake and as the proposed layout does not meet the minimum two rotor blade distance with respect to Turbines T6, T10 and T11. The Board may request the relevant consents in this regard.
- 8.6 Having considered the contents of the application, the decision of the planning authority, the provisions of the development plan, national policy as set out in the Windfarm Development Guidelines issued by the Department of Environment Heritage and Local Government, the grounds of appeal and third party submissions, my site visit and assessment of the planning issues, I conclude that subject to the stated mitigation the proposed development would not have an adverse impact on the integrity of the adjacent European Sites, would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic impact. Accordingly, I recommend permission subject to the following schedule of conditions:

## **REASONS AND CONSIDERATIONS**

Having regard to :

- (a) national policy with regard to the development of sustainable energy sources,
- (b) the Wind Energy Development Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006,
- (c) the character of the landscape in the area and the topography surrounding the site,
- (d) the location of the site outside of any European Site, and the distance to such sites,
- (e) the pattern of development in the area,

- (f) the provisions as set out in the current Laois County Development Plan 2017, including those regarding renewable energy development,
- (g) the distance to dwellings or other sensitive receptors from the proposed development, and
- (h) the submissions made in connection with the planning application and the appeal, including the Environmental Impact Statement submitted with the planning application (including mitigation measures therein), the further supplementary information submitted by the applicant in the course of the planning application and the appeal,
- (i) the Natura Impact Statement and the further information submitted in relation to ecology by the applicant in the course of the planning application and appeal

It is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely affect the landscape, would not seriously injure the visual or residential amenities of the area and would not give rise to any significant impacts on the natural heritage of the area or affect the integrity of any European Site or any protected species. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

- 1 The development shall be carried out 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, 10<sup>th</sup> February 2017, including the detailed mitigation measures set out in the EIS and NIS, except where otherwise may be required in order to comply with the following conditions.

Reason: In the interest of clarity.

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

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

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

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

4. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

Reason: In the interest of clarity.

5. All environmental mitigation measures set out in the Environmental Impact Statement, Natura Impact Statement, and associated documentation submitted by the applicant to the planning authority and An Bord Pleanála, shall be implemented in full, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of protection of the environment.

6. Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. Bat buffer zone setback of 62.5m shall be provided and replacement setback linear hedgerows shall be provided where not feasible.

Reason: To ensure the protection of the natural heritage within the site.

7. The developer shall provide for mitigation measures including a temporary berm adjacent to the proposed junction upgrade works. R430/L7800 adjacent to the flood meadows of the Owenbeg River. Details shall be submitted to the Planning Authority for written agreement prior to the commencement of development.

Reason: In the interest of nature conservation.

8. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –
  - (a) engage the services of a suitably qualified licensed archaeologist to carry out pre development testing at the site. No subsurface work shall be undertaken in the absence of the archaeologist with his / her express consent. The licensed archaeologist shall carry out the relevant documentary and cartographic research examine arial photographs and then, in liaison with the licensing section of the Department of Arts Heritage Regional Rural and Gaeltacht Affairs carry out a programme of test trenches. Testing shall take place at the turbine locations, service areas and hardstands. Excavations shall take place to the uppermost archaeological horizon only, where they survive, and all features / deposits shall be hand cleaned and clearly visible for photographic purposes. Where archaeological material is shown to be present, the archaeologist shall stop works on the site pending further advice from the Department. Such advice may include the implementation and maintenance of buffer zones including vertical buffer zones of a minimum of 500mm) and or further archaeological excavation.



(b) The developer shall notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) regarding the proposed development,

(b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) Provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

9. Prior to the commencement of works on site, a surface water management plan shall be submitted to the Planning Authority for written agreement and shall set out the detailed measures to be undertaken to protect water quality during tree harvesting, construction and operation phase, as well as a schedule for water quality monitoring. Works with a potential to result in pollution or siltation of watercourses shall be supervised by an on-site clerk of works who will report on compliance with the relevant mitigation measures. The clerk of works shall be empowered to halt works where he/she considers that continuation of the works would be likely to result in a significant pollution or siltation incident. In the event of a water pollution incident, or of damage to a river, these reports will be made available to the relevant statutory authorities and on site works will cease until authorised to continue by the Planning Authority.

Reason: To prevent water pollution.

10. Disposal of foul effluent on site is not permitted, unless otherwise authorised by a prior grant of planning permission.

**Reason:** In the interest of public health.

11. (a) Roads, hardstanding areas and other hard-surfaced areas shall be completed to the written satisfaction of the planning authority within three months of the date of commissioning of the wind farm.
- (b) Soil, rock or sand excavated during construction shall not be left stockpiled on site following completion of works. Details of the treatment of stockpiled materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

12. (a) A condition survey of the proposed construction haul routes, including provision for bridges, culverts or other structures, shall be carried out by a suitably qualified engineer both before and after construction of the proposed development. The extent and scope of the survey shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development. In the event of damage occurring to the public road network or associated infrastructure as a result of the construction of the proposed development, such damage shall be made good in accordance with the requirements of and to the satisfaction of the planning authority.
- (b) Any such works shall be undertaken in accordance with the "Guidelines for the Treatment of Otters prior to the Construction of National Road Schemes" issued by the National Roads Authority (2006).

**Reason:** To ensure successful reinstatement of the public road network in the area.

13. A protocol for annual reports on the impact of the windfarm on wildbirds in the vicinity shall be submitted by the developer to and agreed in writing with the planning authority prior to the commencement of development. These reports shall be submitted on an agreed date annually for as long as the windfarm is operational.

Reason: To allow full monitoring of the ecological impact of the proposed development.

14. The wind turbines including masts and blades shall be finished externally in a light grey colour to be agreed in writing with the planning authority prior to commencement of development. Precise specifications of the turbines shall be provided to the planning authority prior to delivery.

Reason: in the interests of visual amenity.

- 15 (a) Cables within the site shall be laid underground.  
(b) The wind turbines shall be geared to ensure that the blades rotate in the same direction.  
(c) 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.

16. 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 the commissioning of the turbines and following consultation with the relevant authorities.

Reason: In the interest of residential amenity.

17. 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.

- 18 Wind turbine noise arising from the proposed development shall not exceed the greater of:

- dB(A) above background noise levels or
- 43 dB(A)

when measured externally at dwellings or other sensitive receptors. Prior to commencement of development, the developer shall submit to, and agree 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 R 1996 "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 commissioning of the wind farm.

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

19. (a) Shadow flicker arising from the proposed development shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors.  
(b) A report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority, indicating compliance with

the above shadow flicker requirements at dwellings. Within 12 months of commissioning of the proposed wind farm, this report shall be submitted to, and agreed in writing with, the planning authority.

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

20. Prior to commencement of development, the developer shall submit and agree in writing with the planning authority a detailed Construction Management Plan, including a monitoring regime. The Plan shall make provision for inclusion of all relevant mitigation proposed in the EIS and NIS and shall in any event ensure that its scope extends to the following parameters:
- (a) surface water management during construction to prevent runoff from the site onto the public roads, unnatural flooding and/or the occurrence of any deleterious matter in the rivers and the tributaries and watercourses of their catchments or other waters within and adjoining the site including groundwater in accordance with best practice
  - (b). Detail of treatment of stockpiled material arising from excavation during construction, management of peat storage and disposal
  - (c) dust minimisation including dust potentially generated from vehicles, measures to include appropriately located wheel wash facilities and appropriate good practice in the covering of laden and unladen vehicles;
  - (d) management of public roads in the vicinity/ so that they are kept free of soil, clay, gravel, mud or other debris and general site management to the satisfaction of the planning authorities;
  - (e) provision of detailed plans for all temporary facilities and operations, including the storage of hydro-carbons, and proposals for reinstatement as appropriate on completion of the construction phase;
  - (f) preparation of a formal Project Construction and Demolition Waste Management Plan;
  - (g) control of adverse noise and disturbance by reference to construction working hours, noise limits and traffic management arrangements;

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the relevant planning authorities. The developer shall satisfy the requirements of the planning authority in relation to measures to be proposed to prevent pollution run-off into water courses. The development shall thereafter be implemented in accordance with the agreed details.

**Reason:** In the interest of amenities, public health and safety, and to protect the adjoining surface watercourses and areas subject to environmental designations.

- 21 On full or partial decommissioning of the wind farm or if the wind farm ceases operation for a period of more than one year, the masts and the turbines concerned including foundations shall be removed and all decommissioned structures shall be removed within three months of decommissioning.

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

22. 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.

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

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

Bríd Maxwell  
Planning Inspector  
October 2017