



An
Bord
Pleanála

Inspector's Report ABP-305235-19.

Development	Wind turbine.
Location	Meenkeeragh, Buncrana, Lifford PO, Co. Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	1851856.
Applicant	Tony Doherty.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Tony Doherty.
Observer	None.
Date of Site Inspection	29 th of November 2019.
Inspector	Mairead Kenny.

1.0 Introduction

This report was preceded by a request for additional information relating to Appropriate Assessment and Environmental Impact Assessment.

2.0 Site Location and Description

- 2.1. The site is located adjacent an existing windfarm in an upland area on the Inishowen peninsula about 4km to the east of Bunrana. The site can be described as being on the southern slopes of Meenkeeragh Hill. The stated elevation of the site is 146mOD. The area is characterised by open heathland and coniferous forestry plantations and the main agricultural activity appears to be sheep farming. There is a significant operational wind energy development at this location, comprising 21 no. existing turbines and 6 no. permitted turbines in all. The 27 turbines are described under different names including Sorne I, Sorne Extension II, Sheeragh and Bawnloge. The subject development is described as Meenkeeragh wind turbine and would be to the south of Sorne I wind farm.
- 2.2. There is a substation about 300m from the site (Sorne Windfarm Substation) and an overhead powerline traverses the site. There is a very low population density in the vicinity the nearest residential properties being well over 1km from the site.
- 2.3. Access to the site is to be by way of a new entrance off the local road L-71212 which also serves Sorne I wind farm. The subject site, which is of stated area of 4.66 hectares provides for a spur of about 300m in length off the existing road infrastructure and a circular area where the subject turbine would be positioned. The centre of that circular area is indicated to be 146m from the Meenkeeragh River to the south-east, which marks the limits of the land holding.
- 2.4. Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

3.0 Proposed Development

- 3.1. Permission is sought for a single wind turbine to be located within Sorne wind farm and which is described in the public notices as follows:

- Ten year permission sought – 30 year operation.
- Three blade wind turbine.
- Maximum base to blade tip height of 119.33m.
- To include turbine transformer, base and foundation, hardstand and temporary set down area.
- New access track, junction and turning area.
- On-site drainage management works.
- New site entrance within existing wind farm.
- All other ancillary works including general and excavation works.

The application cover letter notes:

- The site is within an existing wind area suitable for 'augmentation'.
- The turbine is 1.25km from the nearest dwellinghouse and thus complies with the CDP policy (which has been struck out by recent court judgement) for separation of ten times the blade tip.
- Accords with the CDP and the national Wind Energy Guidelines.

The application was accompanied by the following documents:

- Noise Report.
- Shadow Flicker Report.
- Landscape and Visual Impact Assessment Report.
- Archaeological Impact Assessment (received by the planning authority on the 5th of July 2019 as unsolicited additional information).
- A3 figures and drawings.

4.0 **Planning Authority Decision**

4.1. **Decision**

The planning authority decided to refuse permission for reason summarised below:

- The Council is seeking to initiate a development plan variation relating to deficiencies in policies in the wind energy generation policy framework. Having regard to existing lacuna in wind energy policy the planning authority is not in a position to adequately assess wind energy proposals in the policy context of the current development plan and national guidelines on this matter. Therefore it would be premature and contrary to the proper planning and sustainable development of the area to permit the current wind turbine development proposal.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The main points of the planner's report include:

- A recent successful High Court challenge to the development plan has resulted in removal of significant parts of the wind energy policies. Initiation of a **variation will be undertaken**. In the interim having regard to the extent of the lacuna in policy **proposals that may be brought forward are premature**.
- Regarding siting and design and the location of the development in moderate scenic amenity area, which areas have capacity to absorb additional development and where policy NH-P-7 complies and having regard to the fact that the site does not impact on the designated views or prospects, to the landscape and visual impact assessment undertaken, it is generally accepted that the development **would not have a negative visual impact** on the amenities of the area but in the absence of a policy guiding such development the siting and design of the turbine cannot be conclusively assessed.
- The noise report submitted concluded that the noise generated would be below the proposed maximum limits which are set in the WEGs 2006. Closest dwelling is 1.25 km from the turbine. It is accepted that **no significant noise** impacts will result.
- Shadow flicker assessment undertaken revealed no shadow flicker cast from the proposed wind turbine. The **closest house is not within the shadow**

flicker zone. There are no houses within 10 rotor diameters of the proposed development site (2 m) and no mitigation measures are proposed.

- It is accepted that **no significant impacts on amenities of residential properties** will result.
- The **access arrangements are generally acceptable.** Compliance with recommendations of the area engineer, road design engineer and TII is required.
- Unsolicited further information submitted on 23rd of July 2019 confirms **adequate capacity within the existing substation** serving the Sorne Windfarm to accommodate the additional turbine.
- Proposal is premature pending the completion of the variation process.

4.2.2. Other Technical Reports

Executive Engineer (Roads) report dated 7th January 2019:

- Confirms presence of site notice.
- Sets out drainage requirements.
- Requirement for €20,000 bond in relation to possible roads damage.
- Conditions of planning reg. ref. 09/70448 to apply.

Road Design report dated 15th January 2019:

- Sightlines to be shown for 80kph road.
- Surface water from access not to reach L-71211-0.
- Requirements relating to abnormal roads, including auto-track and strength assessment and timing.
- Requirements relating to structural assessment, which appears to relate to the haul route and include payment towards works if needed.

Chief Fire Officer's report dated 3rd January 2019:

- No objection.

4.3. Prescribed Bodies

Irish Aviation Authority report dated 3rd January 2018:

- Aeronautical obstacle warning light scheme to be agreed.
- As constructed coordinates to be submitted.
- 30 day notification prior to commencement of crane operations.

Department of Culture, Heritage and the Gaeltacht report of 17 January 2019 –

- Recorded monuments in the area include megalithic features which are listed and due to the location and site size subsurface archaeological remains could be encountered.
- Requirement for an Archaeological Impact Assessment.

Report of 23rd of July 2019 -

- Concurs with the recommendations of the AIA.
- Notes the comments that test trenching would be difficult given the nature of site.
- Accepts the recommendation that archaeological monitoring be carried out.
- Presents a planning condition relating to monitoring.

Transport Infrastructure Ireland report dated 2nd January 2019:

- Notes the use of N13 for delivery.
- Any works to national road or associated junctions to be in accordance with TII publications and subject to a Road Safety Audit.
- Abnormal road assessment requirements.
- Use of national road network for grid connection routing is unclear. In first instance alternatives should be considered.
- If such route is selected then works shall avoid impacts to all TII infrastructure such as traffic counters and should only be undertaken in consultation with and subject to agreement of TII and all costs borne by applicant.
- Possible licence requirements for such works.

- These matters should be resolved prior to any decision.

4.4. Third Party Observations

None.

5.0 Planning History

The most recent relevant planning history in the area is summarised.

Under PL05E.244753 permission was granted for a wind turbine at a location 1km to the north of the subject site.

At a location to the east an appeal under ABP-305861 was lodged on 6th November 2019 for a wind energy and grid connection project at Carrowmore or Glentougher, Quigley's Point, Inishowen, Co. Donegal, 7km to the north-east to include 6 turbines up to 124.9m blade tip height, an 80m anemometer mast, access roads, a substation, a habitat management area, 17,620m cable and other infrastructure. The application was accompanied by an EIAR and NIS. The grid connection would pass within 0.7km to the east of the site of the current appeal and 1.2km to the south. This case is undecided at the time of writing.

6.0 Policy Context

6.1. Ireland's Transition to a Low Carbon Energy Future 2015-2030

This sets out a framework to guide energy policy involving transition to a clean, low carbon system. It references Directive 2009/28/EC and the obligations to meet energy targets, including that by 2020 40% of the electricity generation sector will be from renewable sources. Onshore wind will continue to make a significant contribution.

6.2. Climate Action Plan 2019

This reinforces the importance of increasing onshore and offshore wind capacity for electricity production.

6.3. **Project Ireland - National Planning Framework 2040**

This establishes the national objective of transition to a competitive, low carbon, climate resilient and environmentally sustainable economy by 2050, by harnessing the considerable potential of wind, wave and solar energy.

The objectives relate to increases in renewable deployment in line with EU targets.

6.4. **Donegal County Development Plan 2018-2024**

The renewable energy sector including wind farms are recognised and promoted under the development plan.

The appeal site is located in an 'Area Under Strong Urban Influence' and in a landscape which is designated as having **Moderate Scenic Amenity (MSA)**. This is the lowest tier in terms of landscape importance/value. MSAs have the capacity to absorb additional development that is suitably located, sited and designed subject to compliance with all other objectives and policies of the plan.

Map 7.1.1 shows **designated views or prospects**.

Appendix 3 and section 6.5 identify **areas where wind energy is considered unsuitable**. These include areas within the zone of influence of the National Park, the airport, within SACs/SPAs and within freshwater pearl mussel catchments.

A variation including a map identifying areas in terms of their wind energy potential was deleted on foot of an order of the High Court.

6.5. **Wind Energy Development Guidelines 2006**

Amongst the relevant sections of the WEGs are:

- Section 5.6 – **noise impacts** should be assessed by reference to the nature and character of noise sensitive locations. In general noise is unlikely to be a significant problem where the distance from the nearest noise sensitive property is more than 500m.
- Section 5.12 - site selection and design can help to reduce the possibility of **shadow flicker** in the first instance. Shadow flicker at dwellings within 500m should not exceed 30 hours per year or 30 minutes per day. The potential for

shadow flicker at distances greater than 10 rotor diameters from a turbine is very low.

- Chapter 6 - **aesthetic considerations** in siting and design to be undertaken by reference to the profile, numbers, spacing, visual impact and landscape character. Inter-visibility of sites and the cumulative impact of developments to be addressed.

Draft Wind Energy Development Guidelines 2019

In the assessment of wind energy development proposals, a planning authority may consider a range of identified issues including environmental assessments, grid connection details, geology and ground conditions, drainage and hydrological effects, landscape and visual impacts, impacts on ecology, archaeology and roads.

Regarding **geology and ground conditions**, this may include consideration of peat stability and management plans to deal with significant impacts.

Regarding **site drainage and hydrological effects**, this may include consideration of water quality, watercourse crossings, drainage considerations for access roads/tracks, management plans to deal with any potential material impact on watercourses.

6.6. Natural Heritage Designations

The site is upstream of Lough Swilly SAC and Lough Swilly SPA, 6km to the west. To the east is Lough Foyle SPA.

7.0 The Appeal

7.1. Grounds of Appeal

The main points of the first party appeal are:

- Prematurity is not a sustainable reason for refusal as other parts of the development plan offers sufficient guidance and policy to allow the development at this location. The national guidelines are still operational.
- There are no objections from consultees or prescribed bodies.

- The enclosed 37 page document sets out the appeal case in more detail. It is accompanied by copies of the application submissions including application forms and plans, a noise report, landscape and visual impact assessment, shadow flicker assessment, ecological report, archaeological impact assessment and a submission in relation to connection to the grid network dated 23rd of July 2019.
- The single turbine would be an infill between wind energy developments but will maintain the required inter-turbine and dwelling separation distances.
- Circular PL 20-13 remains in force and recommends that planning authorities defer amending development policies until completion of the national review.
- Circular PL 5/2017 relates to the *Interim Guidelines on Statutory Plans, Renewable Energy and Climate Change (July 2017)*, which present administrative procedures which will be incorporated into revision in the 2006 WEGs but do not replace the 2006 WEGs.
- As the site is outside the EHSA or HAS designated areas, the turbine proposed can be considered in the context of an ordinary rural landscape. Landscape detractors include commercial forestry and peat cutting.
- The proposed turbine will connect with the existing substation 300 m to the north east of the site entrance where there is presently capacity.
- Compliance with County Development Plan, national and regional policies is addressed in section 3 of this report. The site is in an area which was identified as suitable for augmentation under the now deleted map 8.2.1.
- The applicant has no objection to the requirements set out in the planning authority internal reports, the reports of IAA, TII and DoCHG. The planner's report raises no issues with the nature of the development or the impacts.
- Section 6 of the appeal submission deals with the rebuttal of the refusal reason under the headings of response to the reason given, the principle of the proposed development, landscape and visual impact, noise, shadow flicker, access, archaeology and appropriate assessment.
- Section 7 sets out a list of precedent appeals which relate to prematurity.

- The development can be assessed under the various development plan provisions and the environmental reports submitted with the application.

7.2. **Planning Authority Response**

The planning authority relies on the planner's report. No further comments.

7.3. **Observations**

None.

8.0 **Further Information Request**

8.1. **Details of request**

The request which issued by the Board on the 13th of January 2020 noted:

- The site is in an area of deep peat 20m from a watercourse and may be hydrologically connected with downstream European sites.
- The measures taken into account in the Stage I Screening constitute mitigation measures and a revised screening report and a Natura Impact Statement was requested.
- The need for conclusions of the NIS to be embedded in robust design and mitigation measures was flagged. It was suggested that the applicant may wish to further address peat depth and stability and any relevant construction phase methodology as well as proposals for surface water management including unusual rainfall events.
- The consideration of bird overflights needs to be further supported.
- The presence of blanket bog on the site was noted and the applicant requested to identify any impacts on Annex I habitats and their significance.
- The applicant was requested to submit Schedule 7A information to inform the Board in EIA screening.

- Other comments were made in relation to baseline conditions of the river, its ecological and fisheries value, Water Framework Directive status and the relevance of the 50 m buffer zone.
- The applicant was invited to respond to comments of TII and the planning authority in relation to roads to be used as a haul route.

8.2. Details of response

The response on behalf of the applicant which was received on 13th March 2020 (email) and 19th March (hard copy) includes the following:

- This is not an EIA project and is sub-threshold.
- Section 6.9 of the appeal documents together with the ecological report is referenced. The best practice measures are standard measures which would be expected to be adopted as a minimum. A detailed Stage I Appropriate Assessment Screening Report prepared by a qualified ecologist has been provided and concludes that a Natura Impact Statement is not necessary.
- Section 4.4.1 of the ecology report states that while the site is between two important SPAs for wintering waterbirds (Lough Foyle and Lough Swilly SPAs) the site is not an important flyway for the species that use them.
- The planning report prepared by Donegal County Council considered and assessed the development and concluded 'as the development is below the EIA requirement threshold of 5 MW of 5 turbines a full EIA is not required'.
- No comprehensive assessment of the baseline conditions of the Meenkeeragh River, its WFD status or fisheries value is available.
- The 50 m buffer zone has been applied to a nearby watercourse to highlight areas in proximity to the water environment where construction has potential to impact on water quality. The proposed access road is just at the edge of this buffer zone and can easily be offset a short distance in order that it is beyond the buffer area. This can be addressed by condition or redesign.
- Regarding the haul route, this is been used for the transport of turbine components for numerous similar developments.

9.0 Assessment

I consider that the assessment of this case may be undertaken under the following headings:

- planning authority decision
- residential amenity
- landscape and visual impacts
- roads and traffic
- archaeology
- material assets
- peat stability and water quality
- ecology
- EIA screening
- Appropriate Assessment.

9.1. Planning authority decision

In relation to the reason for refusal of permission, which essentially relates to the policy context and prematurity pending a variation of the development plan, the appellant lists a number of decisions to grant permission by the Board in this context including ABP-304198. The latter refers to a grant of permission by the Board for a single turbine. The decision of the planning authority to refuse was related to policy and prematurity pending a variation. The appellant also referred to the judicial review proceedings taken by Element Power Ltd (IEHC 550).

I agree with the applicant that the development plan together with the WEGs provide ample policy provision under which to assess this development in particular. I note also that the required 10 blade separation from residential houses, which was subject of the deleted development plan variation is not breached in this instance. The separation of the development from houses together with the established wind energy development leads me to conclude that there is no objection in principle to the proposed development.

Having regard to the nature, scale and context of this development, together with the provisions of the development plan and national guidance, I consider that the single reason presented by the planning authority does not sustain a refusal of permission and that it should be rejected.

9.2. **Impact on residential amenities**

Regarding the impact on residential amenities in the area the application details show the location of all occupied dwellinghouses. The exclusion of an unoccupied farmhouse from this assessment is in accordance with the WEGs, which recommends that only occupied houses be considered.

Having regard to the pattern of residential development in the area the impacts on residential amenity are not likely to be a significant issue in this case. In particular, having regard to the location of residential properties relative to the development I consider that there is no likelihood that the construction phase would impact significantly on the amenities of the area by way of dust or other air emissions, traffic generation or impacts on private wells.

Noise impacts are assessed in a specialist report which was provided as part of the planning application and which is been re-submitted with the appeal. The nearest dwellinghouses are located 1.25 km from the development. The assessment undertaken indicates that the noise generated will be below the maximum limit stated in the WEGs.

The potential for shadow flicker affecting residential properties is assessed in a specialist report which was submitted with the application and resubmitted with the appeal. Submissions identify the zone ten times the blade tip height (1193m) from nearby houses - drawing 'House Layout Map' refers. The applicant's submission is that as there are no dwellinghouses within 10 rotor diameters of the proposed development (820 m), which is the relevant shadow flicker zone, there would be no likely significant impacts and no requirement for mitigation measures.

I accept the assessment of noise impacts and shadow flicker reports and I agree with the conclusions of the planning authority officials, which raised no concerns relating to noise or shadow flicker.

I conclude that the development would not give rise to significant adverse impacts on residential amenities by reason of environmental emissions, noise or shadow flicker.

9.3. Landscape and Visual Impacts

I will address this issue in terms of residential amenity and secondly the broader issue of the impact on landscape character, protected views and so on.

Following my inspection and having considered the application documentation, I am satisfied that there would be no significant visual impacts on individual houses.

Regarding wider landscape and visual impacts, I consider that this matter is adequately addressed in the application documentation. The addition of one more turbine in the context of 27 no. existing turbines would not constitute a major landscape change or give rise to significant visual impacts. The site is not affected by protected views and the landscape category / designation under the development plan is the lowest of three tiers. The subject turbine would be higher than the existing but is sited at a lower ground level. The turbine permitted 1 km to the north under PL 05E.244753 has a similar blade height of 126m. I accept the conclusion in the relevant reports that the additional 123m high turbine would not be visually discordant.

I conclude that the development is acceptable in terms of landscape and visual impact.

9.4. Roads and Traffic

Regarding the haul route for turbine delivery I noted in my earlier memo that the proposal is to import the turbines through Derry city port. A referral of this case to the adjoining local authority in Northern Ireland under s. 131 may be appropriate if permission is to be granted. However, I note that the haul route has been previously used in the delivery of large loads. I drove the haul route at the time of my inspection and did not identify any apparent constraints. I therefore consider that it may be concluded that the selected haul route is established and acceptable and that referral to the adjoining local authority would not be necessary.

The construction phase traffic can be managed for the duration and would be appropriately dealt with by planning condition. Operational traffic is stated to be limited to 1 vehicles per month. The planning authority report notes that the local road predominantly serves already established wind farms and the proposal would result in limited intensification of use of the road. I agree with this conclusion.

The wind turbine development would be served by a new entrance and access road off the L-71212. Having regard to the upland nature of the area, I do not consider that entrance sightlines constitutes substantive issue.

The submission of TII raises issues relating to potential use of the national road network for cable laying. The route of the proposed power cable is identified as following the access route within the site and the applicant indicates that in the submission of 23rd of July 2019 the connection will be to the existing substation 300 m to the north east of the proposed site entrance, where there is capacity. There will be no significant impacts on National roads relating to the grid connection.

I note the conclusion of the planning authority that there would be no effect on local or national roads, which I consider is a robust conclusion.

9.5. Archaeology

- 9.6. The Archaeological Impact Assessment report notes 4 no. Record of Monuments and Places (RMP) sites within 1km of the proposed development. Three of the RMP sites relate to standing stones only one of which is visible and the other RMP site is a megalithic tomb which is 0.6km west of the proposed development. The AIA is accompanied by maps which show the development in the context of the RMP sites. I consider that the submitted AIA is adequate. It was prepared following site inspection and documentary research. This notes the absence of material of archaeological significance on a recent nearby excavation and that nothing of archaeological potential was identified within the proposed development area during survey.
- 9.7. In terms of the landscape setting of the RMPs the two upstanding megalithic sites are deeply embedded in bog. I would not describe either site as high value landscape features. The existing coniferous forestry separates the RMPs from the

site of the wind turbine. No significant impacts on the setting of the RMPs would result from the proposed development.

- 9.8. Regarding the potential for interference with subsurface archaeological remains during construction I consider that this is satisfactorily addressed in the AIA. The Department for Culture Heritage and the Gaeltacht accepts the applicant's submission that due to the wet and spongy nature of the lands test trenching would be difficult. A requirement for archaeological monitoring as recommended is therefore appropriate.
- 9.9. Subject to the recommended condition, the development is acceptable in terms of archaeological impacts.

9.10. **Material assets**

The application drawings indicate that the proposed wind turbine would be at least 146m from the edge of the landholding and that the separation from the nearest existing turbine, which is to the north would be 321m. There would appear to be no issues arising in this case in relation to conflicts between existing/proposed turbines. The development would be compatible with the existing land uses in the area and would not have an adverse impact on material assets.

9.11. **Peat stability and water quality impacts**

In view of the identification of deep peat within the sloping site and its proximity to the stream (notwithstanding the 50m buffer identified) the Board requested the applicant to provide further comment on peat depth and stability, on any relevant construction phase methodology as well as proposals for surface water management including unusual rainfall events. I consider that this issue is relevant having regard to the potential ecological value of the stream, which has not been described in any detail (see below) and having regard to the requirements of the Water Framework Directive and the downstream European sites. The peat survey undertaken showed deep peat (over 1m) along the length of much of the access road and at the location of the turbine. Areas of eroding bog are described as described as 'recovering well'.

The applicant's response to the Board's request for additional information does not add any information of significance. As such no information has been presented in relation to the baseline water quality (and fisheries) which might be impacted in the event of major sedimentation releases including from heavy rainfall or bog slippage or bust.

In terms of the applicant's submission the document Construction Phase Best Practice dated August 2019 is most relevant. The measures which are relevant to the protection of the aquatic environment set out under section 3.2 are described as:

The prospect of deleterious inputs into surface water will be managed through good standards of environmental practice during the build phase *that would be appropriate regardless of the Natura 2000 sites* (my emphasis).

I consider that the measures presented in the context of deep peat on a sloping site are not sufficient for the Board to be satisfied that there would not be a threat to water quality. I return to this matter later.

9.12. Ecology

The application submission include an Ecological Assessment report, which is based on desk studies and on habitat, peat and mammal surveys of the site undertaken on two days in September 2018. Table 3 and Figure 1 describe and identify the designated sites within 10km of the site. The designated sites include a number of bogs which are designated as NHAs and to the south-west and south-east are Lough Swilly pNHA, Lough Swilly SAC and Lough Swilly SPA and Lough Foyle SPA, Lough Foyle Ramsar and Lough Foyle ASSI.

Regarding the aquatic environment the applicant was requested to provide information relating to the baseline conditions of the Meenkeeragh River, its WFD status or fisheries value. No surveys were undertaken in response and no other information was deemed to be available. The data available on the EPA website was not referenced – it shows that the river (the Mill) has a 'High' Q value status based on 2019 measurements. The applicant did clarify that the sub catchment does not contain freshwater pearl mussel (which would exclude consideration of wind energy development under the development plan policies) but is otherwise silent on the aquatic habitat.

It is clear from the information presented that the proposed development would not directly impact on any of these sites designated as NHAs or as European sites. The habitats on site which would be impacted by the development are described as

- wet grassland and lowland blanket bog, at the location of the access road
- eroding recovering blanket bog and cutover recovering blanket bog, which are the dominant habitats at the working area and turbine location.

Regarding mammals, hares are assumed to be present. The Meenkeeragh Stream may and the larger watercourses downstream (the Mill River) would host Otters, but they were not identified in surveys. The nearby cottage is identified as a suitable bat roost site for Leisler bats, the species which is most sensitive to wind energy developments, due to the height at which they forage. However, the site habitat is not considered to provide suitable foraging and it is therefore suggested that it is unlikely that Leisler's bats use the site. Soprano pipistrelle have been recorded in the surrounding area and the site habitats would provide low quality foraging habitat. Due to the levels at which they forage risk of collision is minimised.

Birds which are recorded in the area are common buzzard, common starling, Eurasian Sparrowhawk, European greenfinch, Mistle thrush and wheatear. The report indicates that while the site is between two important SPAs for wintering birds they rarely overfly this site.

I consider that the Ecological Assessment presented is descriptive and focused on recording the presence or likely presence of species in the area. It does not draw firm conclusions relating to the significance of likely significant impacts on ecological resources. It does not report specialist surveys relating to bats. While otter is assumed to be present there is no consideration given to the potential importance of the minor stream or the distance to the main areas of otter activity. Fisheries and aquatic assessments are generally lacking apart from the information I have reported above.

Having regard to the information presented in the Ecological Assessment report I am satisfied that there is limited likelihood of adverse ecological impacts. However, the information presented is not in my opinion conclusive in relation to bats and otter. I comment below further on the qualifying interests of European sites.

9.13. EIA screening

I have had regard to the approach of the Inspector under case ABP-304198 and the recommendation that the requirement for EIA could be determined without screening and based on preliminary examination. The Board adopted that approach. I consider that the same procedures and considerations apply in this appeal.

I consider that having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development.

I conclude that the need for Environmental Impact Assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

10.0 Appropriate Assessment

The European sites which are within a 10km radius of the proposed development and are:

- Lough Swilly SPA
- Lough Swilly SAC
- Lough Foyle SPA

The qualifying interests of these sites are set out in the table below. I have prepared this table. Its conclusions in relation to pathways and potential effects are largely drawn from my review of publicly available information. The discussion below sets out the applicant's submission and my considerations of the potential water quality related impacts and specific impacts on birds.

Table 1 European sites considered for Stage 1 screening:

European Site Name & Code	Distance	Qualifying Interest	Source-pathway-receptor	Considered further in screening
Lough Swilly SAC 002287	5.5km west of the site	Coastal lagoons [1150] Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Lutra lutra (Otter) [1355]	Hydrological pathway by way of Meenkeeragh Stream.	Yes. There is potential for significant effects arising from the discharge of contaminated surface water from the site including in the event of sediment release related to bog slippage and / or high rainfall events.
Lough Swilly SPA 004075	5.5km west of site	Great Crested Grebe (Podiceps cristatus) [A005] Grey Heron (Ardea cinerea) [A028]	Hydrological pathway by way of Meenkeeragh Stream.	Yes Potential impact on bird feeding related to

		<p>Whooper Swan (Cygnus cygnus) [A038]</p> <p>Greylag Goose (Anser anser) [A043]</p> <p>Shelduck (Tadorna tadorna) [A048]</p> <p>Wigeon (Anas penelope) [A050]</p> <p>Teal (Anas crecca) [A052]</p> <p>Mallard (Anas platyrhynchos) [A053]</p> <p>Shoveler (Anas clypeata) [A056]</p> <p>Scaup (Aythya marila) [A062]</p> <p>Goldeneye (Bucephala clangula) [A067]</p> <p>Red-breasted Merganser (Mergus serrator) [A069]</p> <p>Coot (Fulica atra) [A125]</p> <p>Oystercatcher (Haematopus ostralegus) [A130]</p> <p>Knot (Calidris canutus) [A143]</p>	<p>Potential that birds which are special conservation interests of this site will be present for reason of flying between Lough Swilly and Lough Foyle.</p>	<p>potential water quality effects. Potential for bird strikes. Potential for loss of foraging habitat.</p>
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		<p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Greenshank (<i>Tringa nebularia</i>) [A164]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Sandwich Tern (<i>Sterna sandvicensis</i>) [A191]</p> <p>Common Tern (<i>Sterna hirundo</i>) [A193]</p> <p>Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395]</p> <p>Wetland and Waterbirds [A999]</p>		
Lough Foyle SPA 004087	10km to the south-east / east	<p>Red-throated Diver (<i>Gavia stellata</i>) [A001]</p> <p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p>	Potential that birds which are special conservation interests of this site will be present	<p>Yes</p> <p>Potential for bird strikes.</p> <p>Potential for loss of foraging habitat.</p>

		<p>Bewick's Swan (<i>Cygnus columbianus bewickii</i>) [A037]</p> <p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p> <p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Eider (<i>Somateria mollissima</i>) [A063]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p>	<p>for reason of flying between Lough Swilly and Lough Foyle.</p>	
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		Lapwing (<i>Vanellus vanellus</i>) [A142] Knot (<i>Calidris canutus</i>) [A143] Dunlin (<i>Calidris alpina</i>) [A149] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Common Gull (<i>Larus canus</i>) [A182] Herring Gull (<i>Larus argentatus</i>) [A184] Wetland and Waterbirds [A999]		
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10.1. Applicant's case

The applicant has addressed the matter of Appropriate Assessment in section 6.9 of the appeal. This notes the absence of response to a referral by NPWS and the lack of objections in the planner's report.

The applicant's submissions indicate that the Meenkeeragh stream provides a potential hydrological connection between the site and European sites Lough Swilly SAC and Lough Swilly SPA.

The applicant's case in relation to water quality related impacts is that due to the implementation of standard best practice construction methods 'which are typical of a development of this type' and the distance to any European sites negative impacts to Natura sites are not predicted.

The submission of the applicant in relation to potential for impacts on birds related to bird strikes is that the area is not a significant flight path and the author of the Ecological Assessment report attests to professional experience in the locality in this regard.

10.2. Discussion on water quality pathway

Regarding water quality related effects I note that the Meenkeeragh River drains the site and flows to Buncrana where it enters Lough Swilly. The main watercourse in the vicinity of the proposed turbine is to the south at a distance of 146m from the turbine. There is also a minor channel / drain which is to the east of the access road at a distance of about 50m from the edge of the proposed access road.

To address water quality impacts during construction there are proposals for interceptor drains, collector drains and settlement ponds and outfalls which are shown on the application drawings. In addition the submitted document Construction Phase Best Practice dated August 2019 refers. The measures which are relevant to the protection of the aquatic environment set out under section 3.2 are described as:

The prospect of deleterious inputs into surface water will be managed through good standards of environmental practice during the build phase *that would be appropriate regardless of the Natura 2000 sites* (my emphasis).

As part of the request for further information issued to the applicant I indicated that the Stage I Screening relied on measures, which I considered would be described as mitigation measures. The applicant's submission is that the screening relies on standard practice for a development of this type.

It is necessary for the Board to decide whether the measures presented could be for the purposes of the protection of water quality and the Water Framework Directive or whether they are necessary measures to ensure that there is no significant effect on the conservation objectives under the Habitats Directive. These are interrelated matters and the purpose of a measure may be twofold.

I consider that it may be concluded in this case that the purpose of the buffer zone, the interceptor drains and the settlement ponds shown on the site layout drawing no. 3 may relate to water quality rather than to the conservation objectives of the downstream sites Lough Swilly SPA and SAC. On balance I consider that it might not be unreasonable to accept the case presented by the applicant in this respect.

Setting aside the purpose of the measures (as addressed above) the Board must also make a decision on the effectiveness of the measures in the context of the Habitats Directive. I have previously concluded that in the context of deep peat on a sloping site the measures presented are not demonstrated to be sufficient to ensure protection of water quality. Having regard to the presence of a hydrological connection downstream to habitats and species which could be adversely affected by a water quality deterioration from a significant sedimentation event, I do not consider that the Board can be satisfied that the development would not have significant effects on the qualifying interests of the European sites. That would include otter which may be present in the smaller water courses and is certainly present in larger watercourses downstream. The matter of peat slippage was raised in the further information in the context of Appropriate Assessment and no substantial additional information provided.

To conclude I do not consider that the information is available to enable the Board to conclude that the development would not give rise to water quality effects which could result in significant effects on some of the qualifying interests.

10.3. Discussion on Special Conservation Interests of SPAs

Potential effects on birds as a result of the proposed development could arise from water quality related habitat deterioration, to habitat loss through displacement of foraging to bird strikes. There is potential for impacts on birds which may fly between Lough Swilly and Lough Foyle.

The majority of the birds which are special conservation interests of the two SPAs would be mainly restricted in daily feeding, wading and roosting to the coastal habitats. Some will overfly the site of the proposed development.

I note the applicant's submission based on local knowledge and professional experience. I consider that while it might be concluded that there are no likely significant effects on the species for which the SPAs were designated, the documentation to support any such conclusion has not been presented.

10.4. Conclusion

On the basis of the information provided with the application and appeal, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European sites, Lough Swilly SAC, Lough Swilly SPA and Lough Foyle SPA in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

11.0 Conclusions and Recommendation

I have no objection to the development in principle and consider that the reason for refusal outlined in the decision of the planning authority should be rejected.

I do not consider that the development will give rise to significant adverse impacts on roads and material assets, landscape, human beings and cultural heritage.

I consider the need for EIA can be screened out based on preliminary examination.

However, having regard to my conclusions above in particular in relation to the presence of deep peat and the slope of the site and absence of any information relating to peat stability and to the absence of information relating to birds, I consider that the Board is not in a position to conclude that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the European sites.

These issues have already been raised with the applicant and an opportunity given for response. The issues remain unresolved and documentation on file is insufficient.

In the circumstances I consider that the Board is precluded from granting permission and there is no alternative other than to recommend refusal of permission for the reasons and considerations below.

12.0 Reasons and Considerations

The Board is not satisfied, on the basis of the information provided with the application, that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European sites Lough Swilly SAC (site code 002287), Lough Swilly SPA (site code 004075) and Lough Foyle SPA (site code 004087), in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting permission.

Mairead Kenny
Senior Planning Inspector

4th June 2020