An Bord Pleanála

Inspector's Report ABP307520-20

Development	Alterations to increase tip height of 5 no. turbines from 136m to 150m, amendments to location of permitted turbines 1 and 3, increase hardstanding areas, upgrading of access tracks and new site access roads, all associated underground electrical and communications and all associated site works.
Location	Derrykillen, Corlea, Ballyshannon, County Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	19/51750
Applicant(s)	Derrykillew Community Windfarm Limited
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellant(s)	Derrykillew Community Windfarm Limited
Observer	Colm McGovern
Date of Site Inspection	23rd October 2020
Inspector	Paul Caprani.

Contents

1.0 Introduction

ABP307520-20 relates to a first party appeal against the decision of Donegal County Council to issue notification to refuse planning permission for an alteration to a wind farm which includes increasing the height of the five permitted turbines from 136 metres to 150 metres and incorporate slight amendments to the location of permitted turbines nos. 1 and 3. Donegal County Council issued notification to refuse planning permission for two reasons. The first reason states that there is currently a Wind Energy Policy lacuna in the Donegal County Development Plan on foot of a successful recent High Court action which has resulted in the removal of significant parts of the Wind Energy Policy from the said development plan. On this basis the planning authority are not in a position to adequately assess wind energy in the absence of development plan policy. The second reason for refusal refers to the inadequate evaluation of potential noise impacts in the vicinity of the proposed development. An observation was submitted supporting the decision of the Planning Authority. The application was also accompanied by an EIAR and an NIS.

2.0 Site Location and Description

2.1. The subject site is located in South Donegal in the townland of Derrykillew near the border with Fermanagh to the east. The site is located approximately 2 kilometres north of the village of Beleek in County Fermanagh and approximately 7 kilometres west of the town of Ballyshannon in South Donegal.

2.2. The site lies within the townlands of Derrykillew and Corlea within the Republic of Ireland and the townlands of Commons and Bellanadohy within Northern Ireland[1]. The vast majority of the site is located within the Republic however a small strip of land extends southwards from the site into Northern Ireland in order to provide access off the A47 (Boa Island Road) which runs in an east-west direction to the south of the site.

2.3. The site covers an area of approximately 234 hectares and ranges in elevation from 55 to 120 metres above ordnance data. The site is characterised on the whole by cut-over bog interspersed with small lakes and conifer forest plantations. A series of

[1] That part of the planning application site located in Northern Ireland relates to a strip of land running southwards along the southern boundary which links to the site to the A47 to the east of Belleek.

third-class local roads/forest tracks traverse the site primarily in an east-west direction. The Tullybaradair River runs along the north-western boundary of the site. Fin Lough which forms part of a Special Area of Conservation is located to the north-east of the subject site contiguous to the boundary of the site.

2.4. According to the EIAR submitted with the application there are 19 occupied dwellings located within 1 kilometre of the turbine. 9 of these dwellings are associated with landowners involved in the Community Windfarm Project. The closest occupied dwelling is 460 metres from permitted Turbine T2 which is centrally located within the site. (A letter of consent from this landowner is included in Appendix 4-4 of the EIAR). Letters of consent from five homeowners located within 600 metres of the development are also included in this Appendix. The main site access is to be provided via the A47 for the delivery of the turbines and other construction materials. During the operational phase any maintenance and monitoring of the turbines will be accessed from the local roads that traverse the site.

2.5. In terms of the grid connection route, it is proposed that the Derrykillew Community Windfarm will connect to the national grid either via the existing Cliff 110kV station which is located approximately 2 kilometres away at the eastern end Assaroe Lake. Or the Cathleen Falls 110kV substation which is located further west at the north-western end of Assaroe Lake on the outskirts of Ballyshannon c.7 kilometres from the western end of the subject site. Both these routes are extensively along roadways and both have been the subject of assessment in the EIAR submitted. A substation is also proposed within the site located on the north side of the main access road traversing the site and equidistant from Turbines 1, 2 and 5. The substation compound is roughly rectangular in shape and is approximately 130 metres long and 80 metres wide.

3.0 **Proposed Development**

3.1. Planning permission has previously been granted for the provision of five wind turbines on the subject site under Reg. Ref. PL05E.245108 (see file attached and planning history below). Donegal County Council issued notification to refuse planning permission for the proposed development and this decision was overturned on appeal by An Bord Pleanála where permission was granted subject to 20

conditions. The current application before the Board, according to the applicant, seeks to optimise the permitted development on site by altering the development as follows:

- The proposal seeks to increase the tip height of the 5 permitted turbines by 14 metres from a permitted height of 136 metres to 150 metres.
- Incorporate a slight amendment to the locations of permitted Turbines Nos. 1 and 3 by relocating them by approximately 6 metres and 13 metres respectively.
- The increase in the area of the permitted hardstanding in order to cater for the larger turbines.
- An upgrade and increase in the size of the on-site electrical substation.
- An upgrading of the existing access tracks including an upgrade of the works at the site entrance.
- All associated underground electrical and communication cabling connecting the turbines with the on-site substations.

3.2. Under the permitted application the development proposed to connect into the Cliff 110kV generating station located 2 kilometres to the south-west of the site. Under the current application two options are proposed either to the existing Cliff substation via underground cable as per the permitted development (Option A) or to the existing Kathleen Falls substation located further west via an underground cable and overhead line (Option B)..

4.0 Planning Authority Assessment

4.1. Decision

4.1.1. Donegal County Council issued notification to refuse planning permission for 2 reasons which are set out in full below:

1. *The recent successful High Court action challenging the nature of the Wind Energy Policies adopted as part of the County development plan 2018 – 2024 has resulted in the removal of significant parts of the Wind Energy Policies from the Plan. Although the Council has committed to resolving the situation*

through the initiation of a variation to the County Development Plan in 2019, in the interim, it is meant that there are deficiencies within the Wind Energy Policy Framework to enable the Planning Authority to carry out proper decision making on wind energy development proposals. Therefore, having regard to the extent of the lacuna in the Wind Energy Policy, the Planning Authority considers that it is not in a position to adequately assess wind energy proposals given the dearth in the current development plan policy and the national guidelines on the matter. Therefore, in the context of the current Wind Energy Policy lacuna, the impending publication of the Wind Energy Guidelines by the Department of Housing, Planning and Local Government, and the initiation of wind energy variation to the County Development Plan 2018 – 2024, the Planning Authority considers that it would be premature and contrary to proper planning and sustainable development to permit the current wind farm development proposal.

2. *The Planning Authority is not satisfied on the basis of the noise study submitted as part of the EIAR, and specifically with regard to the absence of consideration of noise sensitive receptors in Northern Ireland and in the absence of a rationale for the omission of same, that the proposed development would not result in direct and indirect impacts on the well being of third parties. Accordingly, it is considered that, in the absence of detailed comprehensive data in respect of potential noise impacts in the vicinity of the proposed development (both in the State and in Northern Ireland), approval of this development may result in direct, indirect and cumulative negative significant impact on residents' populations. To permit the development as proposed will therefore be contrary to the proper planning and sustainable development of the area.*

4.2. Documentation Submitted with the Application

4.2.1. A covering letter received with the application by Donegal County Council on 15th November detailed the proposed development and was accompanied by the following documentation.

- An Environmental Impact Assessment Report (EIAR) in three volumes.

- Volume 1 contains the written statement for the non-technical summary.
- Volume 2 contains photomontages.
- Volume 3 contains EIAR appendices.
- A Natura Impact Statement.
- Landowners' letters of consent.
- 10 copies of the site notices.

4.3. **Planning Authority's Assessment**

Reports from Prescribed and Statutory Bodies

4.3.1. A report from the Irish Aviation Authority states that the Authority in the event of planning consent being granted recommends that the following be included in any grant of permission.

- Agree an aeronautical obstacle warning light system for the wind farm development.
- Provide as constructed co-ordinates together with ground and tip height elevations at each wind turbine location.
- Notify the Authority of the intention to commence crane operations with a minimum 30 days prior notification of the erection.

4.3.2. A report from the Department of Culture, Heritage and the Gaeltacht states that the Department agrees with the findings of the archaeological assessment report submitted as part of the EIAR and recommends that archaeological monitoring takes place in the course of any ground excavation works.

4.3.3. A report from Transport Infrastructure Ireland notes the proposed turbine haul route which includes proposals to deliver turbine components primarily using non-national road network. TII request referral of all proposals agreed between the Road Authority and the applicant impacting on national roads. It is unclear that the national road network will be utilised for grid connection routing. In terms of impacts to the existing national road infrastructure cable routing should avoid all impacts to existing TII infrastructure. It is noted that a licence may be required from the Road Authority for

any trenching or cabling proposals on the road network. The Authority request referrals of all proposals agreed in licence between the Road Authority and the applicant which affect the national road network.

4.3.4. A HSE Report notes the planning history of the site. The Department does not see any rationale in the application and the accompanying EIAR as to why the maximum height of the proposed turbines at 136 metres should be altered. The applicant should clarify the rationale as to why the tip height is being increased.

4.3.5. A report from the Loughs Agency of Northern Ireland states that the proposed development falls out of the geographic jurisdiction of the Loughs Agency and therefore it has no comment.

4.3.6. A report from the Department of Infrastructure Northern Ireland notes that the proposed turbines are located within County Donegal and not located within the immediate vicinity of Northern Ireland. The Department have reviewed the EIAR on the planning portal and note that there are no drawings detailing site entrances. The Department have no other comments to make.

4.3.7. A separate report from the same Department states that the Department has assessed the application and notes that the proposed development is hydrologically unconnected to Northern Ireland and therefore the Department have no concerns about flood risk.

4.3.8. A report from the Environmental Health Service Section of Fermanagh and Omagh District Council notes the information contained in the Noise and Vibration Chapter of the EIAR. It is noted that none of the noise sensitive receptors in Northern Ireland to the east/south-east of the proposals have not been considered in the cumulative noise assessment. If these properties are all below the 35 dB(A) criteria in terms of the cumulative impact, their exclusion can be justified. Given the separation distances this is likely to be so. However, clarification on this matter is requested.

4.3.9. A report from the Department of Agriculture, Environment and Rural Affairs of Northern Ireland notes that while most of the development is outside of the jurisdiction, there is a small stream which flows into the Garvary River and the access road crosses the Garvary River. These are areas of concern to fishery interests in the area.

4.3.10. The Natural Environment Division of the Department of Agriculture has also considered the impacts of the proposal on natural heritage interests and on the basis of the information provided, it has no concerns subject to conditions.

4.3.11. A report from Fermanagh and Omagh District Council states that the Council oppose the proposal on visual and amenity and environmental grounds. The Council considers that the proposal will adversely affect the distinctive character of Lower Lough Erne and the Croagh and Garvary River. Both of which are considered to have a high sensitivity to wind energy development. A wind farm on this site of the scale and magnitude proposed, would prevent a very significant adverse change in the landscape from a number of viewpoints which are set out in the submission.

4.3.12. A report from the Department of Communities note that the proposed increase in height of the proposed wind farm is likely to increase the magnitude of the visual effect on the settings of historic monuments in the vicinity. Notwithstanding this, the Department considers that, while the wind farm will be visible in views towards these monuments from the nearby public road, it will not have an adverse impact on the critical function and contextual views between the these monuments.

4.3.13. A report from Enniskillen Airport states that the current application is some distance from Enniskillen Airport and therefore will not constitute a hazard.

4.3.14. A report from the Royal Society for the Protection of Birds (Western Area Planning Office) notes some concerns in relation to a potential impact of the proposal on birds. It is stated should approval be granted, it is recommended that a number of conditions be put in place to protect birds, (the Board will note that this letter is dated February, 2015 and therefore related to the previous application).

4.3.15. The Donegal Co Council's Planner's Report notes the various reports from prescribed bodies together with the transboundary consultations. It is noted that no third-party submissions were received in respect of the application nor were any representations made.

4.3.16. The planning assessment notes the National Regional Energy Policy and reference is made to:

- The Wind Energy Development Guidelines for Planning Authorities 2006.
- The Climate Action Plan.

- The Draft Revised Wind Energy Development Guidelines of 2019.

4.3.17. It is considered that the principle of the proposed development is aligned with national policy and is acceptable in this regard. The report also assesses the EIAR submitted and the details contained therein are summarised. It is stated that in the absence of noise studies at noise sensitive locations in Northern Ireland, the Planning Authority considers that the EIAR has not adequately assessed all aspects of the proposed development as required by Schedule 6 of the Planning and Development Regulations 2001 (as amended).

4.3.18. In relation to the NIS submitted, it is stated that having regard to the previous decision by An Bord Pleanála on the subject site, the planning authority is satisfied that the determination of the NIS is appropriate. A screening report attached to this report concurs with this finding.

4.3.19. Finally, the report notes that there is an absence of policy in relation to wind energy and therefore the planning authority is minded to refuse planning permission. On this basis Donegal County Council issued notification to refuse planning permission for the two reasons referred to above.

5.0 **Planning History**

5.1. One history file is attached. Under Reg. Ref. PL05E.245018 Donegal County Council issued notification to refuse a wind farm development consisting of five turbines originally proposed at 150 metres and reduced to 136 metres together with hardstanding electrical compound and substation building together with grid connection. Permission was refused by Donegal County Council for three reasons relating to:

(a) The adverse impact on Natura 2000 sites.

(b) Visual impact.

(c) Lack of a detailed haulage route.

5.2. This decision was the subject of a first party appeal and An Bord Pleanála overturned the decision of the Planning Authority and granted planning permission on the 7th March, 2016 subject to 20 conditions.

5.3. With regard to planning applications in the vicinity the Board is requested to note that there is currently an application and appeal with the Board under ABP305163-19 where a first party appeal has been lodged against the decision of Donegal County Council to issue notification to refuse planning permission for a 7-turbine wind farm on lands 2 kilometres north-west of the subject site in the townlands of Behy, Cashelard, Tullyhork and Doobally outside Ballyshannon in County Donegal. Donegal County Council refused planning permission for four reasons which related to:

- The Planning Authority's inability to assess wind energy proposals in the absence of adopted policy in the development plan.
- The development will have a negative impact on nesting and foraging areas used by the Hen Harrier.
- Impacts on the amenity of neighbouring residents arises from the absence of detailed comprehensive data assessing noise impacts.
- The absence of a road safety audit.

The Board are due to determine this application before or by 17th December 2020.

6.0 **Grounds of Appeal**

6.1. A first party appeal was submitted on behalf of the applicant by MKO Planning and Environmental Consultants. The grounds of appeal are outlined below.

6.2. The introductory section of the grounds of appeal sets out details of the site location and description, planning history, background to the application, the decision of the Planning Authority and the scope of the grounds of appeal. Section 2 sets out the planning policy context. Section 3 sets out details of the Planning Authority assessment making reference to the local authority planner's report, the statutory consultee responses and the transboundary consultation. Section 4 sets out the response to the grounds of appeal.

6.3. In respect of the first reason for refusal, the grounds of appeal note that climate change is one of the most defining challenges globally at present. Policies and national programmes aimed at reducing reliance on fossil fuels and depending on more sustainable forms of energy is a key factor in addressing this climate change.

The ability to harness renewable energy such as wind energy is seen as a critical part of decarbonising the global economy. Reference is made to Chapter 2 of the EIAR which sets out the arguments for more sustainable forms of energy use.

6.4. Notwithstanding the opinion of the Planning Authority, there is a large base of policy and guidance at all levels which support the development of renewable energy. It is neither accurate nor appropriate to consider such applications as premature in this context. Furthermore, it is noted that the site of the proposed development has received planning permission for a wind farm development and the current application merely represents an 'optimisation' of the wind farm development which was previously granted. Thus, the principle of wind energy on the subject site is well established. It is noted that Donegal County Council have yet to complete any update with regard to the wind energy strategy on foot of the order made in November, 2018 under 218/533 JR which required the removal of certain elements of the Wind Energy Strategy from the Donegal County Development Plan. It is argued that there is still an abundance of policy statements contained in the development plan which would support wind energy in more general terms. The Court has only set aside the mapping element of the Wind Energy Strategy. Therefore, there is no lacuna in the strategy which justifies the Planning Authority refusing planning permission on policy grounds. It is stated that there are several counties in the State that do not incorporate wind energy maps.

6.5. Reference is made to, what it is argued, is a precedent decision in July, 2019 (Ref. 304198-18) following Donegal County Council to refuse planning permission for the construction of a single wind turbine at Killybegs on the basis of an absence of wind policy for the County. It is noted that when permission was refused by Donegal County Council, An Bord Pleanála overturned this decision and granted planning permission on foot of the recommendation from the planning inspector. Therefore, the presence or absence of a wind energy map within the County Development Plan is not, it is argued, a significant factor for consideration in determining the appeal.

6.6. Reference is also made to the High Court case in the case of *JR Element Power Ireland Limited versus An Bord Pleanála [IEHC 550] [2017]* where An Bord Pleanála refused planning permission for a 47-turbine wind farm development in Kildare and County Meath. In refusing permission, the Board in one of the three reasons for refusal, considered the proposal to be premature pending the adoption of a national

wind energy strategy at local level. The applicant argued before the Court that the Board could not lawfully refuse permission for the proposed development on the basis that it was deemed premature due to a policy vacuum in the absence of national and local strategies. In the judgement the Court found that the fact that the Planning Authority did not reserve or allocate particular land for wind farms, or prohibit wind farms in any particular area, may be described as a policy vacuum at local level, but it was not a valid reason for declining permission. The grounds of appeal argue that this argument is equally applicable in the case with the current appeal before the Board.

6.7. In response to the second reason for refusal, the Board are directed to a separate technical report attached to the main body of the grounds of appeal prepared by AWN Consulting. It provides clarification in respect of the methodology undertaken in calculating the cumulative noise impacts for sensitive receptors in Northern Ireland. The appeal argues that the technical assessment submitted with the grounds of appeal comprehensively demonstrates that the proposed development does not merit a refusal on the basis of the reasons specified in Reason No. 2.

6.8. The EIAR determined the noise sensitive locations based on best practice[2]. In accordance with this practice, any noise sensitive locations likely to experience noise levels above 35 dB(A) would be included for the purposes of assessment. Any noise sensitive receptors fell outside the 35 dB(A) LA_{90} noise contour were not omitted from consideration and were screened out in accordance with best practice guidelines.

6.9. Both the Authorities in the Republic of Ireland and Northern Ireland have expressed concerns with regard to cumulative noise impacts. The appeal notes the concerns of both authorities in relation to the potential cumulative impact on noise sensitive receptors to the south-east of the site during the operational period. In this regard a model was prepared, and the calculated noise level confirmed the operational noise at these locations were outside the threshold for inclusion in the study area as per the IOAGPG Guidance. The calculated omni-directional cumulative noise levels at the location range between 25.8 and 31.2 dB(A) LA_{90}.

[2] Good Practice Guide to the Application of ETSU-R-97 for the Study and Assessment and Rating of Turbine Noise (IOA GPG)

6.10. On a somewhat separate note the grounds of appeal take issue with the Planning Authority's conclusion that ownership is not a material consideration and the fact that landowners are within the applicant group should not be used as a mitigation measure. It is argued that this appears to be contrary to the conclusions set out in the Working Group involved in "The Assessment and Rating of Noise from Wind Farms" ETSU-R-97 (1996). While there are potential exceedences at six noise sensitive receptors four of these were landowners and for the two non-landowners' mitigation measures in the form of turbine curtailment was presented within the EIAR.

6.11. Finally, the grounds of appeal set out additional considerations that the Board may take into consideration in determining the appeal and these include:

- *Landscape and visual ornithological considerations and the statutory consultee responses including those from Northern Ireland.* In relation to bird surveys the response states that the information contained in the EIAR Chapter accurately and comprehensive describe the baseline environment and also provides an accurate prediction of the likely effect of the development on ornithology.
- *Local Hydrology* The response also goes on to detail additional responses in relation to concerns expressed in the internal reports in respect of local hydrology where it is stated that the wind farm has been designed to avoid all significant effects on all identified key ecological receptors including watercourses. While the proposed turbine access route crosses the Garvary River, it will not require any alterations at this location.
- In conclusion, therefore it is argued that the EIAR submitted together with the grounds of appeal is comprehensive in scope and the development has been the subject of a rigorous assessment with regard to environmental impacts. It is also stated that there is sufficient strategic policy at local and national level to permit the Board to make a considered decision on the proposed development particularly having regard to the planning history relating to the site.
- Appendix 1 contains the decision of Donegal County Council.
- Appendix 2 contains the AWN Consulting Technical Note in respect of Noise.

- Appendix 3 contains additional surveys carried out on foot of comments made in the various internal reports received by Donegal County Council.

7.0 **Appeal Responses**

7.1. The following response was submitted by Donegal County Council. It is stated that on the basis of legal advice, Donegal County Council will prepare a variation of the current development plan to accommodate wind energy policy following the final publication of adopted national guidelines. The Wind Energy Development Guidelines set out that the Planning Authority should provide for the identification in the development plan of maps of key areas within the Planning Authority's functional area where there is significant wind energy potential and, subject to criteria such as design and landscape planning, natural heritage, environmental and amenity considerations, wind energy development would be acceptable in principle. The creation of development plan mapping for wind energy is an essential part of the plan and the decision-making process.

7.2. It is also stated that, in the absence of a decision from An Bord Pleanála under Reg. Ref. APB 305163-19[3] cumulative impacts cannot be comprehensively assessed.

7.3. With regard to the second reason for refusal, the Planning Authority note that information has been submitted as part of the appeal submission which addresses issues in relation to noise. It is noted that three additional locations in Northern Ireland have been assessed for noise impact. However, it is considered that for the purposes of determination, all noise receptor locations should be included in the planning application to provide clarity to the local authority, the Department of the Environment in Northern Ireland and members of the Republic.

7.4. It is noted that revisions have been introduced at appeal stage in the form of additional noise receptor locations and testing. The Planning Authority considers that all elements of the application should be fully assessed through the application process thereby permitted third party engagement at all times. It is further considered that the appeal must be assessed in conjunction with Reg. Ref. ABP 305163-19.

[3] Please note that this file is currently with the Board for consideration/decision.

8.0 **Observations**

8.1. One observation was submitted by Colm McGovern of Derrykillew, Ballyshannon, County Donegal. This observation was made on behalf of a number of residents of Ballyshannon.

8.2. The observation states that the applicants in this instance failed to carry out proper consultation with the local community. It is stated that the construction and maintenance machinery would have an adverse impact on wildlife habitats and would result in the destruction of the natural terrain such as bogland and heath. It is suggested that the applicants have not taken adequate measures to protect threatened and protected species such as Hen Harriers and Bats. It is further suggested that the subject site, because of the presence of such species, should have been included as a site of community importance under the Habitats Directive. The increase in height of the turbines will contribute to biodiversity loss.

8.3. It is argued that the proposed development disrespects EU rules in relation to Environmental Impact Assessment. The wind farm has failed to address the issue of peat extraction activity having regard to the fact that the entire site is on bog/peatland.

8.4. It is stated that many of the local residents that have expressed support for the proposed development have done so because they have vested interests in the project.

8.5. On the above basis the Board are urged to uphold the decision of Donegal County Council and refuse planning permission for the height increase having particular regard to the concerns expressed by both Donegal County Council and by various agencies in Northern Ireland.

8.6. **Further Submissions from Northern Ireland Agencies**

An Bord Pleanála invited agencies in Northern Ireland to make submissions at appeal stage as per the Board's letter of October 7th 2020. A submission dated 15th January 2021 contained submissions from the following agencies:

Fermanagh and Omagh District Council

It states that the Council supports the refusal of this wind farm for reasons relating to visual impact. It is argued that the scale and magnitude proposed will present a very significant change to the landscape which will have a negative impact on tourism and the visual amenities of the area.

Department of Agriculture, Environment and Rural Affairs

It states that all comments made originally to Donegal Co Council from the Water Management Unit and Inland Fisheries remain valid. Inland Fisheries request more information relating to the road crossing on the River Garvary. Reference is made to various sections of the Fisheries Act 1966, where it is stated that any in-river works require permission to carry out such works.

A report from the NIEA Natural Environment Division states that having considered information contained in appendix 6.5 of the EIAR, the NED's position regarding ornithological issues remains largely unchanged from its previous submission to the planning authority. The development is unlikely to have any significant Adverse impact upon hen harrier or other Raptors nesting in Northern Ireland. It is possible that birds in Northern Ireland could occasionally forage within the vicinity of the proposed development, but the frequency is likely to be low and the risks associated with displacement from foraging and collision are likely to be low. It is noted however that the population of hen harrier is declining across the whole of the island. It should be noted that the potential impact of displacement associated with the current application upon the foraging behavior of multiple pairs of hen harrier's in the wider area would increase cumulatively with the addition of the proposed extension to this development. NED therefore considers the suitability of this location for a wind farm development to be highly questionable. Concerns about the potential effect on the curlew nesting in proximity to the site within Northern Ireland are reiterated. Given the catastrophic decline of this species throughout the island of Ireland over the past 30 years, it is essential that remaining breeding sites are safeguarded. Should the development proceed, it would be advisable to apply a precautionary restriction on the timing of construction and is therefore recommended that no construction work

be carried out between March 1st to July 31st. Consideration should also be given to providing a compensating area of managed habitat at a distance of at least 800 meters from the turbine perimeter. Monitoring of breeding curlew and hen harrier within 2 kilometers of the wind farm should be carried out during the construction year and the first five years of operation and every five years thereafter during the lifetime of the wind farm. Monitoring should include searches for carcasses of birds that have collided with the turbines.

Submission from the Royal Society for the Protection of Birds

This submission also has some concerns with regard to the potential impact on hen harriers. Concern is expressed about the potential cumulative impact from other wind farms in the area. It is noted that there are a number of hen harrier nests within or close to the boundary of the wind farm site. The displacement of hen harriers may lead to an unacceptable cumulative impact in the local area. With regard to vantage point surveys, it is stated but it is generally not advised to locate vantage points within the application site as it is not in accordance with standard wind farm guidance. Two of the three vantage points used for the survey of birds were in very close proximity to turbine locations and this may have altered bird behavior.
The society are generally content with the post construction monitoring program to be undertaken however it is recommended that vantagepoint surveys be carried out for the full year and not just between September and March. Should planning permission be granted a number of conditions are suggested to minimise the impacts on birds.

Environmental Health Service

It is noted that the second reason for refusing issued by Donegal County Council refers to an absence in the noise study to sensitive receptors in Northern Ireland. It is reiterated but the cumulative impact from the 12 wind farms in total (5 turbines under the current proposal and 7 turbines under Planning Ref. 18/51741) if falling below the 35dB criteria can be excluded as per the guidance set out under ETSU-97. Given

the separation distances, the EHS considers that their exclusion can be justified. However, a clarification on this matter was requested. The EHS notes that the consultant on behalf of the applicant has recommended to ensure compliance that a post commissioning operational noise monitoring is undertaken in line with IOA GPG and Supplementary Guidance Note 5: Post Completion Measurements (July 2014). The EHS recommend that this forms a planning condition for the proposed development.

9.0 Policy Context

9.1. European Policy

Renewable Energy Directive 2018/2001/EU

This Directive promotes the use of energy from renewable sources and establishes a new binding renewable energy target for the EU of at least 32% in 2030, which is up from the 20% target set in the 2008 Directive. By the end of 2019, member states were required to submit a ten-year National Energy & Climate Plan (NECPs) for the 2021 to 2030 period, outlining how they will meet the new 2030 targets for renewable energy and energy efficiency.

The Paris Agreement, 2015

Superseding the 2005 Kyoto Protocol, this agreement within the United Nations Framework Convention on Climate Change (UNFCCC), addresses greenhouse gas emissions mitigation, adaptation and finance starting in the year 2020, which aims to keep the global average temperature rise this century to below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

9.2. **National Policy**

Project Ireland 2040 – National Planning Framework

The National Planning Framework (NPF) is the Government's high-level strategic plan shaping the future growth and development of Ireland to the year 2040 and is underpinned by the National Development Plan 2018-2027. Chapter 3 of the Framework addresses 'effective regional development' and includes the following policy priorities for the subject Northern and Western region:

- 'harnessing the potential of the region in renewable energy terms across the technological spectrum from wind and solar to biomass and wave energy'.

Under the heading 'Planning and Investment to Support Rural Job Creation', the following is stated within the NPF with regards to 'energy production':

- 'rural areas have significantly contributed to the energy needs of the country and will continue to do so, having a strong role to play in securing a sustainable renewable energy supply. In planning Ireland's future energy landscape and in transitioning to a low-carbon economy, the ability to diversify and adapt to new energy technologies is essential. Innovative and novel renewable solutions have been delivered in rural areas over the last number of years, particularly from solar, wind and biomass energy sources'.

National Policy Objective (NPO) 55 seeks to '*promote renewable energy generation at appropriate locations within the built and natural environment to meet objectives towards a low carbon economy by 2050'.* The pretext to this NPO states that 'development of the Wind Energy Guidelines and the Renewable Electricity Development Plan will also facilitate informed decision making in relation to onshore renewable energy infrastructure'.

National Strategic Outcome 8 informing the 'transition to sustainable energy' states that:

- 'new energy systems and transmission grids will be necessary for a more distributed, more renewables focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources

such as wind, wave and solar and connecting the richest sources of that energy'.

- It also seeks to deliver 40% of our energy needs from renewable sources by 2020 with a strategic aim to increase renewable deployment in line with EU targets and national policy objectives out to 2030 and beyond.

National Energy and Climate Plan (NECP) 2021-2030

This first draft of the NECP takes into account energy and climate policies developed to date, the levels of demographic and economic growth identified in the NPF and includes all of the climate and energy measures set out in the National Development Plan 2018-2027.

Climate Action Plan 2019

The Climate Action Plan 2019 seeks to realise a 30% reduction in greenhouse gas emissions and increase reliance on renewables from 30% to 70%, thereby adding 12GW of renewable energy capacity by 2030, whilst also phasing out reliance on fossil fuels. This Action Plan sets out a major programme of change in order to achieve a net zero carbon energy system objective for Ireland, while also reflecting Ireland's commitment to achieving 2030 sustainable development goals. According to the Plan, increasing onshore and offshore wind capacity are the most economical options for electricity production based on the marginal abatement cost curve. To meet the required level of emissions reduction by 2030, Ireland will need up to 8.2GW in total of increased onshore wind capacity. Under the action item 'Regulatory Streamlining of Renewables and Grid Development', the Plan identifies the publishing of updated planning guidelines for onshore wind in 2019. In terms of land use, the Action Plan outlines that the management of land affects how much carbon is emitted to or removed from the atmosphere.

Wind Energy Development Guidelines (2006)

The Wind Energy Development Guidelines 2006 provide statutory guidance for wind energy development, including consideration of environmental issues, such as noise and shadow flicker, design, siting, spatial extent and scale, cumulative effect and spacing, as well as the layout and height of wind turbines having regard to the

landscape and other sensitivities. The Guidelines indicate the need for a plan-led approach to wind energy development.

In December 2013, the Minister for Housing and Planning announced a public consultation process with respect to a focused review of the 2006 Guidelines and a 'preferred draft approach' to the review was announced in June 2017.

Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)

These interim guidelines were issued under Section 28 of the Planning and Development Act 2000, as amended. They do not currently replace or amend the Wind Energy Development Guidelines 2006, which remain in place pending the completion of ongoing review. Section 28 of the Act requires both planning authorities and An Bord Pleanála to have regard to these interim guidelines and apply any specific planning policy requirements of the interim guidelines in the performance of their functions.

The interim guidelines provide specific guidance on making, reviewing, varying and amending the wind energy policies or objectives of a Development Plan or a Local Area Plan. A planning authority shall acknowledge and document specific national strategy relating to energy policy, indicate how the implementation of a Development Plan or a Local Area Plan over its effective period would contribute to realising overall national targets on renewable energy and climate change mitigation. Furthermore, the planning authority is required to demonstrate detailed compliance with the above in any proposal in a Development Plan or a Local Area Plan to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use. This approach is reaffirmed in the Departmental Circular PL5/2017.

Draft Wind Energy Development Guidelines 2019

The current Departmental approach is to address a number of key aspects of the 2006 Guidelines, including sound or noise, visual amenity setback, shadow flicker, consultation obligations, community dividend and grid connections. Consultation on the draft Guidelines ended in February 2020.

The draft guidelines identify Specific Planning Policy Requirements (SPPR), and subject to formal adoption of the Guidelines, it is intended that these SPPRs would be applied by planning authorities and An Bord Pleanála in the performance of their functions, as well as having regard to additional matters for consideration in assessing wind energy developments. Notable changes in the draft guidelines when compared with the 2006 wind energy guidelines relate to community engagement, noise limits and minimum separation distances.

9.3. Regional Policy

Regional Spatial & Economic Strategy for the Northern and Western Regional Assembly

The Regional Spatial and Economic Strategy (RSES) provides a 12-year high-level development framework for the Northern and Western Region that supports the implementation of the National Planning Framework (NPF) and the relevant economic policies and objectives of Government. The Strategy recognises the success of the region in the provision of renewable energy from hydropower and onshore wind energy, with wind turbines a new feature in the region's landscapes.

9.4. Local Policy

Donegal County Development Plan 2018-2024

Section 8.2 of the Development Plan outlines the aim for energy development in the County, involving the facilitation of development comprising a diverse energy portfolio, including wind and other energy sources. A host of objectives and policies supporting the development of wind energy projects in the County and aimed at controlling the locations and impacts of wind energy developments are also listed within section 8.2 of the Development Plan.

Development Guidelines

Development guidelines and technical standards for wind energy developments are outlined in section 6 of Part B to Appendix 3 of the Plan, which lists additional locations where wind energy projects must not be located, including '(c) areas identified as locations where wind farm development would not be acceptable, as identified on map 8.2.1 of the Plan' and '(f) areas within a setback distance of ten

times the tip height of proposed turbines from residential properties and other centres of human habitation'. A centre of human habitation is defined in the Plan to include schools, hospitals, churches, residential buildings or buildings used for public assembly.

It is understood that in light of both a High Court Order (Record Number 2018/533JR between Planree Limited and Donegal County Council) dated 5th November 2018 and the publication of the Draft Wind Energy Guidelines on 12th December 2019, certain provisions of the Development Plan, comprising section 6.5(c) and (f) of the Wind Energy standards at Part B: Appendix 3 'Development Guidelines and Technical Standards' and Map 8.2.1, were ordered to be deleted and/or removed from the Development Plan. The Development Plan is to be read in light of this Order pending any possible future variation of same and the planning authority intends preparing a variation to the Development Plan regarding wind energy.

Landscape Designation

To conserve, protect and manage the County's natural heritage for future generations and encourage appreciation and enjoyment of these resources, section 7.1 of the Plan categorises the landscape of the County into three areas, as illustrated in Map 7.1.1 of the Plan, including areas of 'Especially High Scenic Amenity' (EHSA), 'High Scenic Amenity' (HSA) and 'Moderate Scenic Amenity' (MSA), none of which are considered to be of low landscape value. The majority appeal site is covered by the moderate scenic amenity designation comprising of lands to the east and south of the site. However ,the Board should note that 4 of the 5 Turbines are located on the north western corner of the site which is designated as an area of high scenic amenity:

Policy NH-P-7 of the Plan highlights that subject to other Plan objectives and policies, within a HSA it is policy to facilitate development of a nature, location and scale that allows development to integrate within and reflect the character and amenity designation of the landscape.

Policy E-P-2 It is a policy of the Council to facilitate the appropriate development of renewable energy from a variety of sources, including, hydro power, ocean energy, bioenergy, solar, wind and geo-thermal and the storage of water as a renewable

kinetic energy resource, in accordance with all relevant material considerations and the proper planning and sustainable development of the area.

9.4.1. Policy E-P-10 states it is the policy of the Council that development proposals for wind energy shall be in accordance with the requirements of the Wind Energy Development Guidelines – Guidelines for Planning Authorities 2006 (or as maybe amended).

9.4.2. Policy E-P-14 states that it is the policy of the Council to support voluntary initiatives from developers/renewable energy operators for community benefits, in accordance with other policies of this plan and the proper planning and sustainable development of the area.

9.4.3. Policy E-P-16 states it is the policy of the Council to support the strengthening and enhancement of the capacity of existing wind farms, within the local environmental capacity including the sustainable upgrade/replacement of older turbines with newer more efficient models.

9.4.4. Policy E-P-20 states that it is the policy of the Council that proposals for renewable energy development will have regard to the cumulative effect of the development on the environment when considered in conjunction with other existing and permitted developments in the area.

9.4.5. Policy E-P-21 states that it is the policy of the Council that all applications for renewable energy projects will ensure that details of the proposed grid connection and all associated infrastructure are considered in any Environmental Impact Statement and Natura Impact Statement as maybe required.

10.0 **Planning Assessment**

10.1. I have read all documentation on file including the EIAR and the NIS submitted with the application. I have visited the subject site and its surroundings and have had particular regard to the issues cited in the Planning Authority's reason for refusal and the applicant's rebuttal of these reasons as well as the issues raised in the observations contained on file, including those observations submitted by the various

agencies of Northern Ireland. I consider the critical issues in determining the current application and appeal before the Board are as follows:

- Lacuna in Wind Energy Policy in the Donegal County Council Development Plan
- Impact on Noise Receptors in Northern Ireland
- Other Issues

10.2. **Lacuna in Wind Energy Policy in the Donegal County Council Development Plan**

10.2.1. Donegal in its first reason for refusal makes reference to a successful High Court action *JR Planree Limited -v- Donegal County Council [Ref. 2018/553]*. By order made on 5th November, 2018 certain provisions of the County Donegal Development Plan have been removed relating to wind energy. These sections being:

- Section 6.5(c) and (f) of the Wind Energy Standards at Part B of the Plan.
- Map 8.2.1 of the Development Plan which related to a map of the county indicating areas which identifies areas which were suitable/unsuitable for wind energy developments.

10.2.2. In relation to these issues, I would note the following:

Part B, Appendix 3 of the development plan sets out development guidelines and technical standards in relation to various types of development. Section 6 specifically relates to wind energy.

Section 6.5 of Part B, Appendix C subsection (c) refers to areas identified as locations where wind farm would not be acceptable or identified in Map 8.2.1, (Chapter 8 of the County Development Plan 2018 – 2024). Subsection (f) requires a setback distance of 10 times the tip of the proposed turbines from residential properties and other centres of human habitation.

10.2.3. For the purposes of clarity these two sections have now been removed from the development plan. In relation to this matter, I would agree with the arguments set out in the grounds of appeal that (a) that the principle of wind farm development on the subject site has already been established in An Bord Pleanála's decision under PL05E.245108 where the Board granted planning permission for five turbines at the

subject site subject to 20 conditions in March, 2016. I would also refer the Board to Condition No. 3 in respect of the parent permission which extends the life of the planning permission to 10 years (i.e. up to 2026).

10.2.4. The principle of wind farm development on the subject site has therefore been established. Thus, in the case where the Board determined that the current application before it should be refused, it does not negate the fact that planning permission for a wind farm development has already been established for the subject site. The Board therefore have already determined that the principle of a wind farm on the subject site is acceptable.

10.2.5. In this context the application before the Board does not constitute a de novo assessment as to whether or not the principle of a wind farm development is suitable on the subject site but rather whether or not the proposed modifications, are referred to in the documentation submitted with the application as “the optimisation” of the wind farm is suitable in this instance.

10.2.6. Furthermore, as the appellant points out in the grounds of appeal, there is a comprehensive range of guidance and policy objectives on a national, regional and local level in relation to wind energy developments and therefore, while certain aspects of the development plan have been deleted and removed, this does not imply that there is a complete vacuum or lacuna in policy which precludes the Board from determining the application before it. I refer the Board to the previous section in the report which sets out details of the various policy framework in which the proposed development can be assessed. In this regard I would make reference to the extensive European policy including:

- Renewable Energy Directive and the Paris Agreement as well as national policy set out in the National Planning Framework, the National Energy and Climate Plan.
- The Wind Energy Development Guidelines.
- The Interim Guidelines for Planning Authorities on Renewable Energy and Climate Change.
- The Draft Wind Energy Development Guidelines.

10.2.7. It is still apparent that there are numerous policy objectives and statements remaining in the Donegal Development Plan which would support in more general terms the provision of wind energy developments. In this regard reference is made to Policy E-P-2 where it is the policy of the Council to facilitate the appropriate development of renewable energy from a variety of sources including hydropower, ocean energy, bioenergy, solar, wind and geothermal and the storage of water as a renewable kinetic energy resource, in accordance with all relevant material considerations in the proper planning and sustainable development of the area.

10.2.8. Policy E-P-10 states it is the policy of the Council that development proposals for wind energy shall be in accordance with the requirements of the Wind Energy Development Guidelines – Guidelines for Planning Authorities 2006 (or as maybe amended).

10.2.9. Policy E-P-14 states that it is the policy of the Council to support voluntary initiatives from developers/renewable energy operators for community benefits, in accordance with other policies of this plan and the proper planning and sustainable development of the area.

10.2.10. Policy E-P-16 states it is the policy of the Council to support the strengthening and enhancement of the capacity of existing wind farms, within the local environmental capacity including the sustainable upgrade/replacement of older turbines with newer more efficient models. It is respectfully suggested to the Board that the current application before it would be particularly relevant to the above policy.

10.2.11. Policy E-P-20 states that it is the policy of the Council that proposals for renewable energy development will have regard to the cumulative effect of the development on the environment when considered in conjunction with other existing and permitted developments in the area. In this regard I refer the Board to the EIAR submitted with the application which adequately in my view assesses the potential cumulative impacts which could arise from the proposal (see separate section below).

10.2.12. Policy E-P-21 states that it is the policy of the Council that all applications for renewable energy projects will ensure that details of the proposed grid connection and all associated infrastructure are considered in any Environmental Impact Statement and Natura Impact Statement as maybe required. Again, I refer the Board

to the EIAR and NIS submitted with the application which adequately addresses these issues.

10.2.13. On the basis of the above, I consider that there is an abundance of policy documentation which can assist in informing the Board as to whether or not the proposed development is acceptable and in accordance with the proper planning and sustainable development of the area notwithstanding the order made under Ref. 218/533 JR in the High Court in November, 2018.

10.2.14. The grounds of appeal also make reference to judicial review proceedings taken by Element Power versus An Bord Pleanála 2016/920 JR [IEHC550]. Under this application (Reg. Ref. 09 PA0041) An Bord Pleanála issued notification to refuse planning permission for a wind farm straddling the border of Kildare County Council and Meath County Council for three separate reasons the first of which referred to the absence of any National Wind Energy Strategy with a spatial dimension or wind and energy strategy at local levels for Kildare and County Meath. In its judgement the Court held that there was no provision within the Planning and Development Act 2000 which empowered the Board to reject the proposed development on the basis that it would be premature pending the adoption of National/or Local Strategies. The Courts therefore ruled in relation to this application that there was no such policy vacuum at national or local level to preclude the Board from granting planning permission and that this was not a relevant consideration and not a valid reason for declining permission. This judgement in my view is directly relevant to the case currently before the Board.

10.2.15. Finally, in relation to this matter I would refer the Board to a precedent decision made under Reg. Ref. ABP304685-19. This application related to the provision of six wind turbines with a tip height of 135 metres located approximately 5 kilometres north-east of Raphoe, Co Donegal. As in the case of the current application, the first reason for refusal issued by Donegal County Council made reference to the supposed existing lacuna in wind energy policy contained in the development plan on foot of the recent High Court Judgement. The Board in its decision, and on foot of the inspector's recommendation, overturned the decision of the Planning Authority and granted planning permission for the proposed development in July, 2020. The Board in issuing this determination have in my opinion accepted the fact that there is

a sufficient policy framework in existence to enable it to determine a windfarm application in the County.

10.2.16. On the basis of the above assessment and the fact that the Board have already established that the subject site is suitable for a wind farm development having regard to the parent permission, together with the presence of national and local guidelines, the High Court judgement in the case of JR – Element Power Ireland Limited v An Bord Pleanála and the precedent decision under PL05E.204685, I consider that the Board is not precluded or restricted from granting planning permission for the proposed development on the basis that there is a lacuna in wind farm policy relating to the site or in the County as a whole.

10.3. **Impact on Noise Receptors in Northern Ireland**

10.3.1. The second reason for refusal states that the Planning Authority is not satisfied on the basis of the noise study submitted that a full assessment and consideration of noise sensitive receptors in Northern Ireland was undertaken. It is argued that there is an absence of a rationale for the omission of a number of potential noise sensitive receptors located in Northern Ireland. And that these noise sensitive receptors were fully taken into consideration in the assessment of noise.

10.3.2. It is respectfully submitted that if Donegal had concerns in relation to this particular issue, it may have been more appropriate to request the applicant to submit further information in this regard rather than using this reason as a basis for refusal. It appears that the Planning Authority's concerns primarily related to an absence of information in this regard rather than genuine concerns that the proposed development would result in negative and significant impacts on resident populations. The appellant in the grounds of appeal notes that noise monitoring locations were identified by preparing a preliminary noise model contour map at the early stage of assessment. It was on the basis of the modelling that any locations that fell inside the predicted 35 dB(A) L_{A90} noise contour would be considered for noise monitoring purposes. The Institute of Acoustics (UK) have prepared a "*Good Practice Guide for the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise*". These guidelines were produced in May, 2013 and Section 2.2.1 of the guidelines, which relates to scoping for background noise surveys, clearly states that the study area for background noise assessment should, as a

minimum be the area within noise levels from the proposed, consented and existing turbines may exceed 35 dB(A) L_{A90} at up to a 10 metre per second wind speed. This according to the guidelines, is the most suitable methodology for defining a study area.

10.3.3. The applicant in this instance has identified three locations which are representative of the closest in distance to both the proposed development and the proposed Derrykillew Windfarm extension site. These are indicated as HO65, HO66 and HO67 all of which are located within Northern Ireland to the south and east of the subject site. The three locations were inputted into the cumulative operational noise level model. The calculated noise level at each location confirm that the operational noise level at these locations were located outside the threshold for inclusion in the study area as the cumulative noise levels at this location as a result of the wind turbines were predicted to be 31.2 dB L_{A90} (HO65), 27.5 dB L_{A90} (HO66) and 25.8 dB L_{A90} (HO67). The applicant in the additional information submitted as part of the grounds of appeal therefore has in my view adequately and fully addressed the concerns raised by Donegal County Council in its reason for refusal.

10.3.4. In relation to this issue Donegal County Council in its response to the grounds of appeal has stated that “all noise receptor locations should be included in the planning application to provide clarity to the local authority, DoE Northern Ireland and members of the public”. The Board in adjudicating and deliberating on the current application and appeal is entitled to take into consideration and assess all the information contained on file. The fact that additional information has been submitted with the grounds of appeal together with the fact that Donegal County Council have been permitted to comment on the said information enables the Board to take a holistic view in respect of all information submitted in determining the current application and appeal.

10.3.5. The Board should also note that the report from the Environmental Health Service Section of Fermanagh and Omagh District Council notes that none of the noise sensitive receptors in Northern Ireland to the east/south-east of the proposals have been considered in the cumulative noise assessment. The report acknowledges that “*If these properties are all below the 35 dB(A) criteria in terms of the cumulative impact, their exclusion can be justified. Given the separation distances this is likely to be so. However, clarification on this matter is requested*”. It is important to note that,

rather than expressing outright concerns on this matter, the report (a) agrees that where the properties are located in a contour that is below 35 dB (A) criteria, it is appropriate that the applicant omit these properties for the purposes of the assessment and (b) that having regard to the separation distances, “this is likely to be the case”. This is reiterated in its submission to An Bord Pleanála at appeal stage. The Environmental Health Service Section of Fermanagh and Omagh District Council appear to be seeking clarity and reassurance on this matter rather than expressing concern.

10.3.6. Thus, I am satisfied based on the information contained in the EIAR as supplemented by the information contained in the grounds of appeal that the proposed development does not merit a refusal of planning permission on the basis of excessive noise concerns.

10.4. **Other Issues**

10.4.1. <u>The Materiality of the Alterations Proposed</u>

The current application seeks modifications, or in the words of the applicant “optimisation” of the existing wind farm already permitted. As already outlined in my assessment it is not necessary not indeed appropriate, to assess the principle of a wind farm development on the subject site as this issue has already been determined under the parent permission Reg. Ref. PL05E.245108. However, it is appropriate in my view for the purposes of completeness, to assess the proposed alterations in accordance with the proper planning and sustainable development of the area.

The material alteration sought under the current application are as follows:

- The slight relocation of the turbines nos. 1 and 3 by a distance of 13 metres and 6 metres respectively.
- An increase in the size of the permitted hardstanding to accommodate larger turbines.
- An increase in the tip height of the 5 permitted turbines by 14 metres (from 136 metres to 150 metres).
- Slight alterations to the size of the on-site electrical substation.

- Consideration of options to permit a grid connection to either the Cliff substation (as proposed under the original application) or to the Kathleen Falls substation further west on the outskirts of Ballyshannon.

10.4.2. In relation to the slight relocation of Turbines 1 and 3 it is not considered that the relocation will have any material effect due to the minor alterations in the locations proposed and the turbines will remain located within the same habitats as the turbines already submitted. There is also little or no alteration in the topography of the ground levels accommodating the relocated turbines.

10.4.3. With regard to the increased area of hardstanding associated with the turbines I note that the EIAR has assessed the potential impact arising from the excavation of the hardstanding areas.

10.4.4. The EIAR (Section 7.4) estimates the increased hardstanding area to be approximately 275 square metres per turbine. This will result in an additional 12,818 cubic metres of material to be excavated on site. Having regard to the receiving environment, the nature of the development and the relative remoteness of the locations of the turbines in the context of surrounding settlement, I do not consider that the increase in hardstanding areas will have any material impact on the visual amenities of the area. Furthermore, I am satisfied having regard to the traffic section contained in the EIAR that the increase in excavated material from the subject site will not have any significant or material impacts in terms of overall traffic generation. I am satisfied that the existing road network is suitable to cater for any increase in volumes of traffic associated with the increase in hardstanding areas. I am satisfied that the EIAR has adequately assessed the potential impacts arising from the increase in hardstanding and I consider these impacts to be acceptable.

10.4.5. The most profound material change proposed under the current application relates to the increase in height of the turbines from 136 metres to 150 metres. As the layout of the proposed turbines are essentially the same to that already approved by the Board, the Board will note that there will be no changes in ground levels on which the turbines are to be erected. Furthermore, the increase in turbine height has been the subject of a comprehensive and robust visual impact assessment under Section 11 of the EIAR. I would agree with the conclusion contained in the EIAR that the additional visual impact as a result of the proposed increase in height would be

negligible. In this regard I would refer the Board to Figure 11.7 of the EIAR which indicates the additional theoretical visibility arising from the increase in height of turbines. The additional increase in visibility is indicated in red and the Board are invited to agree that the additional visual impact would not be readily discernible. Furthermore, I would adopt the same conclusion as the previous inspector where she concluded "*that the reduction in the height of the turbines from 150 metres to 136 metres makes little difference*". The proposals will be viewed across a large expanse of upland terrain and will regardless of being 136 metres in height or 150 metres in height remain a prominent feature on the landscape. However, having regard to the fact that the main visual receptors (outside landowners associated with the development) will be in excess of half a kilometre away and the differential in height between that permitted and proposed, which amounts to approximately a 10% increase, will be imperceptible when viewed from such vantage points. Notwithstanding the concerns expressed by Fermanagh and Omagh District Council with regard to visual amenity impacts, the proposed increase in the height of the turbines over and above that already permitted will not materially or significantly detract or adversely impact upon the amenity or landscape character of the area.

10.4.6. With regard to the increase in the size of the on-site electrical substation, the proposed substation is located in a relatively discreet area between Turbines 1, 2 and 5 adjacent to the main access road. The visual character of the substation is not altered under the current application and will not give rise to any significant or disproportionate effects on the landscape having regard to the permitted development.

10.4.7. Finally, the proposed development includes for the option of a grid connection to Cathleen Falls on the outskirts of Ballyshannon at the western end of Lake Assaroe. I consider that the EIAR submitted with the application has adequately assessed the potential environmental impact arising from any grid connection from the turbine to the substation in question and I would conclude that any impact in this regard is acceptable.

10.4.8. A number of other issues were raised in the observation submitted and these are briefly assessed below:

<u>Consultation with the Local Community</u>

The observation submitted argues that inadequate consultation has taken place with the local community in respect of the proposed development. It is clear from the information contained in the EIAR and in particular Section 2.9.4 and 2.9.5 that detailed community consultation has taken place in respect of the proposed project. The EIAR states that public consultation began in early 2018 and a community liaison officer was appointed. Representatives of the local community groups in the wider area were contacted and a series of one to one meetings took place with various community groups. Furthermore, a public information event was held on 8th August in the Breesy Centre at Cashelard, County Donegal. Community participation has also been afforded through the statutory requirements of the Planning and Development Act in terms of submitting observations to the Planning Authority and appeals/observations to An Bord Pleanála. Any such submissions must be taken into consideration in adjudicating on the application and appeal. Public consultation requirements have therefore been met in my opinion.

Impact on the Hen Harrier and Curlew

Concerns were also expressed in the observations submitted, including the observations from Northern Ireland Agencies, that the proposed development could adversely impact on the habitat of the Hen Harrier and the Curlew, both of which are in decline throughout the Island of Ireland.

The EIAR readily acknowledges that the Hen Harrier species is dependent on habitats within the study area for breeding and foraging. However, I would refer the Board to the fact that the principle of a wind farm development has already been accepted on the subject site and therefore any impact arising on the habitat of the Hen Harrier or Curlew has already been assessed by the Board. The increase in the height of the turbines will not impact on the extent of foraging habitat available. Furthermore, the EIAR states that the potential for habitat loss due to the optimisation of the wind farm is minimal and therefore will not be significant.

National Transposition of EIAR Legislation

Concerns are also expressed that the EIAR is inadequate and that the transposition of EIAR legislation in Ireland is less than adequate. Any issues in relation to the transposition of European Directives/Legislation into Irish Legislation is not a matter for An Bord Pleanála. With regard to the adequacy of the EIAR submitted I note that

the observation submitted does not elaborate in relation to any perceived shortcomings on the assessment carried out. I have carried out my own independent assessment of the information contained in the EIAR submitted and I consider that the document submitted is satisfactory.

Any suggestion that the site should be added to the list of European Sites is not a matter for the Board and the Board is not the competent authority on this matter[4].

Letters Supporting the Proposed Development

The observation argues that letters of support for the proposed development should be discounted by the Board in its assessment of the application on the basis that many letters of support have vested interests in the proposed development going ahead. The Board will adjudicate on the application on its planning permits and in accordance with the proper planning and sustainable development of the area. Whether or not particular parties have vested interest in the development going ahead it is not a material consideration in determining the current application and appeal.

Other Amenity and Ecological Issues

Lastly, the observation suggests that a number of agencies located in Northern Ireland had concerns in respect of the proposed development. Concerns in relation to potential noise impacts have already been evaluated in my assessment above. Other concerns primarily related to potential impacts on birds and impacts on watercourses. I am satisfied that the biodiversity chapter of the EIAR adequately assesses the impact of the proposed development on birds that do not form qualifying interests associated with the Natura 200 site. A key consideration, having regard to the extant permission for 5 turbines on site, is whether or not the current application will result in any impact over and above that associated with the extant permission. In this regard the proposal will not result in any greater fragmentation of habitat or foraging area for birds, it will not result in any additional turbines being permitted, over an above the extant permission. Thus not withstanding the concerns expressed by an number of agencies in Northern Ireland, the proposal in my view

[4] The observation refers to designating the area as a ‘site of community importance under the Habitats Directive’.

will not have any material impact on birds or bird populations over and above that associated with the parent permission.

11.0 Appropriate Assessment

11.1.1. This section of the assessment addresses whether or not the proposed project individually or in combination with other plans or projects is likely to have a significant effect on any European site in view of the site's conservation objectives and whether or not a Stage 2 Appropriate Assessment is required.

11.2. Natura Impact Statement

11.2.1. The Board will note that an NIS accompanies the application. It sets out details of a description of the proposed development. It sets out details of European sites within the likely zone of impact of the proposed development and concludes on foot of a Stage 1 Screening Assessment that it cannot be excluded beyond all reasonable scientific doubt, in view of best scientific knowledge that the proposed development either individually or in combination with other plans and projects would have a significant effect on five designated Natura 2000 sites in the vicinity which are identified as:

- The Lough Golagh and Breesy Hill SAC.
- The Donegal Bay SPA.
- The Lough Derg (Donegal) SPA.
- The Pettigo Plateau SAC (located in Northern Ireland).
- The Pettigo Plateau SPA (Northern Ireland).

11.2.2. The NIS goes on to identify the individual qualifying interests and features of special conservation interest associated with the Natura 2000 sites in question and Section 5 of the NIS sets out the potential impacts. The potential impacts on the qualifying interests are identified and proposed mitigation measures are set out in order to address any potential adverse impacts. The NIS also identifies any potential direct and indirect impacts on European sites and also assesses any potential cumulative impacts. The NIS acknowledges that the proposed development has the potential to significantly affect the hydrological regime and water quality in the vicinity of the site

primarily through sediment run-off and other pollutions such as hydrocarbons. A number of preventative mitigation measures have been incorporated into the project design aimed at addressing these potential impacts. With the incorporation of the preventative measures, the wind farm development it is concluded, presents no significant impacts to surface water or groundwater quality. No significant cumulative impacts are identified on any regional surface water catchment or groundwater bodies either as a result of the proposed development or the associated grid connection options therefore it is concluded that no impacts on any European sites will arise.

11.2.3. For the purposes of completeness, I propose to carry out an independent and comprehensive appropriate assessment screening exercise in respect of the proposed windfarm development.

11.3. **Appropriate Assessment Stage 1**

11.3.1. The 234 hectare site is located in close proximity and contiguous to, but not within a designated Natura 2000 site. Part of the northern boundary of the site in the vicinity of Lough Finn borders on the Lough Golagh and Breesy Hill SAC which stretches c.5 kilometres northwards from the northern boundary of the subject site. To the immediate north-east of the subject site is the Pettigo Plateau SAC and Pettigo Plateau SPA. These two Natura 2000 sites are located 50 metres to the north-west of the wind farm development site and just less than 2 kilometres from the grid connection route.

11.3.2. The Donegal Bay SPA is located 7.8 kilometres to the west of the wind farm and 1 kilometre west of the grid connection route. The proposed development has hydrological connectivity with the Donegal Bay SPA and the subject site is located within the potential core foraging area of the Light Bellied Brent Goose.

11.3.3. The Lough Derg SPA is located 14.5 kilometres to the north-east of the wind farm site and 16.2 kilometres from the grid connection route. The proposed development is located within the potential core foraging range of both the Herring Gull and the Lesser Black Backed Gull.

11.3.4. The project is not necessary for the management of a European site. Having regard to the proximity of the subject site together with the hydrological connectivity with the Donegal Bay SPA and the fact that the site provides core foraging habitats for bird

species associated with SPAs in the vicinity I consider that the proposed works to be carried out on the subject site together with the operation of the wind farm could have a negative effect on the qualifying interests associated with these European sites by virtue of potential for fragmentation, disturbance or displacement of species associated with habitats that form part of the qualifying interests associated with the Natura 2000 sites. The main potential threats which could arise include:

- Alterations to water quality through accidental spills or release of suspended solids during excavation works.
- Alterations to the hydrological regime and hydromorphology of watercourses in the area.
- And through the potential spread of invasive species.
- Potential impact on foraging habitats for birds associated with SPA's in the area.

11.3.5. It is reasonable to conclude on the basis of the information contained on file which I consider it adequate in order to issue a screening determination that the proposed development individually or in combination with other plans and projects have the potential to impact on the Natura 2000 sites referred to and therefore a Stage 2 Appropriate Assessment should be carried out in respect of the proposed development.

11.3.6. The qualifying interests/special conservation interests associated with the Natura 2000 sites referred to above are set out and assessed below.

Lough Golagh and Breesy Hill SAC (Site Code 002164)

Qualifying Interest	Conservation Objective
Blanket Bog [7130]	To restore the favourable conservation condition of Blanket Bogs.

This SAC is located contiguous to, but outside the northern boundary of the site. The Natura 2000 Data form (NPWS 2017) set out site-specific threats, pressures, and activities with potential to impact on the SAC are as follows:

- Leisure Fishing
- Mechanical removal of peat
- The provision of paths, tracks and cycleways.

The proposed windfarm will have no impact on the incidence of leisure fishing in the area are on Lough Finn in particular which borders the SAC. The proposal will involve the removal of peat on site to facilitate the construction of the turbine bases. However, any such peat removal will not relate to the SAC in question. The nearest turbines to the southern boundary of the SAC are Turbines 3 and 4 which are located c.300 to 430 m from the boundary of the SAC. Furthermore, there is an access road between both turbines and the boundary of the SAC and this will act as a buffer to any potential impact on peat. The proposal will not involve the construction of any paths, tracks or cycle tracks within the SAC. The proposed windfarm therefore does not pose a direct threat to the SAC in question. The SAC is sufficiently far away from the grid connection route to ensure that no direct impacts can occur.

Pettigoe Plateau SAC (Northern Ireland)

Qualifying Interests	**Conservation Objectives**
Northern Atlantic wet heaths with *Erica tetralix* [4030]	To maintain (or restore where appropriate) the Northern Atlantic wet heaths with Erica tetralix to favourable condition.
Blanket Bogs [7130]	To maintain (or restore where appropriate) the active blanket bog to favourable condition.
European dry heaths	To maintain (or restore where appropriate) the European dry heaths to favourable condition.

The site conversation objectives specifically identified the following threats and pressures in respect of the SAC.

Threats and Pressures	Comments
Peat Cutting	No peat cutting / excavation will occur on the bog in question as a result of the windfarm
Burning	The proposal will result in no burning as a result of the development
Drainage	No alteration will occur in the existing drainage regime of the bog as a result of the windfarm development
Grazing	The proposed windfarm will have no impact on livestock numbers or the grazing regime
Supplementary stock feed	Not relevant to the development in question.
Land reclamation	The proposal will have no impact on land reclamation of the SAC in question
Damaging recreational activities	The proposal will have no impact on the recreational activity associated with the SAC.
Afforestation	The proposal will not impact on any planting activity associated with the SAC.
Nitrogen Deposition	The proposal does not involve and agricultural activity which will alter the nitrogen regime of the existing SAC
Changes to surrounding land uses	The proposal will result in a modest intervention on 234ha marginal uplands with the construction of 5 turbines resulting in the marginal land accommodating a windfarm development. It will not result in any

	direct effect on the SAC in question
Climate Change	The proposal will have a beneficial effect in terms of climate change.

Pettigo Plateau SPA (Northern Ireland) (Site Code: UK9020051)

Special Conservation Interest	**Conservation Objective**
Golden Plover	To maintain the selected species in favourable condition

The identified pressures and threats associated with the species of conservation interest are

Alteration of habitat through inappropriate land use	The proposed windfarm will not result in an alteration of habitat associated with the SPA
Predation	The windfarm will not introduce a new species which will result in any species praying on the species of conservation interest.
Disturbance due to recreational activities	The proposed windfarm will not result in any increase in recreational activities in the Pettigo Plateau SPA.

The Donegal Bay SPA (Site Code 004151)

Great Northern Diver	To maintain the conservation condition of the species concerned
Light-bellied Brent Goose	To maintain the conservation condition of the species concerned
Common Scoter	To maintain the conservation condition of the species concerned
Sanderling	To maintain the conservation condition of the species concerned
Wetlands and Waterbirds	To maintain the conservation condition of the species concerned

The site-specific pressures and threats are listed as:

Continuous urbanisation	The proposed windfarm does not present a threat to the SPA in this regard
Roads, motorways	The proposed windfarm does not present a threat to the SPA in this regard
Nautical sports	The proposed windfarm does not present a threat to the SPA in this regard
Grazing	The proposed windfarm does not present a threat to the SPA in this regard
Walking horse-riding and non-motorised vehicles	The proposed windfarm does not present a threat to the SPA in this regard
Marine and freshwater aquacultures	The proposed windfarm does not present a threat to the SPA in this regard

The Lough Derg (Donegal) SPA (Site Code: 004057)

Special Conservation Interest	**Conservation Objective**
Herring Gull	To maintain the conservation condition of the species concerned
Lesser Black Gull	To maintain the conservation condition of the species concerned

The site-specific pressures and threats are listed as:

Leisure Fishing	The proposed windfarm will have no impact on the incidence of leisure fishing in the SPA
Other human intrusions and disturbances	The proposed windfarm will not accentuate or exacerbate and additional human intrusions and/or disturbances on the SPA
Introduction of invasive non-native species	The proposed wind farm will not result in any invasive non-native species
Silviculture and Forestry	The proposed wind farm with not result in the introduction of additional forestry are Woodland within the confines of the Lough Derg SPA

Conclusions in relation to direct impacts

A systematic assessment of the potential impact arising from the proposed windfarms on Natura 2000 sites both contiguous to the site and in the wider surrounding area leads to the conclusion that there will be no direct effects on the qualifying interests and species of special conservation interest associated with the Natura 2000 sites in question. The proposed wind farm development will not present any additional pressures are threats to the qualifying interests or species of special conservation interests concerned.

Indirect Effects

The NIS Submitted has in my view correctly identified potential indirect effects on surrounding natura 2000 sites, which could arise as a result of the proposed development. The indirect effects are as follows:

- surface water pollution during the construction operation and decommissioning phases of the proposed wind farm.

- potential collision disturbance on displacement of birds associated with the surrounding SPA's during the operational and construction phase of the windfarm.

The construction of the development will involve tree felling, earthworks and excavation, all of which create the potential for pollution in various forms in terms of increased sedimentation and site runoff. Construction phase activities include access road construction, turbine base/hard-standing construction and grid cable excavation which are all result in the disturbance of peat and mineral subsoil. The Tullybaradair River along the northwestern boundary of the site incorporates an extensive network of peatland, forestry, and roadside drains within and adjacent to the development site. These drains and water courses could act as potential conduits for pollution to downstream ecological receptors.

To counteract this, a series of mitigation measures and best practice measures are set out in the NIS. Central to these measures include a detailed Construction and Environmental Management Plan (CEMP) which is attached as Appendix 3 of the NIS. Other mitigation measures are set out in relation to tree felling, the storage of materials, on-site refueling of machinery and the incorporation of fuel absorbent mats together with the provision of interceptor drains, swales/road side drains, and settlement ponds. The Board should note that in addition to the mitigation measures set out in the NIS, the potential for adverse effects on surrounding natura 2000 sites in view of the site specific conservation objectives has been considered in detail in the EIAR. Particularly in relation to the section on water (Section 8).

I am satisfied on the basis all the information submitted, including the information in the NIS and the EIAR that the mitigation measures will be effective in addressing potential indirect impacts in respect of water pollution on any of the natura 2000 sites in the vicinity.

With regard to collision disturbance and displacements of birds associated with the SPA's, the NIS sets out details of breeding populations, fledgling successes, the habitat extent and quality for each of the species of conservation interest associated with the SPA's. The analysis concludes that there is no evidence of breeding or roosting activity was recorded within, our adjacent to the proposed wind farm site in respect of the species in question. Therefore significant effects with regard to

collision, direct habitat loss, disturbance or displacement are not anticipated as an indirect effect.

Cumulative and In-combination Effects

Section 6 of the NIS specifically relates to cumulative impacts and in combination effects with other plans and projects. Projects identified include the planning application for the Derrykillew Community Windfarm Extension which is currently with the Board for decision (ABP Reg. Ref. 305163-19). The NIS also makes reference to details of numerous smaller developments in the wider area which could potentially have a cumulative impact. It is concluded that the proposed development by itself will not result in any adverse impacts on Natura 2000 sites and therefore cannot contribute to any cumulative effect where considered in combination with any other plans or projects. The predicted residual effects arising from other plans or projects in the area are not anticipated and therefore it can be reasonably concluded in my opinion that no residual cumulative or in-combination effects will result from the proposed development.

Having regard to the detailed assessment carried out in the NIS together with my independent assessment in respect of the bird populations of special conservation interest and the habitats associated with the SAC's in the vicinity, together with the modest number of turbines proposed and the distances between same, and the separation distances between the Natura 2000 sites and the wind farm site, I consider that the conclusion reached in the NIS is reasonable. On the basis of the field survey results and the detailed analysis undertaken as part of the application and the NIS, it can be reasonably concluded, on the basis of best scientific knowledge and beyond all reasonable doubt, that the proposed development will not adversely affect any of the species of conservation interest associated with the SPA or the habitats associated with the SAC, either directly, indirectly or cumulatively. On the basis of the information provided with the application, including the Natura Impact Statement, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, and the assessment carried out above, I am satisfied that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of Lough Golagh and Breesy Hill SAC (Site Code: 002164), Pettigoe Plateau SPA (Site Code: UK9020051), Donegal Bay SPA

(Site Code: 004057), Lough Derg (Donegal) SPA (Site Code: 004151) or any other European site, in view of the site's Conservation Objectives.

12.0 ENVIRONMENTAL IMPACT ASSESSMENT

The application is accompanied by an Environmental Impact Assessment Report (EIAR) on the basis that it falls within Classes of the 5th Schedule of the Planning and Development Regulations 2001 (as amended). It falls within Part 2, Class 3(i) of Part 2 of the Planning and Development Regulations, that being "*projects of more than 5 Turbines or having a total output greater than 5 megawatts*". The windfarm before the Board comprises of 5 turbines with a total project output of greater than 5 Megawatts.

Furthermore, the optimisation of the permitted windfarm under the current application also falls under Class 13(a) of Part 2 of the Regulations being:

"Any change or extension of development already authorised, executed or in the process of being executed (not being a change in the extension of Part 1) which would :-

i. Result in the development being of a class listed in Part 1 or Paragraphs 1 to 12 of Part 2 of this Schedule and

ii. Result in an increase in size greater than –

- *25 per cent*
- *An amount equal to 50 per cent of the appropriate threshold*

Whichever is the greater.

No formal scoping procedure with the Board was entered into. The application was lodged subsequent to the provisions of Circular Letter PL1/2017, and therefore the subject application falls within the scope of the amending 2014 EIA Directive (Directive 2014/52/EU) on the basis that the application was lodged after the last date for transposition in May 2017. It also falls within the scope of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018), as the application was lodged subsequent to these Regulations coming into effect on 1st September 2018.

This section of my report evaluates the information in the EIAR and carries out and independent and objective environmental impact assessment (EIA) of the proposed project in accordance with the requirements set out in the above legislation. In carrying out an independent assessment, I have examined the information submitted by the applicant including the submitted EIAR as well as the written submissions made by the 1st Party to the Board on appeal and the observations contained on file.

A single EIAR (together with a number of appendices) has been prepared in respect of the proposed windfarm. A number of the environmental issues, most notably noise and ecology/biodiversity, have already been addressed in my planning assessment of this report above. This EIA section of the report should therefore, where appropriate, be read in conjunction with the relevant parts of my Planning Assessment.

The impact of the proposed development is addressed under all relevant headings with respect to the environmental factors listed in Article 3(1) of the 2014 EIA Directive. The EIAR clearly sets out the background to the project development. The EIAR set out details of the scoping and consultations undertaken (Section 2.9) and the consultation responses (Section 2. p92). Details of pre-planning meetings with public bodies as well as community consultation are also detailed in the document (Section 2.p.93 & Section 2.p.94). The competency of experts including team members and responsibilities are set out in S1.7 of the EIAR. It is stated that there were no technical difficulties encountered in producing the EIAR.
The main potential impacts specific to Derrykillew windfarm can be summarised as follows:

- Potential for adverse impacts on surrounding residential amenity through increase noise, shadow casting and shadow flicker.
- Potential adverse impacts on the landscape and visual amenity of the area.
- Biodiversity impacts.
- Impacts on surface water, and to a lesser extent groundwater quality during construction.

- The positive impacts on climate change in terms of providing more sustainable forms of energy and reducing reliance on fossil fuels.

Consideration of Alternatives

Section 2.8 of the EIAR sets out the evaluation of the alternatives considered as part of the development. Part 2 of Annex IV of the EIA Directive requires that the developer sets out a description of reasonable alternatives studied and providing an indication of the main reasons for selecting the chosen option.

The EIAR explored alternative sites, however having regard to the parent permission issued by the Board in 2015 on the subject site, and the fact that the proposal under the current application seeks to optimise the existing turbine layout, the exploration of alternative sites was not a realistic proposition. The previous application already determined that the site is an optimal location of a windfarm development.

The EIAR also considers alternative design considerations including the design and layout of the turbines. Different designs and layouts were explored. The optimised layout under the current proposal keeps the same set back distance to the closest dwellings as already allowed under the permitted development. The proposed 150m tip height option represents the optimal balance turbine height, density and output balance.

In terms of alternative roadways to service the turbines, the EIAR points out that all access tracks are already permitted and are not proposed to be altered under the current optimisation scheme before the Board.

Grid connection route options were also considered, a number of potential route connections were ruled out on the basis that they were required to pass through the village of Belleek and or along the N3. The EIAR evaluates the connection to the Cliff Substation in the townland of Cloghore to the west of the site and also the Cathleen Falls 110kV substation further west of the site on the outskirts of Ballyshannon.

The EIAR also assess alternative ancillary structures including site compounds, alternative site access, alternative land uses (including the do-nothing scenario) alternative renewable technologies and processes and alternative mitigation measures.

I am satisfied that the developer as part of the EIAR process has considered in detail various alternatives relating to the proposed windfarm development in accordance with the provisions of the Directive.

Details of Competencies and Expertise of the Contributors to the EIAR

The EIAR has been prepared on behalf of the developer by a multi-disciplinary team of competent and technical experts in accordance with the requirements of Article 5(3) of the amending Directive. The competencies and responsibilities of the experts are detailed in Section 1.7 and of the EIAR. Details of the experience and competencies are also set out at the beginning of each chapter dealing with the environmental factors. I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality, and this is reflected in the information contained in the EIAR.

Details of Public Consultations undertaken as part of the EIAR

Details of the consultation entered into by the applicant as part of the preparation of the project and to inform the EIAR process are set out at Section 2.9 of the document. Specific consultation with various bodies / stakeholders was undertaken in the scoping of the document. Consultations were also undertaken with interest groups local community in order to identify concerns with the project and incorporate mitigation measures where required. A community liaison officer was also appointed, and a public information day was also initiated. A site-specific website was also established to provide up to date information. The planning appeals process also allows for further opportunities from third parties in relation to public consultation.

Description of Proposed Development

Chapter 3 of the EIAR provides a description of the proposed development and sets out in detail the proposed changes to the permitted development. It also provides details of

- The wind turbines
- Site Roads
- Peat Management
- The Electricity substation
- Site Cabling

- Tree Felling and Replanting
- Grid Connection
- Access and Transportation
- Site Drainage
- Construction Management and methodologies

- **Environmental Factors**

The sections below address each of the environmental factors. The headings used in the EIAR are as follows:

- Population and human health
- Biodiversity – Flora and Fauna
- Ornithology
- Land, Soils and Geology
- Water
- Air and Climate
- Noise and Vibration
- Landscape and Visual
- Archaeology and Cultural Heritage
- Material Assets
- Interactive Effects

Section 4 of the EIAR relates to ***Population and Human Health***. It examines the receiving environment including population trends and density in the Republic of Ireland and Northern Ireland and compares with the study area. Details of the demographic and employment profiles are also set out. In terms of land use, the study area comprises of cut over bog with some commercial forestry. Details of settlement patterns and economic services, including transport in the vicinity of the

site are detailed. Tourism and tourist attitudes towards windfarms[5] are detailed. These surveys suggest that there is no relationship between windfarm development and the tourist industry; and that tourists on the whole have positive or neutral attitudes towards windfarms. Reference is also made to various studies in relation to windfarms and health impacts. These studies it is argued, likewise conclude that there is no evidence to demonstrate that any significant health impacts arise. The EIAR also assesses the vulnerability of the project to natural disasters. It concludes that any potential impact is very limited as the turbines are not a source of pollution. Furthermore, the windfarm is not connected to, or located within proximity to a Seveso site. Reference is made to a number of studies to the effect of windfarms on property values[6].

No material impacts are anticipated in respect of shadow flicker. Of the 15 properties identified which could experience shadow flicker, when the regional sunshine average and the wind direction reduction factor is taken into account, the total annual guideline limit of 30 hours per annum is not anticipated to be exceeded at any of the modelled properties. The proposal in anticipated to have benefits in terms of employment, investment and community benefits.

The chapter concludes that there are likely to be no significant adverse impacts on human beings during the construction and operational phase. A series of mitigation measures are set out to reduce the potential impacts of the proposal during the construction phase. During the operational phase, the proposal will contribute to a reduction in greenhouse gases and will contribute positively to climate change. There are no anticipated impacts on residential amenity in terms of noise, shadow flicker, property values, or interference with communications systems. No impacts are anticipated in respect of houses in Northern Ireland. Where potential impacts could arise on local population, the EIAR sets out where appropriate, a series of pre and or post mitigation measures to address these potential impacts.

I have considered all the information on file including the written observation made on foot of the appeal in relation to population and human health and the information contained in the EIAR. I am satisfied that the potential for impacts on population and

[5] Based on a Scottish survey of 2016 and Failte Ireland surveys of 2007 and 2012.
[6] In Scotland and the USA.

human health can be avoided, managed and/or mitigated by measures that form part of the proposed scheme and with suitable conditions, to an acceptable extent.

Section 5 relates to ***Biodiversity Flora, Fauna***. Details of a series of field studies carried out in 2018 and 2019[7] are set out in the EIAR. Individual otter, bat and marsh fritillary surveys were undertaken. The chapter also assess the proposal in the context of Designated Sites in the vicinity[8]. Extensive desktop studies in relation to existing flora and fauna data bases for the study area are set out. Details of the existing habitats are set out. Conifer woodland and upland blanket bog predominate on site. The habitats in the vicinity of each of the proposed turbine sites, access roads, grid connection routes and other ancillary development are also detailed.

The ecological significance of the habitat beneath each of the structures are also assessed. Turbine 3 and 5 together with the substation are located on wet heath and blanket bog, habitats of national importance. The proposal will therefore have a permanent slight negative effect in the absence of mitigation measures. The construction works could also give rise to aquatic habitat degradation through sediment run-off in the absence of mitigation. In terms of existing fauna of the site, no otter breeding site or holts were observed hence no impacts were anticipated during the construction or operational phases. The habitat is not considered suitable for badgers. In terms of bats, the number of bats recorded on site were of 'local significance only' with low levels of bat activity. A series of mitigation measure are set out through mitigation by avoidance, mitigation through best practice including minimisation of vegetation removal. A peatland restoration and enhancement strategy is also proposed to the north-east of the site to mitigate against the loss of peatland habitat. Pre-construction mammal surveys will be undertaken. Detailed drainage plans will be put in place to protect water quality. Biosecurity measures will be put in place to arrest the spread of invasive species.

The mitigation measures to be employed will result in either no significant effect or a permanent slight positive residual effect in biodiversity of the site. Finally, this chapter of the EIAR assesses cumulative effects in relation to other developments namely forestry, agriculture, or other wind turbine developments in the area. No cumulative impacts with such projects are anticipated.

[7] April July and December 2018 and April and August 2019.
[8] The application was accompanied by an NIS and this is assessed elsewhere in my report.

I have considered all the information on file including the written observation made on foot of the appeal in relation to biodiversity and the information contained in the EIAR. I am satisfied that the potential for impacts on biodiversity can be avoided, managed and/or mitigated by measures that form part of the proposed scheme and with suitable conditions, to an acceptable extent.

Section 6 of the EIAR relates to ***Ornithology.*** A detailed desk study was undertaken to search for any relevant information on species of conservation concern which may potentially make use of the study area. Consultations were also undertaken with relevant stakeholders. Field surveys were also carried out on a continuous basis over a 17month period.[9] Details of the survey methodology are set out in the EIAR. The potential risks identified from the proposed windfarm include direct habitat loss through the construction of windfarm infrastructure, displacement where birds avoid the windfarm and its surrounding area during both construction and operational phases, and potential mortality through collision. The EIAR identifies the Special Protection Areas within the zone of influence for the site[10]. Details of all bird species using the field surveys and the various available published and unpublished data sets are set out in great detail in the EIAR. A total of 31 species were identified within the zone of influence, of these 4 species were identified as being of high sensitivity and 6 were classed as medium sensitivity.

In terms of potential impacts, the additional habitat loss over and above the permitted development is less than 2 ha's, which is considered to be negligible in terms of the overall habitat loss for birds. In terms of displacement, it is considered that the minor displacement over and above the permitted windfarm is not deemed to be significant. The collision risk mortality modelling undertaken as part of the EIAR, indicates that the potential increase in collisions over and above the permitted development would in the order of an additional 0.2 collisions per year. The EIAR sets out various mitigation measures to be employed during the construction, operation and decommissioning of the windfarm. Finally, the EIAR assesses any potential cumulative impacts which could arise from other plans or projects. These projects include forestry, agricultural practices, peat extraction and other wind turbines. No significant cumulative disturbance has been identified. It is therefore

[9] April 2018 to August 2019.
[10] The impact of the proposal on SPA's in the areas is assessed separately in the NIS submitted and this is assessed elsewhere in my report.

anticipated that no significant residual effects will arise as a result of the revised proposal.

I have considered all the information on file including written observations made in the appeal in relation to ornithology and the information contained in the EIAR. I am satisfied that the potential for impacts on ornithology can be avoided, managed and/or mitigated by measures that form part of the proposed scheme and with suitable conditions, to an acceptable extent.

Section 7 of the EIAR relates to ***Lands, Soils and Geology***. This Section sets out the impact assessment methodology used to assess any potential impact and set out details of the existing site topography. Peat thickness across the site varies from 0m to 7.2m. with the deeper peat areas located to the east of the site. The peat deposits on site are classified as low importance as the peat has been significantly degraded as a result of drainage. In terms of geology, the site is underlain by Precambrian Quartzites, Gneisses & Schists. The bedrock is classified as being sub-economic as a construction material.

The EIAR also includes a Peat Stability Assessment. The findings involved an analysis at over 40 locations and in all the areas assessed, each were found to have an acceptable margin of safety. The increase in the height of the turbines will result in an extra c275 sq. m of hardstanding per turbine. Additional extraction will also be required for the enlarged substation. The proposal will require an increase in peat excavation of c 32,951 m^3. Whereas the extant permission envisaged an excavation of 13,930 m^3. Most of the increase in peat excavation is attributed to the proposed substation upgrade. 68,448 m^3 of stone will be sourced from local quarries. The main potential adverse impacts will arise during the construction phase, which will see an increase in excavation as referred to above. Mitigation measures will be put in place, including utilising as far as possible, existing roads providing floating roads and minimising and reusing excavated peat where possible. Mitigation will also be put in place to avoid spillages. Measures are also set out to minimise the potential impact exposed subsoils and to minimise the potential impact on peat stability. No potential cumulative impacts are anticipated and very few potential impacts are envisaged during the operational phase. During the decommissioning phase, it may be possible to reverse some of the impacts through the rehabilitation of the some of the peat and soils.

I have considered all the information on file including the written observation made in the appeal. This observation did not raise any concerns in relation to soils and geology. I am satisfied that the potential for impacts on lands soils and geology can be avoided, managed and/or mitigated by measures that form part of the proposed scheme and with suitable conditions, to an acceptable extent.

Section 8 of the EIAR relates to ***Water***. The existing water environment was determined by a detailed walkover study including detailed drainage mapping and baseline monitoring/sampling[11]. Consultations with statutory bodies were also undertaken. The area is characterised by high surface runoff rates and very low groundwater recharge rates. In terms of local hydrology, the western and northern portion of the site flow into the Tullybaradair River. Turbines T1 to T4 as well as the substation are located within this River catchment. The eastern and north eastern part of the site where Turbine T5 is located drains into Lough Scolban in County Fermanagh.

In terms of flood risk, none of the turbines are located within 50m of streams and are outside the fluvial indicative 1 in 100-year flood event. Details of the hydrochemistry are set out in section 8.3.6 of the EIAR. The vulnerability of the underlying aquifer is classified as being moderate to high. But there are no designated groundwater protection zones.

In terms of potential risks, the main impacts potentially arise during the construction phase. Contamination of surface waters through construction works is identified as the major threat. The impacts are identified as exposure of soils and increased sedimentation and nutrient release arising from tree felling. Increased sedimentation release could also occur due to earthworks. A series on mitigation measures, both by avoidance and design are set out, these include properly installed drainage mitigation measures up-stream. It is noted that there is a considerable buffer zone (in excess of 50 m) between the turbine bases and streams in the area. The primary risk to groundwater is from accidental spillages. However, the blanket peat provides an effective cover to the underlying aquifer, and all hydrocarbon refuelling and storage and the use of any chemical or cement-based products will be the subject of strict protocols and mitigation measures. Some levels of increased dewatering are likely to

[11] April 2018.

occur when constructing the turbine bases. This will be the subject of the runoff management system. There are no anticipated impacts on groundwater supplies. Increases in potential surface water runoff between the permitted and proposed development within the study area are calculated as being less than 0.04%. The EIAR details the proposed drainage management system to be put in place to address these potential impacts.

Any stream or river crossings will be undertaken using directional drilling for the substation and grid connection and a series of mitigation measures will put in place as part of the drilling activities. No significant cumulative impacts are anticipated.

I have considered all the information on file, including the written observation made on foot of the appeal in relation to water quality and the information contained in the EIAR. I am satisfied that the potential for impacts on surface and groundwater quality can be avoided, managed and/or mitigated by measures that form part of the proposed scheme and with suitable conditions, so that any impact can be deemed to be acceptable.

Section 9 of the EIAR relates to ***Air and Climate.*** It sets out details of the air quality parameters set out in the Air Quality Standards Regulations of 2011 and the ozone Directive 2008/50/EC. It is noted that the subject site is located in Air Quality Zone D. Details of the ambient air quality at the nearest station (Letterkenny) for the various parameters are set out.[12] No parameters were exceeded. The potential impacts arising from the construction phase are identified as being exhaust emissions from transport carrying out construction works and bringing materials to the site, dust emissions from the construction of turbines and other infrastructure on site. A series of mitigation measures are set out to counteract any potential impact on air emissions. In residual impact is identified as a short-term imperceptible negative impact. During the operational phase, the proposal by providing an alternative to electricity generated from fossil fuel sourced power stations, will result in reduced emissions of CO_2, SO_2, and NO_x. This will result in a long-term significant positive impact.

In terms of climate change, the EIAR sets out an estimated calculation of carbon losses and savings from the revised development. It estimates that over the 30 year

[12] SO_2, PM_{10}, NO_2, CO and Dust.

lifetime of the development c.763,000 tonnes of carbon dioxide will be displaced from the traditional carbon-based electricity generation. The impact is therefore determined to 'long term moderate positive impact'. There will be no measurable cumulative effects with other developments on are quality and climate.

I have considered all the information on file including the written observation made on foot of the appeal in relation to air quality and climate and the information contained in the EIAR. I note that the observation submitted did not raise any concerns in relation to climate change. I am satisfied that the potential for impacts will on the whole, be positive due to the reduction on the reliance on fossil fuels during the operational phase. Impacts during the construction phase can be avoided, managed and mitigated by measures that form part of the proposed scheme and with suitable conditions, to an acceptable extent.

Section 9 relates to ***Noise and Vibration***. This chapter sets out details of the adopted guidance and criteria in relation to noise and vibration. The receiving environment is described. The existing noise climate was ascertained using noise monitoring data based on two locations indicated on figure 10.2 of the EIAR. Derived decibel levels (LA_{90}) for various wind speeds (4 to 10 m/s) at a 10m height are set out on Table 10.7 of the EIAR.

During the construction phase the major noise generators (HGV's, track excavators, de-watering pumps, piling operations, vibrating rollers and general construction) at the nearest noise sensitive location (a dwelling 460 m away) range between 44 to 55dB $L_{Aeq}T$. With a cumulative impact of 58 $L_{Aeq}T$. These predicted noise levels are below the predicted Category A value for construction noise of 65dB(A) L_{Aeq} T. The nearest noise sensitive receptor to the proposed substation is 1.1km away the cumulative impact arising from in terms of construction noise is predicted to be 53dB(A) L_{Aeq} T.

A separate construction noise assessment is carried out for the grid connection route and the haulage routes. The impacts are assessed as being 'slight negative and temporary' in nature. A series of mitigation and best practice measures are set out to reduce any adverse potential impacts. Due to the separation distances involved, no

impacts are anticipated on sensitive receptors in terms of vibration during the construction phase.

During the operation phase a worst-case scenario assessment is undertaken assuming all turbines are operational. The assessment predicts noise levels at 64 noise sensitive receptors at wind speeds of 4 to 10 m/s. The modelling predicts some potential exceedances at 6 dwellings, 4 of which are landowners. The exceedances are in the realm of 0.1 to 0.5 dB(A). Furthermore, the turbines in question can be programmed to operate at reduced modes (curtailment mode) to reduce noise output. A detailed curtailment strategy, if required can be implemented. However, with the incorporation of a suite of mitigation it is not envisaged that such a curtailment mode strategy will be necessary. The EIAR goes on the assessment the potential impact on sensitive receptors in Northern Ireland, under Northern Ireland criteria. The Predicted noise levels at all receivers located in Northern Ireland are within the criteria for daytime and night-time periods. The EIAR also assesses the potential increase in noise levels between the permitted and proposed developments under various wind speeds (4 to 10 m/s). The average difference ranges from 0.3 dB(A) to 1.4 dB(A) which is imperceptible. The noise impact from the substation and the nearest noise sensitive receptors are in the range of 20-23 dB(A) which is negligible. Some potential exceedances may occur during the construction phase along the alignment of the grid connection. However, any such exceedances would be temporary in nature.

Finally, the EIAR assesses the impact arising from the cumulative impacts. The Derrykillew Windfarm Extension project c. 2km to the north west has been identified for inclusion in the cumulative noise assessment. Some potential exceedances have been identified at certain windspeeds. The potential exceedances vary from 1 to 3 dB, which are imperceptible.

In terms of vibration no impacts during the operational phase are anticipated at sensitive receptors.

I have considered all the information on file including the written observation made on foot of the appeal in relation to noise and vibration and the information contained in the EIAR. I am satisfied that the potential for impacts during the construction phase and operation phase will be negligible, and where necessary can be avoided,

managed and mitigated by measures that form part of the proposed scheme and with suitable conditions, to an acceptable extent.

Section 10 of the EIAR relates to ***Landscape.*** Reference is made to the assessment carried out by An Bord Pleanála under the previous application where the inspector concluded that there was very little material impact in visual terms between turbines of 136m in height and 150m in height. The EIAR goes on to outline the methodology used in assessing the visual impact together with the assessment criteria used in the methodology. A number of windfarms in the wider area are included in the cumulative visual impact assessment. The receiving environment is best described according to the EIAR as 'Transitional Marginal Land' as defined in the DoEHLG Guidelines. The Development Plan Landscape Designations for Leitrim, Donegal and Northern Ireland are set out. It is noted apropos the Donegal Development Plan, that one of the Turbines is located in an area of 'Moderate Scenic Amenity' and four turbines are located in an area of 'High Scenic Amenity'. The windfarms will also be visible from 2 designated scenic views. The EIAR also sets out details of the landscape character assessment. The proposal is located in the 'Lough Derg Uplands and Lakelands'. Designated Walking Routes, Cycleways and Tourism Trails in Donegal and the surrounding counties are also detailed.

The assessment study area covers a 20km radius from the centre of the proposed wind farm and includes parts of Donegal, Fermanagh and Leitrim. Details and photographs of views of the site from the surrounding area are detailed and assessed. Figures 11.6 to 11.8 sets out the theoretical zones of visibility. It indicates that the proposed revised height will virtually no effect on the zone of theoretical visibility. The analysis also assesses the visibility from the road network in the vicinity. There is theoretical visibility of the proposed turbines within 5km from the site, beyond this radius views are generally confined to the west and east in wedge shaped bands. Outside this distance, visibility is more intermittent. Generally, there will be a moderate landscape effect within 10km of the site, beyond that adverse landscape effects will decrease with distance. 12 photomontages have been prepared which assess the visual impact within a 20km radius of the site. When assessed in the context of the permitted development the impact is assessed as being 'imperceptible' and in one instance (viewpoint 12) 'not significant'.

The construction impacts, which will last over a 12-18 month period, will have a temporary adverse effect in terms of site roads, temporary compounds and other work as well as tree felling. The proposed windfarm will have acceptable cumulative effects.

I have considered all the information on file including the written observation made on foot of the appeal. I am satisfied that the potential for impacts on the landscape character have been adequately assessed in the report and the proposed alterations will have a imperceptible visual impact over and above that associated with the permitted development. The is very limited potential to mitigate the visual impact.

Section 12 of the EIAR relates to ***Archaeology and Cultural Heritage***. This section outlines the background to the area, details of the archaeological assessment; methodology used; details the receiving environment; assessment of potential impacts and direct impacts; together with mitigation measures are set out in the section. It is stated that there are no archaeological sites known to the National Monuments Service within the site of the proposed wind farm or in the vicinity of the proposed cable route. The nearest recorded RMP/SMR's within 5km of the site are set out in Table 12.3.82. Features of archaeological interest within 5 km, including Fermanagh are noted, the closest of which is 1.4 km away. Details of various archaeological investigations which have taken place are set out in the EIAR. In terms of mitigation, an archaeologist will be on site at the start of any new excavation works to monitor excavation material and will consult and liaise with the relevant statutory authorities.

Details of Protected Structures[13] within the vicinity of the site are also set out. With the exception of a gate lodge outside Ballyshannon, all buildings of architectural and historic merit are located in the vicinity of the Town of Belleek, to the south, the closest being 1.3 km from any turbine. A thatched cottage at Derrykillew c530 m from the site is listed in the NIAH. Other features of cultural/folklore heritage in the wider area are also referred in the EIAR. Cable grid connection routes are under ground and will not be visible. Only features within 100 m of the site were assessed. Two features were identified a number of bridges in the vicinity are also listed on the

[13] Referred to as 'listed buildings' Northern Ireland

NIAH. The EIAR also assesses the haul turbine delivery route in terms of its proximity to features of architectural / cultural heritage interest.

It is concluded that no significant direct or indirect affects will occur on the cultural heritage of the area as a result of the construction phase. During the operational phase the impacts are confined to the setting of existing structures in the context of the turbine structures. The impacts are determined to be imperceptible or not significant.

I have considered all the information on file, including written observation made in the appeal in relation to archaeological and cultural heritage, and the information contained in the EIAR. I am satisfied that the potential for impacts have been adequately identified and assessed in the report and the proposed alterations to the permitted windfarm will have a imperceptible impact on cultural heritage over and above that associated with the permitted development. The is very limited potential to impact on the setting and context of features of cultural heritage in the area and equally to mitigate against the impact on cultural heritage other than the monitoring of all site works.

Section 13 of the EIAR relates to ***Material Assets.*** It examines traffic and transport. The preferred haul route is identified from Belfast Port and is indicated on Figure 13.1. Existing Traffic Volumes in the area are also assessed. In term of the construction phases, construction traffic will be present on site for c.255 days. Approximately 7,000 truckloads of materials will be required for site preparation and ground works. 55 extended articulated trucks movements will be required to deliver the 5 turbines. An assessment of the capacity of the road network and junction network is set out in the EIAR, the impact is assessed as being minor. A detailed assessment, including a sweep-path analysis of the route delivery is also set out. Some junctions will require a detailed design and a 'dry-run' prior to transporting the turbines to site. A series of traffic mitigation measures are set out to assist traffic management during the construction phase. During the operational phase c. 2 trips per day will be made. No significant cumulative traffic impacts are anticipated.

Telecommunications and aviation is also assessed under material assets. In terms of electromagnetic interference, a consultation exercise was carried out with national

and regional broadcast operators. It is stated that the consultees indicated that the proposed turbine layout does not overlap with any of the telecoms links or clearance zones requested by the operators. In terms of aviation requirements, the turbines will be marked on maps, lit up at night, and entered into the aircraft navigation databases and therefore can be avoided during flight. The proposed development will have no residual impact on the telecommunication signals of any other operator due to distance from or absence of, any links in the area. No cumulative impacts will arise.

I have considered all the information on file, including the written observation made in the appeal in relation to material assets and the information contained in the EIAR. I note that issues relating to material assets were not raised as a concern in the observation submitted I am satisfied that the potential for impacts have been adequately assessed in the report and the proposed alterations will have an acceptable impact in terms of material assets.

Section 14 of the EIAR relates to ***Interaction of Effects***. A matrix Is presented in Table 14.1, which assesses the potential interactions both during the operation and construction phase. The table indicates where no interactions exist, and in the case where an interaction does exist, whether the said interaction is positive negative or neutral. The interaction of the various potential impacts are then commented upon in the chapter.

12.1. **Reasoned Conclusion on the Significant Effects**

Having regard to the examination of environmental information contained above in the EIAR submitted by the applicant, together with the written submissions on file, I would conclude the following in relation to significant effects:

(a) The most significant effects will be the visual impact arising from the permanent removal of forestry and the erection of 5 wind turbines of 150 meters in height. This will result in a significant impact on the receiving environment and up to 10 km surrounding the site. However, development must be assessed in the context of the extant permission on site which allows for the provision of 5 turbines of 136 meters in height. The visual impact arising from the 14m increase in height is not so significant.

(b) From a sustainable energy perspective, the proposal fully supports government policy to reduce reliance on fossil fuels and provide more sustainable sources of energy. The proposal will result in the reduction of almost 30,000 tonnes of CO_2 during the 30 year lifespan of the windfarm. The proposal therefore will have a moderate positive impact on climate change.

(c) Impacts in terms of traffic, noise, shadow flicker and water quality the proposed windfarm could either during the construction or operational phase potentially give rise to adverse environmental impacts or impacts on sensitive receptors in the surrounding area. However, with the incorporation of appropriate mitigation measures and the implementation of best practice, the impacts are deemed to be acceptable. Furthermore, the impact over and above that already permitted on site would be negligible.

(d) Finally, EIAR reasonably concludes in my opinion, having regard to the nature of the existing environment, that there will be little or no adverse impacts arising from the proposed windfarm in terms of biodiversity, land soils and geology, and cultural heritage.

The EIAR has considered that the main significant direct and indirect and cumulative effects of the proposed development on the environment in both the Republic of Ireland and Northern Ireland and potential impacts would be primarily mitigated by environmental management measures, as appropriate. Following mitigation, no residual significant long-term negative impacts on the environment or sensitive receptors would remain with the exception of the visual impact and the positive impact in terms of promoting and utilising more sustainable forms of renewable energy. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on the environment during the construction or operational phase, particularly in the context of that development already permitted on site.

I am satisfied that the information provided is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the project on the

environment, taking into account current knowledge and methods of assessment. Overall, I am satisfied that the information contained in the EIAR complies with the provisions of Article 3, 5 and Annex (IV) of EU Directive 2014/52/EU.

13.0 Overall Conclusions and Recommendations

Arising from my assessment above, and having particular regard to the extant permission relating to the provision of 5 no. turbines wind on the subject site, together with national and regional policy together with the over-arching policies contained in the Donegal County Council development plan which seek to encourage alternative forms of sustainable energy, including wind energy, it is considered that the proposed development would be in accordance with the proper planning and sustainable development of the area and I therefore recommend that the decision of Donegal County Council in this instance be overturned and that planning permission be granted for the proposed development.

DECISION

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

REASONS AND CONSIDERATIONS

Having regard to:

(a) national policy relating to the development of sustainable energy resources,

(b) the provisions of the “Wind Energy Development Guidelines” for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006,

(c) the over-arching policies of the planning authority as set out in the Donegal County Development Plan, as varied,

(d) the scale and community based nature of the proposed development,

(e) the general character of the site and the landscape features and general topography of the surrounding area,

(f) the separation distance of the proposed turbines from any inhabited dwellings,

(g) modifications in terms of the increase in height of the proposed turbines as proposed under the current application,

(h) the range of mitigation measures set out in the documentation received including the Environmental Impact Assessment Report and the Natura Impact Statement

(i) transboundary considerations and consultations relating to the site and to the proposed development, and

(j) the submissions on file and the report of the Inspector,

it is considered that the proposed development, subject to compliance with the conditions set out below, would be in accordance with the National and County policies in respect of wind energy, would not give rise to pollution, would not result in unacceptable impacts on the visual amenity of the general area, would not seriously injure the amenities of the area or of property in the vicinity of the site, would be acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment

The Board agreed in full with and adopted the conclusions of the Planning Inspector in respect of the conclusions reached in the stage 2 Appropriate Assessment submitted with the application. In this regard, the Board concurred with the conclusion reached in the Natura Impact Statement submitted that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of the site's conservation objectives.

Environmental Impact Assessment

The Board considered the Environmental Impact Assessment Report submitted with the application to the planning authority, the submissions on file and the Inspector's assessment of the environmental impacts. The Board considered that the Environmental Impact Assessment Report together with other documentation and submissions on file, was adequate in describing the direct effects, indirect effects and cumulative effects in combination with other projects of the proposed development, including grid connection. The Board noted and adopted the Inspector's report and conclusions in respect of Environmental Impact Assessment.

The Board completed an Environmental Impact Assessment and concluded that the proposed development, subject to compliance with the mitigation measures proposed, and subject to compliance with the conditions set out below would be acceptable having regard to the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

   REASON: In the interest of clarity.

2. All of the environmental, construction and ecological mitigation measures set out in the Environmental Impact Statement and Natura Impact Statement accompanying the application to the planning authority and other particulars submitted with the application to the planning authority shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order.

REASON: In the interest of clarity and the protection of the environment during the construction and operation phases of the development.

3. In addition to the mitigation measures set out NIS and EIAR the applicant shall

(a) Vegetation Clearance from within the site footprint shall occur outside the bird breeding season from March 1st to August 31st inclusive in order to avoid disturbance to nesting birds.

(b) An independent and suitably qualified ornithologist shall be present on site if construction works are required from March to August in any year and works should cease should any disturbance to breeding birds be detected.

(c) prior to the commencement works an ornithological monitoring plan shall be submitted and agreed in writing with the planning authority. This plan should include, but not be limited to, all the measures detailed in appendix 6.7 including ornithological monitoring of the site during and post construction. Details of the monitoring regime to be implemented shall be agreed with the planning authority. Any such monitoring should focus Annex 1 species of conservation concern including the hen harrier, curlew and snipe. All reports should be submitted to the planning authority within six months of the end of each survey.

4. 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.

5. This permission is for a period of 30 years from the date of commissioning of the wind farm. The wind turbines and related ancillary structures and temporary roadway shall then be removed and the site appropriately reinstated, prior to the end of this period, unless planning permission shall have been granted for their retention for a further specified period. Details of the reinstatement plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

REASON: To enable the impact of the development to be reassessed, having regard to the changes in technology and design during this period.

6. Post construction usage of the wind farm site by birds and bats shall be monitored for a period of five years which shall be carried out by a suitably qualified and competent ecologist. Full details of the methodology of monitoring and data collection and reporting arrangements shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

REASON: To ensure appropriate monitoring of the impact of the development on the fauna of the area.

7. (a) Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with the planning authority:

(i) A Transport Management Plan, including details of the road network/haulage routes indicated in the Environmental Impact Assessment Report including the vehicle types to be

used to transport materials on and off site, and a schedule of control measures for exceptional wide and heavy delivery loads.

(ii) A condition survey of the roads and bridges along the haul routes to be carried out at the developer's expense by a suitably qualified person both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes to cater for construction-related traffic. The extent and scope of the survey and the schedule of works shall be agreed with the planning authority/authorities prior to commencement of development.

(iii) Detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority/authorities.

(iv) Detailed arrangements for temporary traffic arrangements/controls on roads.

(v) A programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.

(b) All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of each road's use as a haul route for the proposed development.

Reason: To protect the public road network and to clarify the extent of the permission in the interest of traffic safety and orderly development.

8. The operation of the proposed development, by itself or in combination with any other permitted wind energy development, shall not result in noise levels, when measured externally at nearby noise sensitive locations, which exceed:

(a) Between the hours of 7am and 11pm:

i. the greater of 5 dB(A) $L_{90,10min}$ above background noise levels, or 45 dB(A) $L_{90,10min}$, at wind speeds of 4m/s or greater

ii. 40 dB(A) $L_{90,10min}$ at all other wind speeds

(b) 43 dB(A) $L_{90,10min}$ at all other times

where wind speeds are measured at 10m above ground level.

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, including any mitigation measures such as the de-rating of particular turbines. 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 R 1996-1. 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.

9. (a) Shadow flicker arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors.

(b) 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.

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

(a) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
(b) location of areas for construction site offices and staff facilities;
(c) details of site security fencing and hoardings;
(d) details of on-site car parking facilities for site workers during the course of construction;
(e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
(f) measures to obviate queuing of construction traffic on the adjoining road network;
(g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
(h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
(i) provision of construction hours, including deliveries of materials to the site;
(j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
(k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater; and
(l) off-site disposal of construction/demolition waste.

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 planning authority.

Reason: In the interest of amenities and safety.

11. The wind turbines including masts and blades, and the anemometer mast, shall be finished externally in a light grey colour.

Reason: In the interest of visual amenity.

12. (i) Cables within the site shall be laid underground.

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

(iii) 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 and for clarification purposes

13 Prior to the commencement of development, the developer shall agree a protocol for assessing any impact on radio or television or other telecommunications reception in the area. In the event of interference occurring, the developer shall remedy such interference according to a methodology to be agreed in writing with the planning authority, following consultation with other relevant authorities and prior to commissioning the turbines.

Reason: In the interest of residential amenity.

14. 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 of the coordinates 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.

15. 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, 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.

16. 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) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to 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.

17. 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.

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

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

19. The 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, as amended. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

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Paul Caprani
Senior Planning Inspector
28th January 2021