



An  
Bord  
Pleanála

## Inspector's Report ABP-313021-22

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<b>Development</b>	Construction of wind turbine and 20kV substation and all associated site development and ancillary works
<b>Location</b>	Loughanstown, Co Westmeath
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	21666
<b>Applicant(s)</b>	Natural Forces Renewable Energy Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First & Third Party
<b>Appellant(s)</b>	Natural Forces Renewable Energy Ltd and North West Meath Turbine Action Group.
<b>Observer(s)</b>	Waters Family
<b>Date of Site Inspection</b>	3 <sup>rd</sup> June 2022.
<b>Inspector</b>	Sarah Lynch



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## **1.0 Site Location and Description**

- 1.1. The site is located within the townland of Loughanstown Co. Westmeath which is located approximately 2.8km northwest of Castlepollard. It is stated that the development site will extend to an area of 3.15ha. The site is accessed from an existing local country road to the west of the R394 which is significantly restricted in terms of width and alignment. The topography of the development site and surrounding lands is relatively flat.
- 1.2. The lands directly abutting the location of the proposed turbine is currently planted with conifers. A farmyard is located at the entrance to the development site to the southwest of the proposed turbine. The adjacent local road is single carriageway and significantly narrow in width lined by a mature hedgerow.
- 1.3. There are a number of mature dwellings and farmyards along the adjacent country road, however the area in general is relatively sparsely populated.

## **2.0 Proposed Development**

- 2.1. It is proposed to construct a single wind turbine with an energy output of 4.2MW and an overall tip height of 150m. The proposal will also include a 20kV substation and associated infrastructure including an access track within the site. A grid connection has been referred to within the documentation submitted but does not form part of the application.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Westmeath County Council determined to refuse permission for the following reasons:

1. CPO 10.146 of the Westmeath County Development Plan 2021-2027 sets out that it is Council policy objective to strictly direct large scale energy production projects onto cutover cutaway peatlands in the County, subject to environmental. Landscape habitats and wildlife protection requirements being addressed. In the context of this policy objective and given that the proposed

development constitutes an industrial scale/large scale energy production project by virtue of its overall height to blade tip, it is considered that to permit the development as proposed would if permitted contravene CPO 10.146 of the Westmeath County Development Plan 2021-2027.

2. In the absence of satisfactory details submitted to the contrary, it is considered that the development of permitted has the potential to give rise to shadow flicker. In this regard, to permit the development as proposed would detract from residential amenities and deprecate the value of properties in the vicinity and would therefore be contrary to the proper planning and development of the area.
3. In the absence of satisfactory details submitted with this application in respect of the proposal coupled with a future required connection to the national grid, it is considered that to permit the development as proposed would be contrary to CPO 12.1 of the Westmeath County Development Plan, to 'Contribute as appropriate towards the protection of designated sites in compliance with relevant EU directives and applicable national legislation' and would therefore be contrary to the proper planning and development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planners report is consistent with the decision of the Local Authority.

#### **3.2.2. Other Technical Reports**

- District Engineer – FI requested in relation to impact on roads arising from trenching. Structural and traffic impacts appear excessive and inefficient given that the development is for a single turbine.
- Chief Fire Officer – no objection subject to conditions.

### **3.3. Prescribed Bodies**

- Department of Defence – obstruction lighting is fitted on turbine
- Irish Water – no objections

### 3.4. **Third Party Observations**

Watters Family have made an observation to the appeal which can be summarised as follows:

- Planning application is in contravention to the WM CDP.
- Current government policy is for offshore windfarms.
- Development too close to Castlepollard and to houses in local area.
- Development will cause disturbance due to noise and flicker.
- No interconnection to national grid.
- Development will give rise to a visual impact and affect tourism.
- Development will cause damage to infrastructure of area.

### 4.0 **Planning History**

There is no recently recorded planning history within the development site. However, the development site is east of the Coole Windfarm development.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

##### **Westmeath County Development 2021-2027**

A number of chapters of the County Development Plan make reference to renewable energy as follows:

- Chapter 5 Economic Development and Employment Strategy – renewable energy is recognised as a key component to achieving a low carbon economy. CPO 5.59 Seeks to support renewable energy initiatives.
- Chapter 9 Rural Westmeath – policy position supports renewables in the context of farm diversification this is referenced in CPO 9.34.
- Chapter 10 Transport Infrastructure and Energy – Favourable approach will be taken in relation to renewable energy sources.

- Section 10.23 Wind Energy sets out the Councils policy position on wind energy development.
- CPO 10.139 Seeks to support initiatives limiting emissions of greenhouse gases through the development of renewable energy sources.
- CPO 10.143 - Provide the following separation distances between wind turbines and residential dwellings:
  - 500 metres, where the tip height of the wind turbine blade is greater than 25 metres but does not exceed 50 metres.
  - 1000 metres, where the tip height of the wind turbine blade is greater than 50 metres but does not exceed 100 metres.
  - 1500 metres, where the tip height of the wind turbine blade is greater than 100 metres but does not exceed 150 metres.
  - More than 2000 metres, where the tip height of the wind turbine blade is greater than 150 metres.
- CPO 10.144 Ensure the security of energy supply by supporting the potential of the wind energy resources of the County in a manner that is consistent with proper planning and sustainable development of the area.
- CPO 10.145 Encourage and support the development of small-scale wind energy development and single turbines in urban and rural areas and Industrial Parks, provided they do not negatively impact upon environmental quality, landscape, wildlife and habitats or residential amenity.
- CPO 10.146 To strictly direct large-scale energy production projects, in the form of wind farms, onto cutover cutaway peatlands in the County, subject to environmental, landscape, habitats and wildlife protection requirements being addressed. In the context of this policy, industrial scale/large-scale energy production projects are defined as follows: Projects that meet or exceed any of the following criteria:
  - Height: over 100m to blade tip, or
  - Scale: More than five turbines, or

- Output: Having a total output of greater than 5MW Developments sited on peatlands have the potential to increase overall carbon losses. Proposals for such development should demonstrate that the following has been considered:
- Peatland stability; and
- Carbon emissions balance

### **Project Ireland - National Planning Framework 2040**

The National Policy Position establishes the fundamental national objective of achieving transition to a competitive, low carbon, climate resilient and environmentally sustainable economy by 2050, this will be achieved by harnessing both the considerable on-shore and off-shore potential from energy sources such as wind, wave and solar.

- NSO 8 Transition to a low carbon economy

It is an objective of the plan to deliver 40% of our electricity 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.

### **Ireland's Transition to a Low Carbon Energy Future 2015-2030**

This document is a complete energy policy update, which sets out a framework to guide policy up to 2030. Its objective is to guide a transition, which sets out a vision for transforming Ireland's fossil fuel-based energy sector into a clean, low carbon system. It states that under Directive 2009/28/EC the government is legally obliged to ensure that by 2020, at least 16% of all energy consumed in the state is from renewable sources, with a sub-target of 40% in the electricity generation sector. It notes that onshore wind will continue to make a significant contribution but that the next phase of Ireland's energy transition will see the deployment of additional technologies as solar, offshore wind and ocean technologies mature and become more cost-effective.

### **Climate Action Plan 2019**

- Section 4 - Choosing the Pathways which Create the Least Burden and Offer the Most Opportunity for Ireland.



In the power generation sector, increasing onshore and offshore wind capacity are the most economical options from the MACC for electricity production.

### **Wind Energy Development Guidelines 2006**

- Section 5.6 discusses noise impacts, which should be assessed by reference to the nature and character of noise sensitive locations i.e. any occupied house, hostel, health building or place of worship and may include areas of particular scenic quality or special recreational importance. In general noise is unlikely to be a significant problem where the distance from the nearest noise sensitive property is more than 500m.
- Section 5.12 notes that careful site selection, design and planning and good use of relevant software can help to reduce the possibility of shadow flicker in the first instance. It is recommended in that shadow flicker at neighbouring offices and dwellings within 500m should not exceed 30 hours per year or 30 minutes per day. The potential for shadow flicker is very low at distances greater than 10 rotor diameters from a turbine.
- Chapter 6 relates to aesthetic considerations in siting and design. Regard should be had to profile, numbers, spacing and visual impact and the landscape character. Account should be taken of inter-visibility of sites and the cumulative impact of developments.

### **Draft Wind Energy Development Guidelines 2019**

- Chapter 5 – considering an application for wind energy development.
  - A planning authority may consider some if not all of the following matters:
    - Environmental assessments (EIA, AA etc.)
    - Community engagement and participation aspects of the proposal
    - Grid Connection details
    - Geology and ground conditions, including peat stability; and management plans to deal with any potential material impact. Reference should be made to the National Landslide Susceptibility Map to confirm ground conditions are suitable stable for project;

- Site drainage and hydrological effects, such as water supply and quality and watercourse crossings; Site drainage considerations for access roads/tracks, separate in addition to the impact of the actual turbines management plans to deal with any potential material impact on watercourses; the hydrological table; flood risk including mitigation measures;
- Landscape and visual impact assessment, including the size, scale and layout and the degree to which the wind energy project is visible over certain areas and in certain views;
- Visual impact of ancillary development, such as grid connection and access roads;
- Potential impact of the project on natural heritage, to include direct and indirect effects on protected sites or species, on habitats of ecological sensitivity and biodiversity value and where necessary, management plans to deal with the satisfactory co-existence of the wind energy development and the particular species/habitat identified;
- Potential impact of the project on the built heritage including archaeological and architectural heritage;
- It is recommended that consideration of carbon emissions balance is demonstrated when the development of wind energy developments requires peat extraction.
- Local environmental impacts including noise, shadow flicker, electromagnetic interference, etc.;
- Adequacy of local access road network to facilitate construction of the project and transportation of large machinery and turbine parts to site, including a traffic management plan;
- Information on any cumulative effects due to other projects, including effects on natural heritage and visual effects;
- Information on the location of quarries to be used or borrow pits proposed during the construction phase and associated remedial works thereafter;

- Disposal or elimination of waste/surplus material from construction/site clearance, particularly significant for peatland sites; and
- Decommissioning considerations.

Notable changes within the draft guidelines relate to community engagement, noise and separation distance.

### **Noise**

- Section 5.7.4 - The “preferred draft approach”, proposes noise restriction limits consistent with World Health Organisation Guidelines, proposing a relative rated noise limit of 5dB(A) above existing background noise within the range of 35 to 43dB(A), with 43dB(A) being the maximum noise limit permitted, day or night. The noise limits will apply to outdoor locations at any residential or noise sensitive properties.

### **Shadow Flicker**

- Section 5.8.1 - The relevant planning authority or An Bord Pleanála should require that the applicant shall provide evidence as part of the planning application that shadow flicker control mechanisms will be in place for the operational duration of the wind energy development project.

### **Community Investment**

- Section 5.10 - The Code of Practice for Wind Energy Development in Ireland Guidelines for Community Engagement issued by the Department of Communications, Climate Action and Environment (December 2016) sets out to ensure that wind energy development in Ireland is undertaken in observance with the best industry practices, and with the full engagement of communities around the country.

### **Visual Impact**

- Section 6.4- Siting of Wind energy projects.

### **Set back**

- Section 6.18.1 Appropriate Setback Distance to apply - The potential for visual disturbance can be considered as dependent on the scale of the proposed turbine and the associated distance. Thus, a setback which is the function of size of the turbine should be key to setting the appropriate setback. Taking

account of the various factors outlined above, a setback distance for visual amenity purposes of 4 times the tip height should apply between a wind turbine and the nearest point of the curtilage of any residential property in the vicinity of the proposed development, subject to a mandatory minimum setback of 500 metres.

- Policy SPPR 2 – Set back.
- Section 6.18.2 Exceptions to the mandatory minimum setbacks - An exception may be provided for a lower setback requirement from existing or permitted dwellings or other sensitive properties to new turbines where the owner(s) and occupier(s) of the relevant property or properties are agreeable to same but the noise requirements of these Guidelines must be capable of being complied with in all cases

## 5.2. Natural Heritage Designations

Lough Derravaragh SPA is the nearest Natura 2000 site to the development site located c. 3.8km to the south and Lough Lene SAC is located c. 5.2km to the southeast of the site.

## 5.3. EIA Screening

- 5.4. As outlined above the proposed development will accommodate a single turbine with an output of 4.2 MW, Schedule 5 Part 2 3(l) states that EIA is required for the following type of development: *‘Installations for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total output greater than 5 megawatts’*. The proposed development is below the upper limits for such development and as such does not require a mandatory EIA to be carried out.
- 5.5. Further to the foregoing, the proposed development is of a class for the purpose of EIA and there is therefore a requirement to consider whether a subthreshold EIA is required in this instance. The applicant has considered the proposed development against the criteria set out in Schedule 7A of the Planning and Development Regulations 2001, as amended. I have reviewed the information submitted in the context of the Schedule 7A criteria and conclude that based on the nature, scale and location of the proposed development I do not consider that the proposed development

has the potential to give rise to significant effects on the environment and I therefore conclude that a subthreshold EIA is not required in this instance.

## 6.0 The Appeal

### 6.1. Grounds of First Party Appeal

A first party appeal has been prepared by Rowan Engineering Consultants on behalf of the applicant and can be summarised as follows the appeal submission responds to each reason for refusal individually and will be summarised accordingly hereunder:

#### Reason 1

- The proposed turbine is a community led development as defined by the CRU. The turbine output is more than 0.5MW and less than 5MW.
- The turbine is classified as a single turbine community led project in the Westmeath County Development Plan in which such proposals are supported in both urban and rural locations.
- The turbine location, size and scale were discussed at pre planning stage and was met positively.
- The proposed development was considered subthreshold for the purpose of EIA being under 5MW.
- Proposed development was designed and surveyed in accordance with the Wind Guidelines 2006 and draft Wind Guidelines 2019.
- Landscape impacts are considered to be minor.
- The selection process was rigorous in order to prove that the project was in an area suitable for wind energy and would not incur environmental, landscape, habitat and wildlife impacts.

#### Reason 2

- The applicant has included the appropriate studies in relation to shadow flicker.
- A shadow flicker calculation was undertaken as per the guidelines and indicated that exceedance of the guideline threshold would not occur, nonetheless the

applicant has stated that a conservative approach has been adopted and a shadow flicker shutdown device has been installed in order to future proof the development.

### Reason 3

- An Environmental Impact Assessment screening report was prepared and included information in relation to Appropriate Assessment and Ecological Impact Assessment.
- As the development does not include more than 5 turbines or exceeds 5MW of output a mandatory EIA is not required.
- The proposed development was considered subthreshold and examined in relation to Schedule 7 criteria.
- The assessment concluded that the development was not considered to have the potential to cause significant environmental effects and it was therefore recommended that EIAR was not recommended.
- The development was screened out for stage 2 Appropriate Assessment.
- An ecological survey of the site was carried out in October 2021.
- The proposed grid connection will be subject to a Section 5 application to the Local Authority and is not included within the proposed development site.
- All aspects of the proposed development have been considered in the context of ecological impacts and it is considered that there is no potential for impacts to arise.

### **6.2. Grounds of Third-Party Appeal**

- The development should have been refused for additional reasons.
- The application was not in accordance with articles 22-24 of the Planning and Development Regulations 2001.
- The planning authority failed to invalidate the application.

- Failure to comply with article 19(1)(c ) to securely fix public notices at a conspicuous position – there are three entrances to the site and a notice was only fixed at one.
- There is a material change of land use no details were given of current use or proposed use.
- The plans submitted failed to describe the development. There are no floor plans nor any section of the turbine structure, a set of steps were shown at the entrance to the turbine but no detail of the inside of the turbine were submitted.
- Plans were mostly schematic and typical sections were submitted and dimensions were given on an envelope basis rather than specific.
- No information is given on the amount of excavation volume of material to be excavated and material to be infilled.
- A channel is proposed surrounding the proposed hard stand, however no definitive details are given in the plans, the hydrological impacts of such a proposal cannot therefore be properly assessed.
- The applicant has failed to submit drawings and plans which indicate principal dimensions.
- No contiguous drawings were submitted.
- No buildings, bored wells, septic tanks, percolation areas or other such features were identified on the plans submitted.
- No indication of distance from proposed structure to site boundary.
- Plans did not indicate wayleaves on site.
- Typical design drawings cannot be reconciled with obligations of the Regulations.
- The applicant failed to submit location maps of an adequate scale.
- EIA and AA reports do not assess the impacts of the grid connection.
- Planning Authority did not carry out a partial screening for AA.
- The Board has no jurisdiction to carry out an EIA or AA on the information provided.

### 6.3. Third Party Appellant's Response to Applicant's Appeal

The North Westmeath Turbine Action Group GLC has submitted a response to the applicant's first party appeal.

- The application was not in accordance with articles 22-24 of the Planning and Development Regulations 2001.
- The planning authority failed to invalidate the application.
- EIA and AA reports do not assess the impacts of the grid connection.
- Material contravention to the WMCC development plan.
- Inadequate information has been submitted in relation to EIA and AA.
- The proposed development is not a community led project which are identified within the development plan as comprising of turbines less than 100 metres in height.
- The developer has misrepresented the number of houses within a 1km radius of the development.
- It can not be said that there are no impacts.
- No reliance can be placed on pre application discussions.
- The material is flawed and there is a misrepresentation of the distance to the nearest house.
- No shadow flicker management plan has been submitted.
- Developer requests that the Board overlook the shadow flicker exceedance.
- Grid connection routes have not been agreed and are therefore hypothetical.
- The Planning Authority stated that there is a hydrological connection from the development site to the Derravarragh SPA via the River Inny and that any deterioration to water quality could pose a risk to qualifying interests of the SPA. The planner recommended that a stage 2 Appropriate Assessment is required.
- The planner stated that a NIS would be required for the proposed development and the proposed grid connection.
- Screening report is inadequate.
- The development cannot obtain consent in the absence of a NIS.



#### 6.4. **Planning Authority Response**

- None

#### 6.5. **Observations**

One observation was received from the Waters Family, the observations made can be summarised as follows:

- The planning application is contrary to Westmeath County Development Plan.
- Current Government Policy is for offshore windfarms.
- Turbine is too close and too high to Castlepollard and surrounding houses.
- The turbine will give rise to shadow flicker and noise disturbance.
- No interconnection to national grid.
- Development will ruin the scenic value of this lake district.
- Damage to the surrounding infrastructure will occur.

#### 6.6. **Further Responses**

6.7. The applicants have prepared a response to the third-party appeal which can be summarised as follows:

- The applicant contends that the application is not invalid and sets out a number of points in this regard.
- The site notice was erected at the entrance to the site as per the regulation requirements. The primary purpose of the site notice is to inform the public and given the number of submissions received it is clear that the public were informed.
- The land use will not be subject to a material change of use, reference is made to Section 2(1) of the Planning and Development Act 2000, as amended in which it is stated that 'In this Act except where the context otherwise requires: - "use" in relation to the land, does not include the use of the land by the carrying out of any works thereon'.

- The information submitted with the application and appeal meets the requirements of the regulations.
- Technical data has been submitted which outlines the components of the turbine and all information provided adequately describes the proposed development.
- Measurements are specific and detailed on plans.
- Works do not relate to reconstruction, alteration or extension.
- Distances from landownership to development boundary are identified in drawing no. 21217-100.
- Wayleaves in the surrounding lands are not within the application boundary and are therefore not affected by the development.
- In order to determine the grid connection route the applicant must be in receipt of a grid connection offer.
- The proposed development does not require a mandatory EIA and was assessed against the criteria specified in Schedule 7A of the Planning and Development Regulations as amended. The assessment concluded that the proposed project does not have the potential to have significant effects on the environment and it is recommended that an EIAR is not required.
- It is considered that the councils assessment addressed the applications validity and the completeness of the EIA and AA.

## 7.0 **Assessment**

- 7.1. It is important to note at the outset that there is both a first party appeal and a third-party appeal to the decision of Westmeath County Council to refuse permission for the proposed turbine. In the interest of clarity and for ease of reference I will examine both appeals separately within the report hereunder commencing with the first party appeal.
- 7.2. Having examined the application details and all other documentation on file and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in the first party appeal relate to the following:
- Classification of turbine – Westmeath County Development Plan

- Shadow flicker
- EIA

7.3. In relation to the third party appeal I consider the main issues raised relate to the following:

- Validation,
- Biodiversity, grid connection
- Roads and Traffic,
- Construction works / Drainage,
- Landscape and Visual Impact
- Appropriate Assessment

7.4. Having reviewed the issues raised within both appeals and the documents submitted, I am satisfied that no additional substantive issues arise with regard to the proposed development and therefore the assessment will pertain solely to the issues raised within both appeals submitted.

7.5. **First Party Appeal**

Classification of turbine Westmeath County Development Plan

It is contended by the applicant that the Council erred in judgement in refusing the proposed turbine on the basis that the turbine is a large-scale energy production project which in accordance with CPO 10.146 should be directed to areas of cut over bog. The applicant states that the proposed development is a community led project and specifies, within the grounds of appeal, that the proposed turbine will generate 4.2MW of energy and will reach 149.38 metres in height. The applicant further states that the proposed development is in accordance with the new Commission for Regulation of Utilities definition for Community Projects as set out in the Decision Paper – Enduring Connection Policy Stage 2. I draw the Boards attention to this document in which the identification of projects as being of community projects or otherwise relates to the method of the connection process, for example a wind development identified as being a community project within this document would not be required to have obtained planning permission for the proposed turbine/s prior to submitting an application for connection. Thus, the identification of a project as a

community project simplifies the connection application process somewhat and does not have any bearing or influence upon the planning application process.

- 7.6. Therefore, whilst I acknowledge the applicant's contentions in this regard, I am satisfied that the identification of the project as a community project within the CRU paper as outlined above does not circumvent the statutory status of the policies and objectives of the Westmeath County Development Plan 2021-2027.
- 7.7. Given the current policy position outlined within the Westmeath County Development Plan, the proposed wind turbine, being in excess of what is defined as a community project within the said development plan by virtue of being in excess of 100 metres in height, is contrary to the provisions of the development plan and as such it is recommended that the Council's reason for refusal on this basis is upheld.
- 7.8. I note that the applicant's refer to pre planning in which it is stated that the development was met positively, I draw the Boards attention to Section 247(3) of the Planning and Development Act 2000, as amended in which it is clearly stated that 'the carrying out of consultations shall not prejudice the performance by a planning authority of any other of its functions under this Act, or any regulations made under this Act and cannot be relied upon in the formal planning process or in legal proceedings'. Whilst I acknowledge the applicant's frustration in this regard, such consultations cannot be taken into account in the consideration of this appeal.

#### Shadow Flicker

- 7.9. With regard to the second reason for refusal, it is contended by the applicant that the Council's concerns in relation to an absence of satisfactory details regarding any potential to give rise to shadow flicker are misplaced. The applicant has carried out a shadow flicker assessment and as part of the assessment has proposed mitigation measures to prevent any significant impacts arising from shadow flicker. I have reviewed the relevant assessment and note that the shadow flicker assessment results indicate that the proposed development will exceed the limits of 30 minutes per day but are significantly below the 30 hours per year threshold the maximum being 15:49 hrs per annum. I further note that the maximum exceedance in relation to the 30 minutes per day is 33 minutes per day. It is important to note that this exceedance will impact dwellings located 939 metres from the turbine. Notwithstanding such a minor exceedance, I note that the applicant has proposed to install a shutdown system to

prevent such impacts from arising. Technical details of this shadow shutdown mechanism are provided within Annex B of the Shadow Flicker Assessment provided.

- 7.10. Based on the information submitted and the mitigation measures proposed to prevent impacts arising from Shadow Flicker I am satisfied that the proposed development will not adversely impact residential amenity in this regard.

#### EIA/AA

- 7.11. With regard to reason 3, I note that the applicant contends that an Environmental Impact Assessment Screening Report was submitted with the planning application in which there were chapters in relation to Appropriate Assessment and Ecological Impacts. It is stated that the conclusions from each of these chapters was that there would be no significant impacts to the environment, any European designated sites or any ecological receptors.

- 7.12. I refer the Board to section 5.3 above and section 8 below in this regard in which the requirement for EIA and AA have been considered in detail. It is concluded within both these sections that given the nature of the development and the location of the proposed works, EIA nor AA Stage 2 are required in this instance. For the reasons set out within the relevant sections I do not consider that the proposed development should be refused on this basis.

- 7.13. **Third Party Appeal**

#### Validation

- 7.14. It is contended within the third-party appeal that the application lodged to the Council was not in accordance with articles 22-24 of the Planning and Development Regulations 2001 and the Council failed to invalidate the application at the outset. The third party also states that the applicant did not comply with article 19(1)(c) in that public notices were not fixed securely in an easily visible location and that site notices were only placed on one of the three entrances to the site.

- 7.15. Whilst I acknowledge the appellants concerns in this regard it must be noted that the issue of validation of the application is within the remit of the Planning Authority and is not within the remit of the Board. Therefore, it would not be appropriate for the Board to consider the validation of this application by the Planning Authority.

7.16. Notwithstanding the foregoing, it is important to note the appellants concerns in relation to the specific dimensions of the proposed turbine. I draw the Boards attention to drawing no. 21217-201 E 138 Wind Turbine side elevation in which the exact turbine height is shown as 149.38m. Concerns were raised within the third-party appeal in relation to the provision of envelope dimensions and not specific dimensions. Having reviewed the plans submitted, I am satisfied that specific dimensions have been provided.

Biodiversity / Grid Connection

7.17. Concerns are also raised within the appeal in relation to Appropriate Assessment and EIA. It is important to note that the applicants submitted an Appropriate Assessment Screening and ecological report with the application. An Appropriate Assessment Screening has been carried out hereunder and examines the potential for likely significant effects and as such will not be repeated. With regard to the need for EIA I draw the Board's attention to Section 5.3 above in which the need for EIA has been considered. The proposed development is below the upper limits for such development and as such does not require an EIA to be carried out.

7.18. With regard to the proposed grid connection, I note that the applicant has stated within the application that a Section 5 Exemption certificate will be applied for in relation to this element of the development it is stated within the documentation that the proposed grid connection will be below the upper voltage threshold in relation to EIA and as such the applicant considers this element of the development to be exempt from planning permission and is therefore not included within this application for consideration. Based on the information submitted I consider this is reasonable. However, I note the concerns of the Council's Engineer in relation to the grid connection and the potential impacts and disturbance associated with the construction of same to provide connectivity for a single turbine.

7.19. In addition to the foregoing, and in response to the third party's concerns that insufficient information has been submitted by the applicant for the Board to appropriately consider the need for EIA, I draw the Board's attention to the ecological report which was submitted with the planning application, in which there is an assessment of the habitats and species present within the proposed development site and the surrounding area.

- 7.20. I note that in order to inform this study a site survey of both the turbine and access road was undertaken on the 28<sup>th</sup> October 2021. Survey results indicate that habitats in the development site and vicinity do not provide suitable habitat for any rare or threatened plant species and there are no records of any protected plant species in the vicinity of the site.
- 7.21. In addition to the foregoing, no bat roosts were recorded within the vicinity of the proposed turbine or access track. Some foraging is expected to occur within the area along hedgerows. The habitats present are expected to support a suite of typical farmland bird species. The open grassland habitat at the proposed turbine location may support some ground nesting birds such as skylark and meadow pipit, while hedgerows and treelines are likely to support various warblers, tits, finches, thrushes and wood pigeons. The site does not support any breeding sites or other refuge for any ground dwelling mammal or bird species though it is stated that occasional occurrence of Irish hare, badger, fox and other species is expected.
- 7.22. The proposed development site is not covered by any wildlife or conservation designation and the nearest designated conservation site is the Hill of Mael and The Rock of Curry pNHA which is c. 3.2km to the northwest and Lough Glore pNHA which is located c. 3.4km to the east.
- 7.23. Wet grassland was noted at the proposed turbine site and is rated as being of Local Importance and of lower ecological value, as is the adjacent band of scrub woodland to the west and the hedgerow and treeline network adjoining the access track and the L5753. The coniferous forest is not rated of ecological value.
- 7.24. Potential impacts are stated to arise in relation to construction works, however it is stated within the ecological report that works are within areas of low ecological value and as such the magnitude of effects is low. Areas of scrub are to be retained and protected with fencing and the proposed access route will be set back from adjacent hedgerows and treelines in order to prevent damage to root systems.
- 7.25. It is further stated that there are no evident drainage networks on the site and therefore no risk of siltation or pollution to watercourses during construction. Disturbance to species identified above will be temporary in nature and therefore the magnitude of impacts is expected to be negligible.

- 7.26. Having regard to the foregoing I am satisfied that the applicant has provided sufficient information in relation to the surrounding receiving environment in order to allow for a robust and thorough assessment of the potential impacts to biodiversity arising from the development. I am further satisfied, based on the nature of the proposed development and the habitats and species present within the development site and the surrounding area that the proposed development would not give rise to significant impacts to the receiving environment.
- 7.27. It is also important to note in the context of EIA the applicant has also submitted a noise assessment which demonstrated that noise emissions would not exceed upper thresholds at sensitive receptor locations and assessments such as an LVIA which will be considered hereunder and as outlined above a shadow flicker analysis and community engagement documents.

Whilst I note the third party appellants concerns in relation to the need for AA and EIA I am satisfied based on the foregoing that the applicant has provided adequate information in relation to the surrounding receiving environment in order to determine the need for AA stage 2 and EIA.

#### Construction works

- 7.28. I note from the third-party grounds of appeal that concerns are raised in relation to the lack of detail provided for within the plans submitted specifically in relation to the drainage arrangements on site, the quantum of excavated material to be removed from the site and the internal layout of the proposed turbine.
- 7.29. With regard to excavations, I note that there appears to be inaccuracies within the information submitted. In this regard, I draw the Board's attention to section 2.3.2 of the EIA Screening report in which it is stated that the proposed turbine foundations will be 20m in diameter and 3.5 metres in depth, the applicant states within this section of the document that 568m<sup>3</sup> of material will be excavated to facilitate the foundations of the proposed turbine. I note from the information submitted that a portion of the foundations will be backfilled using granular material. It is unclear whether this material is reused excavated material or new material to be imported into the site. No details of the quantum of reused materials have been provided in this regard.
- 7.30. I further note that Section 2.3.3 of the EIA Screening document refers to the area of hardstanding to be provided within the site amounting to 4,500m<sup>2</sup>, I note from the plans



submitted that hardstanding areas relate to parking, a crane platform, an assembly area, a waste collection area and storage area. In addition, there will be foundations or hardstanding areas required to accommodate the proposed substation and access road which is proposed to have a width of 4.5 metres. These elements of the development will also require an element of excavation and stripping of topsoil.

- 7.31. It is clear from the plans submitted and the details provided within the accompanying documentation that the proposed areas requiring some element of topsoil stripping and/or excavation are significantly in excess of 4,500 m<sup>2</sup>. With this in mind I draw the Board's attention to table 3.1 of the EIA Screening document in which it is stated that the quantum of excavated material arising from the proposed works i.e the access road, hardstanding and turbine foundations amounts to a total of 568m<sup>3</sup>. Given that this amount is also stated within the documentation to relate solely to the turbine foundations, as outlined above, it is abundantly clear that there is an inaccuracy within the documentation provided in relation to the quantum of material to be excavated and /or reused within the site.
- 7.32. Having regard to such an inaccuracy and the restricted width of the adjoining local road, it is not possible to properly examine and assess with any degree of certainty the potential for impacts to arise in relation to the transportation of excavated material. No details of the quantum of soils to be reused on site or removed to a waste facility have been provided. In addition, there is no information in relation to the expected number of traffic movements required to transport such material if being exported off site. Such details should be provided in order to allow for a proper assessment of this activity and to determine the potential for impacts to arise in relation to traffic and residential amenity.
- 7.33. With regard to concerns raised in relation to the internal layout of the turbine, I note that plans indicate that a lift shaft is present within the centre of the turbine to provide access to the upper elements of the turbine for maintenance and commissioning. I consider the plans submitted to be of adequate detail to allow for a proper assessment of the development in the context of the development site and surrounds.
- 7.34. With regard to the drainage arrangements, I note that it is proposed to provide open drains on either side of the proposed access road and surrounding the proposed turbine. Drainage is proposed to connect to an existing drain to the north of the site

which will ultimately drain to the Glore River. No drainage details have been provided which demonstrate the proposed drainage layout within the site. A typical cross section of the proposed access road illustrates open drains on either side of the road which is standard practice within such developments, however no details have been provided in relation to the drainage surrounding the turbine and other hard stand areas. It is therefore unclear where the connection point for the proposed drainage will be and whether it will in fact connect into the existing drainage to the north of the site, the location of which is not provided.

- 7.35. In the absence of such details it is unclear whether the proposed development will require works outside of the development boundary as it is clearly stated within the documents submitted that there are no drainage channels within the development boundary. Whilst in some instances such works would be considered exempt development there are no such exemptions pertaining to wind energy development. Details of drainage works should therefore be submitted.
- 7.36. In the absence of such details I am unable to properly assess the potential for the proposed development to impact water quality within the drainage stream in to which it is proposed to connect the surface water discharge. It is important to note that concerns in relation to hydrology merely pertain to the immediate watercourses and details relating to any potential works which may be required to facilitate the discharge of surface water from the proposed development, such matters do not have any bearing on the consideration of likely significant effects in the context of Appropriate Assessment which are considered hereunder due to the lack of any meaningful pathway between the proposed development and the European designated sites in the vicinity.
- 7.37. Thus, in the absence of any specific drainage details, it is not possible to properly assess the potential for impacts to arise in relation to water quality and I therefore recommend that the proposed development is refused on this basis.

#### Landscape and Visual Impact

- 7.38. It is important to consider the visual impacts of the proposed development given its visibility within the landscape and having regard to the issue being raised within the observation to the appeal.

- 7.39. The applicant states within the grounds of appeal that the site selection process was undertaken in a rigorous manner to ensure that the development site was suitable for wind development and further states that the relevant setbacks from residential properties can be achieved, and the landscape impacts identified from the LVIA assessment were minor physical impacts.
- 7.40. I have reviewed the relevant documents submitted, in particular the Landscape and Visual Assessment, and have carried out a site inspection of the development site. I note that a study area of 20km was applied when examining the potential for visual impacts to arise. Particular focus was applied to a study area of 10km for the purpose of the proposed development as it is a single turbine.
- 7.41. I note that the proposed development is within LCA 2 'Inny River lowlands' which comprises pastoral landscapes, extensive areas of cutaway bog, industrial peat production, and conifer plantations. The assessment submitted also reviews the landscape characters within adjoining counties such as Meath and Longford and results from the theoretical zone of visibility demonstrate that visibility is limited to elevated hilltops and rolling ridges within the wider north, east and southern portions of the study area and the most notably areas of theoretical visibility are present in the western half of the study area. Comprehensive visibility has the potential to occur within the immediate surrounds, the northern portions of the central study area and in the north western quadrant of the study area.
- 7.42. The overall landscape sensitivity is classed as being low to medium and the overall magnitude of landscape impact is expected to be medium to low within the immediate vicinity and low within the 5km radius and negligible at greater distances. The significance of landscape impact is therefore considered within the LVIA as being moderate to slight.
- 7.43. Based on the information submitted and the characteristics of the development site and surrounding landscape and the adequate set back distances achieved, I am satisfied that the proposed development will not give rise to visual impacts of such a significance as to warrant a refusal on this basis.

## 8.0 Appropriate Assessment Screening

- 8.1. An Appropriate Assessment Screening document has been prepared by Paul Murphy of EirEco Environmental Consultants on behalf of the applicant. The Screening document describes the proposed development, its receiving environment and relevant European Sites in the zone of influence of the development. It was informed by desktop study of maps and ecological and water quality data from a range of sources and a site survey.
- 8.2. The report concluded that all sites were outside of the zone of influence of the development. Lough Derravaragh SPA (site code:004043) was identified as the closest designated site to the development. However, given that there is no hydrological connection to this site and no suitable ex-situ habitat within the development site, the applicant considered that the proposed development would not impact the integrity of this SPA.
- 8.3. It is noted that whilst mitigation measures are proposed within the EIAR, such measures are not for the purposes of avoiding or reducing any potential harmful effects to any European sites and relate to the overall maintenance of the site which is controlled by an EPA licence.
- 8.4. As there is no meaningful connectivity to any other European Sites, the applicant considered that likely significant effects on European sites could be ruled out at preliminary screening stage.
- 8.5. I have reviewed all sites considered by the applicant which are outlined in Table 1.0 below and I have reviewed the designated sites within an area in excess of 15km radius of the development site and do not consider that any additional sites should be included for the purpose of screening beyond those considered within the applicants Appropriate Assessment Screening document.

### 8.6. Table 1.0

European Site Name & Code	Distance	Qualifying Interest	Source-pathway-receptor
Lough Derravaragh SPA	c.4.2km	Whooper Swan (Cygnus cygnus) [A038]	A hydrological connection

004043		<p>Pochard (<i>Aythya ferina</i>) [A059]</p> <p>Tufted Duck (<i>Aythya fuligula</i>) [A061]</p> <p>Coot (<i>Fulica atra</i>) [A125]</p> <p>Wetland and Waterbirds [A999]</p>	<p>exists via a drainage stream to the north of the site which discharges to the Glore River which is a tributary of the Inny River which flows to this SPA. Due to the distance between the SPA and the development site and the dilution and dispersion action of the rivers, it is clear that no meaningful pathway exists between the development site and this SPA.</p>
Lough Lene SAC 002121	c.5.4km	<p>Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> spp. [3140]</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092]</p>	<p>No pathway from the development site.</p>
White Lough, Ben Loughs and Lough Doo SAC 001810	c.6.1km	<p>Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> spp. [3140]</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092]</p>	<p>No pathway from the development site.</p>

<b>Moneybeg and Clareisland Bogs SAC</b> <b>002340</b>	<b>c.8.1km</b>	Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150]	No pathway from the development site.
<b>Lough Kinale &amp; Derragh SPA</b> <b>004061</b>	<b>8.5km</b>	Pochard ( <i>Aythya ferina</i> ) [A059] Tufted Duck ( <i>Aythya fuligula</i> ) [A061] Wetland and Waterbirds [A999]	No pathway from the development site.
<b>Derragh Bog SAC</b> 002201	<b>9km</b>	Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120]	No pathway from the development site.
<b>Lough Sheelin SPA</b> 004065	<b>9.2km</b>	Great Crested Grebe ( <i>Podiceps cristatus</i> ) [A005] Pochard ( <i>Aythya ferina</i> ) [A059] Tufted Duck ( <i>Aythya fuligula</i> ) [A061] Goldeneye ( <i>Bucephala clangula</i> ) [A067] Wetland and Waterbirds [A999]	No pathway from the development site.
<b>Garriskil Bog SAC</b> 000679	<b>9.4km</b>	Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150]	No pathway from the development site.
<b>Garriskil Bog SPA</b> 004102	<b>9.4km</b>	Greenland White-fronted Goose ( <i>Anser albifrons flavirostris</i> ) [A395]	No pathway from the development site.
<b>River Boyne and Blackwater SAC</b> 002299	<b>11.3km</b>	Alkaline fens [7230] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion,	No pathway from the

		<p>Alnion incanae, Salicion albae) [91E0]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p>	development site.
<b>Lough Owel SPA 004047</b>	<b>12.9km</b>	<p>Shoveler (Anas clypeata) [A056]</p> <p>Coot (Fulica atra) [A125]</p> <p>Wetland and Waterbirds [A999]</p>	No pathway from the development site.
<b>Lough Owel SAC 000688</b>	<b>12.9km</b>	<p>Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140]</p> <p>Transition mires and quaking bogs [7140]</p> <p>Alkaline fens [7230]</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p>	No pathway from the development site.
<b>Ardagullion Bog SAC 002341</b>	<b>13km</b>	<p>Active raised bogs [7110]</p> <p>Degraded raised bogs still capable of natural regeneration [7120]</p> <p>Depressions on peat substrates of the Rhynchosporion [7150]</p>	No pathway from the development site.
<b>Lough Iron SPA 004046</b>	<b>13.8km</b>	<p>Whooper Swan (Cygnus cygnus) [A038]</p> <p>Wigeon (Anas penelope) [A050]</p> <p>Teal (Anas crecca) [A052]</p> <p>Shoveler (Anas clypeata) [A056]</p> <p>Coot (Fulica atra) [A125]</p> <p>Golden Plover (Pluvialis apricaria) [A140]</p> <p>Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]</p>	No pathway from the development site.

		Wetland and Waterbirds [A999]	
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- 8.7. The proposed development comprises of single turbine, substation and associated access road,
- 8.8. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- Construction and operation related - uncontrolled surface water/ pollution/spillage of fuels.
  - Noise and disturbance to ex situ bird species.
- 8.9. It is important to note at this juncture that all of the above sites are significantly removed from the proposed development site. There is a potential hydrological pathway via the surface water discharge which ultimately discharges to the Glore River which joins the Inny River c. 7.5km downstream of the main Glore River tributary.
- 8.10. As outlined within the applicants Appropriate Assessment Screening document the closest site to the development is the Lough Derravaragh SPA which has no meaningful connection to the site being located hydrologically in excess of 7.5km downstream of the development and is connected via drainage channels and streams that discharge to the Glore River and onward to the Inny River along its route. I concur with the applicants screening assessment in this regard and agree that given the significant distance separating the proposed works and the SACs listed in table 1.0 above that in the event of pollution or sediment entering an adjacent watercourse, such pollution would be diluted and dispersed to an imperceptible level at the point of contact with any of the designated sites within table 1.0 above and as such significant effects to these designated sites are not likely to arise and can be ruled out.
- 8.11. In addition to the foregoing, I have also considered ex-situ effects in relation to the qualifying interests of the surrounding SPAs. The proposed development site is within a mature conifer wood land surrounded by agricultural fields to the rear of an existing farmyard. The applicants surveyed the developments site and state within their findings that the existing woodland is not utilised by any of the qualifying interests of



the SPAs listed above and that the habitat type within the development site is not suitable habitat for these species.

- 8.12. It is therefore concluded within the Appropriate Assessment Screening that in the absence of suitable habitat significant effects will not arise and can be ruled out.

### **Screening Determination**

- 8.13. Overall, the proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No's, 004046, 002341, 000688, 004047, 002299, 004102, 000679, 004065, 002201, 004061, 002340, 001810, 002121, 004043, or any other European site, in view of the sites Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

- 8.14. This determination has been based on the significant distance of the proposed development from any designated sites and the lack of any meaningful pathway between the development site and such designated sites and the lack of any suitable habitat for the qualifying interests of the surrounding SPAs.

- 8.15. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects on the projects on any European Sites.

## **9.0 Conclusion**

- 9.1. In overall conclusion, I note the Council's reasons for refusal and consider, given the scale of the proposed development being in excess of 100 metres in height, that the proposed development would be contrary to the provisions of objective CPO 10.146 of the Westmeath County Development Plan, in which such developments are directed to areas of cut over cutaway peatlands. In addition, the applicant has failed to provide sufficient details in relation to the proposed traffic movements associated with the construction of the proposed development and in doing so the Board can not properly assess traffic related impacts and any potential for such movements to impact on the residential amenity within the area.

9.2. Finally, as outlined above, the applicant has also not provided sufficient details in relation to the drainage arrangements for the proposed development and in the absence of such details the Board cannot properly determine the potential for surface water related impacts within the local receiving hydrological environment.

## 10.0 Recommendation

10.1. I recommend that the planning application be refused for the following reasons and considerations.

## 11.0 Reasons and Considerations

1. The proposed development by virtue of its overall height which exceeds 100 metres and location on lands outside of cutover cutaway peatlands would be contrary to the provisions of the Westmeath County Development Plan 2021-2027, in which objective CPO 10.146 of the plan seeks to strictly direct large-scale energy production projects, in the form of wind farms, onto cutover cutaway peatlands in the County. The proposed development if permitted would therefore be contrary to the provisions of the Westmeath County Development Plan 2021-2027 in this regard.
2. Having regard to the location of the development which is accessed via a local road of restricted width and alignment, the Board is not satisfied based on the lack of information provided with the application and appeal in relation to excavations and associated traffic movements that the proposed development would not seriously injure the amenities of properties in the vicinity by reason of traffic related noise and general disturbance and would not create serious traffic congestion along both the access road and at the junction of the R394 and L5753. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The Board is not satisfied on the basis of the lack of information provided with the application and appeal that the proposed development would not result in pollution of surface waters within the vicinity of the site, in the absence of information to the contrary, it is considered that the proposal would pose an

unacceptable risk of environmental pollution and would therefore be contrary to the proper planning and sustainable development of the area.

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Sarah Lynch  
Senior Planning Inspector

28<sup>th</sup> June 2022