



An
Bord
Pleanála

Inspector's Report

ABP-314062-22

Development	Alterations to the permitted Meenbog Wind Farm.
Location	Meenbog (and surrounding Townlands), Co Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	
Applicant(s)	Planlee Limited
Type of Application	Leave to Apply for Substitute Consent
Date of Site Inspection	25 th July 2023.
Inspector	Barry O'Donnell

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1.0 Introduction

- 1.1. This report relates to an application for Leave to Apply for Substitute Consent, under Section 177C (2)(b) of the Planning and Development Act, 2000, as amended, in respect of alterations to a wind farm at Meenbog, County Donegal. The applicant is of the opinion that exceptional circumstances exist that should permit an application for substitute consent to be made so as to regularise the development.

2.0 Site Location and Description

- 2.1. The site is located in the townlands of Croaghonagh and Meenbog, c.12km north of Donegal Town and 9km south of Ballybofey, in south County Donegal. It abuts the Northern Ireland border with County Tyrone, along its eastern boundary.
- 2.2. The site consists of an under-construction wind farm, known as Meenbog Wind Farm, which will contain 19 No. turbines and associated infrastructure, with electricity generation potential of 90MW. It is in a rural area that is characterised by a mix of mountains, blanket bog, forestry plantations and agricultural fields. There are a number of watercourses routeing through the site, which drain primarily to the Mournebeg River, to the north.
- 2.3. The site is accessed from the N15 Donegal Town – Ballybofey National Primary Road. A stone track routes from the access junction around the site, providing access to the individual turbine bases.

3.0 Planning History

Parent Permission

ABP-300460-17: The Board granted permission on 25th June 2018 for the construction of wind farm comprising 19 No. wind turbines, grid connection and all associated site works. Permission was granted subject to 20 No. planning conditions.

ABP-313729-19: Under Section 146(B) of the Act, the Board varied the permission by Order dated 5th June 2019, in relation to: -

Lengthening of the blades of the proposed turbines while remaining within the previously permitted tip height of 156.5 metres.

Planning Enforcement

UD20254: Ongoing investigation in relation to potential non-compliance with conditions attached to permission Ref. ABP-300460-17 and other unauthorised development at the site. The Planning Authority's records on the investigation indicate that a Warning Letter was issued on 23rd November 2020, following receipt of a complaint, and that multiple specified instances of further engagement took place with the applicant up to the point at which it was advised that Substitute Consent is required.

4.0 Policy Context

4.1. Donegal County Development Plan 2018 – 2024

4.1.1. The Donegal County Development Plan 2018-2024 is the overarching policy document in relation to planning in the County area.

4.1.2. Variation No. 2 dated 21st December 2022 contains a revised Wind Energy Policy Framework, following a Judicial Review of the original strategy contained within the development plan. Map 8.2.1 of the Variation contains a New Wind Energy Map, which identifies 'Acceptable in Principle', 'Not Normally Permissible' and 'Open to Consideration' designations. The subject site is located within the 'Not Normally Permissible' designation and the Framework provides the following description: -

'Like the other two designations, these areas were identified on foot of a comprehensive analysis of the environmental sensitivities and the wind energy potential of the County. On foot of this determination, and in-line with national guidelines, it follows that most windfarm developments will not normally be permissible. This should apply in particular to such proposals on previously undeveloped sites, inclusive of sites with a lapsed unimplemented permission (and where substantive works have not been undertaken). Notwithstanding, and having regard to previous planning assessments and decisions and the subsequent investment incurred, it is the position of Donegal County Council that a more balanced approach is required when dealing with windfarm proposals in these areas

where, crucially, there is an already existing strong planning history. This refers to the following categories: Existing Windfarms; Developments Under Construction; Developments Where Permissions Have Lapsed But Where Substantial Works Have Been Completed; and Sites With a Live Permission but not yet started. For such sites, it is considered reasonable to allow for the consideration of proposals for the augmentation, upgrade and improvement of such developments in accordance with the details set out in Policy E-P-12 below.'

4.2. Natural Heritage Designations

4.2.1. The following European sites are within the vicinity of the subject site: -

Site Name	Site Code	Distance
Croaghonagh Bog SAC	000129	Partly located within the subject site
River Finn SAC	002301	c.1.1km north-east
Lough Eske and Ardnamona Wood SAC	000163	c.5km south-west

4.2.2. In addition to the above, the River Foyle & Tributaries SAC (UK Ref. UK0030320) encroaches to the south corner of the site.

5.0 The Application

5.1. Grounds for Seeking Leave to Apply

5.1.1. MKO Consultants, acting on behalf of the applicant, have submitted a report which outlines the grounds on which leave to apply for substitute consent are sought. The grounds can be summarised as follows: -

- Works for the wind farm approved under Ref. ABP-300460-17 are ongoing with approx. 90% of engineering works, including access roads, electricity substation, turbine hardstands, turbine bases, pear repositories and borrow pit areas substantially complete.
- In 2020 the applicant was requested by the Planning Authority to provide as-built drawings of works completed to that point, the production of which identified 21 No. locations where works undertaken could be considered to differ from the

permitted development. Subsequent engagement between the parties identified further deviations, 45 in total, the majority of which are submitted to not require substitute consent.

- None of the deviations forming part of the application is considered to be sufficiently material as to require substitute consent and the application is made on a without prejudice basis, in order to adhere to the Planning Authority's expressed preference.
- Leave to apply for substitute consent is sought for 25 No. deviations from the permitted development, as follows: -
 1. Alteration of internal road alignment in area of N15 access junction.
 2. Additional peat storage cell in area southeast of substation
 3. Alteration to alignment of the T10 access road.
 4. Additional borrow pit south-west of T12 (also associated additional peat storage space) in place of permitted borrow pit in alternative location.
 5. Alteration to alignment of the T12 access road.
 6. Construction of peat containment berm near T8.
 7. Alteration to alignment of the T8 access road.
 8. Alteration to alignment of the T1 access road.
 9. Alteration to alignment of the T2 access road.
 10. Alteration to alignment of the T4 access road.
 11. Expansion of borrow pit BP2 south of T15.
 12. Alteration to hardstand and access road for T15.
 13. Alteration to alignment of the T17 access road.
 14. Alteration to alignment of the T13 access road.
 15. Provision of enlarged peat cell north-west of T18.
 16. Alteration to alignment of turning head at T14.
 17. Additional peat cell north near T15.
 18. Additional peat cell near T17.

19. Provision of layby with welfare facilities south of T10.
 20. Provision of layby north-east of T15.
 21. Alteration to alignment of the T19 access road.
 22. Alteration to alignment of the T9 access road.
 23. Alteration to alignment of the T7 access road including additional storage.
 24. Provision of roadside berms and settlement ponds adjacent to road corridor
 25. Repositioned borrow pit and peat storage cell at T13.
- Additional potential deviations identified by the Planning Authority or its consultant, SLR, are submitted to not require substitute consent. The additional deviations are summarised at Appendix 3 of the MKO Consultants Planning Report submitted with the application.
 - In accordance with Section 177D(1)(b) of the Act, exceptional circumstances exist which meet specified criteria necessary for the Board to grant the applicant leave to apply for substitute consent.
 - The applicant had a reasonable belief that the subject deviations were authorised as part of the approved development and/or that there was no unacceptable impact on the environment, individually or cumulatively in terms of EIA/AA. Any remedial EIAR/NIS prepared as part of a substitute consent application will demonstrate that identified deviations have not had any significant environmental effects beyond those considered by the original EIAR.

5.2. Exceptional Circumstances

5.2.1. *'Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive'*

Regularisation of the development will not circumvent the purpose and objectives of the EIA and Habitats Directives. The as-constructed development is consistent with the nature, scale and extent of potential environmental impacts assessed by the original EIAR. All deviations are contiguous to the approved development and are of a minor nature.

5.2.2. *‘Whether the applicant had or could reasonably have had a belief that the development was not unauthorised’.*

The applicant could reasonably have had a belief that the subject deviations were not unauthorised. It is common for largescale developments such as wind farms to have a degree of built-in flexibility to allow for further refinement of construction activities in response to on-site conditions. The subject deviations are not considered to be material changes.

5.2.3. *‘Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired’.*

The ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has not been substantially impaired. An Environmental Report prepared as part of the application concluded that the development has not had significant environmental effects and a remedial EIAR and/or NIS will be prepared as part of a substitute consent application. The substitute consent process allows for public engagement.

5.2.4. *‘The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development’.*

The subject deviations do not result in any significant effects on the environment or adverse effects on the integrity of a European site. A remedial EIAR and/or NIS will be prepared as part of a substitute consent application.

5.2.5. *‘The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated’.*

All works on the site, including the subject deviations, adhered to mitigation measures and methodologies set out in the documents submitted with the original application. It is not anticipated that works requiring remediation will arise. Should such a situation arise, effects will be capable of remediation.

5.2.6. *‘Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development’.*

With the exception of the subject deviations, the applicant has undertaken the development in accordance with the planning permission granted. Many of the deviations identified only came to light on forensic analysis undertaken by both the applicant and Planning Authority and it can be expected that similar issues would arise at other largescale development sites.

5.2.7. *‘Such other matters as the Board considers relevant’.*

A peat slide occurred on the site in November 2020. There was no assertion on the part of the Planning Authority or its consultant that the subject deviations caused the peat slide. Details of the peat slide are contained within Section 7 of the MKO Consultants report.

5.3. **Planning Authority Response**

5.3.1. The Planning Authority made a submission on 16th August 2022, the contents of which can be summarised as follows: -

- Assessment by the Planning Authority (ecological consultant SLR) and National Parks and Wildlife identified 45 No. deviations to the permitted wind farm development, approx. 33% of which pose medium or higher ecological risk.
- The application only seeks to regularise 6 of the 17 medium or higher ecological risk deviations and the Planning Authority is of the view that the remaining identified deviations require regularisation through an application for substitute consent.

6.0 **Assessment**

6.1. **Introduction**

6.1.1. The application is submitted under the provisions of Section 177C of the Act and in this context the Board is asked by the applicant to confirm that the works carried out should or should not have been subject to Environmental Impact Assessment, a determination on the requirement for Environmental Impact Assessment or an

Appropriate Assessment and, therefore, to confirm that an application for Substitute Consent can be sought.

- 6.1.2. The Board will note that Section 177(2) of the Act stipulates that an application for leave to apply for substitute consent may only be brought in circumstances where development has been carried out.
- 6.1.3. The Board previously granted permission to the applicant, under Ref. ABP-300460-17, for a wind farm development of 19 No. turbines on the site and subsequently varied the permission, under Ref. ABP-313729-19, in relation to proposed turbine blade lengths. In accordance with the requirements of the legislation, the Board's determination in this case, whether or not to grant leave to make such an application, must be confined solely to the retention elements of the development.
- 6.1.4. This application relates to 25 No. identified deviations from the approved wind farm development. The Planning Report prepared by MKO Consultants that accompanies the application discusses additional potential deviations that do not form part of the application and the Planning Authority's submission refers to additional deviations that do not form part of the application. There appears to be disagreement between the parties regarding the extent of deviation from the approved development. For the purposes of clarity, my Report is concerned only with the 25 No. deviations identified by the application and summarised at Section 5 above.

6.2. **Tests for Leave**

- 6.2.1. Section 177D(1)(b) of the Act specifies that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment was or is required in respect of the development concerned and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.
- 6.2.2. Section 177D (2) stipulates that in considering whether exceptional circumstances exist the Board must have regard to the following:

- a) *Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- b) *Whether the applicant had or could reasonably have had a belief that the development was not unauthorised'*
- c) *Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such as assessment has been substantially impaired'*
- d) *The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
- e) *The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
- f) *Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
- g) *Such other matters as the Board considers relevant.*

6.3. Environmental Impact Assessment

6.3.1. This application relates to deviations from a consented and under-construction wind farm development, application Refs. ABP-300460-17 and ABP-313729-19 refer, the original application for which included the submission of an Environmental Impact Assessment Report and Natura Impact Statement.

6.3.2. Having considered the 25 No. individual deviations that are the subject of this application for leave to apply for substitute consent, I consider they can be grouped into the following broad headings: -

- Alterations to internal access roads and hardstanding areas,
- Additional and expanded borrow pits and peat cells,
- Additional welfare and storage facilities, and
- Additional drainage infrastructure.

6.3.3. Individual classes of development for the purposes of EIA are contained at Parts 1 and 2 of Schedule 5 of the Regulations and the following are relevant to this application: -

Part 2, Class 2(b): Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.

6.3.4. The borrow pits are effectively quarries, that have been excavated for use of material as part of the approved wind farm development. The area occupied by the additional and expanded borrow pits is not stated within the application documents and I have thus estimated their size using available Google Earth measuring tools, where they are shown to measure c.3.5ha (this represents measurement of all the affected borrow pit). On this basis, the identified deviations do not exceed the threshold for mandatory EIA.

6.3.5. The Board may wish to clarify with the applicant the exact area of the borrow pits.

Part 2, Class 10(dd): All private roads which would exceed 2000 metres in length.

6.3.6. The exact length of access road deviations is not stated within the application documents. I have estimated this total length based on the scaled application drawings and they measure c.1km and, on this basis, the identified deviations do not exceed the threshold for mandatory EIA.

6.3.7. The Board may wish to clarify with the applicant the exact length of the access road deviations.

Additional welfare and storage facilities and additional drainage infrastructure

6.3.8. These elements of the development are not prescribed classes of development listed at Part 1 and 2 of Schedule 5 of the Regulations, so the question of whether they may give rise to a requirement for EIA does not arise.

6.4. Requirement for a determination on the requirement for Environmental Impact Assessment

6.4.1. The legislation further requires consideration to be given to whether a determination on the requirement for EIA is required, i.e., whether a formal screening in respect of sub-threshold EIA is required.

6.4.2. Schedule 7 of the Regulations contains broad criteria to be used in the screening of sub-threshold development for EIA, identifying that consideration should be given to (1) characteristics of the proposed development, (2) location of the proposed development and (3) types and characteristics of potential impacts.

6.4.3. With reference to the above criteria, I would advise the Board of the following: -

(1) Characteristics of the proposed development

- A number of the subject deviations are located partially or entirely outside of the consented development footprint, i.e., they involve encroachment beyond the area of land identified for development and directly assessed as part of the EIAR and NIS submitted with the original application.
- A number of the deviations are in themselves large developments, for example including expanded and additional borrow pits, which I estimate measure c.3.5ha.
- The deviations include alterations to the approved site surface water drainage network.

(2) Location of the proposed development

- The site is located in a rural, upland area, encompassing the Meenbog townland and surrounding townlands.
- The Croaghonagh Bog Special Area of Conservation encroaches into the northern-most part of the site, in the area of the site access junction with the N15. The northern-most part of the internal access road abuts the boundary of the SAC and the route crosses an open watercourse that drains into the SAC.
- The site is also in proximity to the River Finn Special Area of Conservation and is connected to it via drainage channels shown on available EPA drainage maps¹ to drain northward, into the Mournebeg River.
- Barnesmore Bog Natural Heritage Area and Croaghonagh Bog proposed Natural Heritage Area are in proximity to the site, to the south and north, respectively.

¹ <https://gis.epa.ie/EPAMaps/>

(3) Types and characteristics of potential impacts

- The alterations to internal access roads and turbine access roads/hardstanding areas involved groundworks/excavation, deposition of heavy stone material and alterations to the site surface water drainage network. The alterations to the access route to T7 and hardstanding at T9 were in response to a peat slide event (the event and subsequent engagement between the applicant, Planning Authority and the EPA is outlined in detail at Section 7 of the Planning Report submitted with the application). These works have the potential to affect the groundwater regime on this peatland site and have the ability to affect the quality and content of surface water discharges from the site.
- The borrow pits involved deep excavation and removal of materials, in a number of instances with the excavated pit reused as a peat store. I observed substantial standing water in each of the borrow pits on my visit to the site. I consider the works have the potential to affect the groundwater regime on this peatland site and have the ability to affect the quality and content of surface water discharges from the site.

6.4.4. I would also point out to the Board that the Planning Authority's submission on the application expresses the view that a number of the deviations pose medium or higher ecological risk.

6.4.5. Having regard to the above, I am of the opinion that the likelihood of significant effects on the environment cannot be excluded by the Board and that there is a requirement for a determination as to whether EIA is required.

6.5. **Appropriate Assessment**

6.5.1. There are a large number of European sites within a 15km search zone of the site. The following are within the vicinity of the subject site: -

Site Name	Site Code	Distance
Croaghonagh Bog SAC	000129	Partly located within the subject site
River Finn SAC	002301	c.1.1km north-east
Lough Eske and Ardnamona Wood SAC	000163	c.5km south-west

6.5.2. In addition, the River Foyle & Tributaries SAC (UK Ref. UK0030320) encroaches to the south corner of the site.

6.5.3. Croaghonagh Bog SAC (Site Code 000129)

Croaghonagh Bog SAC (Site Code 000129) encroaches into the northern-most part of the site, in the area of the site access junction with the N15. Croaghonagh Bog SAC is designated for a single qualifying interest, blanket bogs. The National Parks and Wildlife Service Site Synopsis document for the site states that it is '*a small but quite intact blanket bog... underlain by metamorphosed sandstone and includes a good diversity of habitats including active bog, wet heath, lakeshore, streams and ditches, and some old cut-away bog.*'

6.5.4. River Finn SAC (Site Code 002301)

River Finn SAC (Site Code 002301) lies c.1.1km north-east of the site and is hydrologically connected to the site by the surface water drainage regime, which is shown by available EPA mapping² to drain northward into the Mournebeg River, which forms part of the SAC. The River Finn is designated for a number of qualifying habitats, i.e., Oligotrophic waters containing very few minerals of sandy plains, Northern Atlantic wet heaths with Erica tetralix, Blanket bogs, Transition mires and quaking bogs, and qualifying interests, i.e., Atlantic Salmon and Otter.

6.5.5. Lough Eske and Ardnamona Wood SAC (Site Code 000163)

Lough Eske and Ardnamona Wood SAC lies c.5.5km south-west of the site. It is hydrologically connected to the site by a tributary of the Lowrymore River that crosses the site at the access junction with the N15. The SAC is designated for a number of qualifying habitats, i.e., Oligotrophic waters containing very few minerals of sandy plains, Petrifying springs with tufa formation, Old sessile oak woods with Ilex and Blechnum in the British Isles, and qualifying interests, i.e., Freshwater Pearl Mussel, Atlantic Salmon and Killarney Fern.

6.5.6. The applicant has not submitted an Appropriate Assessment Screening Report with the application and the MKO Consultants Planning Report states that the subject deviations were not expressly assessed within the Natura Impact Statement (NIS)

² <https://gis.pleanala.ie/InternalMapView/>

that accompanied the original application. I have given consideration to the NIS as part of my assessment.

- 6.5.7. The Screening element of the NIS identified that Croaghonagh Bog SAC may experience indirect effects associated with drainage on the site, during the construction and operational phases. It identified that River Finn SAC qualifying interests Atlantic Salmon and Otter may be affected by a deterioration in water quality associated with the construction, operation and decommissioning phases.
- 6.5.8. The Screening identified that Lough Eske and Ardnamona Wood SAC lies within a different river catchment to the main wind farm site but that the cable route element of the project, which primarily routes along the N15, lies within the catchment. In this context, the Screening identified potential impacts for both qualifying habitats and interests arising from a deterioration of water quality during grid connection works.
- 6.5.9. For River Foyle & Tributaries SAC, the Screening identified potential impacts for both qualifying habitats and interests arising from a deterioration of water quality during the construction, operation and decommissioning phases.
- 6.5.10. As part of its investigation of the as-built wind farm, the Planning Authority commissioned a report by SLR Consultants, which assessed the deviations and identified that a number pose either a 'medium' or 'higher' ecological risk (Table 2 of the report refers). The higher ecological risks relate primarily to the borrow pits and peat cells, with medium risks relating primarily to access road alterations.
- 6.5.11. The subject deviation works involve excavation, deposition and construction activities of a similar degree to those involved with the wider wind farm project and include works that were a direct response to a peat slide event. I consider the works have the potential to affect the groundwater regime on this peatland site and have the ability to affect the quality and content of surface water discharges from the site. In this regard I consider the deviations have the potential to give rise to significant effects on those European sites that are hydrologically connected, similar to impacts identified as part of the NIS submitted with the parent application.
- 6.5.12. In view of the above assessment, I conclude that the subject development requires
Appropriate Assessment

Conclusion

6.5.13. To conclude my assessment, the development qualifies for consideration for leave to apply for substitute consent as it is a development in respect of which an environmental impact assessment or a determination as to whether an environmental impact assessment is required and Appropriate Assessment is required.

6.6. **Exceptional Circumstances**

6.6.1. Section 177D(2) of the Act stipulate that in considering whether exceptional circumstances exist, the Board shall have regard to prescribed matters as listed in Section 6.2.8 above. Consideration is given to each of these matters in the following section.

(a) Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive

6.6.2. The purposes of the EIA and Habitats Directives are to determine if a proposed development is likely to have significant effects on the environment or on a European site designated under the Habitats Directive

6.6.3. The original wind farm application included submission of an EIAR and NIS. Figure 5.1 of the MKO Consultants Planning Report discusses the deviations and the underpinning reasons for each.

6.6.4. It can be seen from the table that that the access road and hardstanding alterations were a response to ground conditions and topography and they all follow a similar or reduced length route to that originally permitted. The alteration to the entrance route from the N15 is stated to have arisen from a road safety issue. In the case of the route to T7 and the area surrounding T9, the alterations are stated to be a direct response to a peat slide event and were undertaken following engagement with the Planning Authority and EPA.

6.6.5. The additional peat cells arose from a requirement to store a greater volume of peat than was expected.

6.6.6. The borrow pit deviations relate to expansion of an approved pit and a previously existing forestry pit and minor relocation of an approved pit.

6.6.7. On balance, I consider the deviations closely follow the approved development (access road and hardstanding alterations) or are a practical response to site conditions (peat cells). The deviations were not directly addressed by the original EIAR, but likely give rise to similar effects to those identified and assessed as part of the original EIAR and NIS. Taking a balanced view, I do not consider the regularisation of the development would circumvent the purpose and objectives of the EIA or Habitats Directives.

(b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised

6.6.8. I note from the application documents that the applicant is of the view that there is a tolerance for minor deviations from the approved planning-stage designs, in response to actual conditions encountered on the ground, and that such an approach to construction of large-scale construction projects is commonplace.

(c) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired

6.6.9. The Board will note that an assessment of the environmental impacts of the permitted wind farm development was carried out as part of the planning application process.

6.6.10. I consider the ability to carry out an EIA or AA has not been substantially impaired. The submission of an application with the appropriate level of information and supporting assessment can be provided, that would allow the Board to discharge its responsibilities in respect of EIA and AA.

6.6.11. Furthermore, I am satisfied that the making of an application for substitute consent will permit public participation in the assessment process.

(d) The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development

6.6.12. Each of the subject deviations forms part of a wind farm development that is located on an elevated, peatland site. The works undertaken have involved

groundworks/excavation, deposition of material and alterations to the site's surface water drainage network.

6.6.13. As I have already stated, the subject deviations were not directly assessed as part of the original EIAR but they are each within the assessment envelope and I consider the effects on the environment and/or effects on the integrity of a European site are likely to be of a similar magnitude and intensity to those impacts identified and assessed within the EIAR and NIS that accompanied the original application. In this regard I am inclined to agree with the applicant's submission that the deviations occur in similar habitats and locations to the previously assessed and permitted development and do not change the nature or scale of the development or the environmental impacts associated with it.

6.6.14. An exception to this is the emergency works undertaken to the access route to T7 and T9 hardstanding area, which followed a peat slide event. I note in relation to these works, the applicant points out that the peat slide was not caused by any of the subject deviations and this submission is not contested by the Planning Authority. The applicant has also provided correspondence from the EPA (Appendix 4 of the MKO Consultants Planning Report) which outlines that obligations under the European Communities (Environmental Liabilities) Regulations 2008 had been complied with, following investigation of the peat slide event.

6.6.15. The SLR Consultants report for the Planning Authority identified that a number of the deviations pose either a 'medium' or 'higher' ecological risk, with higher ecological risks relating primarily to the borrow pits and peat cells and medium risks relating primarily to access road alterations.

6.6.16. In view of the above, I conclude that the making of an application for substitute consent would allow for adequate detail to be submitted as part of that application to allow the public to be informed of the likely effects to have arisen, to allow comment thereon, and for the Board to be in a position to adequately address the likely impacts that may have resulted.

(e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated

6.6.17. The applicant states that the development has not caused significant environmental impacts or significant effects on the integrity of a European Site.

- 6.6.18. Notwithstanding this, the application does not include any assessment of potential significant effects on the environment or adverse effects on the integrity of European site as part of the application and I am thus unable to ascertain whether there is a need for specific remediation. I have previously outlined that the subject works have the potential to affect the groundwater regime on this peatland site and have the ability to affect the quality and content of surface water discharges from the site, giving rise to potential significant effects on those European sites that are hydrologically connected, similar to impacts identified as part of the NIS submitted with the parent application.
- 6.6.19. The Board will be aware that the making of any application for substitute consent will clearly examine the need for any such remediation.

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development

- 6.6.20. The applicant submits that all other completed aspects of the wind farm development have been constructed in accordance with the approved plans and documents.

(g) Such other matters as the Board considers relevant

- 6.6.21. I consider that no further matters need to be considered by the Board in this case.

7.0 Recommendation

- 7.1. Having regard to Section 177 D(1)(b), which provides that the Board shall only grant leave to apply for substitute consent where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of development by permitting an application for substitute consent, I am satisfied that such exceptional circumstances exist in the instant case, and therefore recommend that consent for leave to apply for substitute consent be permitted in accordance with the following:

8.0 Reasons and Considerations

8.1.1. Having regard to Section 177D of the Planning and Development Act, 2000, as amended, the Board is satisfied that: -

(a) The development is one where an environmental impact assessment, a determination as to whether environmental impact assessment is required, and an appropriate assessment is required, and

(b) That exceptional circumstances do exist by reference, in particular, to the following:

- The fact that the regularisation of the development would not circumvent the purpose and objectives of the Habitats Directive,
- The nature and scale of the subject development,
- That the ability to carry out an Environmental Impact Assessment and Appropriate Assessment and to provide for public participation has not been substantially impaired
- The limited nature of the actual/likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the development, and
- The extent to which such significant effects, if any, on the environment can be remediated

and, therefore, concluded that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Barry O'Donnell
Planning Inspector

17th August 2023.