



An
Bord
Pleanála

Inspector's Report ABP 319602-24

Development	Proposed windfarm of 15 no. wind turbines and associated works
Location	Scart Mountain, Co. Waterford
Planning Authority	Waterford City and County Council
Prospective Applicant	FuturEnergy Scart Mountain DAC
Type of Application	S37CC Pre-application Consultation on Design Flexibility.
Date of S37CC Pre-Application Meeting:	20/05/24
Date of Site Inspection	13/04/23
Inspector	Pauline Fitzpatrick

1.0 Introduction

- 1.1. This report relates to pre-application discussions held with FuturEnergy Scart Mountain DAC in respect of a proposed development known as Scart windfarm which is to comprise of 15 no. turbines and ancillary works including an on-site substation. The prospective applicant is seeking an Opinion on Flexibility from the Board. The request was received by the Board on 24th April 2024.
- 1.2. The Board's representatives met with the prospective applicant in relation to the proposed development under section 37B of the Planning and Development Act. The presentation provided by the prospective applicant and written record of the meeting are on the said file (ABP Ref. 319601-24). The Board's representatives also met with the prospective applicant on one occasion in relation to the requested Opinion on Flexibility. The presentation provided by the prospective applicant and the written record of this meeting are on this file.

2.0 Site Description

- 2.1. The site which covers an approx. area of 970 hectares is located c. 4km to the north-east of Cappoquin in County Waterford adjacent to the County Tipperary border. Approx. 682 hectares is in Coillte's ownership with the remaining lands privately owned. The majority of the site is covered in coniferous forestry with the northernmost area covered in peatlands.
- 2.2. The north end of the site includes Knocknanask Mountain with elevations between 290 and 486m OD in sloped terrain. A valley divides Knocknanask from Scart Mountain which reaches 428mOD. From the top of Scart Mountain the site slopes gradually down to the south to the lowest point of approx. 125mOD.
- 2.3. The site has a number of watercourses including the Glenshelane and Farnane Rivers.
- 2.4. Access is via the local road network from the N72 National Secondary Road. There are forest roads and several local roads within the windfarm site boundary.

3.0 Proposed Development

The proposed development comprises the following:

- 15 no. wind turbines with an electrical output of between 85.5 – 108 MW. The turbines are to have a blade tip height in the range of 179.5 to 185 metres, a hub height in the range of 102.5 to 110.5 metres and rotor diameter in the range of 149 to 163 metres,
- 110kV substation,
- 1 no. meteorological mast,
- 2 no. temporary construction compounds,
- Borrow pits,
- Access roads both new and upgrade of existing,
- All ancillary works.

The connection to the national grid via an underground connection from the proposed on-site 110kV electrical substation to Dungarven 110 kV substation will be subject of a separate Section 182A application (subject of pre-application consultations under ref. ABP 317824-23).

4.0 Request For An Opinion On Flexibility

4.1. Context

- 4.1.1. The prospective applicant previously entered into pre-application discussions with the Board under ABP ABP 315920 -23 with respect to the development of the proposed Scart Mountain windfarm comprising of 15 no. wind turbines and ancillary works.
- 4.1.2. The Board, in a letter dated 24th January 2024 determined that the proposed development constitutes Strategic Infrastructure Development within the meaning of section 37A of the Planning and Development Act 2000, as amended, and that any application should be made directly to the Board
- 4.1.3. The Planning and Development, Maritime and Valuation (Amendment) Act 2022, provides for design flexibility in the case of applications for permission for any

development specified in the Seventh Schedule, primarily relating to the rapidly changing technology available in renewables, and the potentially long lead-in times between the making of a planning application and procurement of equipment.

- 4.1.4. The request for a design flexibility opinion is required to be part of the consultations under section 37B. As a consequence, the prospective applicant has sought a new pre- application consultation (ABP 3196101-24). Concurrently the prospective applicant has submitted this request to the Board for an Opinion on Flexibility with respect to specific elements of the development that may be provided later for the Board's approval.

Request

- 4.1.5. Section 37CC material for formal consultation was submitted to the Board on 24th April 2024 including prescribed Form 20 as set out in the Planning and Development (Amendment) (No.3) Regulations 2023. The request included all relevant information as set out in Section 37CC (2) of the Act, in order to assist the Board in informing its opinion, including:

- Name and address of the applicant,
- A site location map,
- Description of the nature and purpose of the proposed development and its possible effects on the environment,
- A draft layout plan of the proposed development,
- Details of the development which are considered unlikely to be confirmed at application stage and the need for flexibility for the following reasons:
 - Procurement
 - Potential obsolescence of existing technology
 - To allow the prospective applicant to take advantage of new technologies which may become available during the consenting process.

- 4.1.6. The following elements (details) of the development are those for which flexibility is being sought:

	Minimum (metres)	Maximum (metres)
Turbine Tip Height	179.5	185
Rotor Diameter	149	163
Hub Height	102.5	110.5
Max. Export Capacity	85.5 MW	108 MW

5.0 Consultation

- 5.1. 1 no. meeting was held with the prospective applicant's representatives on 22nd May 2024. The presentation to the meeting and the meeting record are on the file. Issues raised at the meeting are identified and considered in Section 8 below.

6.0 Legislative Provisions

6.1. Planning and Development, Maritime and Valuation (Amendment) Act 2022

This Act, in recognition that certain applications require a degree of flexibility, introduced amendments to the Planning and Development Act 2000 (as amended) and the Maritime Area Planning Act 2021, to facilitate procedures that will enable planning authorities and the Board to consider design flexibility as part of the assessment of planning applications.

6.2. Section 37CC Planning and Development Act, 2000 (as amended)

This section of the Act sets out the requirements for requesting the Board to consider design flexibility, and the Board procedures for consideration of the request as part of the assessment of planning applications.

Section 37CC (1) states that a prospective applicant who proposes to make an application for any development specified in the Seventh Schedule may, before making such an application, request a meeting with the Board for the purpose of section 37CD as part of consultations referred to in section 37B(1).

Section 37CC(2) (a-d) lists the details required in the application. (incl. site location map, draft layout plan, brief project description & possible effects on the environment).

Section 37CC (2) (e) requires a description of -

(i) the details, or groups of details, of the proposed development that, owing to the circumstances set out in subparagraph (ii), are unlikely to be confirmed at the time of the proposed application, and

(ii) the circumstances relating to the proposed development, including such circumstances as the Minister may prescribe in relation to any class or description of development for the purposes of this subparagraph, that indicate that it is appropriate that the proposed application be made and decided, before the prospective applicant has confirmed the details referred to in subparagraph (i) including, in particular, whether the prospective applicant may be able to avail of technology available after making the proposed application that is more effective or more efficient than that available at the time of the application,

Section 37CC (2) (f) requires an undertaking to provide with the proposed application either—

(i) two or more options in respect of each detail or group of details referred to in paragraph (e)(i), containing information on the basis of which the proposed application may be made and decided,

(ii) parameters within which each detail or group of details referred to in paragraph (e)(i) will fall and on the basis of which the proposed application may be made or decided, or (iii) a combination of subparagraphs (i) and (ii),

Section 37CC (2) (g-h) lists other information that may be provided or prescribed.

Section 37CC (3) provides for the Board to convene a meeting.

Section 37CC (4) provides for the Minister to make regulations in relation to procedures and administration for the purposes of holding a meeting.

6.3. Circular Letter PL11/2023 – New Design Flexibility Provisions with regard to certain unconfirmed details as part of application for planning permission

This document refers to the opinion on flexibility which developers may wish to avail of. It notes that applicants may wish to seek permission before certain details of the proposed development are confirmed. It provides an example of a windfarm and notes that details such as the precise height or blade length of a turbine or the precise grid connection point and route may not be confirmed at the time of application. In addition, it notes that the process is not intended to apply to points of detail generally dealt with by way of compliance condition and agreed between the applicant and the Board post-consent.

The document states that the applicant must set out the circumstances why it would be appropriate for the proposed application to be made and decided before the details are confirmed. It provides that a separate meeting may take place to discuss the flexibility request as part of the existing pre-application arrangements. It also states that existing consultations which may take place in advance of the flexible meeting request may concern the scope of details not likely to be confirmed at application stage and likely to be subject to a request for an opinion on unconfirmed details.

It further provides for matters of public notification and transparency in respect of the new arrangements and prescribes the forms to be used for the various stages of the process - flexible meeting request (Form 19); opinion on unconfirmed details issued by the Board (Form 20); and supplementary statement of unconfirmed details to accompany a planning application (Form 21).

7.0 Planning History/Precedent Cases

There are a number of requests for opinion on design flexibility before the Board for decision e.g:

ABP 318971-24: an opinion on design flexibility for 10 to 12 wind turbines and associated development in Co. Tipperary (pre-application consultation file ref. ABP. 315655-23). Consultations have closed.

ABP 319151-24: an opinion on design flexibility for 9 no. wind turbines and associated works at Knockshanvo and adjacent townlands Co. Clare (pre-application consultation file ref. ABP 319215-24). Consultations have closed.

ABP 319240 -24: an opinion on design flexibility for 17 no. turbines and associated works at Clydaghroe and Cummeenabuddoge, Clonkeen. Co. Kerry (pre-application consultation file ref. ABP 319219-24). Consultations have closed.

Several similar flexibility pre-application consultation requests under section 287A relating to maritime developments have been considered by the Board and are listed below.

- **ABP-316331-23:** The *Arklow Bank* offshore windfarm project
- **ABP-316332-23:** The *North Irish Sea Array* offshore windfarm project
- **ABP-318274-23:** The *Oriel* offshore windfarm project
- **ABP-318552-23:** The *Dublin Array* offshore windfarm project
- **ABP-318588-23:** The *Codling* offshore windfarm project

8.0 Assessment

8.1.1. The table below sets out the details and circumstances for section 37CC flexibility requested by the prospective applicant as well as my consideration and recommendation in relation to the various elements.

Details / Groups of Details	Circumstances	Consideration	Accept Flexibility
Turbine Tip Height Range - 179.5 to 185 metres	<ul style="list-style-type: none"> Procurement process will not take place until the planning process is complete and pre-construction planning commences. Potential for obsolescence of existing technology. Take advantage of new technologies - New turbines models or variants may be available, due to advancements in technology. 	<p>I am satisfied that the flexibility sought in tip height is reasonable and minimal and note that the height of the turbine is dependent on the final turbine design.</p> <p>Notwithstanding that the prospective applicant is not limited to the specific ranges detailed in the request, I am satisfied that the range of flexibility sought can be considered and assessed fully in any future application and EIAR.</p>	Yes
Rotor Diameter Range 149 to 163 metres		<p>I am satisfied that the flexibility sought in rotor diameter is reasonable and minimal and note that rotor diameter is dependent on the final turbine design.</p> <p>Notwithstanding that the prospective applicant is not limited to the specific ranges detailed in the</p>	Yes

		request, I am satisfied that the range of flexibility sought can be considered and assessed fully in any future application and EIAR.	
Hub Height Range 102.5 to 110.5 metres		I am satisfied that the flexibility sought in hub height is reasonable and minimal and note that hub height is dependent on the final turbine design. Notwithstanding that the prospective applicant is not limited to the specific ranges detailed, I am satisfied that the range of flexibility sought can be considered and assessed fully in any future application and EIAR.	Yes
Export Capacity Range 85.5 MW to 108 MW		Export capacity is dependent / consequent of turbine design and is not a physical attribute on which it is possible to measure or assess impact. It is accepted that there may be a variation in export capacity arising as a result differing turbine models. The stated range of capacity of between 5.7MW and 7.2 MW per turbine is noted.	No

9.0 Conclusion

9.1. Following the completion of the section 37CC meeting on 22nd May 2024, and having regard to the information provided by the prospective applicant in relation to the request for flexibility and to the circumstances which support this request, and based on my consideration of the request as set out above, I consider it reasonable that the following details/groups of details of the proposed development, may be confirmed after the proposed application has been made and decided by the Board:-

Turbine dimensions:

- a) Turbine Tip height
- b) Rotor diameter
- c) Hub Height

9.2. For each of the details or group of details listed above, the prospective applicant shall provide with the proposed application two or more options in respect of each detail or group of details and/or parameters within which each of the detail or group of details will fall.

9.3. Normal construction related details that are intrinsic to the installation of the windfarm infrastructure that are not clarified at the application stage should be set out and assessed in the application (incl. EIAR & NIS), and subject to a compliance condition which could include the submission of a CEMP.

9.4. The request for flexibility on export capacity was considered. Export capacity is dependent/consequent of turbine design and is not a physical attribute on which it is possible to measure or assess impact. I accept that there may be a variation in export capacity arising as a result differing turbine models.

10.0 Recommendation

I recommend that the following details of the proposed development may be confirmed after the proposed application has been made and decided by the Board. The Board should notify the prospective applicant of its Opinion in respect of flexibility under section 37CD of the Planning and Development Act, 2000, as amended, in accordance with the following Draft Opinion.

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.



Pauline Fitzpatrick

Senior Planning Inspector



August, 2024

DRAFT OPINION

An Bord Pleanála Opinion on Flexibility

(1) Request for meeting	
Request under section 37CC of the Act:	Request for Design Flexibility in relation to a proposed windfarm at Scart Mountain, Co. Waterford
Request reference Number:	ABP 319602-24
Name of the requestor/ prospective applicant:	FuturEnergy Scart Mountain DAC
Location, townland or postal address of the land or structure to which the application relates (as may be appropriate):	Scart Mountain, Co. Waterford
Nature and extent of the proposed development:	15 no. wind turbines with an electrical output of between 85.5 – 108 MW, 110kV substation, 1 no. meteorological mast, 2 no. temporary construction compounds, borrow pits, access roads both new and upgrade of existing and all ancillary works.
Date of receipt of the request:	24 th April, 2-24
Opinion Reference Number:	ABP 319601-24
Date of Opinion:	

(2) Was the following Information included where relevant, with the Flexibility Meeting Request under section 37CC of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended.

Information	Enclosed with Request		
(a) A site location map sufficient to identify the maritime area/land on which the proposed development would be situated.	Yes: [x]	No: []	
(b) A brief description of the nature and purpose of the proposed development and of its possible effects on the environment.	Yes: [x]	No: []	
(c) A draft layout plan of the proposed development.	Yes: [x]	No: []	
(d) A description of the details, or groups of details, of the proposed development that, owing to the circumstances set out in (e) below, are unlikely to be confirmed at the time of the proposed application.	Yes: [x]	No: []	
(e) A description of the circumstances relating to the proposed development that indicate that it is appropriate that the proposed application be made and decided, before the prospective applicant has confirmed the details referred to in (d) above.	Yes: [x]	No: []	
(f) An undertaking to provide with the proposed application, either - i. two or more options, in respect of each detail or group of details referred to in (d) above containing information on the basis of which the	Yes: [x]	No: []	

<p>proposed application may be made and decided,</p> <p>ii. parameters within which each detail referred to in paragraph (d) above will fall and on the basis of which the proposed application may be made and decided, or</p> <p>iii. a combination of (i) and (ii).</p>			
<p>(g) Such other information, drawings or representations as the prospective applicant may wish to provide or make available.</p>	<p>Yes: []</p>	<p>No: []</p>	<p>N/A: [x]</p>
<p>(h) The appropriate fee.</p>	<p>Yes: [x]</p>	<p>No: []</p>	

(3) Opinion of the Board under section 287B of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended.

Information	Details/ Circumstances
<p>a) The details, or groups of details, of the proposed development that may be confirmed after the proposed application has been made and decided.</p>	<p>1. Turbine Dimensions:</p> <p>a) Turbine Tip Height</p> <p>b) Rotor Diameter</p> <p>c) Hub height</p> <p>In deciding not to accept the request for flexibility for export capacity the Board considered that this element of the project relates is consequent of turbine design and is not a physical attribute on which it is possible to measure or assess impact. It is accepted that there may be a variation in export capacity arising as a result differing turbine models.</p>

b) The circumstances relating to the proposed development that indicate that it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed the details referred to in paragraph (a) above.	<ul style="list-style-type: none"> i. To avail of ongoing advances in technology; ii. To facilitate the procurement process; iii. To ensure against the potential obsolescence of existing technology.

For each detail, or groups of details, referred to in paragraph 4(a) above, the proposed application shall, in addition to any other requirement imposed by or under the Planning and Development Act 2000, as amended, be accompanied by the information referred to in the undertaking submitted with the flexibility meeting request under section, 37CC(2)(f) of the Planning and Development Act 2000, as amended.

The proposed application must be consistent with the opinion provided in accordance with section 37CD of the Act.