Inspector's Report

ABP-322673-25

Development	A 10 year permission for 8 no. wind turbines, onsite substation and proposed underground grid connection. An Environmental Impact Assessment report (EIAR) and Natura Impact Statement (NIS) accompanies this application.
Location	Graffy, Meenamanragh, Dalraghan More, Glenties, Meenagrubby, Tievebrack Banganboy, Stracashel, Drumconcoose, Drumnalough, Lugaveen, Glenties, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2151990
Applicant(s)	Cuilfeach Teoranta
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First

Appellant	Cuilfeach Teoranta
Observer(s)	Adrian Gallagher
	Anne-Marie O'Donnell
	DAU
	Donegal County Council
	Dr. M.J Cooke
	Graffy Environmental Group
	Irish Red Grouse Association
	Patricia Sharkey
	Moira Miller
Date of Site Inspection	29th July 2026
Inspector	Rachel Gleave O'Connor

Contents

1.0 Introduction 4

2.0 Overview of the Proposed Development and Site Location 5

3.0 Legislation and Policy Context 5

3.2. European 5

3.3. National 7

3.4. Local 10

4.0 Submissions 12

4.21. Local Authority 14

4.22. Prescribed Bodies 16

4.23. Third Parties 22

4.24. Applicant 45

5.0 Assessment 56

5.4. Donegal County Development Plan 2024-2030 57

5.5. The Climate Action and Low Carbon Development Act 2015 (as amended) (Climate Act) 68

5.6. Ornithology 71

5.7. Consultation 81

6.0 Appropriate Assessment 84

7.0 Water Framework Directive 87

8.0 Recommendation 88

9.0 Reasons and Considerations 88

10.0 Appendix 1: Commission's Specialist Ornithology Report 98

11.0 Appendix 2: Stage 1 Screening for Appropriate Assessment 99

12.0 Appendix 3: Stage 2 Appropriate Assessment 119

1.0 Introduction

1.1. An Bord Pleanála previously made a decision on this appeal by order dated 1st December 2023, under appeal reference number ABP-312385-22. I refer to correspondence on the file dated June 2025 which confirms that this decision was quashed by order of the High Court dated 3rd March 2025 and the case was remitted by that Court back to An Coimisiún Pleanála for a fresh determination. A new file no. ABP-322673-25 was assigned.

1.2. Having regard to the High Court Order, the quashing of the previous Board decision, and the passage of time, the Commission considered it appropriate and in the interests of natural justice, to issue a Section 131 Notice to all parties, seeking any further general submissions/observations on the planning application subject of the appeal and on the Donegal County Development Plan 2024-2030 and the Climate Action Plan 2024 / 2025. This notice was issued to all parties in June 2025. Subsequently, submissions received were circulated, along with subsequent responses. The Department of Housing, Local Government and Heritage, Development Applications Unit, also requested that the case be referred to them, which it subsequently was. This consultation with all parties, and circulation of responses received, occurred during the period July 2025 to January 2026. Section 4 of this report below describes the submissions received and circulation of responses in more detail.

1.3. This report considers the submissions made on foot of the above-mentioned request, and the proposed development, in the context of any new framework or policy in the intervening period, and as outlined in section 3 below.

1.4. This report should be read in conjunction with the original assessment set out within the Inspector's Report dated 28th July 2022 (ref. ABP-312385-22) (with the exception of the AA set out in that report, as outlined in section 6 below), and inclusive of an addendum to that report, being Inspector's Report dated 23rd October 2023 (together, being the 'original Inspector's report'). In addition, to assist in the assessment set out in this current report, the Commission engaged a specialist in the area of Ornithology. The specialist report is included as Appendix 1 to this report (file reference 'R322673_App1 Specialist Ornithology Report').

2.0 Overview of the Proposed Development and Site Location

2.1. The current application subject to this appeal (ref. ABP-322673-25) is for 8 no. wind turbines under a 10 year consent, onsite substation and proposed underground grid connection, as well as a 30 year operational life for the development from the date of commissioning. A comprehensive description of development is set out in the original Inspector's Report. The Planning Authority refused planning permission for 5no. reasons as outlined in the original Inspector's Report.

2.2. The subject site is situated in County Donegal, northeast of the town of Glenties at its western extent. The site has a stated area of c.46.191ha. The location of the proposed turbines lies from Graffy in the southwest to Dalraghan More to the northeast, of the site. The proposed substation and control building is situated in Meenagrubby. The proposed grid connection to the ESB Tievebrack substation follows local roads L-6743-2 and L-2593-2 westwards towards the R250 from the substation/control room location at Meenagrubby.

2.3. The site is largely formed of open moor areas, with land uses including rough grazing, conifer plantations and historic turf cutting. The surrounding area is also characterised by similar land uses, as well as dispersed settlements, isolated farmsteads and houses. A comprehensive description of the site and surrounds is set out in the original Inspector's Report, as is a description of the planning history of the site.

3.0 Legislation and Policy Context

3.1. Relevant legislation and policy is identified under the original Inspector Report and Addendum Report dated 28th July 2022 and 23rd October 2023 respectively. This section of my report focuses upon any relevant new or updated legislation and policy considerations.

3.2. European

3.2.1. Renewable Energy Directive (2009/28/EC [REDI])

3.2.2. This Directive requires a commitment to produce energy from renewable sources and it set binding targets on the share of renewable energy in energy consumption

and in the transport sector to be met by 2020. It aimed to make renewable energy sources account for 20% of EU energy by 2020. Ireland had a national target of 16%. The government decided that 40% of electricity consumed in 2020 would be generated by renewables sources. Members States must submit National Renewable Energy Action Plans and Progress Plans to the EC.

3.2.3. Recast Renewable Energy Directive (Revision 2018/2001 [REDII])

3.2.4. This Directive established a new binding renewable energy target for the EU for 2030 of at least 32%, with a clause for a possible upwards revision by 2023. This target is a continuation of the 20% target for 2020. In order to help EU countries deliver on this target, the directive introduced new measures for various sectors of the economy, particularly on heating and cooling and transport, where progress has been slower (for example, an increased 14% target for the share of renewable fuels in transport by 2030).

3.2.5. Amended Renewable Energy Directive (RED III)

3.2.6. On 9 October 2023, the EU Council adopted the amended Renewable Energy Directive (RED III), part of the "Fit for 55" package. It was published in the Official Journal of the European Union on October 31, and entered into force 20 days after that date. The RED III aims to increase the share of renewable energy in the EU's overall energy consumption to 42.5% by 2030, with a further indicative target of 2.5%. The Directive also introduces specific targets for Member States in the industry, transport, and building (district heating and cooling) sectors. It has come into effect by way of the Reg. S.I 274 of 2025 from 6th August 2025.

3.2.7. Energy Roadmap 2050

3.2.8. This 2011 Roadmap deals with the transition of the energy system in ways that would be compatible with the greenhouse gas reductions targets set out in the REDI.

3.2.9. REPowerEU May 2022

3.2.10. In response to the hardships and global energy market disruption caused by Russia's invasion of Ukraine, the European Commission is implementing its REPowerEU Plan to help the EU save energy, produce clean energy and diversify its energy supplies.

3.3. **National**

3.3.1. The National Planning Framework (NPF)

3.3.2. The NPF First Revision 2025 is the Government's high level strategic plan for shaping the future growth and development of the State to the year 2040. It updates the original NPF from 2018. The NPF states that the future planning and development of our communities at local level will be refocused to tackle Ireland's higher than average carbon-intensity per capita and enable a national transition to a competitive, low carbon, climate resilient and environmentally sustainable economy by 2050 through harnessing our country's prodigious renewable energy potential (pg.4). Chapter 9 'Climate Transition and Our Environment' addresses renewable energy.

3.3.3. National Strategic Outcome 8 Transition to a Low Carbon and Climate Resilient Society, which includes the provision of new energy systems and transmission grids to support more distributed renewables-focused generation.

3.3.4. National Policy Objective 70 seeks to "Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050."

3.3.5. The Climate Action and Low Carbon Development Act 2015 (as amended)

3.3.6. The Climate Action and Low Carbon Development Act 2015 (as amended) (Climate Act), commits Ireland to a legally binding 51% reduction in overall greenhouse gas emissions by 2030 and to achieving net zero emissions by 2050. Under section 17 'Amendment of section 15 of the Principal Act' the Commission as a relevant body shall, in so far as practicable, perform its functions in a manner that is consistent with the most recent approved climate action plan, most recent approved national long term climate action strategy, national adaptation framework, sectoral plans, furtherance of the national climate objective and the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

3.3.7. Climate Action Plan 2025 (CAP 25)

3.3.8. The Climate Action Plan 2025 builds upon the Climate Action Plan 2024 (CAP 24) by refining and updating the measures and actions required to deliver the carbon

budgets and sectoral emissions ceilings and it should be read in conjunction with CAP 24. References to CAP 25 in this report therefore also includes recognition of CAP 24.

3.3.9. As part of its functions, the Commission must, in so far as practicable, perform its functions in a manner that is consistent with the most recent approved climate action plan, most recent approved national long term climate action strategy, national adaptation framework, sectoral plans, furtherance of national climate objective and the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State [section 15(1) of the Climate Action and Low Carbon Development Act 2015 (as amended)].

3.3.1. Government Policy Statement on Security of Electricity Supply, Nov. 2021

3.3.2. This policy statement notes that electricity is vital for the proper functioning of society and the economy. The statement lists challenges to ensuring security of electricity supply, including:

- Ensuring adequate electricity generation capacity, storage, grid infrastructure, interconnection and system services are put in place to meet demand – including at periods of peak demand; and
- Developing grid infrastructure and operating the electricity system in a safe and reliable manner.

3.3.3. Page 5 of the policy statement notes the Government has approved *"that it is appropriate for additional electricity transmission and distribution grid infrastructure, electricity interconnection and electricity storage to be permitted and developed in order to support the growth of renewable energy and to support security of electricity supply".*

3.3.4. Government Policy Statement on the Strategic Importance of Transmission and Other Energy Infrastructure

3.3.5. This statement notes the strategic importance of investment in networks and energy infrastructure, with such development expected to take account of all relevant standards.

3.3.6. Water Action Plan 2024: A River Basin Management Plan for Ireland

3.3.7. The Plan responds to the requirements of the Water Framework Directive, to accelerate the identification and implementation of the right measures in the right places to both restore and protect all water bodies. The catchments.ie website provides substantial background information for this plan and the most current and up-to-date information on the status of local rivers, lakes and water bodies.

3.3.8. Ireland's 4th National Biodiversity Action Plan 2023-2030 (NBAP)

3.3.9. The NBAP includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Commission, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Commission. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.

3.3.10. The plans 5 objectives are as follows: 1. Adopt a whole-of-government, whole-of-society approach to biodiversity; 2. Meet urgent conservation and restoration needs; 3. Secure nature's contribution to people; 4. Enhance the evidence base for action on biodiversity; and 5. Strengthen Ireland's contribution to international biodiversity initiatives.

3.3.11. With respect to the EU Nature Restoration Law, this is addressed on pg.26 of the Plan. "The proposed EU Nature Restoration Regulation will set legally binding targets to restore degraded ecosystems, in particular those with the most potential to capture and store carbon, and to prevent and reduce the impact of natural disasters. Subject to finalisation of the Regulation, it is expected that all Member States will be required to produce a National Restoration Plan within two years of adoption. This will be led by the National Parks and Wildlife Service and will comprise a broad and deep public participation process, informed by robust ecological and socio-economic impact assessments. This National Biodiversity Action Plan will be updated by 2027 to include Ireland's National Restoration Plan."

3.4. **Local**

3.4.1. Donegal County Development Plan 2024-2030

3.4.2. Since the time of the original report on the appeal, a new County Donegal Development Plan has been adopted for the period 2024-2030. Chapter 9 'Natural Resource Development' addresses renewable energy in section 9.1.

3.4.3. General Objective E-O-2^{cc} seeks to secure the maximum potential from wind energy resources of the County commensurate with the receiving environment and local development patterns consistent with proper planning and sustainable development, to contribute towards security of energy supply.

3.4.4. Wind energy is addressed in section 9.2. This states in relation to onshore wind that:

"…the Council's approach has been prepared having regard to the 'Wind Energy Development Guidelines, 2006' (DHPLG) ('the Guidelines') [the Planning Authority has been advised that it may not have regard to the Draft Guidelines, 2019 pending finalization]. Whilst the importance of addressing climate change is at the fore of national policy, and whilst the Government's commitment to achieving targets as discussed above is acknowledged, the Guidelines provide that this must be achieved in a balanced way: 'the development plan must achieve a reasonable balance between responding to Government Policy on renewable energy and enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development, taking into account the legitimate views of local communities.' (p.11).

Map 9.2.1: 'Wind Energy' designates 'areas considered suitable or unsuitable for new wind energy development that have been identified on foot of a comprehensive analysis of the environmental sensitivities and the wind energy potential of the County'. The mapping has been prepared using a spatial sieve analysis of factors (in accordance with the Wind Energy Development Guidelines 2006). The Sieve Mapping Methodology is set out at Appendix B of this Plan. In the event of a discrepancy occurring between Map 9.2.1 and the written objectives and policies contained in the Plan, the written text shall be the key material consideration and take precedence over Map 9.2.1.

Arising from this process, and in accordance with Policy WE-P-1 and Map 9.2.1, the Plan identifies the following policy area designations as the means of determining the principle of the acceptability or otherwise of proposed wind farm developments.

(a) Acceptable In Principle

Wind farm developments shall be generally acceptable in principle in these areas.

(b) Open to Consideration

Wind farm developments shall be generally open to consideration in these areas.

(c) Not Normally Permissible

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 un-implemented 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 WE-P-1(c)(ii.) below.

The objectives and policies contained in this Section of the Plan set out a broad framework against which all windfarm proposals shall be considered. However, individual windfarm proposals are likely to give rise to additional issues covered by other provisions in the Plan and thus proposals shall also be subject to compliance with all other pertaining objectives and policies contained in this Plan.

Within each of the wind energy area designations on Map 9.2.1, and along the interface between the designations, there may be small areas that do not fully meet the intent of the designation. Such anomalies shall be considered individually and in the context of all other objectives and policies contained within this Plan, should an application for development be submitted in these. The onus shall be on the applicant to make the case that the site does not meet the characteristics of the designation within which it is, but ultimately it shall be a matter for the Planning Authority to adjudicate on such matters."

3.4.5. Wind Energy Policies are set out in WE-P-1, WE-P-1A, and WE-P-2, to WE-P-8.

3.4.6. Chapter 11 'Natural, Built and Archaeological Heritage' addresses Biodiversity. Objectives BIO-O-1 and BIO-O-2 relate the preservation and enhancement of biodiversity and objectives of the National Biodiversity Action Plan.

3.4.7. Policies BIO-P-1 to BIO-P-5 concern compliance with the requirements of the EU Habitats Directive and EU Birds Directive, the conservation / protection of QIs for designated sites including the Cró na mBroanáin Red Grouse Sanctuary and any species protected under the Wildlife Act (save to the extent necessary to provide for strategic infrastructure projects), protection of features of biodiversity, prevent spread of invasive species, and consideration of pollinator habitat.

3.4.8. Section 11.2 addresses Landscape. Objective L-O-1 is to protect, manage and conserve the character, quality and value of the Donegal landscape. Policies related to this are set out in L-P-1 (protection of areas identified as Especially High Scenic Amenity) to L-P-8.

3.4.9. Appendix B: Map 9.2.1 Wind Energy Sieve Mapping Analysis sets out the methodology for the construction of the Wind Energy Map.

4.0 Submissions

4.1. <u>June 2025</u>

4.2. The Section 131 Notice was issued on 17th June 2025 to all parties seeking any further general submissions/observations on the planning application subject of the appeal and on the Donegal County Development Plan 2024-2030 and the Climate Action Plan 2024 / 2025.

4.3. July 2025

4.4. Responses were received from the following:

- Applicant
- Irish Red Grouse Association
- Donegal County Council
- Adrian Gallagher
- Graffy Environmental Group

4.5. The Applicant's submission was subsequently circulated on 28th July 2025 to all parties for comment.

4.6. August 2025

4.7. Responses were received from:

- Dr. M.J Cooke
- Patricia Sharkey
- Anne-Marie O'Donnell
- Adrian Gallagher
- Graffy Environmental Group
- Irish Red Grouse Association
- Donegal County Council

4.8. By way of emails dated 1st and 8th August, the Department of Housing, Local Government and Heritage, Development Applications Unit (DAU), requested that the case be referred to them. A Section 131 Notice was issued to DAU on 28th August 2025.

4.9. September 2025

4.10. A response was received from DAU in September 2025.

4.11. October 2025

4.12. Following circulation of the DAU response all parties for comment, responses were received from:

- Patricia Sharkey
- Irish Red Grouse Association
- Dr. M.J Cooke
- Anne-Maire O'Donnell
- Moira Miller
- Graffy Environmental Group

4.13. November 2025

4.14. A response to the DAU submission was received from the Applicant in November 2025. This was due to technical difficulties (accepted by the Commission).

4.15. Further copies of submissions were also received in November 2025 from Graffy Environmental Group, Adrian Gallagher and Donegal County Council.

4.16. December 2025

4.17. A Section 131 Notice was issued on 12th December 2025 to all parties seeking response to the applicant's response of 4th November 2025, in the interest of natural justice.

4.18. January 2026

4.19. Responses were received from:

- Anne-Marie O'Donnell
- Donegal County Council
- DAU
- Adrian Gallagher

4.20. These submissions are summarised below, categorised under LA / prescribed bodies / third parties / applicant, and organised by date (month / year).

4.21. **Local Authority**

4.21.1. Donegal County Council is the relevant local authority for the subject site and their submissions are summarised below.

4.21.2. July 2025

- Since the appeal was submitted, a new Donegal County Development Plan 2024-2030 has been adopted which contains finalised policies relating to wind energy.
- Within the Development Plan, Map 9.2.1 identifies that the appeal site as 'Not Normally Permissible' for wind energy developments. Appendix B of the Plan explains the methodology used.
- Reference to policy WE-P-1 with respect to the assessment of the acceptability in principle of wind farm development.
- Note that the historical consent on the site for a wind farm was not implemented and has expired, and that the proposal is contrary to policy WE-P-1.
- With reference to the planning authority's second reason for refusal, the appeal site remains designated as an EHSA area and policy WE-P-2 states that wind farms should not be located in such areas, with reference to WE-P-1A. The proposal is considered contrary to policy WE-P-2.
- With reference to the planning authority's 3rd, 4th and 5th reasons for refusal, the concerns remain relating to Natura 2000 sites, QIs, and other protected species, and the information submitted by the appellant has not adequately addressed these concerns. Previous DAU comments remain relevant. The proposal is considered to be contrary to policy BIO-P-1.
- With reference to the Climate Action Plan 2025, map 8.2.1 of the Plan has been produced having regard to material considerations, and there are other areas of the County that are 'Open to Consideration' for wind energy development opportunities.
- The Planning Authority wishes to rely on the content of previous reports in response to this appeal. It is requested that permission be refused.

4.21.3. August 2025

- The Planning Authority would like to rely on its previous response to the appeal in July and reiterates the following points.

- The site is identified as 'Not Normally Permissible' in Map 9.2.1 Wind Energy of the 2024-2030 Development Plan, as defined in Section 9.2 of the plan and with reference to policy WE-P-1 of the plan. It is considered that the proposed development remains contrary to the Development Plan, noting there are other areas in the county providing opportunity for windfarm development and that the plan has been informed by national policy, being generally supportive of renewable energy.

4.21.4. November 2025

- Note the submission dated 24th September 2025 from the Department of Housing, Local Government and Heritage made in relation to the appeal.
- The Council wishes to rely on the content of the Planning Authority's previous reports in response to the appeal and no has no further comment. It is requested that the Board refuse permission for the development.

4.21.5. January 2026

- The Council wishes to rely on the content of the Planning Authority's previous reports in response to the appeal and no has no further comment. It is requested that the Board refuse permission for the development.

4.22. **Prescribed Bodies**

4.22.1. September 2025

4.22.2. Department of Housing Local Government and Heritage – Development Applications Unit (DAU):

- The Department's concerns in 2021 related to 3 significant risks to nature conservation related to potential impact to: Merlin populations a QI of Lough Nillan Bog SPA and Derryveagh and Glendowan SPA; significant proportion of the national population of Golden Eagle and probable breeding White-tailed Eagle (Annex I Bird Direct species); and freshwater pearl mussel and salmon, QI for West of Ardara/Mass Road SAC and River Finn SAC (respectively).

- Many of original concerns have not been addressed in the updated submissions and recent White-tailed Eagle strikes are of extra concern. The Department still has significant concerns.
- Highlight the location of the proposed windfarm on the southeast slopes of the Aghla Mountain, at the watershed of two river SACs. There has been no submission of revised assessment of impacts to these river SACs. The proposed 'amended' windfarm has no previous permission and is partially within the West of Ardara/Mass Road SAC and River Finn SAC. It is within 3-5km of Lough Nillan Bog SPA and Derryveagh and Glendown Mountains SPA.
- The home range size of breeding Merlin in Western European is unknown, therefore it is not possible to state conclusively that the breeding pair in the area of the site is not connected to either of the SPAs. Note State responsibilities to ensure Merlin can return to habitat and maintain the integrity of nearby European Sites. The siting of the proposed turbines in the area would likely prevent re-occupation of previously occupied merlin territory. ABPs reason 2 for refusal remains.
- The area of the proposal is essential for known breeding territories for White-tailed Eagle and Golden Eagle which are still present and pose a collision risk. SPAs maybe designated in future. Concerns remain, the site is not a suitable location due to a number of factors including the high-quality habitat and obvious use of the area by both eagle species. ABP reason 3 for refusal remains.
- There were three White-tailed Eagle mortalities within the last year, found dead under turbines, two within 6km of the site, and they were smaller turbines, casting doubt on the collision risk modelling. ACP must take account of the cumulative effect.
- ACP must take account of the obligations of the Nature Restoration Law 2024 and the Biodiversity Strategy of the EU Green Deal.
- Note the applicant states with reference to Coolglass, that priority must be given to national policy over local policy, however the protection of EU sites

and Annex I species goes far beyond the 'limitation in an individual development plan' and the Coolglass site is not similar to this site. The Department remains unconvinced that the site is an 'appropriate location' for a wind farm. The National Climate Action Plan does not surpass EU Nature Directives, it must be delivered in a way that complements and is constrained by the legal protections for Annex I species and habitats, the protection of habitats and species being itself a climate action.

- In relation to ABP reason for refusal no.1, the applicant is not correct in stating only 3 spatial data layers of the wind energy map under the Development Plan are relevant, because all but one of the townlands involved in the proposal have SAC within them or directly adjoining the EU site, with multiple direct hydrological connections, and an important SPA for Merlin and Greenland White-fronted Goose is within 1.5km of the project, and another within 3km of the proposal, giving another two layers.
- The Department is aware of multiple small landslides around Aghla Mountain, which has an orographic wetter microclimate typical of its glacial formed mountain and steep-sided valley topography. Related concern for impact upon Freshwater Pearl Mussel and Salmon. In response to the applicants mitigation in this regard, concern regarding peat slides and inadvertent or accidental petrochemical spills into nearby waterways, with devasting impact on river wildlife including otters, Freshwater Pearl Mussel, Salmon.
- The deaths of the White-tailed Eagles resulting from collision with nearby turbines were recorded due to birds being satellite tagged and inactivity alert. Untagged eagles and other, particularly smaller, bird species mortalities (such as Merlin) at wind farms, may go unrecorded or unobserved, due to inherent difficulties in conducting carcass searches and rapid removal by scavengers.
- Note known White-tailed Eagle territory and nest in the Bluestack Mountain area and another breeding territory in the Ardara area. They have large territories. A study in the Baltic Sea region found reduced survival in wind turbine proximity for White-tailed Eagle, with significant collision risk. Reference to a research study in Spain which found there was no clear relationship between predicted risk and actual recorded bird mortality at wind

farms, correlation must be improved by focusing on individual proposed turbine sites and species-specific level. Expansion of the White-tailed Eagle breeding range may have been stalled by the 3 deaths on the Meencloghspar windfarm and Cornacahan windfarm, despite collision risk assessed as being unlikely to be significant at those sites.

- Concern for the small national population of five breeding pairs of Golden Eagle entirely within upland Donegal, which would be very vulnerable to poorly sited windfarms. Doubt cast on the collision risk modelling with reference to the comments on White-tailed Eagle, but despite this, even the modelled extent would be significant for such a small population of long lived, low productivity, life-mating, high profile Annex I Birds. This species is not satellite tagged.
- With reference to survey data for another application for the Cloghercor Windfarm refused in 2024, the area is shown with Golden Eagle activity. Reference to a US study highlighting concern that growth of the wind energy industry could have conservation implications for Golden Eagle and other raptor populations.
- In relation to Merlin, the information provided must eliminate reasonable scientific doubt as to the absence of effect. Note that the updated surveys could not find the previously nesting pair, however observe the siting of the proposed turbines would likely prevent the reoccupation of the previously occupied merlin territory. Merlin is elusive and breed in sparse remote areas, difficult to conduct systematic surveys and determine precise territory range size. Merlin require open County for hunting and trees or other structures for nesting, so territories are larger in less productive habitat.
- No assessment of Greenland White Fronted Geese migration, QI of Lough Nillan SPA.
- Unclear why the Cró na mBraonáin Red Grouse Sanctuary is not mentioned in the recent submissions, potential impact has not been assessed. Red Grouse is red-listed Bird of Conservation Concern. Note importance of this species for eagle breeding territories.

- No mention of bats in updated documents, despite a record of a bat roost within metres of the proposed windfarm, nor any proposed mitigation measures. The Department is aware of bat roosts and bat activity in the area of the proposed windfarm. Bats are protected species and research shows significant reduction in bat activity near windfarms.
- The Department considers there are some critical gaps in the data, information and analysis that have been presented, which hinder a full understanding of the likely significance of effects of the proposed windfarm on European Sites and their conservation objectives, and the conservation of Annex I species. Note that competent national authorities shall agree to projects only after having ascertained that it will not adversely affect the integrity of sites concerned, where scientific doubt remains as to the absence of effects on the integrity of the site linked to the plan or project being considered, the authority must reject the application for authorisation.
- In the assessment of a suitable site for locating a windfarm, sufficient safeguarding ones to separate turbines from EU sites and Annex I species must be included, with this depending upon the QI of the relevant site and any Annex I species for important habitat. Relevant for the two hydrologically connected SACs and the SPA for birds previously mentioned.

4.22.3. January 2026

4.22.4. Department of Housing Local Government and Heritage – Development Applications Unit (DAU):

- Previous concerns raised by DAU dated 2021 and 2025 should be taken into account.
- Proximity of two SACs, two SPAs – reason 1 for refusal remains.
- Breeding Merlin, potentially linked to the SPA – reason 2 for refusal remains. The siting of the proposed turbines would likely prevent the re-occupation of previously occupied Merlin territory, whether through bird strike or avoidance.
- Breeding and foraging White-tailed Eagles and Golden Eagles – reason 3 for refusal remains. The breeding population of Golden Eagles is entirely within Donegal and would be very vulnerable to poorly-sited windfarms.

- ACP must take into account the cumulative effect of existing turbines along with the current application.
- The location of the proposed wind farm is not suitable due to a number of factors, including potential impacts on EU sites and species, high quality habitat, habitual use by eagle species.
- White-tailed Eagle – listed on Annex I, Red Listed, potential impact on breeding pairs may result in nest failing with a national level impact.
- The collision risk presented outlines a sizable impact. Eagle deaths in 2024 and 2025 show the eagles do not avoid turbines. If the effect was upon fledglings from the same nest, the success of the breeding pair would be compromised and the nest may be abandoned, and the range of the national population affected. The foraging range of breeding White-tailed Eagles can be large. Dispersing juvenile White-tailed Eagles are known to travel long distances. Adults remain in their home range year round, and impact to home range would be high, they need connectivity between habitats.
- With reference to NatureScot, 13km is within the ordinary foraging range of breeding White-tailed Eagle. Some of the eagles using the area could be part of breeding pairs. Impact may therefore be on breeding population. The success rate of the nest and its ability to expand its national range would be compromised, which would have a national effect.
- The proposed wind farm is at the edge of accepted foraging area for one of the nests. Potential extra mortality could be linked to this nest, if impacts are >1% mortality per year it would have an effect on the trajectory of the population.
- Turbines within foraging range for the breeding site, may have a national level effect on White-tailed Eagle population. Turbines may also impact connectivity of habitat, which contains the most northerly range, and would impact further spread north.
- Proposed mitigation (removal of fallen livestock and sources of carrion) is only during construction and not for the operational 30 years of the windfarm. Efficacy of this mitigation is not well evidenced.

4.23. **Third Parties**

4.23.1. July 2025

4.23.2. Red Grouse Association:

- This project and application was conceived under the 2018-2024 Development Plan, therefore a new application should be required cognisant of the new 2024 Development Plan.
- The National Climate Action Plan should not take precedence over sustainable planning, and should not overstep the EU Habitats Directive. The previous reasons for refusal stand as the application has not changed.
- Concerns raised regarding impact upon peatland environment, release of carbon from excavations and landslides.
- With reference to the 2024-2030 Development Plan, the site is in an area 'Not Normally Permissible for wind turbines'. The site is also protected under the EHSA designation. No turbines are permitted in EHSA areas (by variation of the 2018 Plan).
- The new Plan has a requirement to assess projects taking cognisance of EPA peat slippage zoning. We note the EIAR admits to peat extraction of 22,888 cubic metres on the site and excavations of 5,475m along the grid route.
- Previously in the 2018-2024 Plan Cró na mBraonáin Red Grouse Sanctuary (CBRGS) was protected by Policy NH-P-20 and it is not afforded the same protection in the 2024-2030 Plan under Policy BIO-P-2.
- Please have regard to more expansive submission of 27th January 2022, particularly around the symbiotic relationship between the Golden Eagle and Red Grouse.

4.23.3. Adrian Gallagher (by email and post):

- With reference to the new Development Plan 2024-2030, query whether a new application including EIAR should be requested from the developer.
- In relation to the 2024-2030 Plan, the lesser protection of High Scenic Amenity rating (Map 1) has been given to a long finger of land that protrudes

into the bulk of an area of Especially High Scenic Amenity. Question the grounds for this decision, given it includes the Stracashel River and the lands adjacent to it.

- The Gaeltach Lár area (which this is part of) is much connected with St. Colmcille and the Cosán na mBráithre path. Pilgrimage routes associated with St. Colmcille, in the manner of the Camino, Slí Colmcille, are being developed and this path may become part of that network. Works would be disruptive to walkers on the pilgrimage.
- Query the robustness of the archaeological assessment as it misses a mass rock in the adjacent townland of Crocam.
- ABP has previously adjudged nearby areas worthy of protection from wind farm development in order to protect areas habituated by golden eagles, other raptors and wild birds. The same protection should be offered to the site.
- The ‘green’ project is the opposite of ‘environmentally friendly’ when considering the removal of vast amounts of bog and associated impact upon the environment of the area, as well as materials required for the development.
- The size of the turbines will negatively affect the landscape. Visual effect from upland areas should be considered, as well as effect upon hikers and tourists, including noise impact.
- Request ABP carry out their own EIAR.
- Concern regarding negative effect of run-off from the site upon ecology.
- Insufficient information in the EIAR concerning materials required and related carbon produced for construction, lifetime operation and decommissioning, as well as carbon-sink.
- No alternative sites examined.
- No consideration of cumulative effects of having another windfarm in an established area of natural beauty. Query whether future turbines are planned.
- The EIAR is deficient due to the absence of the above information.

- Donegal has enough wind farms.
- Enclosure: Wild Mountain Way – Donegal on Foot and Alone; and photographs.

4.23.4. Graffy Environmental Group:

- The submission provides an overview of the planning history (timeline of events) for wind energy proposals on the site to date, including previous concerns raised from various bodies and it is asserted that these concerns persist in the current proposal.
- The submission describes the establishment and aims of the Graffy Environmental Group.
- While the approximate location of wind turbines is shown, the precise location is dependent upon ground conditions to be determined. The application contains a significant number of uncertainties or features which have not been described definitively.
- A description of the development and site is set out in the submission.
- Flooding occurs frequently in the area of the site and heavy rainfall is common in the area. Photos enclosed showing pluvial flooding along the grid connection route. The site is located in an area criss-crossed by streams, drains and culverts, draining into the Stranagappoge River and Stracashel River, both of which are the primary headwater tributaries of the River Finn SAC and the Owena River / West of Maas Road SAC. Turbines are proposed on top of streams. Quality of these upland waters is pristine (evidenced through testing described in the submission) and would be negatively affected by the development.
- Graffy Bridge is old and it is an unacceptable risk that it would have to bear the weight of vehicles carrying thousands of tonnes of heavy building materials and turbine components.
- There are QI aquatic species associated with the site and surrounds, including otter, salmon, lamprey and freshwater pearl mussel. It would not be possible to construct or operate the proposed wind farm without causing

adverse effect on important species. No survey undertaken for white-clawed crayfish.

- It is not possible to state definitively that protected Freshwater Pearl Mussel is not present in the river system, it would not be possible to construct or operate the wind farm without adverse effects on this species.
- The applicants surveys confirm the scientifically based concerns about the likely effects of the proposed wind farm on bird species expressed by the DAU. Merlin and Golden Eagle have been observed on or very near to the proposed development site by members of the Graffy Environmental Group.
- Surprising the applicant's NIS does not mention Red Grouse, apart from briefly. A nationally important Red Grouse Conservation Project Cró na mBraonáin is located on Achla Mountain a short distance from the site. The DAU expressed concern that the amount of Red Grouse survey is sufficient. It is asserted that this is a gap in the NIS and a reason to refuse permission.
- Reference to detail provided to the Board concerning a Golden Eagle nest, which is around 3km from the subject site. The general pattern of Golden Eagle activity has not changed for very many years. The EIAR for the Graffy wind farm planning application cites 19 observations of Golden Eagle, a casual observation of a Golden Eagle was also verified by a member of the Golden Eagle Trust on 25th June 2025. (Submission refers to Appendix III as a photo of a Golden Eagle, however there is no Appendix III attached to the submission).
- There are a number of significant issues relating to ownership of the site and title to resources which have been in use, and are still in use, by people living in the area. Cannot find a consent letter from Coillte who own a portion of the site. Rights of turbary (sporting rights), turf-cutting, rough grazing and shooting, cannot be extinguished without consent or a formal process. One of the landowners wrote to Donegal CC to withdraw consent (Kathleen or Catherine McGuigan Folios 13628 and 13629). This was considered in the original inspectors report at para.10.5.2 (pg.210-211).

- Question the rationality or necessity of the project. The applicant's case is overstated as wind energy has significant environmental costs and is heavily subsidised. The EIAR does not examine the potential for other sources of renewable energy; onshore wind is promoted without justification; the EIAR omits detailed consideration of the grid-related problems in the Northern and Western Region with lack of capacity and excess supply; EIAR omits the greatest demand for electricity from renewable sources comes from the east of the country; the physical distance between supply and demand requires considerable strengthening of the grid.
- Inadequate consideration of alternatives, other renewable energy sources are not considered to any reasonable extent. The applicant has not adequately considered other onshore or offshore sites. Only lands only by the applicant are considered and some minor alternative configurations. The EIAR states that alternative grid connections were considered, however it also sates that there is no alternative grid connection to be considered (page 14 section 1.8.4). The EIAR fails to comply with the requirements of the EIA Directive for the consideration of alternatives.
- Dispute the reasons put forward by the appellant for why permission should be granted, for the following reasons: the previous grant on the site has only historical relevance and the current application is neither a reapplication or amendment; policies and objectives of the Development Plan; wind resource is widely available in north-west Ireland; the scale of the proposal and its visual intrusion are inappropriate for the location; there are a significant number of dwellings proximate to the site; a lengthy grid connection is required and Donegal CC's Roads Department have stated they did not intend to facilitate proposals for installing high voltage cables along the local road network; at 623m the closest receptor is too close and this and other residents will be effected by shadow flicker and noise; risk of peat slippage is higher than stated due to excavation works; mitigating risk of negative effects does not make an unsuitable site preferrable to a site where no risk arises; lack of knowledge about birds listed as key species; potential effect upon archaeological / heritage features; the appeal has not considered cultural heritage, the Graffy site is in the Gaeltacht area with impact upon culture and

language to be considered, no language impact statement submitted with the application (objective CCG-O-8).

- The five reasons for refusal set out in the decision by Donegal CC to refuse planning permission (ref.21/51990) are strong and well-founded on planning, sustainability and the need to protect areas and species of conservation importance.
- The argument put forward by the appellant that the proposal is a 'reapplication' of a previous grant of planning permission on the site, cannot be considered by ACP as the previous permission has lapsed through passage of time, there is no current permission, and ACP must consider only the application before it. The use of the term 'amendment' also causes confusion as shown when lodged with the Planning Authority.
- With reference to the Donegal County Development Plan 2024-2030 the site is located in an area where wind farms are not normally permissible. Relevant policies / objectives in the development plan are highlighted in the submission in relation to this. Policies on wind energy, peatlands, landscape are highlighted. The site is located in an area designated as Especially high Scenic Amenity (EHSA) or an area of High Scenic Amenity and these areas are not suitable for wind turbines.
- Overview of relevant provisions within the previous Donegal County Development Plan 2018-2024 provided in the submission, with commentary with respect to the applicant's appeal challenge. The applicant has not suitably or effectively engaged with the community. The appellant mistakenly refers to repowering / extension of wind farm policies, when the proposal is not such a scheme. The DEHLG Wind Energy Development Guidelines 2006 are out of date and inadequate to protect residential amenities. The 2006 Guidelines are not fit for more modern technological advancements in wind energy, they have not been subjected to SEA or AA which is legally necessary and therefore they cannot be relied upon and are not legally sound. The proportional setback and other provisions of Variation no.2 of the previous plan are robust and appropriate conditions for development control of wind farms.

- There are deficiencies (as identified by DAU) in the applicant's AA Screening Report and NIS, and therefore ACP does not have the power to grant planning permission as required legal standards have not been met. Concerns raised by the Loughs Agency, by Inland Fisheries and by several other submitters are not addressed by the applicant.
- Reference to the Meenbog peat slide in November 2020, where ABP appeared to have ignored local commissioned reports. The potential for landslides at the subject site, without massive ongoing site works, proves the unsuitability of the site in a location with more watercourses. The risk of peat slippage is much higher than stated, given the areas of deep peat which are to be excavated. Peat slides occur frequently in the area (photos provided). Note a number of bog slides occurring around the country, some associated with the Gowlaurevagh, County Leitrim and Derrybrien, County Galway, associated with wind farms. The quantum of peat and spoil to be moved on the site has not been specified by the applicant. The appeal does not provide a robust response to the potential for peat slippage, which would have adverse effect on water quality and fisheries, therefore no certainty of no effect upon Natura 2000 designated sites. Reference to two papers which state that the risk of peat slippage will increase in future due to climate change. Reference to the Shass Mountain Peat Slippage Report, findings indicate that areas that do not have a negligible risk of slippage should be avoided for construction.
- Concern about negative visual impact upon an area celebrated for its natural beauty. Note other submissions in this regard. The designation of the area as EHSA is more than adequate a reason for ACP to refuse planning permission.
- Even though the proposal does not include any housing or residential element, a language impact statement should have been submitted by the applicant. Reference to recent Board decision and associated High Court case taken in Co. Meath concerning a similar matter.
- The submission addresses general policies of relevance, including: Climate Action Plan 2024 (noting effects of climate change including projected increased intensity of windstorms which could result in increased windthrow

damaging structures, as well as recognition of limitations of the grid network with capacity exceeding demand in the west); Climate Action Plan 2025; Donegal County Council Climate Action Plan 2024-2029 (noting that the aims of this plan would not be assisted by the project); RSES Northern and Western Region (noting provision with respect to the protection of biodiversity and peatlands on pages 195, 205 and 208, with principle emphasis upon off-shore renewable energy provision and recognition of limited grid capacity for on-shore provision in the north west pg.264. The submission also notes that largescale on-shore renewable provision requires costly upgrades to the grid as well as having constraints and curtailment issues); The NPF and NDP (noting that the policy framework considers offshore wind, wave and solar energy as the primary sources of renewable energy in future NPO 42, and the NDP supports small scale sources, the proposal conflicts with these plans); National Biodiversity Action Plan 2023-2030 (the proposal conflicts with this plan); The European Union's Biodiversity Strategy for 2030; Programme for Government 2025 (noting this does not support onshore wind farms where this results in environmental damage).

- Information about the proposed grid connection and details of the wind farm construction are not clearly laid out, as case law requires, at the time the planning application is made (reference to Sweetman Derryadd case 2020 / 557 JR and Articles 22 and 23 of the Planning Regulations).
- The Graffy Enviromental Group has sufficient standing and is entitled to fully participate in the application process;
- With reference to Article 6 of Directive 2011/92/EU as amended, and as transposed by the Planning Regulations 2001 (Article 98), as further environmental information has been submitted, publication of notices to all full public participation required. In addition, the regulations do not fully transpose the requirements of the Directive, with respect to information being made available to the public when information becomes available after a decision is made.
- The Board's letter of 17th June 2025 does not comply with Section 239 and 245 of the Regulations (as amended), requiring notification of members of the

public that an NIS is being considered. Anyone recently moving into the area would not know about the application.

- The allocation of a new reference number means that the Board will determine the application de novo, and therefore the application should be re-advertised to inform members of the public. The current invitation for comments from the Board fails to comply with Directive 2003/35/EC and the Aarhus Convention.
- The Wildlife Acts 1976 and 2000 and the Wildlife (Amendment) Act 2023, requires ACP to ensure that areas of bog in and around the site are not damaged, directly or indirectly due to the proposal. Because of the presence of protected species of wildlife, ACP cannot grant permission. With reference to the Flora Protection Order 2022, ACP cannot give assurance that flora will be adequately protected. The construction of the proposal would give rise to risk of invasive species being introduced. ACP must pay considerable attention to the Regulation on Nature Restoration (Nature Restoration Law) August 2024. ACP should have regard to the requirements of the WFD and objectives of the national River Basin Management Plan.
- Enclosures: Appendix I letter from DAU 12 November 2021 to Donegal County Council regarding application ref.21/51990 on the site; Appendix II photos of pluvial flooding on the site; Appendix IV copies of correspondence between Ms Kathleen or Catherine McGuigan and Donegal CC Feb 2021; Appendix V photos of landslides or peat slippages in vicinity of the site. (Submission refers to Appendix III as a photo of a Golden Eagle, however there is no Appendix III attached to the submission).

4.23.5. <u>August 2025 Following Circulation of Applicant's Response to Submissions (07/25)</u>

4.23.6. Graffy Environmental Group:

- Insufficient time has been given to the Graffy Environmental Group to enable its members and consultants to prepare a sufficiently comprehensive response to the documentation submitted by the applicant. Reference to section 129 of the Planning and Development Act 2000 which states at 2(a) that 4 weeks be given to parties to make an observation, however only 19 days was given by ACP in this instance.

- The applicant's submission raises the importance of the Governments Renewable Energy Policy as set out in the NPF, Climate Action Plans, RSES etc. but does not mention constraints acknowledged in these documents, including regarding renewable connections concentrated in the north-west (west and south-west), capacities exceeding demand in this area and limited opportunities for new connections without additional reinforcements and the reliance on repowering end of life wind farms.
- There is no evidence to support the applicant's conclusion at para.3.6 which states that only harmful drastic reductions in electricity use would be capable of the emission reduction possible through solar PV, onshore and off-shore wind farms.
- In relation to the applicants reliance on the Coolglass Judgment, this placed too much emphasis on the need for renewable energy with less consideration of ecological and environmental concerns, and is subject to appeal to the Supreme Court which is significant and the appeal cannot be determined before the Supreme Courts Judgment.
- Contrary to the applicant's response, it is asserted that the NPF first revision does not support further onshore wind energy, and supports the expansion of off-shore wind energy instead. It should not be used to support the proposal when the County Development indicates otherwise.
- While the Climate Action Plans provide general and non-specific support for renewable energy infrastructure, the applicant is incorrect to assume or deduce that these plans support specific onshore wind energy developments, especially in Donegal, given the grid constraints and problems already noted.
- Dispute the applicant's conclusion that in applying the Coolglass Judgment and with reference to section 15 of the Climate Action Act 2015 (as amended), it is almost mandatory for a planning authority (including ACP) to materially contravene development plans in furtherance of climate goals, and to exercise an over-riding pubic interest in a manner that furthers climate goals, as the Act does not state this and the Coolglass judgment is subject to appeal.

- The RSES for the region emphasise the importance of off-shore renewable development and none of the policies in the RSES provide a reason for granting permission to the proposal.
- With reference to the County Development Plan mapping to determine locations 'Not Normally Permissible' for wind farm development, dispute the applicant's claim that the site is only subject to three of the spatial layers (landslide susceptibility, freshwater pearl mussel and EHSA), as the site also has a direct hydraulic and other connections to SACs and SPAs (as identified in the EIAR and NIS) and therefore spatial layers 1 (SACs), 2 (SPAs) and 3 (NHAs) apply.
- Policies under the Development Plan do not support the proposal, including Variation no.2 policy E-P-23 carried forward into the 2024-2030 Plan. Objectives NH-O-4 and NH-P-6 also provide protection to these areas. The 2024-2030 Plan therefore provides even more protection of the Graffy area and site than heretofore.
- The applicant's case that the site falls short of being a EHSA is opinion, with no evidence for this, and should be disregarded by the Commission.
- The conclusions of the applicant's ornithological report that nests are not used is an unreasonable conclusion that ignores that birds may return to hunt in the area or to these nests in future. The allegations in the applicant's ornithological report undermine the validity of the conclusions reached and should be treated with caution.
- No mention of the importance of Red Grouse which is likely present on the site. The nationally important Red Grouse conservation project is located a short distance from the site. The symbiotic relationship between Red Grouse as a prey species and Golden Eagle as a predator species is also important and should be considered as significant to conservation effort. Merlin and Golden Eagle have been observed by members of the Graffy Environmental Group (Appendix III of previous submission – Inspector comment – as noted above, there was no Appendix III attached to that submission).

- Request that the Inspector reject the applicant's Woodrow APEM report as much of it relies heavily on inappropriate Collision Risk Modelling. Reference to NPWS records of 2 white tailed eagle casualties at wind turbines close to the location in Oct 24 and May 25 (appendix refers).
- Restate flood risk concerns set out in previous submission with reference to enclosures related to the same. Assert the applicant's response does not address this matter. ACP should take into account the increasing frequency and strength of storms as a result of climate change and the consequence of heavier rainfall events, which are very likely to overwhelm any surface water containment measures.
- The applicant submission does not address whether aquatic fauna may be put at risk or endangered as a result of the construction and operation of the wind farm, with reference to Otter, Atlantic salmon, river lamprey and brook lamprey, QIs of designated European sites. The rivers draining the site are within the favourable reference range of the freshwater pearl mussel. It would not be possible to construct or operate the proposal without adverse effect on these aquatic species.
- Alleged intimidation of an objector and member of the Group in relation to the landownership issues raised.
- Regulation on Nature Restoration August 2024.

Inspector Comment: I note that the submission appears to be missing pages 20 and 21.

4.23.7. Dr. Michael J. Cooke:

- People living within 1.5km of a wind farm are at significant risk of disturbance to their sleep and consequent effects on their health. Latest research shows adverse health effects occur within 15km of industrial wind turbines.
- Once sleep is disturbed it has major physiological affects particularly cardiovascular disease, as well as other mental and physical effects. Noise sensitivity is particularly a problem for people with ASD. Some subjects with ASD can have an abnormal and distressing fixation with rotating objects

which was taken into account in two UK planning inquires and an application which was withdrawn.

- Sleep is recognised as a fundamental right under the European Convention of Human Rights article 8.1.
- Rural Ireland is suffering from depopulation. Recently settled families close to the turbines and a small school, which people could leave, with catastrophic effect on the regeneration of the Glen.
- The fact that planning authorities have no definite guidelines on set-back distance is a deficiency that needs to be rectified by objective scientific evidence. The negative consequences on public health are demonstrated.

Enclosures: Article from The Journal.ie on high court case where settlement over illness caused by windfarm; Article from Offaly Express.ie on wind farm causing serious health impacts; Article Irish Times.ie on High Court case where turbines shut down and damages due to noise nuisance; Wind Turbines and Health: The Studies from windconcerns.com; Straboy Wind Farm Oral Hearing Proof of Evidence Dr Christopher Hanning.

4.23.8. Anne Marie O'Donnell

- Concern at the dismissive tone and content of the applicant's Woodrow report on birds.
- Observed a huge increase in recent years in the number of landslides locally related to wet springs and summers.
- The consultants did not carry out a bat survey in their EIAR.
- Reference to Donegal CC refusal for permission ref.21/51990, stating that the roads section does not intend to facilitate proposals for installing HV cables in the local roads network.

Enclosures: Appendix 1 photos of landslides in Graffy wind farm area; Appendix 2 Bats (correspondence with bat conservation Ireland confirming bat records in the area); Appendix 3 copy of planning decision ref.21/51990.

4.23.9. Irish Red Grouse Association Conservation Trust:

- Reference to the Coolglass case and the applicant's reliance on this, assert that this is a complete overturning of the planning system as it stands and cannot hold.
- The proposed site is located on the southern slopes of the Achla mountain an avifauna rich area.
- Dispute the applicant's findings, with reference to sightings of Golden Eagle and White-tailed Eagle by bird watchers on the site in 2024 and 2025.
- There is no mention of CBRGS, Red Grouse is a Red Listed Species, and on a national scale CBRGS is one of the primary habitats for the species in the country, it is protected by the Development Plan under policy BIO-P-2.
- Reference to the Cloghercor SID wind farm (ABP-316025-23) refused in part due to the presence of Golden Eagle territories, with less than 6km separating the sites. The EIAR for that wind farm proposal recognised the importance of the Graffy site for Golden Eagle.
- Strongly rebut the claims in the Woodrow paragraphs 41 and 42. They fail to locate a subsequent successful nest, which was located by GET and NPWS. It is 5km form the centre of the turbine plot.
- Graffy lies at close proximity, 2.5km between so many Golden Eagle territories. Woodrow attempt to mask the distance between territories using the measurement to the nest to nearest turbine. The Graffy windfarm would result in the abandonment of a crucial breeding and foraging pathway.
- Request that the Inspector entirely disregard the Collision Risk Modelling conclusions. Note that the NPWS is aware of White-tailed Eagle casualties at wind farms in the area.
- Reliance on the judgment of Humphreys to override the EU Habitats Directives and local County Development Plans is not in keeping with sustainable planning.
- Concern at the disclosure of nesting data for Merlin in the EIAR. Now the applicant suggests they are protecting Merlin by only sharing less important flightline and records tables as they come forward with new Merlin data for

2024 to 2025. The submission suggests a link between the disclosure in nest locations and the subsequent abandonment of Merlin nests.

- Assert that the Woodrow report is bias to the desired outcome for the applicant.

Enclosures: Email from NPWS re. White-tailed Eagle mortalities; copy of receipt and planning submission on application 21/51990 by Joseph Brenna of the Cró na mBraonáin Red Grouse Sanctuary from Donegal CC; copy of unsigned legal agreement between Cuilfeach Teoranta and owners of property.

4.23.10. Patricia Sharkey:

- Agree with the Boards Refusal. Note that the applicant puts emphasis on the aspiration to reach Net Zero, but this won't be achieved without nuclear. The State's aspirations cannot supersede European Law, the Habitats and Water Framework Directives.
- The applicant refers to the Scottish landscape which does not compare to Donegal which is much smaller and saturated with industrial wind turbines.
- No consideration of Osprey which nest in the area, and do not arrive until after the survey dates.
- Buffer zone is inadequate. Note White-tailed Eagle mortality.
- Applicants cite Percival which was written when industrial turbines were smaller.
- Fail to acknowledge Kestrel are Red List endangered.
- Assert that surveys may be undertaken in weather conditions when birds are less present. Surveys undertaken in nesting season but birds of prey are present all year round.
- The location is susceptible to land slides and within the zone of influence for Freshwater Pearl Mussel.
- There is no engineering mitigation measure that can protect birds from turbine blades.

4.23.11. Adrian Gallagher:

- Because of the change in regulations under which this decision will be decided under, observers should be allowed the time made available to the applicant, to carry out similar surveys and reach judgements. In addition, do not agree that submissions should only take in matters raised in the applicant response.
- The renewable energy sector is subject to NPF and does not override public good. The NPF supports the protection and enhancement of carbon pools such as forests and peatlands. The NPF does not prioritise the immediate area, the norther western region is large.
- The applicant's survey is not independent. Question if survey results should be believed. Surveys in the area have disturbed birds. The area has potential for birds to return.
- The Percival publication quoted in the applicant's survey states that agreement to surveys to be carried out should be agreed with conservation agencies, no mention of this happening, invalidates the authority of the survey. Mapping of habitats should also be carried out.
- Emphasis is placed by the applicant on the NPF, however greater emphasis should be put on the EU's Nature Restoration Regulation Objectives.
- Article 1-9 of Regulation (EU) 2024/1991 of the European Parliament and of the Council on Nature Restoration and Amending Regulation (EU) 2022/869. The submission asserts why the appeal should be refused with reference to this.

4.23.12. <u>October 2025 (following circulation of the response from DAU)</u>

4.23.13. Graffy Environmental Group:

- The Graffy Environmental Group fully endorse the submission by DAU. Note the important role of DAU as a prescribed body with scientific experience and competence within the NPWS a State Organisation.
- Note the deaths of three of Ireland's most iconic birds, the White-tailed Eagle, as a result of wind turbine strikes in south Donegal between October 2024 and May 2025. Query how many other birds of this species have died in earlier years. Note that these strikes were to wind turbines considerably smaller than that proposed. Note that these birds were found as they were tagged and

tracked. DAU records show a concentration of White-tailed Eagle activity in Donegal uplands.

- Note the difficulty of determining where Merlin, a threatened species, may be present.
- Note there is no assessment of Greenland White Fronted Geese migration. This species is a QI for the Lough Nillan SPA and an even more significant QI for Sheskinmore SPA a few km NNW of Ardara, this is a reason to refuse permission.
- The applicant has failed to mention potential impact on the Cró na mBraonáin Red Grouse Sanctuary, and no mention of bats despite record of a roost within metres of the proposed windfarm.
- Note the DAU submission states there are critical gaps in the data, information and analysis presented on the likely effects on European sites, and the site is considered unsuitable for a windfarm.
- ACP should take into account the successful and expanding White-tailed Eagle reintroduction project, which is vulnerable to mortality factors. Evidence of bird mortality is increasing as a result of large-scale wind-energy developments. Reference to a Norwegian study quoted by DAU demonstrating relatively high mortality rate for White-tailed Eagles in wind farm area. Reference to a US study demonstrating that birds observed flying at the same height as the wind turbines were mainly wetland species and raptors of conservation need.
- Note the DAU recorded two known territories where White-tailed Eagle nested in 2024 and 2025 in Bluestack Mountains and Ardara in Co. Donegal.
- With respect to Merlin, NPWS records confirm the presence of at least one pair, ACP cannot disregard the scientific doubt over the whereabouts of the missing Graffy pair(s) which bred successfully in the two years coinciding the arrival of the initial EIAR survey. DAU emphasis that the home breeding range of Merlin in Western Europe is unknown. Complete scientific evidence is required by legislation.

- The High Court Order requires ACP to arrive at a decision in compliance with National and EU legislation and policies for nature conservation and biodiversity including specifically the EU Habitats and Birds Directives, International Conventions and Agreements ratified by Ireland for the protection of birds and wildlife, and in accordance with the EU Nature Restoration Regulation and the EU 2030 Biodiversity Strategy.

4.23.14. Moira Miller:

- Support and reiterate the observations and recommendations made by the DAU. Appeal to ACP to uphold the initial refusal.

4.23.15. Anne Maire O'Donnell:

- Fully support the views in the DAU submission.
- Note the DAU comments on landslides and more summer rainfall in recent years. Agree with DAU comments in relation to lack of bat data.

4.23.16. Dr. Michael J. Cooke:

- Welcome the DAU submission and note the contents.
- ACP are obliged to accept the word of the national competent authority on these matters.

4.23.17. Patricia Sharkey:

- Welcome the NPWS submission. Law to protect these bird species should be upheld. The precautionary principle applies.

Inspector Comment: I note that the submitter references enclosures in the form of photographs of White-tailed Eagle, Golden Eagles and Osprey taken locally, however these were not included with the submission. In any case, my assessment has included consideration of these species in sections 5.6 and 5.7 below.

4.23.18. Irish Red Grouse Association Conservation Trust:

- Fully endorse the DAU report.
- The sanctuary of associate member, Cró na mBraonáin Red Grouse Sanctuary (CBRGS) is deeply affected by this development.

- Previous commentary on Golden Eagle flight corridors from Gweebarra across Achla to the Bluestacks are verified in the DAU report. Concurs with our conclusions re the Graffy area being an eagle hotspot.
- Note DAU comments on Merlin, concurs with the conclusion that disturbance was a key factor in displacing the Merlin temporarily from their quiet Graffy nesting sites.
- Concern regarding collision risk for Whooper Swans, with pairs during winter at Lough Ea and Lough Finn.

Enclosure: Photos of Whooper Swans.

4.23.19. November 2025 (following recirculation of DAU response to allow applicant response)

4.23.20. Adrian Gallagher:

- Welcome the findings of the DAU report. Request the Inspector pay attention to the eight concerns raised in the report.
- Shocked that turbines a short distance south of Graffy at Meencloghspar (Carnaween) have killed two White Tailed Eagles and a third has been killed not far away in Killybegs. This amounts to 3 kills in eight months, while the EIAR suggest 1 collision per 10.8 years.
- Developer sought analysis and commissioned reports are always going to favour their project.
- Note DAU report stating a lack of assessment of Greenland White Fronted Geese migration, a QI of the Lough Nillan SPA. Also note that Golden Plover are a QI for the Lough Nillan SPA and query if any impact assessment has been carried out on Golden Plover. Golden Plover has been observed in the area.
- Possibility of Hen Harriers being in the area is a concern, as the species is in decline, are listed on Annex 1 of the Birds Directive, and are an All Ireland Species of Conservation Concern.
- Cumulative effect of windfarms should be taken into consideration.

- Agree with the DAU on the multiple threats to many species and unique ecosystems that this wind farm would bring.

4.23.21. Graffy Environmental Group:

- ACP should attach considerable importance and significance to the Department's submission.
- Fully endorse the evidence provided in the submission by DAU as it fully vindicates the widespread concerns of the community and the specific concern about the habitats which the Graffy Environmental Group strives to protect.
- Restate points made in earlier submission regarding unknown bird mortality, the White-tailed Eagle reintroduction programme, Merlin surveys, lack of Greenland White Fronted Goose assessment, Red Grouse and the Sanctuary for the same, and peat slides.
- Note and endorse the concerns raised by DAU in relation to Freshwater Pearl Mussel. The submission outlines the ecology and habitat requirements, threats and locations of Pearl Mussel in County Donegal, in support of the opinion of DAU that the proposed wind farm and especially construction and maintenance activities constitute a threat to any local population of pearl mussel.
- Mitigation measures for freshwater pearl mussel should not be taken into account by ACP as they would only be undertaken after granting of planning permission and the applicant's NIS observes that risk can be particularly high following dry periods with subsequent heavy rain. Note that the site is traversed by numerous small streams.
- Article 6(2) of the Habitats Directive emphasises prevention, and has a larger scope than Articles 6(3) and 6(4), as it applies to activities that do not necessarily require development control authorisation or other licensing.
- Reference to the High Court Judgment in the matter of section 50 of the Planning and Development Act 2000 as amended, Sweetman v ABP and the AG Jan 2020, with respect to mitigation intended to protect the River Blackwater outlined in a CEMP. The likelihood of a project being able to be screened out at the appropriate assessment stage on the basis of standard

mitigation measures must be considered very unlikely. The applicant's NIS which refers on several occasions to the potential damage which could be caused to the pearl mussel population, does not contain the certainty required by the Habitats Directive and the CJEU cases which have established that scientific certainty with no gaps in information is essential.

- ACP should pay considerable attention to, and have regard to, the Regulation on Nature Restoration. Pages 57-58 commit the Government to further develop and strengthen the NPWS as Ireland's leading natural heritage agency and prioritise restoration actions on State lands, commit to targets in the National Biodiversity Plan.
- Note the Feasibility Study for a Freshwater Pearl Mussels Translocation Project on the Owenea River in County Donegal, promoted by the Ballinderry Rivers Trust, which illustrates the importance of the pearl mussel and the support for its protection given and expressed by local people concerned about the survival of the species in County Donegal.

Enclosures: Appendix I Pearl mussel translocation project report; Appendix II Copy of previous submission dated 22 Oct 25, with minor typo/formatting amends.

4.23.22. <u>January 2026</u>

4.23.23. Anne Marie O'Donnell, responding on behalf of the Graffy Environmental Group:

- In response to the Applicant's assertion that they are addressing the Board's reasons for refusal only, note the reasons for refusal set out in the Council's Decision dated 30 November 2021 (ref.21/51990).
- Disappointed that the remittal is not being treated as a new application. However, depend on the understanding that ACP is required to consider the remittal de novo. As such, DAU concerns should be considered in full, and matters not limited to potential impact upon Golden Eagle, White-tailed Eagle and Merlin as suggested by the applicant. Concerns around Freshwater Pearl Mussel should not be ignored.
- Note that while the applicant has been given extensions of time to respond, observers have not.

- The submission sets out concern at the tone and content of the applicant response.
- Note that Mr Michael Trewby states that, in recognition of the presence of Eagles, the applicant proposes to relocate some turbines back from the summit of the mountain. This would not have the effect of eliminating the danger to the bird species mentioned.
- The recent turbine strikes that killed three White-tailed Eagles demonstrates that wind farms are a threat to birds in general and, when they are of a protected species, the Irish State must be seen to take appropriate action.
- In response to the applicant suggestion of lead poisoning – there is no foundation for this and the DAU report states there was no evidence of gunshot or poisoning. Also note that the Directive and obligations upon the State does not differentiate between health and sick birds.
- Other matters that make the site unsuitable for a wind farm –
    - The site is on the watershed of two SAC waterbodies;
    - There is a high risk of flooding;
    - There is a high risk of landslides;
    - The development poses a threat to Freshwater Pearl Mussel;
    - There are consent issues;
    - There is scant mention or regard to the Cró na mBraonáin Red Grouse Sanctuary adjacent to the site, Red Grouse being a prey species for Annex I bird species.
- Do not agree with the applicants response to DAU suggestion that the Graffy site could be redesignated as a SPA. The site meets the conditions for protection and merits consideration for protection under the Directive. The fact there are no official plans is irrelevant. The site may be considered an extension of a current SPA and offered the same protection.

Enclosures: Appendix I ACP letter inviting observations; Appendix II list of observations made on the planning application to Donegal CC ref.21/51990.

4.23.24. Adrian Gallagher:

- It is the duty of ACP to consider all aspects of the project and not be curtailed by the applicant.
- In relation to Freshwater Pearl and Salmon there appears to have been no input at any stage in the planning process by the Loughs Agency in an area that falls within its legal remit, namely "(a) the management of property… (b) the conservation, protection and improvement of the fisheries of the Foyle Area generally." The EIA is incomplete without consultation with the Loughs Agency. The Foyle/Finn/Mourne Rivers fisheries catchment includes the site.
- The Loughs Agency may have added information on otters and other protected species. Salmon aren't just protected in their own right and form part of the ecosystem in which eagles live.
- Comhairle na Tuaithe (The Countryside Council) should have been asked to act in an advisory role.
- No detail given as to how using A.I would work as part of mitigation. Donegal differs to Spain as do the species mentioned, Griffon vultures compared to eagles.
- No detail of what colour blades could be painted as part of mitigation, it could make for a bigger eyesore.
- Removing carrion would remove a food source for various species.
- On site mitigation sounds like a 'possibly', 'maybe', 'probably not' situation.
- The Aghla Mountains in Scotland is not a good comparison to the site.
- In relation to the applicant suggestion that larger turbines move slower, consideration is need of the blade length, sweep, with the blade end moving faster than the centre and a greater area to be avoided.
- Table 1 of the submission sets out a comparison of turbine models based on size, asserting that further out from the centre, the larger turbine blades are faster than the smaller turbine at its tip.
- The impact of push or pull/suction from fast speeding turbine blades, causing a bird to be in contact with the turbine should also be factored in.

- The submission includes diagrams to illustrate bird-risk bands for the turbines, making the assertion that the proposal makes a cumulative barrier effect, and suggesting the EIAR is incomplete in this regard.
- Reference to the John Muir Trust 'sounding the alarm on the cumulative impact' of wind farm projects on the Scottish landscape.

4.24. **Applicant**

4.24.1. July 2025

4.24.2. A summary of the main points in the Cuilfeach Teoranta submission dated July 2025 is set out below:

- Renewable Energy Policy at National, Regional and Local Level: Reference to Section 15(1) of the Climate Action and Low Carbon Development Act 2015. Priority must be given to national policy over local policy, as made clear by Humphreys J. in Coolglass Wind Farm Limited v ABP & Ors [2025] IEHC 1 ("Coolglass") at paras 43-46, 143.
- National Planning Framework (NPF) First Revision – April 2025: Reference to the revised NPF and its support for renewable energy, particularly the potential of the Northern and Western Region. The accelerated delivery of additional renewable energy is essential for Ireland to meet climate targets, reduce greenhouse gas emissions and improve energy security. NPO 70, promote renewable energy use to meet national objectives towards achieving climate neutral economy by 2050. On-shore wind underpins the Governments ambitions and should be given significant weight by ACP.
- Climate Action Plans 2024 and 2025: The 2025 targets have not been met and those for 2030 require substantial focus on renewable energy sources if targets are to be achieved. To meet the sectoral emissions ceiling, the electricity sector requires a 75% reduction in emissions by 2030, with the increase in renewable electricity to 80% by 2030 central to achieving this. Accelerating the delivery of onshore wind is essential to reach targets and relevant public bodies are required to carry out their functions in a manner which supports this achievement. It is incumbent upon ACP to exercise its

functions in a manner consistent with the Climate Action Plans 2024/2025, ensuring priority is given to achieving targets.

- Climate Action & Low Carbon Development Act 2015 [as amended 2021]: Reference to the Coolglass decision in the High Court, and of particular note, the requirement to materially contravene the development plans in furtherance of climate goals and to exercise the public interest override in a manner that furthers climate goals.
- Directive (EU) 2018/2001 On the promotion of the use of energy from renewable sources an amended (The 'Revised Renewable Energy Directive'): The revised directive introduces stronger measures to ensure that all possibilities for the further development and uptake of renewables are fully utilised. Article 16(f) provides that by 21 February 2024, until climate neutrality is achieved, Member States shall ensure that in the permit-granting procedure, the planning, construction and operation of renewable energy plants, the connection of such plants to the grid, the related grid itself, and storage assets are presumed a being in the overriding public interest and serving public health and safety when balancing legal interests in individual cases, for the purposes of relevant articles in the Habitats Directive, Water Frameworks Directive and Birds Directive. It is a requirement of European Law that the overriding public interest exemptions in these aforementioned Directives be applied in the case of renewable energy projects. European Law therefore favors [sic] the granting of permission for renewable energy development.
- Energy security in Ireland to 2030 [Department of the Environment, Climate and Communications, November 2023]: Higher levels of renewables reduce geopolitical security risks and reduce the impact of volatility in the prices of fossil fuels through supply diversification. This is particularly evident following Russia's invasion of Ukraine which led to energy spikes. The importance of renewables in safeguarding security of supply is established in policy at both EU and national level.
- Regional Spatial & Economic Strategy 2020-2032: RPO 8.1 confirms Assembly support for development of a safe, secure and reliable electricity

network and transition towards a low carbon economy centred on energy efficiency.

- Donegal County Development Plan 2024-2030: Policy WE-P-1 states that the principle of the acceptability or otherwise of proposed wind farm developments shall be generally determined in accordance with the three areas identified in Map 9.2.1 'Wind Energy'. The term 'normally' in the areas defined as 'not normally permissible' introduces an element of generality. It was incorporated into the draft revised 2019 wind energy guidelines and replaced 'not acceptable' in the 2006 guidelines. In this respect, the Donegal Plan confirms that within each of the wind energy area designations on Map 9.2.1, and along the interface between the designations, there may be small areas that do not fully meet the intent of the designations. The onus is on the applicant to make the case that the site does not meet the characteristics of the designations, but ultimately it is a matter for the Planning Authority to adjudicate on such matters. The methodology for Map 9.2.1 is set out in Appendix B of the Plan. Of the 15 spatial data layers that inform the map, only 3 are identified on the proposed wind farm site, namely, Landslide Susceptibility, Freshwater Pearly Mussel Catchments and areas of Especially High Scenic Amenity (EHSA). The Plan confirms the onus is on the applicant to make the case that the site does not meet the characteristics of the designation. It has been evidenced and accepted that landslides are highly unlikely on the site and that mitigation will prevent adverse impact upon freshwater pearl mussel. The only remaining item is the location in an EHSA area. Policy L-P-1 of the Plan stated that in EHSA areas (Map 11.1) only development of strategic importance or provided for by policy elsewhere in the Plan may be considered. The site falls short of an EHSA, being traversed by a 110kV overhead line, with adjacent hillsides marred by extensive commercial forestry laid out geometrically, and there are no scenic views or prospects. The applicant makes the case that the site does not meet the parameters that merit EHSA designation in comparison to other areas. The applicant makes the case that the Plan is unreasonable in excluding wind energy proposals on sites with an EHSA designation, and asks that permission be applied with reliance on section 37(2)(a) of the 2000 Act, in material contravention of the

development plan, and with reference to the findings of Coolglass. The site should be assessed as an area ‘Open to Consideration’.

- Reasons 2 and 3 of Refusal Decision ABP-312385-22: Report attached at Appendix A (APEM Group Woodrow on behalf of the applicant), sets out a comprehensive case that the refusal reasons 2 and 3 are unreasonable. The report contains further evidence of breeding eagle and merlin surveys (2024 & 2025), updating ornithological impact assessment of golden eagle, white-tailed eagle and merlin as well as a rebuttal of the Board’s refusal reasons 2 and 3. Evidence is presented demonstrating fundamental errors in the Board’s interpretation of the ornithological information provided in the EIAR and NIS. The reasons for refusal are therefore flawed. The conclusions of the EIAR and NIS remain valid. For merlin, the very high sensitivity level applied in the EclA should be downgraded to high or even medium sensitivity due to survey findings. For golden eagles, the potential for displacement is not significant, with mitigation in place, the likely significnat effects due to predicted collision risk should be reduced from low significant to not significant due to survey findings.
- Conclusion: According to latest forecasts by EPA, Irland would miss the 2030 legally binding 2030 climate target by a large margin. Unequivocal support must be given to any proposal seeking to cut emission levels, such as the proposed development.

Enclosed: Graffy Wind Farm, Breeding eagle and merlin surveys (2024 and 2025), Updating ornithological impact assessment for golden eagle, white-tailed eagle and merlin.

4.24.3. November 2025

4.24.4. A summary of the main points in the Cuilfeach Teoranta submission dated November 2025 is set out below:

- In relation to the concerns raised by DAU regarding Freshwater Pearl Mussel and Salmon, the ACP Inspector concluded that impacts could be mitigated, therefore this aspect was not included in reasons for refusal. This concern was not addressed in the applicant submission for this reason.

- In relation to concerns raised by DAU regarding Red Grouse, similar to above, Golden Eagle, White-tailed Eagle and Merlin were the only bird species included in the reasons for refusal, as such the applicant has focused attention on these species.
- Similarly, Greenland White Fronted Geese and bats did not attract sufficient concern with ACP to warrant inclusion in its reasons for refusal.
- A summary of the main points set out in Appendix A: Ornithology (Michael Trewby the applicant's ecologist consultant) is set out in the following bullets:
- Note that with respect to Merlin, the Department has included the Derryveagh & Glendowan Mountains SPA as potentially affected by the proposed development, previously ABP appeared to be satisfied with the assessment presented in the NIS that ecological linkage to this SPA was precluded due to separation. The information provided in the DAU report does not provide any evidence to support the likelihood of merlin being displaced from the proposed development over the long-term during the operational phase. Challenge the DAU observations and assert that the submitted NIS and additional information support the conclusions of the application that impact from the proposed development will be mitigated and will not give rise to adverse impacts to the integrity of any European sites, being Lough Nillan Bog SPA and by extension, the same conclusion applies to Derryveagh & Glendowan Mountains SPA.
- Reference to ACP assessment in case ref. PA05E.312659 Glenard Wind Farm, as detailed in the Additional Inspectors Report 312/R312659A, complied by the Inspectorate Ecologist. This case has similarities to the current Graffy application, with merlin nesting within 600m of a proposed turbine location and within 230m to 390m of associated works. The main difference is that the site is located over 30km from the closest SPA designated for merlin. With consideration of proposed mitigation, no residual effects were anticipated for this other case.
- The core point of contention is the risk of long-term displacement to breeding merlin during the operational phase of the project due to avoidance or collisions. Submit evidence to counter this, including a technical review of

wind farm displacement effects on merlin including examples of operational wind farm sites, where use by merlin has continued post-construction; a technical review of merlin collision risk modelling and population level effects; a technical review of turbine mediated mortality in merlin; a technical review of merlin home range sizes and the application of relevant guidance.

- The applicant asserts that the DAU submission does not exercise proportionality in the assessment of ecological information. Reference is given to guidance on the assessment of potential connectivity to European Sites, and the determination of buffer zones, which are considered in the submitted NIS. It is asserted that discounting mitigation measures outright and not adequately assessing their efficacy is considered a significant omission.
- It is noted that during the design phase of the project, turbine locations were re-positioned to ensure that no turbine locations were within 500m of the two merlin nest locations identified in 2019 and 2020.
- Neither of the Graffy nest locations were occupied in 2021, 2024 and 2025. Surveys indicate wind damage to a nest making it unsuitable and lack of breeding activity in the area.
- Breeding merlin can be highly transient in terms of nest site fidelity. Hardey et al. (2013) notes that merlins do not generally breed for more than one year in old corvid nests in sitka spruce, but may renest in birch, rowan or scots pine for several years. Trees within the 500m turbine buffer for Graffy are almost exclusively sitka spruce.
- Reference to a ringing study in the Yorkshire Dales (Wright 2003) which found most nesting territories supported a number of alternative nesting sites. 39% were relocations within the same territory, 61% were movements to other territories.
- In terms of direct habitat loss due to the infrastructural footprint of the proposed wind farm site, this will be minimal and will not have a significant effect on the availability of potential nesting habitat in the area. Habitat loss is also unlikely to significantly alter availability of prey species.

- With reference to Vattenfall Press Office 2023, Ray Wind Farm in Northumberland England, has successful breeding merlin. ES for several operational wind farms adjacent to the Cairngorm National Park in Scotland have reported breeding merlins within 2km of proposed developments, further details and examples provided in the submission.
- In Ireland, breeding merlin are present adjacent to several operational wind farm sites including Meednadreen Co. Donegal, Cark Co. Donegal, Owenreagh Co. Tyrone, Crockandun Co. Tyrone and Barnesmore Co. Donegal. (From 500m).
- With reference to a study in Denmark, bird species showed vertical and horizontal avoidance in relation to wind turbines, including merlin which lower their flight altitude during post construction compared to the baseline period. Reference to other publications and recent monitoring for long established wind farm sites that support this. This evidence supports that breeding merlin can become habituated to turbines once operations.
- The site is not on a significant migration route or regularly utilised fight line and no likely significant effects are anticipated from barrier effect and effects on bird flight paths are considered under displacement effects in the EIAR.
- Based upon the evidence presented, it can be concluded that displacement effects will not significantly affect the regional merlin population; and therefore will not adversely affect the integrity of merlin SPAs in the region.
- The submission presents data to support population modelling for merlin as undertaken in the application documents. It is asserted that it is appropriate to assess the potential magnitude of effect for predicted collision risk at the regional scale Co. Donegal in this instance, which is relevant given the DAU consideration of ex-situ breeding pairs.
- Data presented to support the conclusion that there is a very low level of collision predicted by the merlin collision risk modelling for Graffy and it can be concluded that the viability of the regional merlin population is not vulnerable to the proposed development. Therefore SPA integrity will not be adversely affected.

- Asserted that population decline for merlin does not coincide with wind energy growth, and that the most significant threat to upland birds in Ireland is climate change which onshore wind addresses.
- Data presented to support the conclusion that merlin are not as susceptible to collision with wind turbines as other species. While quantitative post-construction wind farm studies are lacking for merlin, this is mediated by strong qualitative evidence that merlin are at relatively low risk of collision, including: comparatively low numbers of fatalities reported – notwithstanding the acknowledge limitations in detection; records of pairs successfully breeding adjacent to turbines; and comparatively high fecundity for a raptor species.
- Evidence submitted to support the conclusions of the AA Screening Report with respect to screening out the potential for likely significant effects on the Derryveagh and Glendown Mountains SPA, due to a separation distance exceeding 5km.
- During construction, with mitigation in place, no residual effects are anticipated. During operation, no significant displacement effects are anticipated, and birds will incorporate the wind farm within their core foraging range. Based upon data presented, merlin was not found to be sensitive to collision risk. Therefore no adverse effects on the conservation objectives of the Lough Nillan Bog SPA are anticipated. Similarly, based upon surveys and desk review, the proposed development is not anticipated to give risk to any likely significant barrier effects.
- In relation to the DAU doubt regarding foraging ranges for merlin, there is published literature which provides guidance on the size of core ranges to be applied in ecological impact assessments. Based upon evidence presented, it has been demonstrated that the magnitude of any residual effects pertaining to disturbance or vulnerability to predicted collision risk of merlin are not significant. There is certainty that there will be no adverse effects on the conservation objectives of the SPAs in question. The application of a 5km range for merlin is representative of studies presented in the submission and

informed by professional judgement using best scientific evidence available, being sufficient robust to provide an accurate assessment.

- In relation to Golden Eagle and White-tailed Eagle, the applicant is critical of the information provided throughout the DAU submission. At worst it is factually incorrect in parts, and in others, it is selective in the evidence presented.
- In relation to the potential for future designation of SPAs for these eagle species: There are no SPAs or candidate sites identified for recently re-introduced Annex I species in Ireland, including Golden Eagle and White-tailed Eagle, and no plans regarding the same.
- In relation to the suitability of the wind farm site due to habitat and usage by these eagle species: Large raptor species can co-exist sustainably with windfarm developments. Mitigation measures are proving successful at limiting impacts, including technological solutions, design measures, removing carrion and enhancement measures. For the current case, removal of carrion is proposed as mitigation, reference to Grousemount Wind Farm in Co. Cork/Co. Kerry, where the removal of carrion is in place as mitigation. Reference to an eagle conservation programme in Scotland funded by a wind farm which demonstrates increased Golden Eagle territory. The proposal also includes mitigation through design, with a reduction to 8 turbines from the previously approved 13 and turbine placement in areas with the most eagle activity. The applicant disputes DAU comments with respect to the suitability of habitat on the site for Golden Eagle with reference to the submitted assessment, that foraging habitat is considered poor within the wind farm site with limited cover for prey species and the occurrence of conifer plantation throughout. Habitat considerations are not an issue for White-tailed Eagle which demonstrated weak behavioural responses to wind farm avoidance and therefore effect of displacement is assessed in the EIAR as negligible for this species. Barrier effects were discounted as the dimension of turbine array does not form an excessively elongated or dense barrier to avian populations.
- The assumptions drawn by DAU from the mortality of eagles in the area and the accuracy of the collision risk modelling for Graffy is not appropriate and

does not represent the reality of how turbines operate. Smaller turbines have a significantly higher risk of collision due to faster operational speeds. In addition, where the collisions occurred, the positioning of turbines is of relevance on ridges/steep contours, increasing risk of contact with soaring birds. For Graffy, mitigation by avoidance through design (in terms of location) has been applied.

- In relation to potential cumulative effects, reference is made to the original content of the EIAR for the application. With reference to the DAU comments on increased White-tailed Eagle activity in the area, reference to SNH (2018) guidelines for the assessment of cumulative effects of onshore windfarms on ornithological receptors. In relation to potential cumulative barrier effects, the site is not on a significant migration route or regularly utilised flight line, the proposal does not form an excessively elongated barrier. In relation to potential cumulative operational displacement effects, the effect of wind farms constructed pre-2020 have been measured and accounted or as part of the baseline, and no further consideration is required. In relation to potential cumulative collision risk, this is addressed in the EIAR, and through mitigation measures, including embedded design phase mitigation, as well as the removal of carrion and an ornithological monitoring programme.
- In relation to the DAU comments on the three fatalities of White-tailed Eagle at other wind farms: Query whether lead ingestion, bird-flu, other illnesses or poor body condition was a contributing factor. Reference to a German study that of White-tailed Eagle fatalities recovered, at least 70% could be attributed to anthropogenic factors. With lead intoxication contributing to the highest proportion of dead birds (24.8%), followed by collision with trains, with a much lower proportion attributed to wind turbines (3.8%). This species is particularly sensitive to even very small amounts of lead which they ingest by scavenging the remains of animals killed by leadshot. This could lead to loss of coordination and contribute to lowered avoidance rates. Query whether weather conditions were a contributing factor, or if there is anything attracting birds to the area. Updrafts maybe a factor (with reference to studies regarding the same), and Graffy is different to the wind farms in question in this regard.

- The two example flight line maps presented in the DAU response do not provide a complete picture of White-tailed Eagle activity in the area, and request that the full suite of data is reviewed and presented to ACP to facilitate a more robust assessment. The maps as presented support the applicant case showing significantly lower levels of flight activity through the proposed development site (figures 2 & 3 of the applicant response).
- In relation to the White-tailed Eagle territory and nest in Bluestack Mountains as mentioned in the DAU response, this is beyond the zone of influence of the proposed development.
- It is asserted that the population of White-tailed Eagle is disproportionately made of juvenile individuals currently and this will alter in future, with reduced fatality associated with turbines as a result. Far more eagles are killed by poisoning, shootings, powerlines, trains and natural causes such as bird flu and starvation.
- In relation to the DAU reference to a Baltic Sea region study demonstrating that White-tailed Eagle faces a significant risk with rotor blades: There is more substance to the findings of this study. It recommends a safety buffer of 5km around nest sites. It is noted that there are no known White-tailed Eagle breeding sites within 5-6km of Graffy.
- In relation to the size of the turbines associated with the recorded fatalities compared to Graffy: No mention is made of the faster rotation of these smaller turbines. Table 2 of the applicant submission compares the probability of collision risk for White-tailed Eagle passing though rotor area for a larger turbine with a smaller turbine. The probability of collision for the worst case scenario (fastest rotation period) ranged from 20-24% for smaller turbines compared to 8-9% for larger turbines. Same for Golden Eagle. For smaller birds such as Merlin, they pass through the area faster.
- In relation to the DAU comment that there is no relationship between the predicted risk and recorded mortality of birds at wind farms in order to discredit the collision risk modelling: This should be struck out by ACP as it is spurious in the context of pre-construction ornithological survey and impact

assessments for wind farm development in Ireland. The study referenced by DAU uses different methodologies and has different ornithological landscape.

- In relation to reference to the Meencloghspar Wind Farm EIAR findings for collision risk: It is not appropriate for DAU to present the limited application of ornithological impact assessment in these cases as examples of rigorous collision risk modelling/ornithological impact assessment failing to identify a risk, which is then realised when turbines are operational. Turbines at these sites were sub-threshold for EIAR. The excerpt from the EIS is from 2005, when Golden Eagles had only recently been introduced. More recent planning submissions were subject to FI requests or rejected. Request these references be disregarded.
- In terms of White-tailed Eagle susceptibility to actually colliding with turbines (rate of avoidance) note that the EIAR for Graffy and collision risk model have robustly assessed potential risk, recognising the low behavioural response of White-tailed Eagle to turbines, applying a high precautionary rate. Note that the population trend for this re-introduced species is increasing.
- In relation to the DAU comment that the site is unsuitable: Note that the Department has failed to take into consideration new evidence demonstrating that Golden Eagles avoid wind farms (Fielding et al. 2020, 2021 & 2022).
- In relation to there being Golden Eagle activity in the Aghla area, no mention is made of where the flights occurred relative to the Graffy site. A critic of the relevance of the Cloghercor Wind Farm survey findings to the application is provided.
- The reliance of the DAU's refusal decision on referencing the soundbites from the abstract of a US study does not constitute an appropriately robust review on the relevant research on Golden Eagles and the effects of onshore wind. Reference is made by the applicant of more relevant Scottish studies.

5.0 **Assessment**

5.1. I note the Order of the High Court and the remittal of the case to the Commission for a fresh determination. The assessment of this appeal is set out in three Inspector

reports, namely the original assessment within Inspector's Report dated 28th July 2022, inclusive of an addendum to that report being Inspector's Report dated 23rd October 2023, and this subsequent current report which includes consideration of submissions and changes to policy / legislation since the Order of the High Court.

5.2. I consider that the matters to be addressed in this report fall under the following headings:

- Donegal County Development Plan 2024-2030
- The Climate Action and Low Carbon Development Act 2015 (as amended) (Climate Act)
- Ornithology
- Consultation

5.3. I address each of these matters in turn below.

5.4. **Donegal County Development Plan 2024-2030**

5.4.1. I note that the appeal was previously recommended to be refused under the original and addendum Inspector Reports, with reference to designations for the site under the previous Donegal County Development Plan 2018-2024, namely as an Especially High Scenic Amenity (Map 7.1.1 and Policy NH-P-6) and in an area 'Not Normally Permissible' for wind energy development (Map 8.2.1).

5.4.2. Subsequently, a new Donegal County Development Plan 2024-2030 has been adopted. Map 9.2.1 'Wind Energy' of the Plan designates areas suitable or unsuitable for new wind energy development, based upon environmental sensitivities. Appendix B of the Plan describes spatial sieve analysis of the factors to inform these designations. The subject site is situated in an area designated as 'Not Normally Permissible' under the 2024-2030 County Plan. Policy WE-P-1cc states that the principle of acceptability of wind farm development shall generally be determined in accordance with Map 9.2.1 and for 'Not Normally Permissible' "Windfarm development proposals on previously undeveloped sites, inclusive of sites with a lapsed un-implemented permission (and where substantive works have not been undertaken) will not normally be permissible." The location of the proposed wind turbines is also an area designated 'Especially High Scenic Amenity' on Map 11.1

'Scenic Amenity' of the 2024-2030 Plan. Policy WE-P-2 states that wind farm development must not be located in areas within 'Especially High Scenic Amenity' (Map 11.1) subject to possible exceptions set out in Policy WE-P-1A. The specified exceptions under WE-P-1A would not apply to the current appeal as it concerns circumstances where a permission has lapsed but substantial works completed, or where there is an extant permission.

5.4.3. I note that with reference to Policy WE-P-1^{cc} and Map 9.2.1, the applicant states that the term 'normally' in 'not normally permissible' introduces an element of generality. Page 179 of the County Development Plan 2024-2030 states that there may be small areas that do not meet the intent of the designation and that the onus is on the applicant to make a case that a site does not meet the characteristics of a designation. In this regard, the applicant goes on to state that of the 15 spatial data layers that inform the map 9.2.1 designations (Appendix B of the Plan refers), only 3 are identified on the wind farm site (landslide susceptibility, freshwater pearl mussel catchments and areas of especially high scenic amenity). With reference to the assessment set out in the original Inspectors Report, the applicant subsequently asserts this accepts that landslides are unlikely to occur, that mitigation is acceptable with respect to freshwater pearl mussel, and therefore only remaining item is the location within an area of especially high scenic amenity.

5.4.4. Before turning to the landscape designation, I note that the Graffy Environmental Group state in their response that they dispute the applicants claim that the site is only subject to three spatial layers with reference to Appendix B of the Plan, highlighting connections to designated sites (SACs, SPAs and NHAs). I continue my deliberations on theses points below.

5.4.5. Page 209 of the County Development Plan 2024-2030 states that in relation to landscape classifications, there may be areas that do not fully meet the definition of the designation and the onus is on the applicant to demonstrate that a site does not meet the characteristics of a landscape designation within which it is situated, as well as that the development applied for shall not adversely affect the classification of the wider landscape. Policy L-P-1 of the Plan states that within areas identified as 'Especially High Scenic Amenity' (EHSA) on Map 11.1, only developments of strategic importance, or developments that are provided for by policy elsewhere in this Plan may be considered.

5.4.6. The applicant states that the site falls short of an EHSA, as it is traversed by a 110kV overhead line, with adjacent hillsides marred by extensive commercial forestry laid out geometrically, and because there are no scenic views or prospects. The applicant makes the case that the site does not meet the parameters that merit EHSA designation in comparison to other areas. The applicant's case is that the site should be considered as an area 'Open to Consideration' and that the Plan is unreasonable in excluding wind energy proposals on sites with an EHSA designation, with reference to section 37(2)(a) of the 2000 Act and the findings of the Coolglass High Court Judgment.

5.4.7. The Local Authority states in their response that the proposed development is contrary to Policy WE-P-1^{cc} and WE-P-2.

5.4.8. There is no dispute that the appeal site is situated in the 'Not Normally Permissible' area under Map 9.2.1 of the Plan. The applicant accepts that the site is overlapped by this area as illustrated in Map 9.2.1, but asserts that the designation is flawed in application to the individual site in question, highlighting that page 179 of the County Development Plan 2024-2030 acknowledges that there may be small areas that do not meet the intent of the designation, with the onus upon the applicant to make a case that a site does not meet the characteristics. In this regard, the applicant addresses the spatial data layers that inform map 9.2.1 (Appendix B of the Plan refers), challenging their applicability to the site. The Local Authority and third parties disagree with this position. As such, I address the applicability of the spatial data layers informing the 'Not Normally Permissible' designation for the site, in turn in the table below.

5.4.9. Table 5.1: Applicability of Spatial Data Layers for Map 9.2.1 to the Subject Site (Appendix B of the Donegal County Development Plan 2024-2030 refers)

Spatial Date Layer	Appraisal
Special Areas of Conservation (SACs and SPAs)	Applicable. The proposed development will involve works within the boundary of both the River Finn SAC and West of Ardara / Maas Road SAC. There are hydrological connections to European sites. There are no SPAs within 1km of the proposed development, however there is potential to impact bird populations associated with the Derryveagh

	and Glendown Mountains SPA and Lough Nilan Bog SPA. These links are addressed in the NIS for the proposed development. Section 6 and associated appendices 2 and 3 of this report below, sets out an appropriate assessment and concludes that adverse impacts to designated sites are avoided with the application of proposed mitigation. Therefore, the site is within the designated zone relating to this spatial data layer, however the applicant has mitigated potential adverse impacts.
Ramsar Sites	Not applicable.
Natural Heritage Areas	Not applicable. There are no NHAs within 1km of the proposed development, there is a proposed NHA, namely West of Ardara / Maas Road pNHA, which could potentially be affected by the construction or operation of the proposed project, it overlaps with the SAC of the same name.
Especially High Scenic Amenity	Applicable. The site is situated within an area designated 'Especially High Scenic Amenity' (EHSA) as detailed on Map 11.1 'Scenic Amenity' of the Donegal County Development Plan 2024-2030. Landscape and visual effects are addressed in sections 8.3 and 10.3 of the original Inspector's report, and the application of the EHSA designation to the site is considered further below in this section of my report.
Settlement Framework Boundaries with 500m Buffer	Not applicable.
Glenveagh National Park	Not applicable.
Nature Reserves	Not applicable.
Long Established Ancient Woodland	Not applicable.

Landslide Susceptibility	Applicable. The GSI landslide susceptibility maps most of the Graffy site as 'moderately low' to 'moderately high', with some areas classified as 'high'. A Peat Slide Risk Assessment is included within the EIAR for the proposed development. The original Inspector's report addresses this in section 8.6 and concludes that based upon the submitted detail, including site investigations and proposed mitigation, the proposed development would not result in adverse impact. Therefore, the site is within the designated zone relating to this spatial data layer; however, the applicant has mitigated potential adverse impacts (through design).
Meenbog	Not applicable.
Lifford-Stranorlar Municipal District Areas	Not applicable.
The Gweebarra River Valley	Not applicable.
St. John's Point	Not applicable.
Freshwater Pearl Mussel Catchments	Applicable. The submitted EIAR contains related surveys, stating that the nearest habitat is c.2.3km downstream of the proposed site. Potential for adverse effect is acknowledged, with proposed mitigation to avoid adverse effects. This is addressed in sections 8.5.21 to 8.5.37 of the original Inspector's report and my AA in this report. The potential for impacts on aquatic ecology can be avoided, managed and/or mitigated by measures that form part of the proposed scheme, by the proposed mitigation measures and with suitable conditions. Additional mitigation through the timing of works will also be implemented where possible, and consultation with the IFI and Lough Agency will be undertaken if trenchless crossing is required during critical

	periods. Therefore, the site is within the designated zone relating to this spatial data layer, however the applicant has mitigated potential adverse impacts.

5.4.10. The Plan does not enhance or reduce the applicability of the 'Not Normally Permissible' designation depending upon the number of spatial layers that apply to a site. In this sense, the fact that some of the spatial layers that inform Map 9.2.1 do not apply to the site does not negate its designation.

5.4.11. As outlined above, there are 4 applicable spatial layers overlapping the subject site, including situation within as EHSA, which is considered further below. The sensitivities identified by the remaining 3 spatial layers have been addressed by the applicant through the design and mitigation proposed as part of the development. However, the applicability of the 'Not Normally Permissible' designation persists in any case, and I conclude that the applicant's argument to challenge the applicability of this designation to the site is not successful. This is because while mitigation will address potential adverse impacts relating to the sensitivities identified in the 3 remaining spatial layers, that does not alter the applicability of the designation. In short, planning permission might still be granted in light of proposed mitigation, but without alteration of the designation, (by way of material contravention for example). In my view, the type of scenario envisaged by the Plan's exception at page 179 of the County Development Plan 2024-2030 (i.e. small areas that might not meet the intent of the designation, with the onus upon the applicant to make a case that a site does not meet the characteristics), would involve areas where sensitivities do not arise despite a site overlapping an identified zone. That is not the case for this site, where sensitivities arise.

5.4.12. Turning to the applicant's case that the site falls short of an EHSA, as it is traversed by a 110kV overhead line, with adjacent hillsides marred by extensive commercial forestry laid out geometrically, and because there are no scenic views or prospects. I note Page 209 of the County Development Plan 2024-2030 states that there may be areas that do not fully meet the definition of the designation, with the onus on the applicant to demonstrate this. I also note the Local Authority position, that the appeal

site remains designated as an EHSA area and the proposal is contrary to policy WE-P-2.

5.4.13. Page 209 of the Plan defines EHSA as follows: 'These are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.'

5.4.14. The Proposed Development Site is located within Landscape Character Area (LCA) 38: Bluestack as defined by the 'Landscape Character Assessment of County Donegal' (2016) which is a landscape dominated by vast areas of upland mountains, bogs and lakes. Page 182 of the Landscape Character Assessment notes under access and recreation, the iconic mountain landscape framing views into the landscape. The LCA is noted for its numerous walking trails, unobstructed panoramic views of the Donegal landscape. Section 8.3 of the original Inspector's Report for this appeal provides an assessment of landscape impact as part of EIA. I also note that the submitted EIAR sets out a Landscape and Visual Impact Assessment highlighting applicable designations for the site, including its LCA and location within the EHSA (designated at that time under the former County Development Plan, with this designation similarly reflected under the current Plan). While it is now asserted in the applicant response that the subject site falls short of the EHSA designation, in my opinion, the assessments carried out to date do not support that position. The LCA, EIAR and subsequent EIA in the original Inspector's report identify the characteristics and designations applicable to the site and support its EHSA designation in my view. The lack of designated scenic views or prospects does not interfere with the EHSA designation, the former being separately assessed. Furthermore, the existence of overhead lines and commercial forestry does not dominate the landscape, which remains intensely natural which was apparent upon my visit to the site. I therefore do not agree with the applicant, and I am satisfied that the EHSA designation does apply to the site. Therefore, the related provisions within policies WE-P-1^{cc} and WE-P-2 of the County Development Plan 2024-2030 remain relevant to my assessment.

5.4.15. I also note that Policy L-P-1 of the Plan states that within areas identified as 'Especially High Scenic Amenity' (EHSA), only developments of strategic importance, or developments that are provided for by policy elsewhere in this Plan

may be considered. The proposed development is not specifically provided for elsewhere within the Plan, and the proposed development is not identified as being of strategic importance, in that it is not identified as being essential, as a standalone development, to the achievement of wider strategic goals. While renewable energy and wind energy does support strategic aims to tackle the climate crisis, the proposed development on its own is not fundamental to the achievement of these aims, and other proposals on more suitable sites can more appropriately contribute to these strategic aims. Policy WE-P-2 is also specific that wind farm development must not be located in an EHSA area.

5.4.16. I am satisfied that the subject site is situated within a designated EHSA and that policy under the current Development Plan 2024-2030 does not support the principle of wind energy development on the site with reference to WE-P-1^{cc}, and specifically prohibits it with reference to policy WE-P-2.

5.4.17. Policy E-O-5 concerns ensuring that wind energy development does not adversely impact residential amenity and policy WE-P-3 in the current Development Plan 2024-2030 sets out required considerations in the assessment of wind energy development proposals, including matters relating to residential amenity. I list these considerations below with an indication of where this assessment can be found in the Inspector Reports relating to this appeal:

5.4.18. Table 5.2: Criteria Under Policy WE-P-3

Policy WE-P-3 Criterion	Assessment
a. Sensitivities of the county's landscape.	Considered in the original Inspector Report section 8.3; 10.3 and this current report above.
b. visual impact on protected views, prospects, designated landscapes, as well as local visual impacts.	Considered in the original Inspector Report section 8.3; 10.3 and this current report above.
c. impacts on nature conservation designations, archaeological areas, county geological sites, historic	Considered in the original Inspector Report sections 8.9; 8.6; 8.10; and 8.4.34; as well as in this current report

structures, public rights of way and walking routes.	in sections 5.6, 6 and Appendices 2 and 3.
d. local environmental impacts, including those on residential properties, such as noise, shadow flicker and over-dominance.	Considered in the original Inspector Report section 8.4.
e. visual and environmental impacts of associated development, such as access roads, plant and grid connections from the proposed wind farm to the electricity transmission network.	Considered in the original Inspector Report section 8.
f. scale, size and layout of the project and any cumulative effects due to other projects.	Scale, size and layout is considered as part of visual effect in section 10.3 and cumulative effect is assessed as part of each topic area in section 8 (EIA), of the original Inspector Report.
g. the impact of the proposed development on protected bird and mammal species.	Considered in the original Inspector Report section 8.5 and this current report in sections 5.6, 6 and Appendices 2 and 3.
h. the requirements and standards set out in the DEHLG Wind Energy Development Guidelines 2006, or any subsequent related Guidelines (or as may be amended).	Considered in the original Inspector Report section 10.2.
i. 'The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)'.	Considered in the original Inspector Report section 8.7.

j. the protection of drinking water sources and public water services infrastructure.	Considered in the original Inspector Report section 8.6.17 and 8.7.
Applications for wind farm development located on peatland and bog shall be accompanied by a 'Peat Stability Risk Assessment Report'.	Considered in the original Inspector Report section 8.6.9-8.6.19.

5.4.19. In relation to Policy WE-P-6 of the Plan, I note that this is addressed in section 8.4.31 of the original Inspector's report with respect to community benefit arising from the proposed scheme. I am also satisfied that the substance of all other relevant policies under the current Development Plan have been appropriately addressed by the assessment set out concurrently across all the Inspector Reports for this appeal (including subsequent sections of this report below).

5.4.20. The applicant highlights the overarching support for wind energy development through European and National legislation, strategies and planning policy approaches and I specifically address the Climate Act in detail below (section 5.5), with respect to the obligations upon the Commission under section 15 to perform its functions in a manner that is consistent with national climate strategies. As part of this, I also consider the applicant's arguments with respect to the Coolglass High Court Judgment in the section below.

5.4.21. In relation to the local planning policy approach addressed in this section of my report and specifically the current 2024-2030 County Development Plan, I note that policy E-O-2^{cc} states that the maximum potential should be sought from the County's wind energy resources, commensurate with the receiving environment and local developments patterns consistent, with the proper planning and sustainable development, which will contribute to the national drive towards ensuring the security of energy supply. Section 9.2 'Wind Energy' of the Development Plan also highlights the importance of wind energy as a renewable energy source for the County and more nationally. However, it is also noted that:

"Donegal already generates significant wind energy outputs relative to other counties in Ireland and has become an energy exporter, despite the limited available

electricity grid infrastructure in the County and significant environmental and heritage designations covering over one-third of the County. It is therefore challenging to achieve a balanced approach to the identification of further suitable locations that will not detract from the scenic and environmental resource of the County."

5.4.22. The Plan goes on to identify that the approach in the Development Plan as set out in Map 9.2.1 and associated policy WE-P-1[cc] has been developed specifically to respond to the 2006 Wind Energy Guidelines which, whilst acknowledging national commitments, states that development plans must achieve a reasonable balance between responding to Government Policy on renewable energy, and 'enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development, taking into account the legitimate views of local communities.' (p.11). Therefore, the locations described under Map 9.2.1 have been considered directly in light of an overarching system that promotes the expansion of wind energy, but in a sustainable manner, consistent with proper planning and sustainable development considerations, also as stated in policy E-O-2[cc]. Therefore, while wind energy development is promoted through planning policy, in determining the acceptability of individual proposals, the principle of development should be considered in light of designations under Map 9.2.1 and related considerations, as set out in my assessment in this report, and the associated Inspector reports for this appeal.

5.4.23. I also note that the Office of the Planning Regulator, in their assessment of the consistency of the Development Plan (in draft form) with legislative and policy requirements, highlights the 'strong evidence base' for map 9.2.1, with a recommendation that the sieve analysis be included as an appendix to the Development Plan, which it subsequently was. The OPR state that 'the Office supports the renewable energy strategy for wind and other renewable sources… consistent with NPO 55. map 9.2.1, which identifies locations considered appropriate for wind farm development, will greatly assist in the implementation of renewable energy projects in a planned manner.' This endorses the approach set out in the Development Plan and specifically Map 9.2.1 in consistency with the national planning policy approach. (Page 46 of OPR submission on Draft Donegal CDP 2024-2030 dated 13th October 2023 available via OPR website).

5.4.24. The subject site is located in an environmentally sensitive area being designated 'Not Normally Permissible' for wind energy development and as an EHSA. With reference to the assessment set out in sections 8.3 and 8.5 of the original Inspector's report, as well as the assessment in this report (this section above and section 5.6 below), I consider the proposed development to have unacceptable landscape, visual and ornithological impact (as assessed in section 5.6 below with respect to eagle species). Subsequently, the principle of the development is contrary to policies WE-P-1[cc] and WE-P-2 of the 2024-2030 Development Plan, and the proposed development is contrary to policy WE-P-3 (particularly parts a. b. and g.) resulting in adverse landscape and visual impact, alongside unacceptable impact upon protected birds (see related assessment in section 5.6 below in relation to eagle species). As such the proposed development is contrary to the proper planning and sustainable development of the area.

5.5. The Climate Action and Low Carbon Development Act 2015 (as amended) (Climate Act)

5.5.1. Section 15 of the Climate Act states the following; (1): 'A relevant body shall, in so far as practicable, perform its functions in a manner consistent with— (a) the most recent approved climate action plan, (b) the most recent approved national long term climate action strategy, (c) the most recent approved national adaptation framework and approved sectoral adaptation plans, (d) the furtherance of the national climate objective, and (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State'. The interpretation of this has now been clarified by judgment in the Supreme Court in *Coolglass Wind Farm Limited v An Bord Pleanála* ([2026] IESC 5).

5.5.2. In relation to the High Court Judgment for the Coolglass case as referenced by the applicant, I note that while the decision of the High Court was upheld by the Supreme Court on appeal, the interpretation of section 15 was not accepted as set out, and the Supreme Court sets out its own interpretation of section 15, which is the interpretation that prevails.

5.5.3. In light of the obligations upon the Commission under section 15, and the interpretation of this as set out in the Coolglass Judgment, I note that the applicable

planning policy for the site is set out in the current County Development Plan which was adopted on 16th May 2024 and covers the period until 2030. Therefore, the plan has been prepared and adopted in light of the Climate Action Plan 2024 to 2029. The current climate action plan CAP 25 builds upon CAP 24 and is read in conjunction with CAP 24. Page 32 of the County Development Plan identifies the responsibilities of the Local Authority with respect to climate as outlined in the Local Authority Action Plan 2024-2029, which was prepared taking into account other relevant climate legislation and policy (pages 8-12 LACAP). Page 32 of the County Development Plan states that 'The County Development Plan shall be read in conjunction with the Climate Action Plan and shall seek to actively translate national climate policy to local circumstances, assist in the delivery of the climate neutrality objective at local and community levels, and identify and deliver on Decarbonising Zones within the local authority area.' Flowing from this is policy E-O-2^{cc} in the County Development Plan, concerning maximising the potential of wind energy resources in a manner consistent with the proper planning and sustainable development, while contributing to the national drive towards ensuring the security of energy supply. The specific wind energy policies then inform this application under the County Development Plan, and I address these specifically in section 5.4 above. Overall, I am satisfied that in the County Development Plan is consistent with section 15 of the Climate Action Plan in the application of planning policy to the current development proposal.

5.5.4. I note the applicant's case that the County Development Plan is unreasonable, as it includes policies that exclude wind energy proposals on sites with an EHSA designation. The applicant therefore requests that permission be granted in material contravention of the development plan, with reference to section 37(2)(a) of the 2000 Act and the findings of Coolglass.

5.5.5. I have set out above in section 5.4 of this report why I consider the site to be correctly described as designated within a Not Normally Permissible area under the County Development Plan. I also describe in the same section why I do not concur with the applicant's case concerning the application of an EHSA designation to the site. I also address ornithology in section 5.6 below. These matters contribute to the broad range of matters informing my assessment of proper planning and sustainable development considerations for the appeal, and as outlined in each of the Inspector's reports.

5.5.6. As acknowledged in this report (and the other Inspector reports for the appeal), the European and National frameworks guiding planning decisions, set out overarching support for wind energy development and this flows through to the local planning policy approach as set out in policy E-O-2^{cc}, seeking to maximise the wind energy resource of the County. However, this supportive framework is not to the exclusion of all other considerations. Assessment of development proposals for renewable energy, including wind energy, requires consideration of site-specific environmental factors. This is recognised in NPO 70 of the NPF, promoting renewable energy at 'appropriate locations'. As well as section 3.5 of the Wind Energy Guidelines 2006 which sets out a step-by-step guide to the analysis of suitable areas for wind energy, and indeed this guide informed the approach set out in the County Development Plan (page 178). It is clear that planning policy promotes renewable energy, including wind energy, but that this promotion is not in isolation to locational considerations. For the current appeal, the site is situated in an area designated 'Not Normally Permissible' and within an Especially High Scenic Amenity area, both of which have associated policies that guard against wind energy development. Conversely, other areas of the County have been identified as 'Acceptable in Principle' and 'Open for Consideration', neither of which apply to the subject site.

5.5.7. The importance of onshore wind to contributing towards state obligations to reduce harmful energy emissions weighs heavily in the balance for any planning decision relating to wind energy development; however, the individual circumstances for the current appeal site, must also be given due weight. The assessment of the current appeal (as described in the 3 Inspector reports) has found that the subject site is unsuitable for wind energy development due to environmental sensitivities, specifically relating to landscape and visual impact, and effect upon ornithology (noting the conclusions of my assessment below in section 5.6). In my view, there is insufficient justification to depart from the local planning policy framework for the site based upon the specific circumstances of the current appeal and with reference to s.37(2)(b) of the 2000 Act. The proposed development is not of strategic or national importance; there is no conflicting objectives in the development plan or ambiguity in this regard, with the policy unambiguously safeguarding against wind energy development on the site; the applicable national and regional planning policy is addressed in reports for the appeal and recognises the importance of locational

factors in planning assessment; and there is no extant permission on the site, or pattern of development in the area, which would justify a material contravention of the development plan to permit the development.

5.5.8. As such, I am not recommending that the Commission approve the development in material contravention of the Development Plan, as I do not consider the requisite justification exists in respect of the proposed development at the subject site, however that does remain an option available, should the Commissioners disagree with my approach.

5.6. **Ornithology**

5.6.1. I note that the appeal was previously recommended to be refused under the original Inspector report, with reference to potential significant adverse impact upon Merlin (a SCI of the Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA) (objectives NH-O-1 and NH-O-10, as well as policy NH-P-5); and significant risk of collision and loss of habitat for Annex I bird species Golden Eagle and White-tailed Eagles.

5.6.2. Policies BIO-P-1 to BIO-P-2 concern compliance with the requirements of the EU Habitats Directive and EU Birds Directive, the conservation / protection of QIs / SCIs for designated sites, the Cró na mBroanáin Red Grouse Sanctuary and any species protected under the Wildlife Act (save to the extent necessary to provide for strategic infrastructure projects); other ecology policies include BIO-P-3 to BIO-P-5 concerning the protection of features of biodiversity, prevention of the spread of invasive species, and consideration of pollinator habitat, although the focus of the ecology assessment in this report is specifically surrounding ornithology impacts only.

5.6.3. Since the time of the original Inspectors report and following the issuing of a Section 131 Notice to all parties seeking further submissions, with subsequent circulation and responses to those submission (see section 4 above), the applicant has submitted updated findings for the site in ‘Graffy Wind Farm, Breeding eagle and merlin surveys (2024 and 2025)’, and ‘Updating ornithological impact assessment for golden eagle, white-tailed eagle and merlin’.

5.6.4. In addition, following receipt of these further submissions and responses, the Commission engaged a specialist in the area of Ornithology. The specialist report is included as Appendix 1 to this report (file reference 'R322673_App1'). This specialist report includes analysis of all documentation relating to ornithology for the appeal to date, including the EIAR as originally submitted and subsequent submissions from the applicant including the updated findings referenced above, and this has informed the Assessment carried out in this report. I set out my assessment of anticipated effect upon Merlin, Golden Eagle and White-tailed Eagle species below.

5.6.5. Merlin

5.6.6. Merlin is protected under the Wildlife Act 1976 and amendments to this. Merlin is also listed under Annex I of the EU Birds Directive and it is protected under Appendix II of the Berne Convention. Merlin is also a SCI of the Lough Nillan Bog SPA which is situated c.1.7km away from the subject site, and the Derryveagh and Glendowan Mountains SPA situated c.2.4km away from the subject site. Section 6 and Appendix 2 and 3 of this report sets out an Appropriate Assessment (and screening for AA) in further consideration of potential effect upon QI / SCI species.

5.6.7. Applicant surveys for breeding Merlin were undertaken in the breeding seasons of 2019 and 2020 and followed relevant guidance in NatureScot and Hardey. These would have identified any breeding attempts by Merlin within the study area, and a pair of Merlin was found nesting at two locations in the same general area, being at their closest, 570m and 680m from turbine locations. Follow up surveys carried out in 2021, 2024 and 2025 only searched previous nest locations and did not locate the breeding pair. In 2025 the 500m study area was also searched, but ideally this would have extended out to 2km. The Commission's Specialist Ornithology Report at Appendix 1 outlines survey effort in more detail and identifies the limitations with respect to survey data presented (para.129-138). Despite limitations acknowledged in the survey effort, the Commission's Specialist Ornithologist concludes that the data collected during 2019 and 2020 represent a reasonable worst-case scenario (given the presence of an active nest) and the data presented remains representative of the current baseline conditions (para.138). I am satisfied overall, that the survey data presented is sufficient for the purposes of my assessment.

5.6.8. In relation to the potential for disturbance to breeding Merlin from construction activities, as outlined above, I note that the closest previous nest location to the site was 570m from turbine locations. The applicant describes this as embedded mitigation within the proposed design, with final turbine location informed by the maximum disturbance distance of 500m away from known nest locations as recommended by NatureScot guidance. Other construction activity is also beyond the 500m buffer, and in the case of the turbine delivery route, utilising existing roads that is unlikely to create new disturbance. Additional mitigation in the form of pre-construction checks is also described, to be carried out where construction coincides with breeding season, with no construction to occur within 500m of known nest locations during this time, and a 500m buffer applied to any new nests that are located. As works will be beyond the recommended 500m buffer, I am satisfied that there is no potential for significant adverse effect upon breeding Merlin as a result of construction associated with the proposed development.

5.6.9. In relation to potential effect during operation, this primarily relates to collision risk. The applicant has produced a collision risk model that predicts 0.73 Merlin collisions over the 30-year life of the windfarm. Taking the inputs into this model, and with regard to the evaluation of this within the Commission's Specialist Ornithology Report (para.148 in particular), I am satisfied that this is a robust prediction of potential effects arising from the operation of the proposed windfarm. I note DAU concern that the windfarm could prevent re-occupation of previously occupied Merlin territory due to bird strike or avoidance, however I also note that Merlin flight activity will mostly occur close to the ground when hunting small birds, below the collision height of modern turbines (flight being under 18m). Overall, with respect to collision risk, I am satisfied that this presents a negligible magnitude of effect and is therefore not significant. As a result, I am satisfied that the proposed development will not result in significant adverse effect upon the Merlin population in this regard.

5.6.10. I note that previous Inspector reports for this appeal have recommended a refusal on the basis of potential significant adverse impact upon Merlin, as well as consequential adverse effect upon Merlin SCI populations resulting from displacement of non-SCI Merlin from areas proximate to the site into the SPA, and subsequent displacement (as a result of territorial dispute / competition) of SCI Merlin. I address the potential effect upon SCI Merlin populations in more detail as

part of my Appropriate Assessment (AA) in Section 6 and Appendices 2 and 3 below. As outlined above, I am satisfied that the proposed development does not have potential for significant adverse impact upon Merlin in general, and with reference to the conclusions of my AA (see section 6), I am also satisfied that adverse effects on site integrity for the Lough Nillan Bog SPA (and the Derryveagh and Glendowan Mountains SPA, or any other European sites) can be excluded with respect to SCI Merlin populations.

5.6.11. Since the time of the original and addendum Inspector's report, the applicant has provided 'Graffy Wind Farm, Breeding eagle and merlin surveys (2024 and 2025)' and 'Updating ornithological impact assessment for golden eagle, white-tailed eagle and merlin'. The data presented confirms that previous nest sites for Merlin from 2019 and 2020 have not been active in subsequent years, and while recognising the limitations in the survey effort presented, I am satisfied that these limitations do not materially alter the findings presented, and that alongside the Commissions Specialist Ornithology Report, provide a robust basis for the reliance upon the mitigation presented by the applicant for the protection of Merlin (primarily in the form of embedded mitigation with respect to turbine location). Whilst I am cognisant of the DAU concerns regarding the displacement of SCI-Merlin and the related previous Inspector recommendation in this regard, following qualified and professional specialist advice from the Commission's Ornithologist (para.151 refers), I am satisfied that there is no scientific evidence to support the likelihood of such a proposition.

5.6.12. Overall, and in conclusion with respect to Merlin, I am satisfied that the proposed development will not result in potential for significant adverse effect, and with particular reference to my AA carried out in section 6 and related Appendices 2 and 3 below, the long-term maintenance of Merlin as an SCI of the Lough Nillan SPA will not be adversely affected.

5.6.13. <u>Golden Eagle and White-tailed Eagle</u>

5.6.14. Golden Eagle and White-tailed Eagle species are protected under the Wildlife Act (1976) and the Wildlife (Amendment) Act 2000. They are listed under Schedule 1 of the Wildlife Acts, meaning they receive the highest level of protection against

intentional disturbance. Both eagles are also listed on Annex I of the EU Birds Directive (2009/147/EC) and protected through the Bern Convention (Appendix II).

5.6.15. These eagles are distinct species and have differing behavioural responses to wind turbines. Therefore, both the applicant and commission's specialist ornithologist, as well as this assessment, evaluate potential effects upon these species separately.

5.6.16. Golden Eagle:

5.6.17. With respect to the applicant's survey effort, I note the specialist ornithologist report commentary in this regard. This identifies inadequacies with the survey effort undertaken for the species and a lack of justification with respect to the approach taken, with reference to NatureScot (Scotland's Nature Agency) which provides comprehensive best practice approaches to raptor survey standards (and the most appropriate guidelines to be relied upon noting the absence of an Irish equivalent).

5.6.18. The applicant's surveys have not been undertaken during all optimum periods or include what would be expected in terms of follow-up surveys, and as such, would be insufficient for the detection of nest locations for Golden Eagle.

5.6.19. With respect to survey periods, NatureScot recommends two years of surveys unless shorter periods can be demonstrated to be sufficient. While surveys undertaken by the applicant during the 2019 breeding season intended to identify potential nesting habitat, wider more dedicated surveys within the 6km buffer were not carried out. Only half a day of dedicated eagle surveys were undertaken in 2019 (in June). In 2020, three days of eagle surveys were carried out in February / March with territorial activity by Golden Eagle recorded, but despite this, no follow-up surveys were carried out until early July and August, which could mean that nesting attempts were missed. The applicant acknowledges this themselves in submissions, with reference to territorial birds recorded between 2018 and 2020, that surveys may have overlooked these birds being from separate territories, rather than being from a territory outside the 6km buffer. In follow-up surveys in 2024, the applicant concluded that there is a Golden Eagle territory within the 6km buffer, but the exact location was not determined, with suitable nesting habitat existing within 2.3km of the proposed development. This nesting habitat was previously discounted as unsuitable in the EIA report. Despite this, follow-up surveys that might usually be expected given these circumstances, were not carried out by the applicant. Only a few hours

of additional survey effort were undertaken in the same day in March 2024, which recorded a territorial bird. With reference to paragraph 173 of the Commission's specialist ornithology report, I note the Commission's ornithologist's view that "Given that golden eagle nests are not always visible, and based on the bird's aggressive behaviour, it seems likely that an incubating female was present nearby during these watches…"

5.6.20. With respect to potential effects as a result of the proposed development upon Golden Eagle, these are likely to primarily relate to operational effects, given the characteristics of surrounding habitats and buffer distance during construction works. I note that paragraph 177 of the Commission's specialist ornithologist report states that "The Applicant's assessment of operational effects on golden eagle was carried out on the assumption that golden eagle was not nesting within 6km of the Proposed Development. The 2024 surveys indicate this assumption no longer holds: a territory is now considered present, likely centred around 2.5km south of the Proposed Development." The ornithologist report also concluded that the applicant's reliance upon baseline period and data collected cannot be substantiated given the lack of flight activity surveys in 2024 and highlights concerns regarding the representativeness of original first-year flight activity data. Paragraph 181 of the ornithologist report states in relation to recorded flight activity, that this is "indicative of a new territory being established in the study area in early 2020, a possibility the Applicant did not adequately investigate. On this basis, the first year of surveys (October 2018 to August 2019) cannot be considered representative of the current baseline conditions and has significantly underestimated flight activity over the Proposed Development."

5.6.21. During operation, there is therefore potential for impact upon Golden Eagle, primarily as a result of avoidance behaviour, as scientific research suggests this is the species characteristic response to windfarms. This could result in the loss of functional habitat and displacement of the species, with birds avoiding otherwise suitable foraging and commuting habitat. Collision risk being only a secondary concern to the more likely impact as a result of avoidance behaviour.

5.6.22. The suitability of the site for foraging is therefore of specific consideration in determining resultant likely effects during operation upon Golden Eagle, however there are no dedicated eagle prey surveys to inform this. The EIA does however

identify the presence of various eagle target species such as hare, red grouse, fox, badger etc. but concludes that the site is poor quality foraging habitat. However, the Commission's ornithologist report states (at para.191) that the site "clearly lies within the core foraging range of a golden eagle territory and contains species that golden eagles regularly prey upon." In my view, the applicant has failed to adequately recognise the foraging potential of the site given the prey and raptor species that are present. I also do not agree with the Applicant's description of the proposed development site as being conifer plantation throughout. During my visit of the site, it was apparent that the conifer plantation does not form the primary characteristic of the site, with much of the site supporting suitable foraging areas for prey species.

5.6.23. In relation to specific consultation responses concerning potential effect upon Red Grouse as a prey species, as highlighted above, there is an absence of specific eagle prey availability surveys, and therefore it is not possible to conclude with any certainty, whether the site forms important foraging habitat for eagles. In this regard, I note the Commission's Specialist Ornithology Report which states at para.191 that red grouse densities are generally low in Ireland and the densities of hares are unknown on this site, which forms part of the core foraging range for Golden Eagle territory, occupied by relevant prey species; therefore, it cannot be confidently concluded that this is not an important foraging area for this species. As such, there is a lack of certainty of potential effects upon Gold Eagle as a result of impacts upon prey species, including Red Grouse, on the site.

5.6.24. In relation to concern regarding potential effects upon Red Grouse as a species itself, I am satisfied that this is unlikely to be significant and note that the nearby sanctuary is not a designated site. While I note that policy BIO-P-2 specifically references conservation of the Cró na mBroanáin Red Grouse Sanctuary, the proposed development does not overlap with, or directly impact upon habitat within the sanctuary and, in the event that the Commission determined to grant consent, consideration of areas proximate to the sanctuary could be given through habitat management measures for the proposed works (secured by condition). The proposed development itself does not encroach upon the sanctuary and Red Grouse is not an SCI of any potentially effected European site. While Red Grouse is red listed and was recorded on the site, it was recorded at low densities and taking into account species characteristics (i.e. preferred habitats on the site and flight heights)

there is no likely significant effect at a population level, as a result of the proposed development. However, as highlighted above, this does not discount potential indirect consequential effect upon Golden Eagle should the density of Red Grouse (as a prey species) reduce on the site alongside other prey species, due to impact from the proposed development.

5.6.25. Overall, having considered the full suite of documentation submitted for the application, including more recent submissions by the applicant, alongside consultation responses and the Commission's own ornithologist specialist report, I am not satisfied that the survey effort and methodology employed by the applicant provides an accurate representation of baseline conditions. As a result, the likely consequential impact upon Golden Eagle from functional habitat loss and displacement has been underestimated in my view and there is potential for likely significant adverse effect upon Golden Eagle as a result of operation of the proposed development.

5.6.26. White-tailed Eagle:

5.6.27. The survey methodologies for Golden Eagle and White-tailed Eagle are similar, and the deficiencies outlined above with respect to Golden Eagle broadly apply in consideration of the survey effort for White-tailed Eagle (as outlined in more detail in the Commission's specialist ornithologist report para.202-204). Lack of survey data and insufficient further searches undermine the findings presented by the applicant in relation to presence of White-tailed Eagle and related nesting, in and around the site. Albeit noting that there are distinctions between the two species and recognising the lack of territorial behaviour observed, and the extent of satellite tagging; baseline conditions described in the EIA may be considered more reasonably accurate for White-tailed Eagle. However, further flight activity surveys would have been the most suitable way to confirm this, and the submitted findings are lacking in this regard.

5.6.28. Similar to Golden Eagle, the primary potential effect would be during operation. This is because the likely nest locations (given habitat characteristics) are outside the NatureScot maximum disturbance buffer distance of 500m. With respect to the type of operational effects, White-tailed Eagle does not display the same avoidance

behaviour as Golden Eagle, and therefore collision risk is the focus of the assessment in this regard.

5.6.29. The worst-case collision risk for white-tailed eagle is presented as 7.3 collisions over 30 years or 1 bird every 3.9 years, using an appropriate avoidance rate of 95% as prescribed by NatureScot guidance and based on the largest candidate turbine. The applicant then compares this mortality rate to the national population, however the Commission's specialist ornithologist report highlights in para.220, this comparison should be to the breeding population alone, as sub-adult birds are not guaranteed to survive to breeding age. This would alter the magnitude of effect of collision risk to White-tailed Eagle resulting from the proposed development. In addition, and as highlighted below, I have further reservations regarding how the magnitude of this effect has been measured by the applicant. As a result, I disagree with the applicant's conclusion that there is a low-magnitude of collision risk associated with the proposed development.

5.6.30. In relation to mitigation, the applicant presents measures that they believe would reduce collision with turbines. With respect to utilisation of the site by White-tailed Eagle, the presence of carrion is identified as an attractor, with associated mitigation identified to remove this to reduce the occurrence of lingering birds. I note consultation responses in relation to this, as well as related comments in the Commission's ornithologist report (paragraphs 206, 212 and 229). I am not satisfied that the application has demonstrated the efficacy of such a mitigation measure to reduce White-tailed Eagle presence and associated risk of collision, given the practical considerations around this. Who would be responsible for removal of carcasses, how often checks would take place and the practicality of locating carrion, particularly that of smaller prey species, makes the efficacy of this mitigation less certain in my opinion. There is also uncertainty about wider ecological impact of this carrion removal upon the wider ecology of the site and other species.

5.6.31. The EIAR outlines other measures that are emerging as effective tools for limiting collision risk to eagles, recommending that based upon observations during post construction monitoring there is a contingency to adopt further mitigation measures. Including painting a turbine black to make it more visible to eagle species. In my view, it would be inappropriate to alter the design in this regard at the post decision stage, considering the assessments that have been undertaken of visual effects

based upon a white finish to the turbine structures. Potential use of an automated systems (IdentiFlight) is also outlined with respect to bird detection and shut down system which could be effective, but I query the practicality of this, and the difficulties with assessing effectiveness, bearing in mind that ineffectiveness would be demonstrated by bird mortality, which as outlined below, has a high magnitude of effect. These measures are also described as post-construction contingency, rather than mitigation incorporated into the proposal.

5.6.32. In relation to consultation responses that note the collision fatalities of White-tailed Eagle at Anarget windfarm, I note concerns in this regard, as well as commentary in the Commission's specialist ornithology report regarding comparisons to this scheme. In my opinion, comparisons to this nearby windfarm are of limited value to an assessment of likely collision risk for the proposed development, beyond demonstrating the sensitivity of the species to collision risk in general. The focus of this assessment is therefore on the characteristics of the proposed development, the characteristics of the eagle species, with a high vulnerability of collision risk, and the baseline characteristics of the site. In this sense, there are inadequacies in the collision risk modelling undertaken by the applicant, as highlighted in the Commission's specialist ornithologist report (para.222-224) and incomplete survey data (as outlined above) which undermine the applicant's estimations of potential effects. Furthermore, in terms of the magnitude of any effect, the Commission's specialist ornithologist report provides a useful examination of how this should be measured (paragraphs 225-226), highlighting inadequacies with the approach taken by the applicant which subsequently result in an underestimation of potential magnitude of effect.

5.6.33. Overall, I am not satisfied that the applicant's data provides certainty with respect to potential effect upon White-tailed Eagle, and therefore, in my view, this data does not form a robust basis upon which a decision to grant permission can be made. There is an absence of comprehensive survey effort and appropriate methodology with respect to the applicant's submitted documentation, and in my view, it is likely that significant harmful impact upon White-tailed Eagle would result as a consequence of collision risk during operation of the proposed windfarm.

5.6.34. Conclusion on Golden Eagle and White-tailed Eagle:

5.6.35. The proposed development has the potential for significant adverse effect upon both Golden Eagle and White-tailed Eagle, protected species under Wildlife Acts, and therefore contrary to policy BIO-P-2 of the Donegal County Development Plan. In addition, I consider the proposed development to have unacceptable impact upon protected birds (namely Golden Eagle and White-tailed Eagles), with reference to considerations under policy WE-P-3 (particularly part g.).

5.6.36. In reaching this conclusion, I am mindful of the Commission's ornithologist report in consideration of the suitability of The Percival (2003) methodology in assessing the magnitude of effect upon non-SPA species such as the current Golden Eagle and White-tailed Eagle populations in Donegal; noting the comments at paragraph 199 of that report that "These considerations carry particularly weight given the fragility of the Irish golden eagle population, currently around five pairs, and the loss of even a single bird could have material consequences given the slow reproductive rate of this species."… and at paragraph 225 "Given the very small Irish populations of both white-tailed eagle and golden eagle, we are of the opinion that these species, along with other Annex 1 species holding small, declining or re-establishing Irish populations, should also be treated as Very High sensitivity, irrespective of SPA linkage." Noting the comments in paragraph 226 that "Both eagle species have small populations and are K-selected, reaching reproductive age around five years of age and typically producing one offspring per year. This combination of traits leaves little capacity to absorb additional mortality. Any losses to these populations can have serious implications because recovery from such losses depends on slow reproductive turnover. This is also why we consider it appropriate to categorise both species as being of Very High sensitivity, notwithstanding that this represents a departure from the sensitivity levels set out in Percival (2003)[3] for species not linked to an SPA." As such, in my view the potential magnitude of resultant effect from operation of the proposed development has been underestimated by the applicant given the particular sensitivities and vulnerabilities of the eagle species concerned.

5.7. **Consultation**

5.7.1. I have considered submissions as summarised in section 4 of this report, throughout my assessment both above and below. In relation to missing pages and enclosures in two of the submissions, as highlighted in section 4.23 above, I do not consider

these omissions to be material to my consideration of the case, particularly given the quantum of correspondence and cross circulation, and I am confident that all pertinent matters raised by third parties have been addressed. In this section of my report, I address matters raised in submissions not already covered in other sections of my report.

5.7.2. I note third party and DAU comments with respect to potential effects upon bat species. This was considered comprehensively in the EIAR and original Inspectors report (paras. 8.5.16 – 8.5.20).

5.7.3. I note submissions with respect to impact upon peatland environment, associated release of carbon and landslides. The original Inspectors report gives comprehensive consideration of peatlands and landslides in recognition of the National Peatlands Strategy 2015. Detailed consideration of characteristics of the site, including peatland areas, is given in section 8.6. There is consideration of peat, peat regeneration, peat stability and landslides in that report at paras.8.6.9 – 8.6.14. As well as carbon losses as a result of peat excavation in the original Inspectors report at paras.8.8.11 – 8.8.12.

5.7.4. I note submission regarding consideration of archaeological effects and specifically the lack of assessment of a mass rock in the adjacent townland of Crocam. Section 8.9 of the original Inspectors report gives full consideration to all relevant archaeological features requiring assessment. Other archaeological features are sufficiently distant from, or exhibit characteristics, that ensure no likelihood of effects requiring EIA.

5.7.5. With respect to the lack of surveys for White-Clawed Crayfish, I note that there are no records of this species in or around the subject site.

5.7.6. I note third party and DAU comments with respect to the consideration of potential effects upon Greenland White Fronted Geese, a SCI of Lough Nillan SPA. As a QI of the Lough Nillan SPA, this species is considered as part of my Appropriate Assessment screening in Appendix 2. There were no records of this species foraging or roosting within the environs of the site (zone of sensitivity 600m) and no flight lines were detected through the site. As such, there is no likelihood of significant adverse effects. Similarly, there is no records of osprey for the site or surrounds. Hen harrier is addressed in paragraphs 8.5.52 to 8.5.53 of the original Inspector's report and

whooper swan in paragraph 8.5.47. Kestrel is addressed in paragraph 8.5.56 of the original Inspector's report.

5.7.7. In relation to submissions concerning the application, it's EIAR and the assessment carried out by ACP in this regard, I note that the original Inspector's report and the EIA within this persists (sections 8.1 – 8.13) and is adopted in my own recommendation. While a new development plan has been adopted, this current report sets out an assessment with respect to the up dated policy framework with respect to wind energy development within the County. In relation to the applicant's reference to the application being an 'amendment' to an approved windfarm, the assessments for the appeal have been undertaken in light of the planning history for the site, including an expired planning consent from 2011 for a windfarm which expired in 2021 (ABP PL05B.237656). This previous consent is addressed in the original Inspector's report, with reference in particular to paragraphs 10.3.6-10.3.7 which highlights the different planning policy approach applicable at that time.

5.7.8. Impact upon the Gaeltacht is considered in section 10.4 of the original Inspectors report. With respect to potential effect upon tourism / hikers arising from the proposed development, this matter overlaps with considerations regarding visual effect, which has been addressed in both this current, and the original, Inspector reports.

5.7.9. I note submissions raising concern regarding flooding. Flooding is addressed in paragraphs 8.7.5 to 8.7.6 of the original Inspectors report. With reference to the Hydrology Impact Assessment for the application, it was concluded that any increased run-off from the site will be imperceptible, and the development will not take up any flood storage capacity. Potential effects upon water quality from run-off from the site is also considered in the original Inspectors report in paragraphs 8.7.7 to 8.7.20 with mitigation identified to ensure no significant adverse remedial effect.

5.7.10. I note a submission highlighting structural concerns regarding use of the Graffy bridge for delivery of construction components. In this regard I note that TII set out in their submission on the application as summarised in the original Inspector's Report, that where abnormal weight loads are proposed, all structures should be checked to confirm capacity to accommodate loads, and in the event that the Commission

determined to grant permission for the development, this could form a condition to the consent (as has been the approach to other windfarm applications).

5.7.11. I note submissions with respect to landowner consents. This is also considered in paragraph 10.5.2 of the original Inspectors report. In the event that permission is granted, landowner rights remain unaffected, and works would only be able to take place legally with the consent of those with a legal interest over impacted lands.

5.7.12. I note submissions highlighting concern that the 2006 Wind Energy Development Guidelines are outdated, however these are the current guidelines in place at the time of writing this report. I also note that section 8.4 of the original Inspector's report addresses potential effect upon human health.

6.0 Appropriate Assessment

6.1.1. Reason for refusal no.2 flowing from the assessment in the original Inspector's report ref.312385 related, in part, to the displacement of Lough Nillan Bog SPA (004110) populations of Merlin. Since the time of that report, further submissions have been made to the Commission including additional findings presented by the applicant with respect to Merlin, and the Commission's specialist ornithology report contained in Appendix 1 of this report. Subsequently, the assessment set out above in relation to Merlin, has concluded that it is no longer considered that there are likely significant adverse effects upon Merlin as a result of the proposed development. As a result, it is necessary in these particular circumstances, and in light of the conclusion regarding impact upon Merlin which is a SPA SCI species, to undertake a fresh Appropriate Assessment (AA) of the application, and I set this out below. While the AA set out below replaces that set out in the original Inspector's report ref.312385, it is cognisant of, and retains elements of, that previous AA where findings remain unaltered since the time of that previous assessment.

6.1.2. **Stage 1 – Screening for Appropriate Assessment**

6.1.3. I have had regard to submissions in relation to the potential impacts on European sites, as part of the Natura 2000 Network of sites. Appendix 2 attached to this report sets out a detailed screening for AA and should be read in conjunction with this section of my report.

6.1.4. AA Screening Conclusion

6.1.5. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the proposed development, alone or in combination with other plans and projects will give rise to significant effects on West of Ardara/Maas Road SAC [000197], River Finn SAC [002301], Lough Nillan Bog SPA [004110] and Derryveagh and Glendowan Mountains SPA [004039] European Sites, in view of those sites' conservation objectives. Appropriate Assessment is required.

6.1.6. This determination is based on:

(i) Potential for emissions to water during construction activities, including the accidental release of alkaline contaminants from concrete and cement during construction of hardstanding and other structures; general water quality impact associated with works machinery, infrastructure and on-land operations (incl. material storage, oils, fuels and chemicals); sedimentation through release of sediments, soils and other materials from proposed excavations and vehicular movement; and release of HDD drilling fluid. During operational phase, there is also the potential for the release of cooling oils associated with the substation site, or the use of chemical fuels and lubricants utilized in route turbine maintenance. With consequential adverse effect upon QIs of the West of Ardara/Maas Road SAC and River Finn SAC.

(ii) Potential for disturbance to affect mobile QIs of the West of Ardara/Maas Road SAC (Otter), and SCIs of the Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA (Merlin). The proposed development will give rise to aerial noise and visual disturbance during construction phase through the movement of vehicles, plant and staff through the site in addition to construction noise.

6.1.7. The potential impacts are expanded upon in further detail as part of a Stage 2 Appropriate Assessment below.

6.1.8. In relation to the remaining European sites considered, taking into consideration the characteristics of the proposed development, the distance between the proposed development site to these designated European sites, as well as the lack of any pathway or link to these European sites, it is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the construction and operation of the proposed development, individually or in combination with other plans or projects, would not be likely to have an adverse effect on the conservation objectives or features of interest

of Lough Nillan Bog (Carrickatlieve) SAC [000165]; Meenaguse Scragh SAC [001880]; Cloghernagore Bog and Glenveagh National Park SAC [002047]; Meentygrannagh Bog SAC [000173]; Coolvoy Bog SAC [001107]; Meenaguse/Ardb ane Bog SAC [000172]; Gannivegil Bog SAC [000142]; Lough Eske and Ardnamona Wood SAC [000163]; Slieve Tooey/Tormore Island/Loughros Beg Bay SAC [000190]; River Foyle and Tributaries SAC [UK0030320]; Sheskinmore Lough SPA [004090]; Inishkeel SPA [004116]; Durnesh Lough SPA [004145]; Lough Foyle SPA (NI) [UK9020031]; and Lough Foyle SPA (RoI) [004087]. Therefore, I agree with the applicant's submitted screening report that a Stage 2 Appropriate Assessment is not required with respect to these aforementioned European sites.

6.1.9. **Stage 2 – Appropriate Assessment**

6.1.10. The submitted NIS identifies the potential for negative effects upon West of Ardara/Maas Road SAC and River Finn SAC, as a result of the proposed development and I concur that an Appropriate Assessment (AA) of the proposed development is required with respect to these aforementioned European sites. In addition, further consideration is required of potential effects upon Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA to exclude potential for significant negative effects.

6.1.11. Appendix 3 of this report sets out the detailed consideration of potential effects upon the European site as part of an Appropriate Assessment for this proposed development. The site-specific conservation objectives and species of conservation interest for River Barrow and River Nore SAC is set out in Appendix 2 and 3. The AA determination is set out below. An Specialists Ornithology Report for the appeal is also set out in Appendix 1 of this report.

6.1.12. <u>AA determination – Conclusion</u>

6.1.13. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

6.1.14. In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on West of Ardara/Maas Road SAC and River Finn SAC, Lough Nillan Bog SPA and Derryveagh and

Glendowan Mountains SPA in view of the conservation objectives of that site and that Appropriate Assessment was required.

6.1.15. Following an examination, analysis and evaluation of the NIS all associated material submitted including NIS, and taking into account observations, I consider that adverse effects on site integrity of West of Ardara/Maas Road SAC and River Finn SAC, Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA cannot be excluded in view of the conservation objectives of that site and reasonable scientific doubt remains as to the absence of such effects.

6.1.16. My conclusion is informed by the following:

6.1.17. Following an examination, analysis and evaluation of the NIS all associated material submitted (including subsequent submissions, applicant findings and the Commission's Specialist Ornithology Report), and taking into account observations, I consider that adverse effects on site integrity of the Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA can be excluded due to baseline characteristics and embedded mitigation with respect to turbine layout.

6.1.18. I also consider that adverse effects upon the site integrity of West of Ardara/Maas Road SAC and River Finn SAC can be excluded in view of the conservation objectives of those sites and that no reasonable scientific doubt remains as to the absence of such effects. My conclusion is based on the following:

6.1.19. The application of general mitigation measures to minimise effects during all phases of the development, alongside specific mitigation with respect to the potential for effects upon water quality, which will prevent potential for, the occurrence of / or adverse impact resulting from, the construction, operation or decommissioning of the proposed development.

7.0 Water Framework Directive

7.1.1. With respect to objectives set out in Article 4 of the Water Framework Directive (WFD), section 8.7 of the original Inspectors report and Chapter 7 of the EIAR considers Hydrology. The site is in the valleys of Stracashel and Stranagoppoge Rivers. I note that section 7.2.2 of the EIAR, outlines the water quality in the streams and rivers draining the site as having moderate (Q3-4) to good (Q4) status. This has

since been updated with the River Waterbody WFD Status 2019-2024, with a status for Stracashel River (Stracashel_010) of ‘Good’ and for the Stranagoppoge River (Stranagoppoge_010) of ‘Poor’ (previously ‘Moderate’). The Stracashel River is assigned ‘Not at Risk’, while the Stranagoppoge River is assigned ‘At Risk’.

7.1.2. The original Inspector’s report outlined the baseline hydrological conditions of site / surrounds, and I am satisfied that with the application of the proposed mitigation summarised in both this report (in AA appendix 3, mitigation to protect water quality for European sites will also more generally protect water quality with respect to WFD status), and the original Inspector’s report (with respect to EIA protection of water quality sections 8.7.10 to 8.7.20), the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

8.0 Recommendation

8.1. Having regard to the documentation on file, the observations and submissions received, the assessment both above and in the original Inspectors report, I recommend that permission for the proposed windfarm development be refused, for the following reasons and considerations.

9.0 Reasons and Considerations

9.1. The Commission reached its decision in accordance with its duties under Section 15(1) of the Climate Action and Low Carbon Development Act 2015, as amended, and the requirement to, in so far as practicable, perform its functions in a manner consistent with inter alia the Climate Action Plan 2025 and the furtherance of the national climate objective.

9.2. The Commission performed its functions in relation to the making of its decision, in a manner consistent with Section 15(1) of the Climate Action and Low Carbon Act 2015, as amended by Section 17 of the Climate Action and Low Carbon Development (Amendment) Act 2021, (consistent with Climate Action Plan 2024 and Climate Action Plan 2025 and the national long term climate action strategy, national

adaptation framework and approved sectoral adaptation plans set out in those Plans and in furtherance of the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State).

And in coming to its decision, the Commission had regard to the following:

- European legislation, including of particular relevance:
    - Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directive) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
    - EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy and amending Directive EU/2023/2413 which aims to speed up the EU's clean energy transition.
    - Directive 2011/92/EU (The EIA Directive) as amended by Directive 2014/52/EU.
- National and regional planning and related policy, including:
    - National policy with regard to the development of alternative and indigenous energy sources and minimisation of emissions from greenhouse gases. Particularly the NPF First Revision 2025 and National Policy Objective 70.
    - Wind energy Guidelines: Guidelines for Planning Authorities 2006 and the draft guidelines published in 2019.
    - The objectives and targets of the National Biodiversity Action Plan 2023-2030.
- Regional and local planning policy, including:
    - Regional Spatial Economic Strategy for the Northern and Western Regional Assembly;
    - Donegal County Development Plan 2024-2030.
- Other relevant national policy and guidance documents.

- The nature, scale and design of the proposed development as set out in the planning application and the pattern of development in the vicinity.
- The likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European sites.
- The submissions made on the planning appeal to An Coimisiún Pleanála and the applicant responses to the same.
- The report and the recommendation of the Inspector, including the examination, analysis and evaluation undertaken in relation to appropriate assessment and the assessment including environmental impact assessment within the original Inspector's report, as well as the specialist ornithologist report for the Commission relating to the same.

Appropriate Assessment: - Stage 1

The Commission considered the Screening Report for Appropriate Assessment, contained within the Natura Impact Statement and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites.

The Commission agreed with the screening assessment and conclusion carried out in the Inspector's report that the West of Ardara/Maas Road SAC (000197); River Finn SAC (002301), Lough Nillan Bog SPA (004110), and Derryveagh and Glendowan Mountains SPA (004039) are European Sites which the proposed development has the potential to have a likely significant effect. The Commission also agreed that the proposed development is not likely to have significant effects on the Lough Nillan Bog (Carrickatlieve) SAC [000165]; Meenaguse Scragh SAC [001880]; Cloghernagore Bog and Glenveagh National Park SAC [002047]; Meentygrannagh Bog SAC [000173]; Coolvoy Bog SAC [001107]; Meenaguse/Ardb ane Bog SAC [000172]; Gannivegil Bog SAC [000142]; Lough Eske and Ardnamona Wood SAC [000163]; Slieve Tooey/Tormore Island/Loughros Beg Bay SAC

[000190]; River Foyle and Tributaries SAC [UK0030320]; Sheskinmore Lough SPA [004090]; Inishkeel SPA [004116]; Durnesh Lough SPA [004145]; Lough Foyle SPA (NI) [UK9020031]; and Lough Foyle SPA (RoI) [004087] in the absence of mitigation and therefore excluded these sites from further consideration.

Appropriate Assessment: - Stage 2

The Commission considered the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file, and carried out an Appropriate Assessment of the implications of the proposed wind farm development for European Sites in view of the conservation objectives for the West of Ardara/Maas Road SAC (000197); River Finn SAC (002301), Lough Nillan Bog SPA (004110), and Derryveagh and Glendowan Mountains SPA (004039). The Commission considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment and to allow it to reach complete, precise and definitive conclusions for Appropriate Assessment.

In completing the assessment, the Commission considered, in particular, the likely direct and indirect impacts arising from the proposed development, both individually and in combination with the other plans and projects and taking into account any mitigation measures which are included as part of the current proposal, in view of the conservation objectives for the European Sites.

The Commission accepted and adopted the Appropriate Assessment carried out in the inspector's report with respect to the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to those Sites conservation objectives.

In overall conclusion, the Commission was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of any European Site, in view of those Sites conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

This conclusion is based on a complete assessment of all aspects of the proposed project, both alone and in combination with other plans and projects of relevance, and took into account all submissions received during the course of the application.

Environmental Impact Assessment

The Commission completed in compliance with s.172 of the Planning and Development Act 2000 an environmental impact assessment of the proposed development, taking into account:

- the nature, scale, location, and extent of the proposed development;
- the Environmental Impact Assessment Report and associated documentation submitted with the application;
- the submissions from the applicant, the planning authority, the observers and the prescribed bodies; and
- the Inspector reports, and adopting in particular, the relevant reasoned conclusions set out in the original Inspectors report, with the exclusion of matters relating to Merlin which are considered in Inspector report ABP-322673-25.

The Commission considered that the Environmental Impact Assessment Report supported by the documentation submitted by the applicant during the course of the appeal, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Commission agreed with the examination, set out in the Inspector reports, of the information contained in the Environmental Impact Assessment Report, and associated documentation submitted by the applicant and submissions made in the course of the planning appeal.

Reasoned Conclusions

The Commission considered that the Environmental Impact Assessment Report and supporting documentation submitted by the applicant during the course of the appeal, provided information which is reasonable and sufficient to allow the Commission to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Commission is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and

complies with the provisions of Directive 2011/92/EU as amended by EU Directive 2014/52/EU amending. The Commission considered that the main significant direct and indirect effects of the proposed development (including the windfarm and substation) on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative, are:

- Potential impacts arising on population and human health as a result of noise and shadow flicker to residential property in the vicinity, which would be encountered during the construction and operational phase and would be mitigated by the implementation of the measures set out in the EIAR and the CEMP which include specific provisions relating to the control of dust, noise and shadow flicker.
- Significant adverse landscape and visual impacts arising from the siting, scale and height of the proposed turbines, which would be highly prominent over an extensive geographical area, would have a dominant and obtrusive impact on visually and environmentally sensitive landscapes, and would impact on the amenity of the area and designated landscape. The incongruity with the natural landscape and adverse visual impact would not be mitigated by design, the separation from settlements or its setting on the downward side of the slope of Aghla Mountain or its partial setting of certain turbines within commercial forestry. In addition, it should be noted that the comparisons used as part of the LVIA between the proposed development and the previously permitted but now expired permission (ABP PL05B.237656) was not considered useful for the purposes of this assessment.
- Potential impacts arising on lands, soil and geology, as a result of the increased risk of peat instability and peat erosion during the construction and operational phases which would be mitigated by the implementation of measures set out in the EIAR, Peat Stability Plan and the CEMP which include specific provisions relating to peat and spoil management, including monitoring. Potential impacts on water quality, hydrology, hydrogeology and associated aquatic ecology, in particular FWPM and Atlantic salmon as well as other fish species and additionally on water dependant species such as otter arising from the potential indirect effects caused by increased run-off,

such as soil erosion and sediment release into the receiving watercourses, which would be mitigated by project design features, including attenuation measures and management of any in-stream works, and the measures outlined in the CEMP, including Ecological Management Plan, HDD methodology, Watercourse Crossing Methodologies, Surface Water Quality Monitoring Plan and an outline Site Drainage Management Plan;

- Potential positive impacts on air and climate during the operational phase arising from the connection of renewable energy technology and transfer to the national grid, thereby facilitating a transition from fossil-fuel dependent energy sources to renewable sources;
- Potential negative impacts on the public road network due to the increase in vehicle movements and resulting traffic during the construction phase which would be mitigated by upgraded site access and the preparation of a Construction Traffic Management Plan.
- Development of wind turbines at the height, scale and siting proposed would likely pose a significant risk of collision for the Annex I bird species White tailed Eagles and functional habitat loss and displacement for Annex I bird species Golden Eagle. Furthermore, the proposed development, would substantially erode the quality of the environment for these sensitive bird species, including the erosion of habitat, encroachment of foraging areas, and effect on roosting and breeding sites.
- The impact on cultural heritage would be mitigated by archaeological monitoring with provision made for resolution of any archaeological features or deposits that may be identified.

The Commission completed an environmental impact assessment in relation to the proposed development and concluded that the effects of the development on the environment by itself and in combination with other plans and projects in the vicinity would not be acceptable due to the adverse landscape and visual impacts and the impact on protected bird species. In doing so the Commission adopted the report and conclusions of the inspector.

The Commission concluded that the development would result in significant adverse landscape and visual impacts arising from the siting, scale and height of the

proposed turbines, which would be highly prominent over an extensive geographical area and would have a dominant and obtrusive impact on visually and environmentally sensitive landscapes. The incongruity with the natural landscape and adverse visual impact would not be mitigated by design, the separation from settlements or its partial setting within commercial forestry.

The Commission concluded that the appeal site and surrounding area is of importance to both Golden Eagle and White-tailed Eagle, species included for protection in Annex I of the Birds Directive (2009/147/EEC), and that notwithstanding the mitigation measures set out by the appellant to address the impacts of the development on these species, it is considered that the proposed development would have a significant adverse effect failing to preserve and maintain sufficient diversity of area and habitat for both species and failing to ensure the continued presence and reproduction of these species in their current area of distribution in County Donegal.

I recommend that permission is refused in accordance with the following reasons and considerations:

1. The proposed development is located on a site, which lies within an area designated for Especially High Scenic Amenity (EHSA). As outlined under Policy WE-P-2 of the County Donegal Development Plan 2024-2030, wind farm development must not be located in EHSA areas, with reference to Map 11.1: 'Scenic Amenity', and noting possible exceptions outlined in policy WE-P-1A which would not be applicable to the current appeal. Notwithstanding the potential contribution this proposed renewable energy project would have in meeting National renewable energy targets; it is considered that the proposal would result in a considerable and unacceptable adverse visual impact upon this upland environment designated as an Especially High Scenic Amenity area. It is considered that the proposed development sited at this location would constitute a highly obtrusive development that would detract from the existing natural character of the area, would undermine the setting of this unspoilt valley and would erode the landscape and visual quality of this rural area and compromise the scenic amenities of this visually sensitive and vulnerable area. The proposed

wind turbines would, thereby, be excessively dominant features and a visually obtrusive form of development in this landscape, would materially conflict with policy WE-P-2 as set out in the Donegal County Development Plan 2024-2030, and would seriously injure the landscape and visual amenities of the area. In addition, the proposed wind farm development is located on a site designated in an area where wind energy development is not normally permissible as defined in Map 9.2.1of the County Donegal Development Plan 2024-2030 and associated policy WE-P-1^{cc} of the County Donegal Development Plan 2024-2030. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is located within an area of significant ornithological value, as evidenced by the applicant's bird surveys in support of the application. It is considered that the siting, height, scale and operation of the proposed turbines would result in a significant risk of collision for the Annex I bird species White-tailed Eagles and functional habitat loss and displacement for Annex I bird species Golden Eagle. On the basis of the information submitted in support of the application and specifically within the submitted Environmental Impact Assessment Report and subsequent submissions during the course of the appeal, (including 'Graffy Wind Farm, Breeding eagle and merlin surveys (2024 and 2025)', and 'Updating ornithological impact assessment for golden eagle, white-tailed eagle and merlin'); in respect of the Golden Eagle and the White Tailed Eagle, both of which are classed as 'high sensitivity to wind farm developments', it is considered that potential risks to the aforementioned Annex I species have not been adequately addressed in the form of scientific evidence and conclusions. The proposed development would, thus, have significant adverse impacts on the ornithological importance of the area by way of collision risk for White-tailed Eagle and functional habitat loss and displacement for Golden Eagle, adversely impacting these protected bird species and would, therefore, be contrary to the proper planning and sustainable development of the area.

The Commission is satisfied that a refusal for the reasons as indicated above is consistent with the CAP 2025 and the 'national climate objective' to pursue and achieve the transition to a climate-resilient, biodiversity-rich, environmentally

sustainable, and climate neutral economy by the end of the year 2050. While the proposed development would contribute to the reduction in greenhouse gas emissions, the subject site is not suitable for wind energy development which would be contrary to the sustainable development of the area. The proposed development would also have significant adverse impacts on the ornithological importance of the area. The precedent it would set, would therefore not pursue, or contribute to the transition to an environmentally sustainable and biodiversity-rich economy, as required under the national climate objective. The Commission is satisfied that a refusal of permission as indicated above is consistent with its obligations under section 15(1)(a) and (d) of the Climate Action and Low Carbon Development Act 2015, as amended.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way."

Rachel Gleave O'Connor
Senior Planning Inspector

17 September 2026

10.0 **Appendix 1: Commission's Specialist Ornithology Report**

See separate file R322673_App1 Specialist Ornithology Report

11.0 Appendix 2: Stage 1 Screening for Appropriate Assessment

Screening for Appropriate Assessment Test for likely significant effects	
Step 1: Description of the project and local site characteristics	
Brief description of project	A 10 year permission for 8 no. wind turbines, onsite substation and proposed underground grid connection.
Brief description of development site characteristics and potential impact mechanisms	The development site and existing environment including any habitats and species recorded on site are described in Section 4 of the NIS. Lands within the immediate locality of the proposed development are comprised of areas of upland habitat including wet heath, upland blanket bog and lowland raised bog, in addition to wet and dry grasslands, coniferous plantation and upland streams. Desk studies, in addition to project survey findings indicate that a number of QI mobile species have been recorded or are present within 10km of the proposed development site. These include otter, salmon, marsh fritillary and FWPM. The desk study returned records for a range of SCI bird species from the preceding 10 years, within 5km of the proposed development. The site has been subject to bird surveys as described in EIAR and in subsequent applicant submissions since the time of the original

	Inspectors report. The impact of the proposed wind turbines has been assessed using maximum dimensions for the rotor swept area which is 18 to 150m i.e. presenting the worst case scenario for avian collision risk.
Screening report	Y
Natura Impact Statement	Y
Relevant submissions	Third party concerns are set out in the original Inspector's report, section 4 above, and were relevant, are addressed as part of the Stage 2 assessment below and planning assessment in section 5 above.

Step 2 below identifies European sites sufficiently proximate or with a linkage that require consideration in terms of possible connection to the proposed development site. In the applicant's submitted Screening for AA, I note that it also contains an assessment of any likely significant effects on QIs/SCIs of designated sites within proximity of the compensation forestry site in Co. Mayo. However, notwithstanding links to the current application, the compensation forestry site will be subject to a separate licensing procedure under the Forestry Act and therefore governed by relevant assessments relating to the same. Therefore, the compensatory / replacement forestry does not form part of the assessment under this report.

Step 2. Identification of relevant European sites using the Source-pathway-receptor model

European Site (code)	**Qualifying interests[1] Link to conservation objectives (NPWS, date)**	**Distance from proposed development (km approx.)**	**Ecological connections[2]**	**Consider further in screening[3] Y/N**
West of Ardara/Maas Road SAC [000197]	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Large shallow inlets and bays [1160]	Site overlaps SAC boundary	No direct habitat loss – areas of proposed site that overlap with SAC boundary are areas of bridge and roadway.	Y

	Annual vegetation of drift lines [1210] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Decalcified fixed dunes with Empetrum nigrum [2140] Atlantic decalcified fixed dunes (Calluno-Ulicetea) [2150] Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170] Humid dune slacks [2190] Machairs (* in Ireland) [21A0] Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130] Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Juniperus communis formations on heaths or calcareous grasslands [5130]		Hydrological connection - The site area is drained by several streams and a network of drainage ditches that drain to the River Stracashel within the area of the SAC. Ex-situ QIs – There is also the potential for noise and visual disturbance to mobile QIs in particular otter.	

	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510] Blanket bogs (* if active bog) [7130] Depressions on peat substrates of the Rhynchosporion [7150] Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Euphydryas aurinia (Marsh Fritillary) [1065] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355] Phoca vitulina (Harbour Seal) [1365] Petalophyllum ralfsii (Petalwort) [1395] Najas flexilis (Slender Naiad) [1833]			
River Finn SAC [002301]	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Northern Atlantic wet heaths with Erica tetralix [4010] Blanket bogs (* if active bog) [7130] Transition mires and quaking bogs [7140] Salmo salar (Salmon) [1106]	Site overlaps SAC boundary	No direct habitat loss – areas of proposed site that overlap with SAC boundary are areas of bridge and roadway. Hydrological connection - The site area is drained by several streams and a network of drainage ditches that drain to	Y

	Lutra lutra (Otter) [1355]		the River Stranagoppoge within the area of the SAC. Ex-situ QIs – There is also the potential for noise and visual disturbance to mobile QIs in particular otter.	
Lough Nillan Bog (Carrickatlieve) SAC [000165]	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Blanket bogs (* if active bog) [7130]	c.1.7km	No hydrological or ecological / other connectivity.	N
Meenaguse Scragh SAC [001880]	Northern Atlantic wet heaths with Erica tetralix [4010]	c.4.1km	No hydrological or ecological / other connectivity.	N
Cloghernagore Bog and Glenveagh National Park SAC [002047]	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Blanket bogs (* if active bog) [7130] Depressions on peat substrates of the Rhynchosporion [7150]	c.4.9km	No hydrological or ecological / other connectivity.	N

	Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355] Vandenboschia speciosa (Killarney Fern) [6985]			
Meentygrannagh Bog SAC [000173]	Blanket bogs (* if active bog) [7130] Transition mires and quaking bogs [7140] Alkaline fens [7230] Hamatocaulis vernicosus (Slender Green Feather-moss) [6216]	c.6.2km	No hydrological or ecological / other connectivity.	N
Coolvoy Bog SAC [001107]	Blanket bogs (* if active bog) [7130]	c.6.5km	No hydrological or ecological / other connectivity.	N
Meenaguse/Ardbane Bog SAC [000172]	Blanket bogs (* if active bog) [7130]	c.7.4km	No hydrological or ecological / other connectivity.	N
Gannivegil Bog SAC [000142]	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Northern Atlantic wet heaths with Erica tetralix [4010] Blanket bogs (* if active bog) [7130]	c.8.8km	No hydrological or ecological / other connectivity.	N
Lough Eske and Ardnamona Wood SAC [000163]	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Petrifying springs with tufa formation (Cratoneurion) [7220]	c.11.7km	No hydrological or ecological / other connectivity.	N

	Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Salmo salar (Salmon) [1106] Vandenboschia speciosa (Killarney Fern) [6985]			
Slieve Tooey/Tormore Island/Loughros Beg Bay SAC [000190]	Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Decalcified fixed dunes with Empetrum nigrum [2140] Atlantic decalcified fixed dunes (Calluno-Ulicetea) [2150] Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170] Humid dune slacks [2190] Alpine and Boreal heaths [4060] Blanket bogs (* if active bog) [7130] Vertigo angustior (Narrow-mouthed Whorl Snail) [1014] Lutra lutra (Otter) [1355] Halichoerus grypus (Grey Seal) [1364]	c.13.3km	No hydrological or ecological / other connectivity.	N

River Foyle and Tributaries SAC [UK0030320]	Watercourses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] Salmon Salmo salar [1106] Otter Lutra lutra [1355]	c.40.6km	Hydrologically connected to the River Foyle and Tributaries SAC via the Stranagoppoge River and subsequently the River Finn, however it should be noted that this follows a hydrological pathway of some 51km at which point the supported flows to which the Stranagoppoge River contribute are around 252m³ /s with the total catchment inclusive of an area of 472km². It is considered likely that in the context of such a catchment and the supported flows, any inputs arising as a result of the proposed development are likely to be subject to significant dilution. Such dilution would not be considered a mitigation measure as it is naturally occurring and does not require input/adjustment as part of the proposal, therefore it has been determined that there is no potential for LSEs arising through water quality and habitat deterioration to the River Foyle and Tributaries SAC and Potential for impacts can be screened out.	N
Lough Nillan Bog SPA [004110]	Merlin (Falco columbarius) [A098] Golden Plover (Pluvialis apricaria) [A140] Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] Dunlin (Calidris alpina schinzii) [A466]	c.1.7km	There will be no direct effects on the SPA, but there is potential for indirect effects.	Y

			Windfarm site within 1.7 km of the SPA at point of grid connection route. Impact assessment of specific species: Dunlin have not been recorded historically or as part of the surveys on site – screened out. Greenland white-fronted geese – none were recorded foraging or roosting within the environs of the site (zone of sensitivity 600m) and no flight lines were detected through the site - screened out. Golden Plover - The results of bird surveys carried out on site recorded three observations of golden plover to the outside of the site boundary with no flight plans through the site. These were however not considered to constitute any consequential ecological linkages to breeding populations within the SPA – screened out. Merlin - A single pair of breeding merlin were recorded in both 2019 and 2020, within close proximity to the proposed development site respectively and with a nesting site within 5.2km and 5.1km of the SPA respectively. Based on maximum estimated territory size of 6km for Merlin and separation distance	

			between windfarm development and SPA the potential for indirect effects. Screened in.	
Derryveagh and Glendowan Mountains SPA [004039]	Red-throated Diver (Gavia stellata) [A001] Merlin (Falco columbarius) [A098] Peregrine (Falco peregrinus) [A103] Golden Plover (Pluvialis apricaria) [A140] Dunlin (Calidris alpina schinzii) [A466]	c.2.4km	There will be no direct effects on the SPA, but there is potential for indirect effects resulting from disturbance and displacement. Red-throated diver – this species was not recorded on site nor within a 2km range of the site. All known breeding loughs within the SPA are distributed in the northern extent of the SPA site, which is in excess of 15km from the proposed development site and therefore beyond the core foraging for this breeding species -screened out. Peregrine Falcon - The results of bird surveys carried out on site recorded two brief observations of peregrine falcon flying through the wind farm site. However, given the lack of suitable nesting sites and available prey these sightings were not considered to constitute any consequential ecological linkages to breeding populations within the SPA – screened out. Golden Plover - The results of bird surveys carried out on site recorded	Y

			three observations of golden plover to the outside of the site boundary with no flight plans through the site. These were however not considered to constitute any consequential ecological linkages to breeding populations within the SPA – screened out. Merlin - Having regard to the proximity of the site to this designated SPA and notwithstanding the fact that the Birds of SCI interest were not found to nest on the project site, two Merlin nests were recorded within close proximity to the site and were recorded using the site for foraging. While the closest area of supporting habitat in the SPA is over c.6.4km north of the proposed site boundary (Lough Finn is exclude based on unsuitable habitat), based on the precautionary principle and the site proximity it is appropriate to screen this site in for the purpose of Stage II AA.	
Sheskinmore Lough SPA [004090]	Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]	c.13.4km	No ecological or any other connection with the proposal site and as such no pathway for impacts.	N
Inishkeel SPA [004116]	Barnacle Goose (Branta leucopsis) [A045]	c.14.0km	No ecological or any other connection with the proposal site and as such no pathway for impacts.	N

Durnesh Lough SPA [004145]	Whooper Swan (Cygnus cygnus) [A038] Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]	c.25.5km	No ecological or any other connection with the proposal site and as such no pathway for impacts.	N
Lough Foyle SPA (NI) [UK9020031]	Red-throated diver Gavia stellata [A001] Great crested grebe Podiceps cristatus [A005] Bewick's Swan Cygnus columbianus bewickii [A037] Whooper swan Cygnus cygnus [A038] Greylag goose Answer answer [A043] Light-bellied brent goose Branta bernicla hrota [A046] Shelduck Tadorna tadorna [A048] Wigeon Anas Penelope [A050] Teal Anas crecca [A052] Mallard Anas platyrhynchos [A053] Eider Somateria mollissima [A063] Red-breasted merganser Mergus serrator [A069] Oystercatcher Haematopus ostralegus [A130] Golden plover Pluvialis apricaria [A140] Lapwing Vanellus vanellus [A142] Knot Calidris canutus [A143] Dunlin Calidris alpina [A149] Bar tailed godwit Limosa lapponica [A157] Curlew Numenius Arquata [A160] Redshank Tringa tetanus [A162] Black-headed gull Chroicocephalus ridibundus [A179] Common gull Larus canus [A182]	c.45km	No ecological or any other connection with the proposal site and as such no pathway for impacts.	N

	Herring gull Larus argentatus [A184] Wetland and waterbirds [A999].			
Lough Foyle SPA (RoI) [004087]	Red-throated Diver (Gavia stellata) [A001] Great Crested Grebe (Podiceps cristatus) [A005] Bewick's Swan (Cygnus columbianus bewickii) [A037] Whooper Swan (Cygnus cygnus) [A038] Greylag Goose (Anser anser) [A043] Light-bellied Brent Goose (Branta bernicla hrota) [A046] Shelduck (Tadorna tadorna) [A048] Teal (Anas crecca) [A052] Mallard (Anas platyrhynchos) [A053] Eider (Somateria mollissima) [A063] Red-breasted Merganser (Mergus serrator) [A069] Oystercatcher (Haematopus ostralegus) [A130] Golden Plover (Pluvialis apricaria) [A140] Lapwing (Vanellus vanellus) [A142] Knot (Calidris canutus) [A143] Dunlin (Calidris alpina) [A149] Bar-tailed Godwit (Limosa lapponica) [A157] Curlew (Numenius arquata) [A160] Redshank (Tringa totanus) [A162] Black-headed Gull (Chroicocephalus ridibundus) [A179] Common Gull (Larus canus) [A182] Herring Gull (Larus argentatus) [A184]	c.57.4km	No ecological or any other connection with the proposal site and as such no pathway for impacts.	N

	Wigeon (Mareca penelope) [A855] Wetland and Waterbirds [A999]			

Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

AA Screening matrix

Site name **Qualifying interests**	**Possibility of significant effects (alone) in view of the conservation objectives of the site***	
	Impacts	**Effects**
West of Ardara/Maas Road SAC [000197] Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Large shallow inlets and bays [1160] Annual vegetation of drift lines [1210] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120]	The proposed development will involve works during construction phase with the potential to release materials into the hydrological environment, including: - Felling of commercial forestry; - Excavations; - Provision of hardstanding; - Construction of substation; - Watercourse crossings (incl. grid connection); - Movement of construction vehicles; and - Decommissioning works and reinstatement. These works will take place in areas proximate to the Stracashel River or Stranagoppogue River or will ultimately drain into these watercourses, via hydrological pathways. These works have potential to cause the following: - Accidental release of alkaline contaminants from concrete and cement during construction of hardstanding and other structures; - General water quality impact associated with works machinery, infrastructure and on-land	Negative impact upon water quality could adversely effect aquatic QIs such as Otter, Salmon and Freshwater Pearl Mussel, through the degrading of habitat condition and / or reducing prey availability. Noise and visual disturbance during construction works could potentially impact mobile QI species, such as Otter in particular.

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Decalcified fixed dunes with Empetrum nigrum [2140] Atlantic decalcified fixed dunes (Calluno-Ulicetea) [2150] Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170] Humid dune slacks [2190] Machairs (* in Ireland) [21A0] Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130] Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Juniperus communis formations on heaths or calcareous grasslands [5130] Semi-natural dry grasslands and scrubland facies on	operations (incl. material storage, oils, fuels and chemicals); - Sedimentation through release of sediments, soils and other materials from proposed excavations and vehicular movement; - Release of HDD drilling fluid. During operational phase, there is also the potential for the following: - Release of cooling oils associated with the sub station site, or the use of chemical fuels and lubricants utilized in route turbine maintenance. There is a possibility that surface water discharge/run-off from the site would contain pollutants (e.g., sediment, silt, oils) that could impact on water quality in the downstream SAC during construction, operational and decommissioning phases. The proposed development will give rise to aerial noise and visual disturbance during construction phase through the movement of vehicles, plant and staff through the site in addition to construction noise.	

calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510] Blanket bogs (* if active bog) [7130] Depressions on peat substrates of the Rhynchosporion [7150] Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Euphydryas aurinia (Marsh Fritillary) [1065] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355] Phoca vitulina (Harbour Seal) [1365] Petalophyllum ralfsii (Petalwort) [1395] Najas flexilis (Slender Naiad) [1833]		

River Finn SAC [002301] Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Northern Atlantic wet heaths with Erica tetralix [4010] Blanket bogs (* if active bog) [7130] Transition mires and quaking bogs [7140] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355]	There is a possibility that surface water discharge/run-off from the site would contain pollutants (e.g., sediment, silt, oils) that could impact on water quality in the downstream SAC during construction, operational and decommissioning phases. [Refer to detail outlined above with respect to West of Ardara/Maas Road SAC.] The proposed development will give rise to aerial noise and visual disturbance during construction phase through the movement of vehicles, plant and staff through the site in addition to construction noise.	Negative impact upon water quality could adversely effect aquatic QIs such as Otter, Salmon and Freshwater Pearl Mussel, through the degrading of habitat condition and / or reducing prey availability. Noise and visual disturbance during construction works could potentially impact mobile QI species, such as Otter in particular.
Lough Nillan Bog SPA [004110] Merlin (Falco columbarius) [A098] Golden Plover (Pluvialis apricaria) [A140] Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] Dunlin (Calidris alpina schinzii) [A466]	In relation to collision risk during operation, this has been considered in detail as part of the original Inspectors report (sections 8.5.38 to 8.5.79) which should be read alongside this section of my report. Assessment with respect to Merlin is set out above in this report and is informed by the Commission's Specialist Ornithology Report at Appendix 1. In summary, the location of turbines are sufficient distant from SPA SCI populations. Specifically in relation to Merlin and collision risk, the Collision Risk Model predicted 0.73 Merlin collisions over the 30 year life of the windfarm, with a negligible magnitude of effect, and not significant impact. Collision risk can therefore be ruled out at screening stage and no mitigation is required with respect to SCI populations. Similarly, potential barrier effects can also be ruled out. The site	With reference to baseline characteristics, potential for impact upon Merlin SCI species, during construction activities for the wind farm, requires further consideration. Potential for significant effect relating to aerial noise and visual disturbance to Merlin cannot be discounted at screening stage 1, continue to stage 2 assessment.

	and its surrounds does not comprise an important migration flight line for SCI species and has limited collision risk potential for SCI populations. The proposed development will give rise to aerial noise and visual disturbance during construction phase through the movement of vehicles, plant and staff through the site in addition to construction noise.	
Derryveagh and Glendowan Mountains SPA [004039] Red-throated Diver (Gavia stellata) [A001] Merlin (Falco columbarius) [A098] Peregrine (Falco peregrinus) [A103] Golden Plover (Pluvialis apricaria) [A140] Dunlin (Calidris alpina schinzii) [A466]	Refer to detail above for Lough Nillan Bog SPA with respect to collision risk and barrier effect for SCI populations. The proposed development will give rise to aerial noise and visual disturbance during construction phase through the movement of vehicles, plant and staff through the site in addition to construction noise.	While supporting SPA habitat is over 6km away, taking the precautionary approach, and with reference to baseline characteristics, potential for impact upon Merlin SCI species, during construction activities for the wind farm, requires further consideration. Potential for significant effect relating to aerial noise and visual disturbance to Merlin cannot be discounted at screening stage 1, continue to stage 2 assessment.
	Likelihood of significant effects from proposed development (alone): Y	
	Possibility of significant effects (alone) in view of the conservation objectives of the site	
The specific conservation objectives and special conservation interests for the potentially effected European site relate to various attributes, including population trends, distribution, range and habitat characteristics. Potential effects arising from emissions associated with the construction, operation and decommissioning of the proposed development have been highlighted above, which have the potential to affect the conservation objectives supporting aquatic qualifying interests of the West of Ardara/Maas Road SAC and River Finn SAC. Potential effects arising from disturbance and displacement during construction activities effecting Otter a QI of the West of Ardara/Maas Road SAC and River Finn SAC is also highlighted, as is potential for disturbance and displacement arising from		

construction activities which have the potential to affect the conservation objectives supporting Merlin as a SCI of the Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA. As such, likely effects on West of Ardara/Maas Road SAC, River Finn SAC, Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA, cannot be ruled out, having regard to those sites' conservation objectives, and a Stage 2 Appropriate Assessment is required. The potential impacts are expanded upon in further detail as part of a Stage 2 Appropriate Assessment below.

Step 4 Conclude if the proposed development could result in likely significant effects on a European site

It is not possible to exclude the possibility that proposed development alone would result in significant effects on the West of Ardara/Maas Road SAC, River Finn SAC, Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA from effects associated with the potential for, emissions impacting water quality during construction, operation and decommissioning activities, and displacement or disturbance of QI / SCI species as a result of activities during construction and operation.
An appropriate assessment is required on the basis of the possible effects of the project 'alone'. Further assessment in-combination with other plans and projects is not required at screening stage.

Proceed to AA.

Screening Determination

Significant effects cannot be excluded
In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the proposed development, alone or in combination with other plans and projects will give rise to significant effects on the West of Ardara/Maas Road SAC, River Finn SAC, Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA European Sites in view of the sites' conservation objectives. Appropriate Assessment is required.

This determination is based on:

- Potential for emissions to water during construction activities, including the accidental release of alkaline contaminants from concrete and cement during construction of hardstanding and other structures; general water quality impact associated with works machinery, infrastructure and on-land operations (incl. material storage, oils, fuels and chemicals); sedimentation through

release of sediments, soils and other materials from proposed excavations and vehicular movement; and release of HDD drilling fluid. During operational phase, there is also the potential for the release of cooling oils associated with the substation site, or the use of chemical fuels and lubricants utilized in route turbine maintenance. With consequential adverse effect upon QIs of the West of Ardara/Maas Road SAC and River Finn SAC.

- Potential for disturbance to affect mobile QIs of the West of Ardara/Maas Road SAC (Otter), and SCIs of the Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA (Merlin). The proposed development will give rise to aerial noise and visual disturbance during construction phase through the movement of vehicles, plant and staff through the site in addition to construction noise.

12.0 **Appendix 3: Stage 2 Appropriate Assessment**

Appropriate Assessment
The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.
Taking account of the preceding screening determination, the following is an appropriate assessment of the implications of the proposed development of a 10 year permission for 8 no. wind turbines, onsite substation and proposed underground grid connection (and ancillary development), in view of the relevant conservation objectives of the West of Ardara/Maas Road SAC, River Finn SAC, Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA based on scientific information provided by the applicant and considering observations on nature conservation. The information relied upon includes the following: • Natura Impact Statement inclusive of Appropriate Assessment Screening. • EIAR with particular focus on Chapter 10 Biodiversity, with associated appendices • Other relevant EIAR Chapters 6 Soils, Geology and Hydrogeology; Chapter 7 Hydrology; and Chapter 14 Interaction of the Foregoing • Construction and environmental management plan (CEMP) • Applicants' response documents to submissions, in particular 'Graffy Wind Farm, Breeding eagle and merlin surveys (2024 and 2025)', and 'Updating ornithological impact assessment for golden eagle, white-tailed eagle and merlin' • Commission's Specialist Ornithologist Report (Appendix 1)

I am satisfied that the information provided is adequate to allow for Appropriate Assessment. I am satisfied that all aspects of the project which could result in significant effects are considered and assessed in the NIS and mitigation measures designed to avoid or reduce any adverse effects on site integrity are included and assessed for effectiveness.

Submissions/observations

Third party and prescribed body concerns are set out in the original Inspectors report and section 4 above. Where relevant to this AA, they are addressed here within the Stage 2 assessment below. The main issues arising concern the adequacy of the findings and evidence base presented in the NIS (and associated Chapters in the EIAR). In particular, I note concerns raised by the DAU with respect to Merlin, a SCI species. Other bird species raised in the DAU submission are not SCIs of any SPAs and are addressed in section 5.6 above. In relation to ambiguity regarding the distances from the subject site and the nearby Lough Nillian Bog SAC and SPA and Derryveagh and Glendowan Mountains SPA, the correct figures are given in the NIS and incorrect distances are presented in the Avi-fauna report (Section 10(ii) 4.1.3 EIAR) however distances referred to in the remainder of the chapter including references to distance from recorded Merlin nests (record from 2019 and 2020) are correct, these have been cross referenced with Volume 3A, Appendix 7 EIAR (part confidential). A key concern relates to the likelihood that the Merlin pair recorded foraging within the site comprise a portion of the populations associated with the relevant SPAs, or could result in displacement of SPA population, and this particular issue is addressed directly in this AA below as informed by the Commission's Specialist Ornithology Report (Appendix 1). The assessment carried out here is cognisant of the respective cases made in relation to this matter by the DAU, third parties and applicant.

The Department (and third parties) also raise concerns regarding Freshwater Pearl Mussel (FWPM) and Salmon and with specific regard to Horizontal Directional Drilling (HDD) and related potential risks and impacts upon downstream sensitive QI species (i.e. Salmon and FWPM), with concern that the NIS contains inadequate details with regard to 1. Distance of drill launch and receiver pits

from watercourses and associated mitigation. 2. Frac-Out plan, response actions and assessment of associated environmental risks and impacts. The applicant has responded to these concerns outlining the details of the HDD process and also proposed mitigation to ensure no adverse impact on site integrity. This matter is considered further as part of this AA below. I note that the DAU concerns persist despite the applicant response on these matters. Potential for cumulative effect is considered further below.

West of Ardara/Maas Road SAC, River Finn SAC, Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA:

Summary of Key issues that could give rise to adverse effects (from screening stage):

(i) Potential for emissions to water during construction activities, including the accidental release of alkaline contaminants from concrete and cement during construction of hardstanding and other structures; general water quality impact associated with works machinery, infrastructure and on-land operations (incl. material storage, oils, fuels and chemicals); sedimentation through release of sediments, soils and other materials from proposed excavations and vehicular movement; and release of HDD drilling fluid. During operational phase, there is also the potential for the release of cooling oils associated with the substation site, or the use of chemical fuels and lubricants utilized in route turbine maintenance. With cconsequential adverse effect upon QIs of the West of Ardara/Maas Road SAC and River Finn SAC.

(ii) Potential for disturbance to affect mobile QIs of the West of Ardara/Maas Road SAC (Otter), and SCIs of the Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA (Merlin). The proposed development will give rise to aerial noise and visual disturbance during construction phase through the movement of vehicles, plant and staff through the site in addition to construction noise.

Qualifying Interest features likely to be affected	**Conservation Objectives Targets and attributes**	**Potential adverse effects**	**Mitigation measures (summary)**
West of Ardara/Maas Road SAC [000197] Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140]	The conservation objectives relate to maintaining and / or restoring the favourable condition of QIs defined by the attributes summarised below. Targets comprise quantifiable measures to	<u>FWPM</u> Hydrological impacts: FWPM - Sensitive to water quality and habitat deterioration effects. Siltation and other water quality effects leading to, mortality, failed recruitment and population decline.	An Environmental / Ecological clerk of works will be appointed for the duration of the construction phase. Measures are outlined to protect water quality and prevent habitat

Large shallow inlets and bays [1160] Annual vegetation of drift lines [1210] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Decalcified fixed dunes with Empetrum nigrum [2140] Atlantic decalcified fixed dunes (Calluno-Ulicetea) [2150] Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170] Humid dune slacks [2190]	indicate performance under each attribute (such as no decline, change, or increasing, using evaluating criteria). For QI habitats, attributes include: Habitat area; Community distribution; Habitat distribution; Physical structure; Disturbance; Vegetation composition; Flowering and fruiting; Hydrological regime; Lake substratum; Water quality; Acidification status; Water colour; Dissolved organic carbon; Turbidity; Fringing habitat area; Vegetation species richness; Nutrients; Transparency; Attached algal biomass; Ecosystem function; Community diversity; Indicators of local distinctiveness;	<u>Salmon</u> Siltation and other water quality effects leading to, mortality, prey reduction, failed recruitment and population decline. Potential for adverse effects in the absence of mitigation. <u>Otter</u> Hydrological impacts and disturbance. Habitat deterioration, siltation and other water quality effects leading to, mortality, failed recruitment, prey reduction and population decline. There is the potential for direct and indirect impact on Otter as a result of potential sedimentation and pollution of the freshwater environment and possible disturbance. Note that surveys undertaken by Woodrow Sustainable Solutions Ltd. for the EIAR noted evidence of otter presence, namely a number of spraint locations, in addition to a number of potential holts, recorded along the Stranagoppoge River. The potential holts were located c. 250m from the closest aspect of the proposed works (the proposed	deterioration are set out in section 7.1.1 of the NIS, and are of relevance to FWPM, Salmon and Otter. Measures relate to soil excavation, storage and re-use and include measures in the CEMP. Specific measures are outlined in the event of extreme weather conditions. Mitigation measures for the general protection of surface waters are set out in section 7.12 of the NIS. Measures include best practices to minimise the release of sediment laden storm runoff, carrying out works on stream crossings in dry weather, shallow cut-off drains or temporary plastic diversion barriers to be installed, vegetation stripping to be kept to a minimum, stockpiled soils a minimum 50m from watercourses, drainage swales at track edges, culverting of drains, managed use and storage of cement and hydrocarbons, silt fences, settlement ponds, and emergency response plan. Specific mitigation measures in relation to general watercourse	

Machairs (* in Ireland) [21A0] Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130] Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Juniperus communis formations on heaths or calcareous grasslands [5130] Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]	Peat formation; Presence in suitable habitat; Habitat quality; Distribution of populations / species; Population size / extent / depth / viability / abundance; Associated species. The attributes of other QIs are summarised below: FWPM: Distribution, population size and structure, habitat extent, water quality, substratum quality, hydrological regime, host fish, fringing habitat. Marsh Fritillary: Distribution, proof of breeding, potential habitat, good quality habitat. Salmon: Distribution, adult spawning fish, fry abundance, out-migrating smolt abundance, number / distribution of redds, water quality. Otter: Distribution, extent of terrestrial habitat, extent of	grid connection route to the south). It is considered therefore that lengths of watercourse in proximity to the application site are likely to be utilised by otters for foraging and migration and the possibility of otter presence within the development area cannot be excluded. There is, therefore, potential for hydrological disturbance to the Otter populations of the area during the construction and decommissioning phases. The Otter population could be associated with the SAC given its proximity; however proposed works in close proximity to the relevant watercourses will be limited to the installation of the proposed grid connection, any resultant disturbance therefore will be of extremely limited scale and duration. Effect is anticipated to be minor and temporary. (See section 8.5.14 of original Inspector's report with respect to EIA). <u>All other QIs for this SAC</u> No direct effect. QIs include a number of terrestrial habitats and species and coastal habitats and species which are not present on	crossings are outlined under Section 7.1.3 of the NIS with any works to be supervised by the ECoW and / or the project aquatic ecologist who will liaise with IFI and NPWS prior to works commencing. Any works within watercourses that have the potential to support fish will be avoided between Oct 1st and April 30th as per IFI and Loughs Agency guidelines. The proposed procedures envisaged in relation to HDD and mitigation measures specific to same are outline under Section 7.1.4 of the NIS. HDD methods are discussed in more detail in section 8.5 of the original Inspector's report as part of the EIA. Mitigation measures specific to FWPM are set out under Section 7.1.2 of the NIS and include the presence of a suitably qualified ecologist on site, measures to prevent silt release, monitoring of silt traps.	

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510] Blanket bogs (* if active bog) [7130] Depressions on peat substrates of the Rhynchosporion [7150] Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Euphydryas aurinia (Marsh Fritillary) [1065] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355] Phoca vitulina (Harbour Seal) [1365] Petalophyllum ralfsii (Petalwort) [1395] Najas flexilis (Slender Naiad) [1833]	marine habitat, extent of freshwater habitat, couching sites / holts, fish biomass available, barriers to connectivity. Harbour seal: Access to habitat, breeding behaviour, moulting behaviour, resting behaviour, disturbance.	site or are either not hydrologically linked to the proposals or are coastal habitats which lie downstream of the proposed development. In relation to costal habitats and species, these QIs are located at a distance of at least 21.1km downstream of the site. At this location flows of around 92.5m3 /s arise from a catchment comprising an area of 126km2. Over such a distance and in the context of such supported flows originating across the large catchment, in addition to mixing in the energetic tidal marine environment, any potential water quality and habitat deterioration effects arising as a result off the proposed development are likely to be undetectable at the point at which they interact with these coastal habitats which form qualifying interests for the SAC. In relation to marsh fritillary, I note that no areas which support dense patches of devil's bit scabious (habitat) are to be lost as a result of the proposed development and in general habitat for the species within the site is considered to be largely unsuitable. No marsh	The proposed project at decommissioning stage has potential to give rise to a similar set of impacts as associated with the construction stage and therefore the applicant states under Section 7.1.6 of the NIS that they intend to implement mitigation measures as set out above in respect of construction in association with decommissioning where relevant. Following the implementation of these measures it is envisaged that potential impacts upon FWPM, Salmon and Otter will be fully mitigated.	

		fritillary was recorded on site during surveys. Potential for adverse effects on all other QIs is ruled out.		
River Finn SAC [002301] Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Northern Atlantic wet heaths with Erica tetralix [4010] Blanket bogs (* if active bog) [7130] Transition mires and quaking bogs [7140] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355]	The conservation objectives relate to maintaining and / or restoring the favourable condition of QIs defined by the attributes summarised below. Targets comprise quantifiable measures to indicate performance under each attribute (such as no decline, change, or increasing, using evaluating criteria). For QI habitats, attributes include: Habitat area; Habitat distribution; Typical species; Vegetation composition; Vegetation distribution; Hydrological regime; Lake substratum quality; Water quality transparency / nutrients / phytoplankton biomass & composition /	<u>Salmon</u> Hydrological impacts: Siltation and other water quality effects leading to, mortality, failed recruitment, prey reduction and population decline. Potential for adverse effects in the absence of mitigation. <u>Otter</u> Hydrological impacts and disturbance. Habitat deterioration, siltation and other water quality effects leading to, mortality, failed recruitment, prey reduction and population decline. There is the potential for direct and indirect impact on Otter as a result of potential sedimentation and pollution of the freshwater environment and possible disturbance. Note that surveys undertaken by Woodrow Sustainable Solutions Ltd. for the EIAR noted evidence of otter	See mitigation measures outlined above for the West of Ardara/Maas Road SAC which are also applicable to the River Finn SAC. Following the implementation of these measures it is envisaged that potential impacts upon Salmon and Otter will be fully mitigated.	

	attached algal biomass / macrophyte status; Acidification status; Water colour; Dissolved organic carbon; Turbidity; Fringing habitat; Ecosystem function; Community diversity; Vegetation structure; Physical structure; Indicators of local distinctiveness. The attributes of other QIs are summarised below: Salmon: Distribution, adult spawning fish, fry abundance, out-migrating smolt abundance, number / distribution of redds, water quality. Otter: Distribution, extent of terrestrial habitat, extent of marine habitat, extent of freshwater habitat, couching sites / holts, fish biomass available, barriers to connectivity.	presence, namely a number of spraint locations, in addition to a number of potential holts, recorded along the Stranagoppoge River. The potential holts were located c. 250m from the closest aspect of the proposed works (the proposed grid connection route to the south). It is considered therefore that lengths of watercourse in proximity to the application site are likely to be utilised by otters for foraging and migration and the possibility of otter presence within the development area cannot be excluded. There is, therefore, potential for hydrological disturbance to the Otter populations of the area during the construction and decommissioning phases. The Otter population could be associated with the SAC given its proximity; however proposed works in close proximity to the relevant watercourses will be limited to the installation of the proposed grid connection, any resultant disturbance therefore will be of extremely limited scale and duration. Effect is anticipated to be minor and temporary. (See section		

		8.5.14 of original Inspector's report with respect to EIA). <u>All other QIs for this SAC</u> No direct effect. QIs include a number of terrestrial habitats and species and coastal habitats and species which are not present on site or are not hydrologically linked to the proposal. Potential for adverse effects ruled out.		
Lough Nillan Bog SPA [004110] Merlin (Falco columbarius) [A098] Golden Plover (Pluvialis apricaria) [A140] Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] Dunlin (Calidris alpina schinzii) [A466]	Merlin: To maintain the favourable conservation condition of Merlin defined by the attributes (and targets) summarised below: Population size (breeding population stable / increasing); Productivity rate (sufficient to maintain the population size); Distribution: nesting options (sufficient availability in SPA); Extent and condition of suitable open habitats for foraging (sufficient availability in SPA);	<u>Merlin</u> Potential for aerial noise and visual disturbance has been addressed in the NIS and through subsequent submissions by the applicant. Embedded mitigation measures have been employed, with the locating of turbines over 500m away from known nest locations. The closest point of any construction activity to the SPA is 1.7 km, therefore there is no potential for any disturbance to SPA birds at their nest sites during the construction period, which is	<u>Merlin</u> Embedded mitigation. Works outside of the maximum disturbance distance of 500m (NatureScot) for breeding. While within the foraging range of SCI Merlin, abundant similar habitat in adjacent areas present. No further mitigation required.	

	Disturbance to breeding sites (not to occur at a level that would significantly impact breeding population). Other SCIs: The conservation objectives relate to restoring the favourable condition of SCIs defined by the attributes summarised below. Targets comprise quantifiable measures to indicate performance under each attribute (such as no decline, change, or increasing, using evaluating criteria): Breeding population trend; Productivity rate; Distribution of breeding habitat; Extent and condition of breeding habitat; Disturbance at breeding site; Barriers to connectivity and site use; Forage spatial distribution, extent and abundance; Winter population; Winter spatial distribution; Disturbance at wintering site;	outside the maximum disturbance distance of 500m (NatureScot). Lough Nillan SPA does fall within the 5km core foraging range given for merlin, so disturbance to foraging merlin during the construction period is possible, however given the abundance of suitable habitat in the adjoining area (with open ground, rough grassland and open moorland), and the temporary nature of works, the long-term maintenance of the Merlin would not be compromised and no mitigation is required. There are no studies to support a proposition regarding displacement of SPA Merlin populations, due to works displacing non-SPA populations, into the SPA. (See related assessment of potential effects upon Merlin in section 5.6 above). <u>All other SCIs for this SPA</u> The proposed development will not have potential to give rise to significant effects upon these SCI		

	Roost spatial distribution and extent; Supporting habitat.	species. These species have been examined in detail in the original Inspectors report (section 8.5 of the same refers), and the Commission is asked to refer to same to avoid any repetition. These species were not recorded utilising the proposed development site or its surrounds in any significant capacity. No mitigation required.		
Derryveagh and Glendowan Mountains SPA [004039] Red-throated Diver (Gavia stellata) [A001] Merlin (Falco columbarius) [A098] Peregrine (Falco peregrinus) [A103] Golden Plover (Pluvialis apricaria) [A140] Dunlin (Calidris alpina schinzii) [A466]	Merlin: To maintain the favourable conservation condition of Merlin defined by the attributes (and targets) summarised below: Population size (breeding population stable / increasing); Productivity rate (sufficient to maintain the population size); Distribution: nesting options (sufficient availability in SPA); Extent and condition of suitable open habitats for foraging (sufficient availability in SPA);	<u>Merlin</u> Potential for aerial noise and visual disturbance has been addressed in the NIS and through subsequent submissions by the applicant. Embedded mitigation measures have been employed, with the locating of turbines over 500m away from known nest locations. The closest point of any construction activity to the SPA is also outside the maximum disturbance distance of 500m (NatureScot).	<u>Merlin</u> Embedded mitigation. Works outside of the maximum disturbance distance of 500m (NatureScot) for breeding. Turbines are outside of the core foraging range for SCI Merlin associated with Derryveagh and Glendowan Mountains SPA. In anycase, there is an abundance of suitable habitat in the adjoining area. No further mitigation required.	

	Disturbance to breeding sites (not to occur at a level that would significantly impact breeding population). Other SCIs: The conservation objectives relate to maintaining or restoring the favourable condition of SCIs defined by the attributes summarised below. Targets comprise quantifiable measures to indicate performance under each attribute (such as no decline, change, or increasing, using evaluating criteria): Breeding population trend; Productivity rate; Distribution of breeding habitat; Extent and condition of breeding habitat; Disturbance at breeding site; Barriers to connectivity and site use; Forage spatial distribution, extent and abundance.	The core foraging range for Merlin is 5km from nest locations, and the turbines on the subject site would not be located within this core foraging range for SCI Merlin population for the Derryveagh and Glendowan Mountains SPA. Therefore, no potential effect arises with respect to this. <u>All other SCIs for this SPA</u> The proposed development will not have potential to give rise to significant effects upon these SCI species. These species have been examined in detail in the original Inspectors report (section 8.5 of the same refers), and the Commission is asked to refer to same to avoid any repetition. These species were not recorded utilising the proposed development site or its surrounds in any significant capacity. No mitigation required.		

The above table is based on the documentation and information provided on the file and I am satisfied that the submitted NIS has identified the relevant attributes and targets of the Qualifying Interests and Special Conservation Interests.	
Assessment of issues that could give rise to adverse effects view of conservation objectives As outlined in the table above, I am satisfied that the only likely significant effects relate to adverse impact upon water quality during the construction, operation and decommissioning phases. These potential significant effects upon QI species associated with the West of Ardara/Maas Road SAC and River Finn SAC have been outlined above, with associated mitigation identified to remove or reduce potential effects. I note third party submissions with respect to potential effects upon QIs and SCIs, particularly FWPM, Salmon and Merlin (the latter being an SCI of Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA), and these concerns are considered further below. With specific reference to the Department's submission and their specific concerns in relation to the possible impacts of HDD on water quality and in particular the resultant impacts on FWMP. Section 7.1.4 of the NIS details that it is envisaged that these works which will include for launch and receptor pits at least 25m either side of the watercourse to be crossed, have relatively limited potential to give rise to significant sedimentation or other water quality impacts, and are likely to comprise the most effective solution for crossing these watercourses whilst minimising potential for water quality effects. Specific mitigation measures are nonetheless presented in the event that a 'break out' or 'frac-out' may occur and this is detailed within Attachment 6 to the draft CEMP (Appendix III). In particular, a Frac-Out Mitigation Plan (to be finalised on appointment of contractor) has been prepared as part of the construction methodology and a sample frac-out plan is provided at Appendix B to Attachment 6. At each HDD crossing, a geo-technical investigation will be undertaken to determine the porosity of the underlying stream bed and to locate a suitable clay/ silt formation so that the risk of drilling mud break out can be ascertained. The depth of the bore may be increased subject to the investigation. Spatial buffers and sediment traps/ booms are also to be implemented and it is noted that the measures set out above in respect of general protection of surface waters, such as bunding of fuel storage and other material storage, remain relevant to HDD also. As outlined in the table above, I am satisfied that the application of general water quality mitigation, alongside specific measures related to FWPM, will be effective at protecting aquatic QIs and there is no potential for likely significant effect with these measures in place. In relation to Merlin, section 5.6 of this report considers the site baseline characteristics with respect to Merlin in detail, and this is also addressed in the Commission's Specialist Ornithology Report in Appendix 1. I am satisfied that the site is a suitable distance from breeding Merlin associated with the SPAs to ensure that there is no potential for significant effect, noting that works and turbines are outside of the 500m disturbance buffer for nesting / breeding Merlin (NatureScot) with respect to both Lough Nillan	

Bog SPA and Derryveagh and Glendowan Mountains SPA. I am also satisfied that the collision risk modelling demonstrates a very low risk with respect to foraging SCI Merlin and that there is no related potential for adverse effects on site integrity for these SPAs.

I note the DAU concern that the home range of merlin is not known and therefore it is not possible to state conclusively that the breeding pair in the area of the site is not connected to either of the SPAs, and this is also addressed in the Commission's Specialist Ornithology Report (para.152). I am satisfied that the applicant has used the best available practice guidance (being NatureScot) with respect to Merlin and windfarm assessments, which gives a core foraging distance of 5km from a nest. The distance between the previously recorded nest site at the subject site and Lough Nillan SPA is just over 5km, and unlikely to be connected to the SPA. Rebecca et al (1992) also describes established methodology for establishing spatial thresholds for Merlin, and finds that across different years, Merlin nests classified as belonging to the same individual territory are located no more than 3.5km apart. It is unlikely in my view that the Merlin previously recorded associated with the site are SCI populations.

In relation to the proposition that there is potential for the displacing of a breeding pair of Merlin from the subject site, to within the Lough Nillan Bog SPA, and that this could subsequentially cause the displacement of a SPA Merlin breeding pair, I note the Commission's Specialist Ornithology Report highlights that there is no scientific evidence to support this as a likely scenario and that "Merlins can also exist in close proximity to each other with nest locations of separate pairs being recorded as close as 350 m from each other (Wright, 1997). It is considerably more likely that any birds displaced by the Proposed Development would seek an alternate nest location within their own existing territory, consistent with the species' documented use of multiple alternate nest sites, rather than travelling the distance required to encroach on a neighbouring pair's established territory within the SPA." (para.151).

Proposed turbines are situated outside of the 5km core foraging range for any SCI Merlin associated with the Derryveagh and Glendowan Mountains SPA and therefore no effects arise in this regard.

On the basis of the Applicant's submissions including additional findings, alongside the professional qualified views outlined in the Commission's own Specialist Ornithology Report (Appendix 1), I am satisfied that Merlin can habituate to operational turbines and birds could incorporate the windfarm within their core foraging range and/or utilise the abundant areas of suitable foraging habitats adjacent to the site. There is an abundance of suitable habitat (i.e. open ground such as rough grassland and open moorland), attractive to prey species, which can be relied upon by Merlin foraging in the area. As such, I am satisfied that no significant operational displacement effects are predicted.

The QI conservation attributes for the West of Ardara/Maas Road SAC and River Finn SAC, that have the potential to be adversely affected, have been identified in the table above. If these identified potential adverse effects occurred, it could reduce the ability of this SAC to meet its conservation objectives for QI species, consequently adversely affecting the integrity of the SAC. Mitigation measures are proposed to minimise the potential for these effects and is set out in detail in section 7 of the NIS, as well as summarised in this table above. With the implementation of mitigation, including supervision of works by an Environmental / Ecological Clerk of Works, and implementation of measures through a Construction Environmental Management Plan, (alongside specific mitigation measures with respect to identified effects), it can be reasonably concluded that no adverse effect upon the integrity of the SACs will result.	
In-combination effects I am satisfied that in-combination effects has been assessed adequately in the NIS. Section 5.4 of the NIS includes table 5-2 which identifies other plans and projects with respect to the potential for in-combination effects. This includes national, regional, local plans and programmes, alongside planning applications. Potential for minor in-combination effect associated with small scale felling and associated sedimentation is identified across relevant catchments and is adequately addressed via proposed mitigation to protection water quality as part of the proposed development. As a result, I am satisfied that no residual in-combination effects will result from the proposed development.	

Findings and conclusions

The applicant concluded that the construction and operation of the proposed development alone, **or in combination with other plans and projects**, will not adversely affect the integrity of this European site.

Based on the information provided, I am satisfied that adverse effects arising from the proposed development can be excluded for the European site considered in the Appropriate Assessment.

Reasonable scientific doubt

I am satisfied that no reasonable scientific doubt remains as to the absence of adverse effects.

Site Integrity

The proposed development will not affect the attainment of the Conservation objectives of West of Ardara/Maas Road SAC, River Finn SAC, Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA. Adverse effects on site integrity can be excluded and no reasonable scientific doubt remains as to the absence of such effects.
Appropriate Assessment Conclusion: Integrity Test In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on the West of Ardara/Maas Road SAC, River Finn SAC, Lough Nillan Bog SPA, and Derryveagh and Glendowan Mountains SPA in view of the conservation objectives of these sites and that Appropriate Assessment was required. Following an examination, analysis and evaluation of the NIS all associated material submitted (including subsequent submissions, applicant findings and the Commission's Specialist Ornithology Report), and taking into account observations, I consider that adverse effects on site integrity of the Lough Nillan Bog SPA and Derryveagh and Glendowan Mountains SPA can be excluded due to baseline characteristics and embedded mitigation with respect to turbine layout. I also consider that adverse effects upon the site integrity of West of Ardara/Maas Road SAC and River Finn SAC can be excluded in view of the conservation objectives of those sites and that no reasonable scientific doubt remains as to the absence of such effects. My conclusion is based on the following: The application of general mitigation measures to minimise effects during all phases of the development, alongside specific mitigation with respect to the potential for effects upon water quality, which will prevent potential for, the occurrence of / or adverse impact resulting from, the construction, operation or decommissioning of the proposed development.