



An  
Bord  
Pleanála

**Inspector's Report**

**05.PC0228**

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<b>Type of Application</b>	Sid Pre-application – whether project is or is not strategic infrastructure development.
<b>Proposed Development</b>	Wind farm development and associated works.
<b>Location</b>	Meenbog, Lismullyduff and surrounding townlands, Co. Donegal
<b>Applicant</b>	Planree Ltd.
<b>Planning Authority</b>	Donegal County Council
<b>Inspector</b>	Suzanne Kehely

## 1.0 PRE-APPLICATION CONSULTATION

- 1.1. Pursuant to a request to enter into pre-application consultation in relation to a proposed wind farm development received by the Board on 20<sup>th</sup> September 2016 in accordance with section 37B of the *Planning and Development Act, 2000*, as amended by the *Planning and Development (Strategic Infrastructure) Act 2006*, Planree Ltd seeks a determination by the Board. The Board's representatives met with the prospective applicant on the following dates:
- 17<sup>th</sup> October 2016
  - 28<sup>th</sup> April 2017
  - 18<sup>th</sup> May 2017
- 1.2. These meetings were followed up with correspondence from the prospective applicant on 22<sup>nd</sup> February and 15<sup>th</sup> June 2017. The Board's representatives also had a meeting on 27<sup>th</sup> March 2017 with representatives of Donegal County Council
- 1.3. The essential question put to the Board is whether the proposed development would or would not be considered strategic infrastructure within the meaning of section 37A of the Act.

## 2.0 THE PROPOSED DEVELOPMENT AND BACKGROUND

- 2.1. The proposed development comprises the construction and operation of a wind farm with a total number of turbines ranging from 19 to 36. The site was the subject of a previous SID application for 49 no. wind turbines and associated site works under PL05.PA0040. (PL05.PC0170 also applies.) The Board refused permission for that development for one reason relating to the inadequacy of information contained in the environmental impact statement and the Natura Impact Statement particularly with regard to viewshed analysis of vantage points, vantage point surveys at the key times for species such as Whooper Swan and Greenland White-fronted Goose (both Annex I species), surveying of water bodies outside the survey area but within the 15-kilometre buffer zone, identification of bird flight paths, identification of potential

bird mortality associated with turbine collision, secondary habitat loss/disturbance for birds associated with avoidance, and failure to identify potential cumulative impacts through a “barrier effect”. The Board could not therefore make a comprehensive assessment of the potential impact of the proposed development to be undertaken on populations of birds listed in Annex I of the EU Birds Directive 2009/147/EC and could not conclude that the integrity of relevant European Sites would not be adversely affected.

- 2.2. The current proposal is within a smaller site and has a smaller footprint in terms of numbers of turbines and ancillary works. The development comprises up to 36 no. turbines in two clusters; one to the west is clustered around Carrickaduff Hill and the other to the east in Lismullyduff. The minimum number of turbines (19) will have a generating capacity in excess of 50MW,
- 2.3. In response to the recent County Development Plan Variation which seeks to restrict distances from residential property to no less than ten times the blade tip height, a 19 turbine layout (the more western Carrickaduff cluster) was presented to the Board and was claimed to satisfy the set-back distances specified under the new CDP- while this was not a final layout, it is stated that the proposal would not be less than 19 turbines. The proposal also includes tree felling and ancillary infrastructure such as access roads (same core but reduced), borrow pits (6 no. reduced from 9), substations (2 no.), electrical underground cabling for grid connection, temporary construction compounds (2no. reduced from 4) and permanent anemometry masts (2 no.). The main amendments from the previous proposal centre on the reduction in turbines and associated infrastructure such as roads and borrow pits as well as the relocation of one of the previously proposed substations.: (Please also refer to Figure 1 and Figure 8 in pouch dated 28<sup>th</sup> April within the file for a graphic presentation of proposed and comparative layouts.)
- 2.4. The prospective applicant has undertaken significant additional ecological and ornithological survey work in preparation of the EIS and NIS.
- 2.5. The project team has engaged with the National Parks and Wildlife Services (NPWS) and the Department of Infrastructure (DFI) Northern Ireland – the body currently responsible for regionally significant infrastructure projects. Further consultation has

also taken place with the planning authority among other prescribed bodies. Public consultation has also been undertaken.

2.6. A briefing document submitted to the Board provides details of surveys that have been undertaken to establish the baseline ecology at the site. The aim of this is to provide information on all ecological aspects within the identified zone of Influence and to accurately predict potential adverse effects. Following extensive desk studies, field surveys and consultation with relevant stakeholders it is stated that baseline ecology of the site has been fully established and Key Ecological Receptors (KERS) have been identified which provides, it is submitted, all the information necessary to inform a robust and comprehensive assessment. The main findings of are summarised below:

- Ornithology: Bird surveys were carried out at the Carrickaduff wind farm from October 2013 to September 2014. In February 2015 surveys recommenced and are on-going. The scope of this is stated to have been based on the reason for refusal together with a detailed review of the Scottish National Heritage Guidelines 2014 on bird surveys for onshore wind farms and also on reconnaissance visits to the site. Table 1.2 Survey and Findings sets this out in more detail.
- Habitats: Twenty habitat types were recorded which include a number of Annex 1 Habitats. The development has been designed to minimise impacts on peatlands and there will be no direct or indirect effects on dystrophic lakes. The development will be designed to not alter the drainage of sensitive habitats and minimise impacts on water.
- Flora: No evidence of Globe Flower or Irish Ladies Tresses within the development site boundary. An invasive species management plan will be prepared to address knotweed identified.
- Fauna: No significant findings of activity regarding Badger Otter or Bats within the development site.
- Fisheries: following survey work and identification of Brown Trout, Atlantic Salmon Stone Loach and European Eel in streams in both catchments in study area, measures will be incorporated into project design to minimise surface water

impact. Significantly survey work in September 2015 revealed no evidence of Fresh Water Pearl Mussel, but measures will be incorporated into project design to minimise potential impacts.

- The applicant has stated that the recommendations contained in the Scottish Natural Heritage Guidance have been followed and that a peer review of the survey methodology and assessment has also been undertaken.

2.7. The layout amendments are stated to be for reasons such as

- Reducing visual impact from houses
- Reducing length of cluster
- Increasing separation distance from the Hen Harrier activity area
- Increase setback from houses
- Creation of more compact cluster.

2.8. Cabling: It remains the preferred option to utilise an underground cable along the N15 to facilitate the grid connection. Underground electrical cables will run along roads with water mains in them but at appropriate separation distances and crossing will be by an appropriate means.

### 3.0 **APPLICANT'S CASE**

3.1. The key elements of the prospective applicant's submission in support of the case being designated as strategic infrastructure are summarised below. The signed records should be consulted for further details.

- Due to the scale of development involved it is submitted that the project is of strategic economic and social importance to the border region and to the state. The capital investment of somewhere in the range of €85-150million and indirect benefits to the community will cumulatively represent a significant economic contribution to the Region and State as a whole.
- The proposal consists of a significant proportion of the entire Gate 3 allocation capacity for Donegal County which in turn represents 9% of the national Gate 3 target.

- The proposal has the potential to generate electricity for 29,000 households (over 50% of households) in County Donegal.
  - The proposal will assist in meeting national renewable energy targets and will result in significant reductions in carbon emission from electricity generation thereby reducing reliance on fossil fuels in Ireland.
  - As a form of sustainable energy it will contribute significantly to the targets and strategy supported in the Border Regional Authority Planning Guidelines which also acknowledge the benefits from interconnection with the Northern Ireland grid and also into grids north and south as planned.
- 3.2. The site is contained within the sole functional area of Donegal County Council and not considered to have a significant effect on another planning authority within the State.
- 3.3. While it is noted that the proposed development is located in proximity to the Northern Ireland border and that there is potential for transboundary effects to arise, these effects are not considered likely to be significant.
- 3.4. As the development exceeds the threshold set out in the 7<sup>th</sup> Schedule and satisfies criteria in section 37(a)(2) of the Planning and Development Act 2000 as amended it is submitted that the project does constitute Significant Infrastructure Development.

#### **4.0 LEGAL PROVISIONS**

- 4.1. The pre-application consultation relates to the proposed 19-36 turbine wind farm, including the construction of substations, meteorological masts and the laying or underground cables together with ancillary development such as construction compounds, borrow pits, forestry felling and road construction/reconstruction. The Board is to determine whether the proposal is or is not Strategic Infrastructure Development as defined by section 37A of the Planning and Development Act 2000, as amended by section 5 of the Planning and Development (Strategic Infrastructure) Act 2006 and by section 78 of the Planning and Development (Amendment) Act 2010. The Seventh Schedule of the 2006 Act provides that the following shall be infrastructure development for the purposes of sections 37A and 37B:

*'An installation for the harnessing of wind power for energy production (a wind farm) with more than 25 turbines or having a total output greater than 50 megawatts.'*

- 4.2. Section 37A(1) states that an application for permission for any development specified in the Seventh Schedule shall, if the following condition is satisfied, be made to the Board under section 37E and not to a planning authority. Section 37A(2) states:

*That condition is that, following consultation under section 37B, the Board serves on the prospective applicant a notice in writing that, in the opinion of the Board, the proposed development would, if carried out, fall within one or more of the following paragraphs, namely –*

- (a) the development would be of strategic economic or social importance to the State or the region in which it would be situate,*
- (b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional planning guidelines in respect of the area or areas in which it would be situate,*
- (c) the development would have a significant effect on the area of more than one planning authority.*

- 4.3. Section 37E(3) refers to the EIS requirements of an application to the Board. It states that

*Before a person applies for permission to the Board under this section, he or she shall—*

- (a) publish in one or more newspapers circulating in the area or areas in which it is proposed to carry out the development a notice indicating the nature and location of the proposed development and—*
  - (i) stating that—*
    - (I) the person proposes to make an application to the Board for permission for the proposed development,*
    - (II) an environmental impact statement has been prepared in respect of the proposed development, and*
    - (III) where relevant, the proposed development is likely to have significant*

- effects on the environment of a Member State of the European Communities or other party to the Transboundary Convention,*
- (ii) specifying the times and places at which, and the period (not being less than 6 weeks) during which, a copy of the application and the environmental impact statement may be inspected free of charge or purchased on payment of a specified fee (which fee shall not exceed the reasonable cost of making such copy),*
- (iii) inviting the making, during such period, of submissions and observations to the Board relating to—*
- (I) the implications of the proposed development for proper planning and sustainable development, and*
- (II) the likely effects on the environment of the proposed development, if carried out, and*
- (iv) specifying the types of decision the Board may make, under section 37G, in relation to the application,*
- (b) send a prescribed number of copies of the application and the environmental impact statement to the planning authority or authorities in whose area or areas the proposed development would be situated,*
- (c) send a prescribed number of copies of the application and the environmental impact statement to any prescribed authorities together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board in relation to—*
- (i) the implications of the proposed development for proper planning and sustainable development, and*
- (ii) the likely effects on the environment of the proposed development, if carried out, and*
- (d) where the proposed development is likely to have significant effects on the environment of a Member State of the European Communities or a state which is a party to the Transboundary Convention, send a prescribed number of copies of the application and the environmental***



***impact statement to the prescribed authority of the relevant state or states together with a notice stating that submissions or observations may, during the period referred to in paragraph (a)(ii), be made in writing to the Board.***

## **5.0 ASSESSMENT**

### **5.1. Compliance with the Seventh Schedule**

- 5.1.1. Having regard to the nature and scale of the proposed facility comprising a minimum of 19 turbines and potentially up to 36 in number with a total power output of at least 50 MW, it is my opinion that the proposed development comes within the scope of class 1 of the Seventh Schedule of the Strategic Infrastructure Act, 2006 (as amended) being a wind farm having a total output greater than 50 megawatts. Exceedance of 25 turbines would also place this proposal within the scope of class 1 but as this is undetermined at this stage the Board cannot rely on this number of turbines in its determination.

### **5.2. Section 37A(2)(a) - Strategic Economic or Social Importance to the State or the Region**

- 5.2.1. In the first instance the proposal comprises a significant proportion of the entire Gate 3 allocation capacity for Donegal – this county representing 9% of the national Gate 3 Target and also has the potential to generate electricity for 29,000 households. The prospective applicant submits that the development is stated to involve a capital investment of something in the order of €85-150million which, when combined with the commercial rates, contributions and associated infrastructure improvements will accept, cumulatively represent a significant economic contribution to the region and the state as a whole. The construction impact of the development in terms of employment and economic activity would likely be significant at a regional level. The community stands to gain considerably from local authority rates and a community contribution scheme / funds. Furthermore, the development would be a significant energy project in the context of border region and would make a

significant impact in terms of meeting the State's renewable energy targets and reduction on fossil fuel dependency (In 2014, 97% of imports were fossil fuels, SEAI). In this regard I note the national energy policy, as stated in the government white paper, *Ireland's Transition to a Low Carbon Energy Future 2015-2030* (December 2015) reaffirms commitments to achieve targets outlined in previous policy instruments, i.e. 40% energy consumption from renewable sources by 2020 as first established in the National Renewable Energy Plan (NREAP) in 2010. Wind energy is accepted as the main contributor to meeting the country's national climate change and energy supply obligations. The development is therefore of economic and social significance to the region by itself and in a national context and is I consider, within the scope of section 37A(2)(a) of the Act.

### **5.3. Section 37A(2)(b) – Contribution to the achievement of the objectives of the NSS or RPGs**

- 5.3.1. In spatial terms the National Spatial Strategy 2002-2020 refers to the need for a reliable, secure and cost competitive energy supply and specifically section 3.7.2 states in relation to energy that a prime consideration is strengthening energy networks in the West, North West, Border and North Eastern areas in particular.
- 5.3.2. National strategy is reinforced at a regional level where the development of more sustainable, competitive, diverse and secure supplies of renewable energy generation to support economic and social development is a key priority for the Border Region. The RPGS that govern Donegal state that 'The Region benefits from interconnection to the Northern Ireland electricity grid and further integration of the grids north and south is planned. The transmission network in the North West requires significant reinforcement, and is essential if the significant un-tapped wind energy potential in this part of the Region is to be realised.' the Renewable Integration Development Project (RIDP) is focused on the delivery of wind energy in the north west (Donegal and West of Northern Ireland. It was anticipated that by the year 2020, should all the Gate 3 wind farms connect, there is the potential to have 660 MW of wind generation in County Donegal alone.

- 5.3.3. In this context I note the site is selected and designed to connect into the grid at Clogher. The site is located along the Northern Ireland border and is strategically positioned to enhance the integration of grids.
- 5.3.4. As a form of sustainable energy and at an output level in excess of 50MW, the project will contribute significantly to the renewable energy targets and strategy supported in the Border Regional Authority Planning Guidelines which also acknowledge the benefits from interconnection to the Northern Ireland grid and also into grids north and south as planned. Accordingly, I consider it reasonable to conclude that the proposal would come within the scope of section 37A(2)(b) of the Act.

**5.4. Section 37A(2)(c) – Significant effect on the area of more than one Planning Authority**

- 5.4.1. The application site is located entirely within the administrative boundary of Donegal County Council and is not proximate to other county boundaries within the State. It is stated that it is not envisaged that the proposed development would have any significant effects, either direct or indirect, on other Planning Authorities within the State.
- 5.4.2. While the site is contained within the sole functional area of Donegal County Council and not I accept likely to have a significant effect on another planning authority in the State, it is noted that the proposed development is located along and in close proximity to the Northern Ireland border and that there is potential for transboundary effects to arise. The applicant makes the case that Northern Ireland does not come within the meaning of ‘planning authority’ as defined in the Planning Act and in any event the constraint led approach and mitigations measures involved will minimise impacts such that transboundary effects could not be classed as significant.
- 5.4.3. On this point I would argue that having regard to the proximity of the site to Northern Ireland both in terms of physical distance and in terms of pathways to sensitive receptors I consider there is a risk for potential significant impacts. For example, the development site borders Northern Ireland in two stretches of 4 and 5 kilometres approximately. The site is drained by multiple river catchments that traverse both jurisdictions and come under the governance of the Loughs Agency in Northern

Ireland. I do not consider the development site can be readily separated from the wider site context in terms of its ecological network and potential for environmental impacts. I consider that the potential exists for significant effects particularly in the areas of ecology, water, landscape and human beings and accordingly that the prospective applicant should be informed that the proposed development would be likely to have significant effects on the environment in a transboundary State (Northern Ireland).

- 5.4.4. Having regard to the decision in the previous direction PC0170, I am of the understanding that ‘planning authority’ within the meaning of section 37 does not include separate Transboundary States and therefore in view of the forgoing, I consider it reasonable to conclude that the proposal would not come within the scope of section 37A(2)(c) of the Act.

#### **5.5. Conclusion with respect to section 37A**

- 5.6. Having regard to the level of power output generated by 19-36 wind turbines and the development site location, I consider the proposed development of a windfarm to constitute development that falls within the definition of energy infrastructure and to exceed the threshold as set out in the Seventh Schedule of the Strategic Infrastructure Act, 2006, as amended by the Planning and Development (Amendment) Act, 2010. Furthermore, I consider the proposal to be of strategic importance by reference to the requirements of section 37A(2)(a) and (b) of the Act. An application for the proposed development must therefore be made directly to An Bord Pleanála under section 37E of the Act. It is also my opinion that the proposed development constitutes development that would be likely to cause significant effects on the environment of a transboundary state (Northern Ireland) and the provisions of section 37E(3)d should therefore be invoked.

## **6.0 RECOMMENDATION**

- 6.1. In view of the above, it is therefore recommended that the Board determine that the development in question constitutes strategic infrastructure development as defined

by section 2(1) of the Planning and Development Act 2000, as amended by section 6 of the Planning and Development (Strategic Infrastructure) Act 2006 and that the prospective applicant be informed accordingly.

## **7.0 CONSIDERATIONS RELATING TO PROPER PLANNING AND SUSTAINABLE DEVELOPMENT**

7.1. Under section 37B(3)(c) of the Principal Act, the Board may provide advice to prospective applicants as to what considerations, relating to proper planning and sustainable development or the environment, may, in the opinion of the Board, have a bearing on its decision in relation to an application. It is acknowledged that the applicant has sought to address the shortcomings identified in the previous application and the scope and relevance of this material has been discussed with the prospective applicant during the pre-application consultation process as reflected in the meeting records. However the following are regarded as particularly relevant considerations relating to proper planning and sustainable development in this instance:

- The need for robust data in light of the reason for refusal. In this regard appropriate timeframes having regard to the deficiencies as identified in the consultant ecologist's report in respect of the previous application.
- Consideration of survey data for an additional summer breeding season to demonstrate Hen Harrier presence or absence
- Further investigation of the advantages and disadvantages of overhead and underground cabling to facilitate grid connection as a basis for a reasoned decision in option choice.
- Transboundary Impacts.
- Cumulative/in-combination effect with existing and future developments.

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Suzanne Kehely

Senior Planning Inspector

31<sup>st</sup> July 2017

## **Appendix I**

The following is a schedule of prescribed bodies considered relevant for the purposes of section 37E(3)(c) of the Principal Act:

- The Minister for Housing, Planning, Community and Local Government.
- Galway County Council
- The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs
- Údarás na Gaeltachta
- The Minister for Communications, Energy and Natural Resources
- Transport Infrastructure Ireland
- An Comhairle Ealaíon
- Fáilte Ireland
- An Taisce
- Inland Fisheries Ireland
- The Irish Aviation Authority
- The Heritage Council
- The Health Service Executive
- The Commission for Energy Regulation
- The Minister of Transport, Tourism and Sport
- The Environmental Protection Agency
- The Minister for Agriculture, Food and the Marine
- Irish Water

The prescribed authorities for the purposes of section 37E(3)(d) of the Principal Act:

- (a) Department of Infrastructure, Northern Ireland
- (b) The Loughs Agency