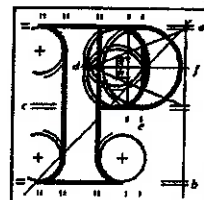


Our Case Number: ABP-316178-23



**An
Bord
Pleanála**

Peter Sweetman & Associates
PO Box 13611
Bantry
Co. Cork

Date: 24 May 2023

Re: Proposed development of Oweninny Wind Farm Phase 3 consisting of 18 wind turbines.
Within the townlands of Laghtanvack, Croaghaun (also known as Croaghaun West), Moneynieran,
Corvoderry, Shanvolahan, Dooleg More, Shranakilly, Bellacorrick and Shanvodinnaun, Co. Mayo

Dear Sir / Madam,

An Bord Pleanála has received your recent submission in relation to the above mentioned proposed development and will take it into consideration in its determination of the matter. Please accept this letter as a receipt for the fee of €50 that you have paid.


The Board will revert to you in due course with regard to the matter.

Please be advised that copies of all submissions / observations received in relation to the application will be made available for public inspection at the offices of the local authority and at the offices of An Bord Pleanála when they have been processed by the Board.

More detailed information in relation to strategic infrastructure development can be viewed on the Board's website: www.pleanala.ie.

If you have any queries in the meantime please contact the undersigned officer of the Board. Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,



Sarah Caulfield
Executive Officer
Direct Line: 01-8737287

PA04

Tel	Tel	(01) 858 8100
Glaao Áitiúil	LoCall	1800 275 175
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64 Sráid Maoilbhride	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
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PETER SWEETMAN & ASSOCIATES

Peter Sweetman PO Box 13611 Bantry Co Cork

To An Bord Pleanála
64 Marlborough Street,
Dublin 1

16 SUBMISSION RE PA16.31617

REG.NO.	PA16.316178
DESCRIPTION	Erection of 18 no. wind turbines with an overall blade tip height of 200m, a rotor diameter of 158m, a hub height of 121m and all associated foundations and hard-standing areas in respect of each turbine;.....
ADDRESS	within the townlands of Laghtanvack, Croaghaun (also known as Croaghaun West), Moneynieran, Corvoderry, Shanvolahan, Dooleeg More, Shranakilly, Bellacorick and Shanvodinnaun, County Mayo.
APPLICANT	Bord na Mona

An Bord Pleanála Legal Functions.

The An Bord Pleanála has three distinct sets of legal tasks when it deals with an application such as this one.

It must assess the planning merits of Application in accordance with the **Planning and Development Act 2000** (as amended) to ensure that application is in accordance with the requirements of the **Planning and Development Act 2000** (as amended) and then to decide that the development can be considered the proper planning and sustainable development of the area.

Thirdly, and different in nature to the first two tasks, the Planning Authority is the competent authority having responsibilities under the **Habitats Directive**.

- 1. The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at 26, 26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49: "47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.*

This point is further explained in the CJEU decision In Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta which states.

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

The threshold the any decision to grant permission must pass in this context is explained in paragraph 44 of CJEU Case 258/11

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

This is a strict standard and the Planning Authority does not have legal jurisdiction to give permission if it is not fully met.

Fourthly the development must be assessed for compliance with the requirements of the Water Framework Directive.

It is our submission that this application fails on all three functions, The developer's statements are in black italics and our comments are in red.

Appropriate Assessment Screening Report

"It has been determined during the screening process, following the examination, analysis and evaluation of the relevant information, and in applying the precautionary principle that there is no potential for significant impacts on the following European sites:"

- *Bellacorick Iron Flush SAC*
- *Bellacorick Bog Complex SAC*
- *Carrowmore Lake Complex SAC*
- *Glenamoy Bog Complex SAC*
- *Slieve Fyagh Bog SAC*
- *Newport River SAC*
- *Owenduff/nephin Complex SPA*
- *Carrowmore Lake SPA*
- *Illanmaster SPA*
- *Doogort Machair SPA*
- *Stags of Broad Haven SPA*
- *Mullet Peninsula SPA*
- *Termoncarragh Lake and Annagh Machair SPA*

- Duvillaun Islands SPA
- Inishglora and Inishkeeragh SPA
- Inishkea Islands SPA
- Clare Island SPA
- Lough Carra SPA

CJEU Case 258/11

44 "So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be **pointed** out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

It is necessary for any decision to have precise and definite findings. "that there is no potential for significant impacts on the following European sites" is not the test.

2. The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at 26, 26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

In no circumstances could the developer's statement be considered to comply with the findings of the CJEU that there is only potential for significant impacts on six European sites:

- Lough Dahybaun SAC,
- Owenduff/Nephrin Complex SAC,
- River Moy SAC,
- Lough Conn and Lough Cullin SPA,
- Killala Bay/Moy Estuary SPA, and
- Blacksod Bay/Broad Haven SPA.

The fact that Owenduff/Nephrin Complex SAC is screened in and Owenduff/Nephrin Complex SPA, is screened out is beyond our understanding.

The test is as Ireland observes, merely necessary to determine that there may be **such an effect**.

IT IS OUR SUBMISSION THAT AS THE SCREENING CARRIED OUT BY THE DEVELOPER IS SO FUNDAMENTALLY FLAWED IN LAW, THAT IT IS NOT POSSIBLE TO MAKE A FULLY INFORMED SUBMISSION ON THE SUBMITTED NATURA IMPACT STATEMENT

The following are some comments on the mitigation measures in the Natura Impact Statement

7.0 MITIGATION MEASURES

The assessment found that the Proposed Development, in the absence of appropriate mitigation measures, could result in potential adverse effects on the qualifying interests of Lough Dahybaun SAC, the River Moy SAC, Owenduff/Nephrin Complex SAC and the SCIs of the Lough Conn and Lough Cull SPA, Killala Bay/Moy Estuary SPA and the Blacksod Bay/Broad Haven SPA.

Not mitigation

In accordance with Article 6(3) of the Habitats Directive, the following mitigation measures are prescribed hereunder to avoid and/or reduce the significance of the potential impacts from the Proposed Development and prevent the occurrence of likely significant effects on European sites. The mitigation measures are described with respect to:

- How the measures will avoid/reduce the adverse impacts on the site;*
- The degree of confidence in their likely success;*
- The timescale, relative to the project, when they will be implemented and secured; and*
- How and when the measures will be monitored.*

Not mitigation

7.1 Construction Phase Mitigation Measures

Mitigation measures which will be implemented during the construction phase are detailed hereunder.

7.1.1 Ecological Clerk of Works and CEMP

A suitably qualified Ecological Clerk of Works (ECoW) will be appointed by the Contractor and will be required full time on site during the construction works. The ECoW will ensure that all mitigation measures outlined within this NIS are implemented correctly during the construction works.

Not mitigation

A Construction Environmental Management Plan (CEMP) has been prepared (see Appendix 3 - CEMP) and will be implemented during the construction phase of the development.

This Construction and Environmental Plan cannot be considered "mitigation" as its contents not are precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

The test as explained in 258/11 is.

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

All mitigation measures outlined within the NIS are captured within the CEMP.

This is certainly not "precise". We have no idea as what they are trying to say.

7.1.2 Pollution Control Measures

Pollution control measures which will be implemented during the construction phase are summarised hereunder:

- *All construction works will be undertaken with due regard to the guidance contained within the CIRIA Document C741 'Environment Good Practice on Site' (CIRIA, 2015) and with regard to IFI guidance Guidelines on the Protection Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters (2016) to ensure the protection of watercourses located within the Proposed Development site.*

Not mitigation as it does not comply with the law, it is not complete, precise and definitive.

- *No instream works will be permitted during the construction works. Where stream crossing occurs on site, a clear-span design bridge will be used.*

Could not be considered "precise" it is not defined.

- *Culverting will only be used for minor forestry/field drains and will be carried out in dry weather periods.*

Could not be considered "precise".

- *Fuels and chemicals will be stored within bunded areas as appropriate to guard against potential accidental spills or leakages. The bund area will have a volume of at least 110 % of the volume of such materials stored.*

Could not be considered "precise".

- All on-site refuelling will be carried out by a trained competent operative
 - Mobile measures such as drip trays and fuel absorbent mats will be used during all refueling operations.
 - No refueling will take place within 50m of any watercourse.
- Where will refueling take place is not defined.

- All equipment and machinery will have regular checking for leakages and quality of performance and will carry spill kits.
- Not specific mitigation, normal best practice

- Any servicing of vehicles will be confined to designated and suitably protected areas such as construction compounds.
- Where are they, they are not defined.

- Additional drip trays and spill kits will be kept available on site, to ensure that any spills from vehicles are contained and removed off site.
- This is closing the stable door after the horse has bolted. It may assist in preventing further effects on the Habitat after the spill.

- Soil/peat exposure will be minimized by controlling, in so far as is practical, where and when peat is stripped.
- This is not mitigation, but it does prove that mitigation measures have not been formed, and therefore do not exist.

- Concrete is required for the construction of the turbine bases and foundations. No batching of wet-cement products will occur on site. Ready-mixed supply of small amounts of wet concrete products and emplacement of pre-cast elements will take place. Pre-cast elements for bridges, culverts and concrete works will be used.
- Each turbine base will require about 3,000 tons of concrete, how will that be delivered in small amounts?

- After concrete is poured at a construction site, the chutes of ready mixed concrete trucks must be washed out to remove the remaining concrete before it hardens. Wash out of the main concrete bottle will not be permitted on site; wash out will be restricted only to chute wash out. Wash down and washout of the concrete transporting vehicles will take place at an appropriate facility offsite.
- There is no design of a wash down facility, it is not included in the drawings.

- The best management practice objectives for concrete chute washout are to collect and retain all the concrete washout water and solids in leak proof containers or impermeable lined wash out pits, so that the wash material does not reach the soil surface and then migrate to surface waters or into the ground water. The collected concrete washout water and solids will be emptied on a regular basis.
- Best practice has no place in a mitigation measure as by definition it cannot be considered a precise and definitive finding.
- Anyway, what is a regular basis? Once a minute or once a year? It is not definite aABP is left to make a presumption.

- *During the construction phase, four temporary site compounds will be required. Temporary on-site toilet facilities (chemical toilets) will be used. These will be sealed with no discharge to the surface water or groundwater environment adjacent to the site. Where are they what effect will they have?*

7.0 MITIGATION MEASURES

The assessment found that the Proposed Development, in the absence of appropriate mitigation measures, could result in potential adverse effects on the qualifying interests of Lough Dahybaun SAC, the River Moy SAC, Owenduff/Nephrin Complex SAC and the SCIs of the Lough Conn and Lough Cull SPA, Killala Bay/Moy Estuary SPA and the Blacksod Bay/Broad Haven SPA.

In accordance with Article 6(3) of the Habitats Directive, the following mitigation measures are prescribed hereunder to avoid and/or reduce the significance of the potential impacts from the Proposed Development and prevent the occurrence of likely significant effects on European sites. The mitigation measures are described with respect to:

- How the measures will avoid/reduce the adverse impacts on the site;
- The degree of confidence in their likely success;
- The timescale, relative to the project, when they will be implemented and secured; and
- How and when the measures will be monitored.

7.1 Construction Phase Mitigation Measures

Mitigation measures which will be implemented during the construction phase are detailed hereunder.

Not mitigation.

7.1.1 Ecological Clerk of Works and CEMP

A suitably qualified Ecological Clerk of Works (ECoW) will be appointed by the Contractor and will be required full time on site during the construction works. The ECoW will ensure that all mitigation measures outlined within this NIS are implemented correctly during the construction works.

Not mitigation.

A Construction Environmental Management Plan (CEMP) has been prepared (see Appendix 3 - CEMP) and will be implemented during the construction phase of the development.

The Construction Environmental Management Plan in appendix 3 is could not assist the board in carrying out an Appropriate Assessment "So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

All mitigation measures outlined within the NIS are captured within the CEMP.

It would be correct to say all mitigation measures outlined within the Natura Impact Statement are outlined in the CEMP.

The Cambridge English Dictionary defines capture as "to take someone as a prisoner, or to take something into your possession, especially by force:"

7.1.2 Pollution Control Measures

Pollution control measures which will be implemented during the construction phase are summarised hereunder:

- All construction works will be undertaken with due regard to the guidance contained within the CIRIA Document C741 'Environment Good Practice on Site' (CIRIA, 2015) and with regard to IFI guidance Guidelines on the Protection Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters (2016) to ensure the protection of watercourses located within the Proposed Development site.

That is not a mitigation measure

- No instream works will be permitted during the construction works. Where stream crossing occurs on site, a clear-span design bridge will be used.

Where do they occur not definite.

- Culverting will only be used for minor forestry/field drains and will be carried out in dry weather periods.

What is a minor forestry/field drain. Or what is not a minor forestry/field drain?

- Fuels and chemicals will be stored within bunded areas as appropriate to guard against potential accidental spills or leakages. The bund area will have a volume of at least 110 % of the volume of such materials stored.

That could be considered mitigation if the site and plans were available

- All on-site refueling will be carried out by a trained competent operative

We are very glad that refueling will not be carried out by an incompetent operator.

- Traffic on site will be kept to a minimum. Only the proposed onsite access track will be used for project-related traffic. Where onsite access tracks pass close to watercourses, silt fencing will be used to protect the streams.

Subject to potential planning conditions and prior to commencement of construction activity, this drainage design (including construction specific measures) will be reviewed by the appointed Contractor as part of the review of this Construction Environmental Management Plan (CEMP).

And who will carry out the required Appropriate Assessment

A Surface Water Management Plan (SWMP) has been prepared and is included as Appendix 11.3 of the EIAR. The purpose of this plan is to ensure that all site works are conducted in an environmentally responsible manner so as to minimise any adverse impacts from the proposed development on surface water quality. The plan will incorporate the following specific objectives:

The High Court has found that this is not acceptable (Humphries J in Sweetman v An Bord Pleanála) or has your chair found that this is activism and should be ignored.

Proprietary Silt Control Measures

Temporary settlement tanks can be utilised, in lieu of constructing temporary settlement ponds, to remove suspended particles from controlled water in small works areas such as localised excavations that require pumping out of water. The tanks, as per Figure 5-3 are proven to be very effective, have a small footprint and are very mobile with the potential to move around the wind farm site using a telehandler. These types of units are recommended by the Scottish Environmental Protection Agency (SEPA) and the UK Environmental Agency for use on construction sites for the treatment of sediment laden water. Sediment retained in settlement ponds or tanks will be removed on a regular basis and deposited at a suitable location, such as embankments or borrow pit reinstatement stockpiles.

That is not a proposal let alone mitigation.

Silt control measures e.g. silt bags, will be implemented as required during the construction process.

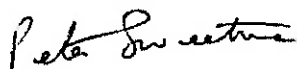
Meaning what?

5.3.2 Dewatering

Extraction could be undertaken by dry or wet working.
Yes, and pigs may fly.

- Dry working requires dewatering. Dry excavation would require the use of initial drainage channels to reduce the hydraulic head, followed by sump dewatering in the pit or well dewatering. The volume of water requiring extraction initially is high in the gravels due to drainage from storage, however as the gravel area is surrounded by lower permeability materials the volume of groundwater encountered for the short-term use of the pit may be limited

What is proposed and what are the mitigation measures?



Peter Sweetman PO Box 13611 Bantry Co Cork

and of behalf of Wild Ireland Defence CLG North Allihies Beara Co. Cork

PLEASE RESPOND **ONLY BY EMAIL TO** [REDACTED]

Please refund our 50 euros ro us rather than to the developer.

There is no justification in crediting the developer with our 50e we submit that to credit the developer with it is contempt of a decision of the CJEU