




Ref: 324113

From Sean O'Callaghan <socallaghan@antaisce.org>

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A Chara,

Please find enclosed An Taisce's submission in ref: 324113.

Is mise le meas,

Seán O'Callaghan

Planning and Environmental Policy Officer

An Taisce – The National Trust for Ireland

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20260424-ACP-324113

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Sent by email to: sids@pleanala.ie

24th April 2026

Ref: 324113

App: Bord Gais Energy

For: Construction of an open-cycle gas turbine power plant, primarily fueled by Natural Gas, Above Ground Installation and ancillary development

Site: Pollnagroagh and Rathmorrissy (Townlands), Athenry, Co. Galway

A Chara,

We thank you for referring the above application to An Taisce for comment. The proposal seeks to build a gas-fired power plant which is projected by the applicant to emit 21,673 - 22,153 tonnes (t) CO₂ equivalent (e) per year. It is noted that a 10-year permission period is being sought, yet repeated references are made in the application particulars to the Peaker Plant operating until 31 December 2050, a point requiring clarification by the planning authority as a preliminary matter. Such an operational timeframe until the end of 2050 would lead to total emissions of between 455,133 tCO₂e (lower estimate) and 465,213 tCO₂e, if 2029 is taken as the baseline year for start of operations due to the construction timeframe expected to commence in Q2 2027 and last approximately 18 months. Furthermore, this would extend the proposal's operations to the end of 2050 when net-zero across all sectors is supposed to be achieved, which is considered to be inappropriate and in contravention of Ireland's legally-binding decarbonisation obligations.

1. Carbon Budgets

In light of the estimates calculated above, it should be ensured that total emissions associated with the proposal are assessed against relevant sectoral emissions ceilings and carbon budgets (likely to be the electricity category in this case), as well as being considered cumulatively with other emissions-intensive facilities expected to be operational between now and 2050. We would have serious concerns regarding the complete omission of operational phase mitigation for emissions expressed by the applicant in Section 8.7.2 of the EIAR (p. 435):

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Directors: Terri Morrissey (Chair), Neil Whoriskey (Vice Chair), John Conroy (Treasurer), Laura Segura Gutierrez (Secretary),

Finbarr Murray, Helen Shaw, Tony Holohan

"There are no specific measures proposed to mitigate the GHG emissions of the operational phase of the proposed project."

EIAR Ch.8: Table 8.1 outlines the 5 year carbon budgets up to 2035 without also considering tighter carbon budgets due to exceedances, as mandated by Section 6D(5) of the Climate Action and Low Carbon Development (Amendment) Act 2021. Furthermore, given the operational timeframe until the end of 2050, it is submitted that the applicant should at least attempt to model the subsequent 3 carbon budgets until that time (including exceedances). Assessing the project against carbon budgets without projected exceedances and subsequent tightening represents a misleading portrayal of the climate implications of the project.

It appears that the applicant has neglected to incorporate projected exceedance of the first carbon budget into recalculation of carbon budget 2 which would represent a greater increase than 8.3%:

"2025 is the last year in the first 5-year carbon budget period. During the initial 5- year budget period the average annual reduction required was 4.8%, this increases to 8.3% in the second budget period (2026-2030)." (EIAR, Ch.8, p.412)

The project's climate accounting methodology recognises the use of carbon budgets for essential contextualisation of operational emissions, but neglects to consider the need for comparison with increasingly stringent carbon budgets given projected exceedances:

"Ireland's carbon budgets can also be used to contextualise the magnitude of GHG emissions from the Proposed Project (TII, 2022a). The approach is based on comparing the net Proposed Project GHG emissions to the relevant carbon budgets (Government of Ireland, 2025a)." (EIAR, Ch.8, p.418)

2. Cumulative Assessment

It should also be ensured that a national cumulative assessment of existing, permitted and proposed gas power plants of the nature proposed (for back-up generation purposes) is carried out to allow for a meaningful assessment of the extent to which the "minimum" 2GW allowance in the Climate Action Plan (CAP) has been surpassed. Without a maximum having been set by the CAP, the planning authorities must ensure that runaway installation at a national level does not occur and exacerbate emissions impact, requiring a degree of coordination and cumulative assessment against carbon budgets.

Such a cumulative impact assessment appears not to have been carried out in EIAR Ch. 8 or Ch. 16, which leads us to query the conclusion in EIAR Section 16.5 that the cumulative effect of the proposal in relation to GHG emissions is *"direct, long-term, negative and slight, which is overall not significant in EIA terms."* We submit that this conclusion would radically change if cumulative assessment with other back-up gas plant and emissions-intensive projects is carried out.

In a judgement of the Supreme Court in the UK, *R(Finch) v Surrey County Council (UKSC/2022/0064)*, regarding a planning permission for an oil extraction site, it was highlighted how the availability of statistical information and standard emissions accounting methodologies allows developers and authorities to produce sufficiently accurate estimates of emissions. The judgement also found that the EIA Directive imposes no geographical limitations on the scope of environmental effects to be assessed, thereby necessitating a robust accounting of full lifecycle, cumulative and collective emissions impacts. Projects must also be assessed by reference to their own full suite of effects.

The applicant declares that:

"The Proposed Project is fully in line with national climate policy, as CAP25 specifically gives a key target of installing "at least 2 GW" of new flexible gas plant, intended to produce a "more flexible energy system, reducing the strain on the power system, and ensuring that we maximise our renewables potential." The Proposed Project will provide 0.325 GW or 0.334 GW of this capacity." (EIAR, Ch.8, p.431)

The necessity for sole reliance on back-up gas generation to smoothen renewables intermittency, and potential reduced focus on diversified alternative back-up options such as long-duration battery electricity storage, interconnector capacity and demand side measures require close consideration when assessing the subject proposal.

We note information provided by an applicant under a separate planning application, as part of a further information request within application ref: 2460842 (currently under appeal, Ref. 323483), in the jurisdiction of Meath County Council, detailing the amount of already permitted flexible gas-fired generation capacity in the country within a list of built, under construction, permitted and in-process gas power plants.

They outlined that since 2021, 3.02GW of capacity have been granted planning permission, and of that, 1.48GW have been built or are under construction. It is also important to note that two of the third party appeals in that case stated that several flexible gas-fired power plants were not included in the applicant's response, including three more already-permitted plants, which the appellants stated would bring the total consented capacity to 3.6GW. They also cited others that are currently going through the planning process, giving a total of 6.2GW of consented and in-process application. This would go far beyond the 2GW target for back-up generation, raising serious emissions climate impact, fossil gas lock-in and transgression of legally binding carbon budgets concerns associated with the proposal. This requires close consideration by An Coimisiún to ascertain the degree to which further development of flexible generation beyond the 2GW target is compatible or not with the overall goals and requirements of the Climate Act and Climate Action plans. It should be ensured that the latest data on gas plants which may have been permitted or planned since this appeal are utilised in assessing the proposal.

While it is true that CAP24/25 does not directly specify an upper limit or maximum and therefore there may not be a legal preclusion under CAP 24/25 on permitting capacity above the 2 GW target, adherence to the legally binding carbon budgets and sectoral ceilings will legally limit the amount of additional gas-fired generation that can be brought on stream. This is further exemplified by EPA research¹ projecting exceedances of carbon budgets and sectoral emissions ceilings, including electricity and industry:

"Budget period 1 (2021-2025) of 295 Mt CO₂eq is projected to be exceeded by between 8 to 12 Mt CO₂eq. Budget period 2 (2026-2030) of 200 Mt CO₂eq is also expected to be exceeded by a significant margin of 77 to 114 Mt CO₂eq (with carryover from Budget period 1).

...

Sectoral emissions ceilings for 2030 are projected to be exceeded by the Buildings, Electricity, Industry and Transport sector"

¹ Ireland's Greenhouse Gas Emissions Projections: 2024-2055. May 2025. EPA.
<https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/07875-EPA-GHG-Projections-Report-FINAL.pdf>

Any overshoot of the 2021-2025 carbon budget will need to be carried over into the 2026-2030 period, under s.6D(5) of the Climate Act, thereby making that budget and the corresponding sectoral ceilings, including for electricity, even more stringent and much tighter than the 51% initial 2030 target. Crucially, without serious course correction, all post-2030 budgets will also be much stricter as a result of the overshoots. It is not clear if consideration of carbon budget exceedances has been factored into the applicant's climate impact assessment in EIAR Chapter 8. The proposal's compatibility with increasingly tight carbon budgets requires close consideration and assessment by An Coimisiún in discharging its responsibilities under s.15 of the Climate Act.

Not only is Ireland on course to overshoot the first two carbon budgets, but the sectoral ceilings currently do not add up to meet the 2030 budget, in fact they exceed it. This carbon budget "hole" could amount to "planned" excess emissions of 25% or more over and above the budget.² The exceedance of the budget comes from the inclusion of "unallocated emissions savings" - a Government decision that unspecified technological developments, unfolding over the time before the second budget period started, would significantly affect the relative feasibility of achieving additional reductions in different sectors.

On that basis the Government "overallocated" emissions across the various sectors, but with a commitment that they expected to subsequently plan additional "emissions savings" in one or more specific sectors (i.e. that they would, at some point, revise one or more of the ceilings downward to come into compliance with the budget). These required "additional" savings were merely being left "unallocated" between sectors as a temporary measure, pending more clarity on technologies, etc. These "unallocated emissions savings" that would have to be subsequently "allocated" represent an additional 13% over the total approved budget for 2026-2030.

Furthermore, the Government failed to assign a ceiling to an entire sector - land use, land use change and forestry (LULUCF). Recently, however, they did introduce what they describe as a "new approach" to LULUCF in the Climate Action Plan 2024. This new approach is based on an EU Regulation on LULUCF emissions that Ireland is already bound to, separately from our domestic climate law. The specific EU limit is arrived at via a formula that depends on emissions in certain previous years, not all of which are yet finalised. Thus, the number arrived at by this "new approach" also increases the amount by which the sectoral ceilings are exceeding the overall carbon budget.

To fix this carbon budget hole, the existing sectoral ceilings will need to be reduced, meaning that even more stringent measures will be needed to curtail emissions.

Ultimately, to comply with the constraints of the legally binding carbon budgets, sectoral activities must add up to a figure within the relevant sectoral ceiling. Given the currently projected exceedances for carbon budgets 1 and 2 and their sectoral ceilings as well as the aforementioned carbon budget hole, budget and sectoral ceiling compliance must mean cutting back on current projected WEM/WAM activities as well as not adding further new activities.

This context on Ireland's emission reduction legal obligations is critical in demonstrating the serious problem we currently face in complying with the legally binding carbon budgets. It therefore also highlights the urgency with which all of society must act to keep Ireland in line with its commitments to a fair share contribution to global emissions reduction, especially those bodies with obligations under the Climate Act, of which An Coimisiún is one.

² Dublin City University and An Taisce (2024) "How Big is Ireland's Looming Carbon Budget 'Hole'?" <https://www.antaisce.org/Handlers/Download.ashx?IDMF=0bb43829-9018-4075-ba83-b9f18280f15d>

In the context of our legally binding carbon budgets and CAP 24/25's clear objective to rapidly reduce fossil fuel use, continually permitting additional gas-fired generation capacity beyond the 2GW target cannot be deemed to be acceptable. To do so would not only contribute to carbon budget exceedances in breach of Climate Act obligations but would also exacerbate lock-in to fossil fuel use and increase the risk that fossil fuel infrastructure, such as the subject proposal, become stranded assets as fossil fuels are phased out.

We would also highlight Annex 2 of the Energy Security in Ireland to 2030 report³, particularly Section 3.10, which clearly shows the need for a reduced role for gas in Ireland's energy future:

"Natural gas demand sees a significant reduction of between 68-78% from 2030 to 2040, depending on the scenario considered. This demonstrates the significant reduction of natural gas use anticipated, reducing the reliance on imports during this period and its limited role in our energy system as we reach 2040".

This is further exemplified by MaREI Institute research, which identifies that natural gas demand needs to fall by 40% this decade, and a further 80% in 2030, in order to remain within the limits of the national Carbon Budget programme, as set out by the Climate Act, and to secure the long term objective of a carbon-neutral economy by 2050 at the latest. This means that by 2040, natural gas demand needs to reduce by 93% in the power sector, 85% in the residential sector and 67% in enterprise.⁴ In assessing energy security considerations it is also particularly important that An Coimisiún addresses the potential for gas and electricity assets to become underutilised, uneconomic and ultimately stranded resulting in greater insecurity.

It must be demonstrated how the subject proposal's gas transmission infrastructure, in-combination with the operational phase activity of the associated Kilshane Gas Power Plant, will allow for Ireland to remain within increasingly stringent carbon budgets and sectoral emissions ceilings under the Climate Act. Aside from a reference to the possible transition to hydrogen and biomethane production, it is not clear how the long-term lock-in of emissions associated with the gas transmission infrastructure and associated power plant will be prevented or abated. The implicit uncertainty in the ability to rapidly deploy biomethane and doubts about its emissions reduction capability is exemplified by the following statement from the applicant on p. 431 of EIAR Ch. 8:

"However, due to uncertainties in carbon intensity of biomethane production, the reduction in GHG emissions from the operational phase of the proposed development has not been quantified."

Furthermore, emissions are taken as a given by the applicant with *"no specific measures proposed to mitigate the GHG emissions of the operational phase of the proposed project."* (EIAR, Ch. 8, p. 435). This embeds an unacceptable level of risk into the proposal with regard to continued climate harms in the context of a deteriorating climate emergency, while also demonstrating that hydrogen and biomethane may not be considered by the applicant to be a credible mitigation for GHG emissions offsetting within the operational timeframe envisaged.

This is wholly incompatible with our national and European climate obligations, as well as with the level of rapid decarbonisation needed as repeatedly highlighted by the IPCC.

"The operational phase of the Proposed Project is predicted to result in between 21,299 and 21,779 tCO₂e. The majority of GHG emissions associated with the

³ <https://www.gov.ie/en/publication/5c499-energy-security-in-ireland-to-2030/#:~:text=As%20we%20transition%2C%20the%20Energy,A%20Renewables%2DLed%20System>

operational phase, and the overall lifespan, of the Proposed Project, originate from the combustion of natural gas by the turbine (assumed to occur 100 hours per year for this assessment).”(EIAR, Ch.8, p.427)

3. Hydrogen/Biomethane

We would highlight the large degree of uncertainty regarding the ability of biomethane and hydrogen to be deployed at scale to ensure a 100% transition from fossil gas combustion. The applicant relies on GNI’s ‘Pathway to a Net Zero Carbon Network’⁴ document to support this, however, An Taisce would have concerns around the feasibility of this plan and its ability to realistically decarbonise our energy system without further fossil gas lock-in. While the potential future use of hydrogen and biomethane does not form part of the EIAR’s enforceable mitigation, we submit that they should not be factored into An Coimisiún’s wider consideration of the application as the proposals are highly uncertain.

Any hydrogen used to reduce carbon emissions must be green hydrogen, which entails a significant amount of renewable electricity demand to power the electrolysis process, necessitating close assessment given the potential inefficiency of this option compared to renewable electricity production combined with long-duration battery storage. Cremonese et al. (2023)⁵ highlight the potential conflict between the deployment of renewable energy for decarbonising local power grids versus using renewable energy to produce green hydrogen.

The potential use of green hydrogen at any significant scale at some point in the future remains highly uncertain, dependent on multiple factors, and is outside of the control of the applicant, thereby not being suitable as a rigorous mitigation measure. Gas Networks Ireland’s (GNI’s) own projections in the aforementioned transition document only predict a small proportion of hydrogen in the gas grid mix by 2050. The transition of a gas network to hydrogen use is very complex technically and procedurally, requiring significant resources and cost outlay, in the retrofitting and/or construction of hydrogen compatible pipelines for example. The feasibility, expense and impact of such complex infrastructural change in the context of the need for rapid decarbonisation requires more detailed assessment. Indeed, for example, GNI’s Ten Year Network Development Plan’s (TYNDP’s)⁶ strategic hydrogen development timeline (Figure 4.2 on p.23) lists production, transportation, storage and end-use elements which are not feasible until the mid-2030s. Multiple elements do not appear to be fully feasible until 2038-2050, if ever. The potential infeasibility of hydrogen deployment to rapidly decarbonise society requires close consideration by An Coimisiún when assessing the subject proposal’s utilisation of hydrogen as a project justification and mitigation measure.

With regard to a potential transition from natural gas to biomethane, we would highlight that biomethane cannot automatically be labelled a carbon neutral fuel due to the environmental risks associated primarily with fugitive methane losses, but also with the use of chemical fertiliser to produce silage and the ammonia emissions which can result from the use of digestate, the by-product of the AD process, as fertiliser. Furthermore, Ireland is currently far behind in reaching the Government target of 5.7TWh of biomethane production per annum by 2030, with further upscaling and actual contribution to decarbonisation remaining uncertain.

⁴ <https://www.gasnetworks.ie/network/pathway-net-zero>

⁵ Cremonese et al. 2023. The sustainability of green hydrogen: An uncertain proposition. <https://doi.org/10.1016/j.ijhydene.2023.01.350>

⁶ <https://www.gasnetworks.ie/sites/default/files/docs/corporate/gas-regulation/Network-Development-Plan-2023.pdf>

4. Consideration of Alternatives

There appears to be no consideration of zero-emissions storage options such as Long Duration Energy Storage (LDES) in the consideration of different technological options. The applicant only assesses two gas backup options (open-cycle versus combined cycle). As the stated goal of the proposal is to support the grid during periods of low renewables availability, it is submitted that the consideration of alternative technologies should be extended in the EIAR, or at least a rationale as to why zero-emissions storage options are not considered by the developer to be feasible or available. With the expected proliferation of renewables and alternative clean storage solutions, the need for backup gas for such an extended period as proposed by the applicant is questionable. This also raises serious concerns over stranded asset risk when complete decommissioning of natural gas will be required and given uncertainties surrounding biomethane and hydrogen, as expressed elsewhere in the submission.

The developer must describe reasonable alternatives and the main reasons for the option chosen, taking into account the effects of the proposed development (**Case C-461/17 *Holohan v ABP***):

"(7) For the purposes of Article 5(3) of Directive 2011/92, alternatives are main alternatives if they are capable of significantly influencing the environmental effects of the project concerned (Question 5).

"(8) In accordance with Article 5(3)(d) of Directive 2011/92, the developer must indicate the reasons which determined the choice he made from various options available to him, in so far as those reasons relate to the environmental effects of the project and of the alternatives (Questions 6 and 7)."

The possibility to assess various reasonable alternatives can be seen as the main added value of the EIA process. It provides a comparison of options in terms of location and technologies, upon which to make the final decision and, if necessary, to adjust the project in its early development stages in order to minimise environmental impacts.

5. Energy Security

Geopolitical events of recent weeks (at the time of writing) and the resulting oil supply/price crisis have starkly highlighted the need to rapidly phase out our dependence on fossil fuels in favour of renewables.⁷ While the applicant highlights that the intention behind the subject proposal is to support the deployment of renewables by providing energy at times of low wind and solar availability, as discussed above, well over the Climate Action Plan target of 2GW of flexible gas-fired generation has already been permitted and/or is under construction. Therefore, it is submitted that granting permission for the subject proposal would exacerbate lock-in to fossil fuel use and worsen Ireland's energy security situation.

6. Population and Human Health

It is highlighted that Open Cycle Gas Turbine (OCGT) power plants emit nitrogen oxides (NOx), carbon monoxide (CO) and fine particulates, alongside climate heating carbon dioxide (CO₂).

⁷ <https://www.irishtimes.com/opinion/2026/04/16/hannah-daly-when-the-crisis-is-caused-by-oil-dependence-the-solution-isnt-cheaper-oil/>

Notwithstanding the requirements under the Industrial Emissions Directive for impact assessment and regulation of these emissions by the EPA, it is submitted that consideration of these impacts should be articulated in the EIAR with regard to potential adverse effects upon the local community. This applies in particular to more vulnerable members of the community who have been found in other jurisdictions to be susceptible to climate harms and there has been an increased recognition of their liability for such harms (see *Verein Kilmaseniorinnen Schweiz and others v Switzerland* [ECHR 53600/20].)

7. Monitoring

In EIAR Section 8.9 'Monitoring Requirements' (p. 437), the applicant states that "*There are no monitoring requirements in relation to climate.*" However, in an EIA context, it is submitted that Article 8a of the EIA Directive encourages post-consent monitoring, if considered appropriate by the planning authority to ensure that developers demonstrate that they are operating in an environmentally responsible manner and confirm that their developments provide sound environmental protection:

1. *The decision to grant development consent shall incorporate at least the following information:*

...

*(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment, as well as, **where appropriate, monitoring measures.***

...

4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment."

...

This should also apply to monitoring of GHG emissions emanating from the proposal. Transparency and clarity in how emissions are presented are important not only for the planning authorities making the final decision but also for the benefit of public information and participation.

The aforementioned Finch judgement, while in the UK jurisdiction, demands a consistent approach to accounting for full impacts of fossil fuel developments which we submit is applicable to the Irish context to ensure that decisions are made with full clarity and understanding of the such project's effects on the global climate.

Furthermore, this could interact with the Strategic Environmental Assessments (SEAs) conducted as part of Climate Action Plans (CAPs) 2024 and 2025, and Article 10 monitoring data required as part of that process, to ensure the inclusion of project-specific monitoring requirements resulting from

SEA so that the EIA effectively addresses data gaps and strategic uncertainties. The scope of the EIA should seek to align with any screening and scoping in/out of issues in CAP-specific SEAs, or explain why this is not appropriate for the project in question. The same applies to mitigation measures for gas plants which may be articulated in CAP SEAs.

8. Water Framework Directive

The application particulars, including the NIS, indicate that the subject site overlies the GWDTE-Galway Bay Complex Fens and Clarinbridge ground waterbodies. While the water quality status of both groundwater bodies is currently good per the criteria set out in the Water Framework Directive, the NIS states that:

"The groundwater vulnerability to contamination under the site of the Proposed Project is classified as a combination of 'Extreme' and 'Rock at or near surface or karst' (GSI, 2025). The bedrock aquifer underlying the site of the Proposed Project is 'Regionally Important Aquifer – Karstified (conduit)', and the underlying soils are a combination of 'Shallow well drained mineral (mainly basic)' and 'deep well drained mineral (mainly basic)'."

The NIS also acknowledges that *"the GWDTE-Galway Bay Complex Fens ground waterbody is poorly documented, and it is unclear how ground water travels within this waterbody."*

The objectives of the WFD are to protect all high status waters, prevent further deterioration of all waters and to restore degraded surface and ground waters to good status by 2027. Specifically, where there is bad or moderate water quality there is the legal imperative to bring that water body up to good status by 2027.

It is therefore submitted that the subject proposal needs to be assessed against Article 4 of the WFD to determine whether the project may cause a deterioration of the status of a surface or ground water body or if it may jeopardise the attainment of good surface or ground water status or of good ecological potential and good surface or ground water chemical status. This is of particular importance given the vulnerability of the groundwater and the uncertainties in how GWDTE-Galway Bay Complex Fens groundwater body moves.

We would highlight the following points of relevant European case law regarding the WFD. In Case C-461/13 (Weser), the CJEU held that:

"Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required

— unless a derogation is granted

— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."

The Weser case created a jurisdictional requirement and established that authorisation for a project has to be refused where there may be an adverse impact on the objectives of Article 4. To assess

the proposal against Article 4, the EPA monitoring data on the water quality status indicators and Environmental Quality Standards must be used.

9. Habitats Directive Legal Requirements

It is now well established in law that approval can only be granted for plans and projects when it has been established beyond all reasonable scientific doubt that the subject proposal will not adversely impact any Natura 2000 sites.

In **Case C-258/11, Sweetman & Others v An Bord Pleanála & Others**, it was held that the provisions of Articles 6(2)–(4) of the Habitats Directive must be interpreted together “*as a coherent whole in the light of the conservation objectives pursued by the directive*” and that they impose a series of specific obligations necessary to achieve and maintain favourable conservation status. A plan or project will negatively impact upon a site if it prevented the “*lasting preservation of the constitutive characteristics*” of the site for which it was designated, with reference to the site’s conservation objectives. Significantly it was determined that:

*“authorisation for a plan or projectmay therefore be given only on condition that the competent authoritiesare certain that the plan or project will not have lasting adverse effects on the integrity of the site. That is so where **no reasonable scientific doubt remains** as to the absence of such effects”* [emphasis added].

The competent authority must therefore refuse authorisation for any plans or projects where there is uncertainty as to whether the plan or project will have adverse effects on the integrity of the site. It was also held in paragraph 44 that:

*“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 (see, to this effect, Case C 404/09 Commission v Spain, paragraph 100 and the case-law cited)...”* [emphasis added].

In *Kelly v An Bord Pleanála & Others*, [2013 No 802 J.R.] with reference to *Commission v Spain c-404/09*,⁸ the High Court held in paragraph 36 that the competent authority must carry out an Appropriate Assessment for a plan or project in light of the best scientific knowledge in the field. It was also held that the competent authority must lay out the rationale and reasoning which was used to arrive at the determination.

The Kelly Judgement has provided a very helpful clarification of the requirements of an AA, and in particular in paragraph 40, a summary of what must be delivered by the process in order to be lawfully conducted:

⁸ ECJ ruling for C-404/09 [Commission v Spain] held that: “[a]n assessment made under Article 6(3) of the Habitats Directive cannot be regarded as appropriate if it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the SPA concerned.”

"(i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.

(ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.

(iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects."

This has been corroborated by the summary provided in *Connelly v An Bord Pleanála [2018] IESC 31* which highlighted that the competent authority may only determine that the proposed development will not adversely affect the integrity of the European site concerned once these preceding requirements are satisfied. Furthermore, the decision-maker has a duty to both provide reasons for reaching the relevant conclusion and 'to make complete, precise and specific scientific findings' which justify that conclusion.

It should therefore be ensured that the requirements of Article 6(3) of the Habitats Directive with regard to the direct, indirect and cumulative impacts of the proposal are satisfied.

Please acknowledge our submission and advise us of any decision made.

Is mise le meas,

Seán O'Callaghan
Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland