

Date | 26 June 2026

Our ref | 01435308

Your ref |

An Coimisiún Pleanála

64 Marlborough St

Dublin 1

D01 V902

Planree Limited**Project: Meenbog Wind Farm – application for substitute consent under Section 177E of the Planning and Development Act 2000 (the Application)**

Dear An Coimisiún Pleanála

We refer to the Planning Report prepared by MKO accompanying this application. This letter is being provided as an Appendix to the Planning Report to clarify the reasoning behind the structure of the Application.

As set out in the Planning Report, planning permission for the development of a 19 turbine Meenbog windfarm was granted at this site in accordance with Section 37G of the Planning and Development Act 2000 (as amended) (the **PDA 2000**) (ABP Ref: PA05E.300460) on 25th June 2018. That permitted development was amended by ABP Ref-303729 which allowed for the installation of turbines with a larger rotor diameter. The windfarm was partially constructed when a peat slide occurred at the site. This caused work at the site to cease, and the Planning Authority Donegal County Council then inspected and determined that a number of deviations had been made at the site, such that the windfarm was not being constructed as per the permissions referenced above.

The need for this substitute consent planning application arises from a decision of the Court of Appeal on 18 December 2024,¹ which determined that the number of material deviations from the plans approved under the Permitted Development necessitated the regularisation of all works undertaken to date, by way of a substitute consent planning application, prior to it being possible to secure the necessary permission to finalise construction of the windfarm.

This planning application is made under Section 177E(2A) PDA 2000 which provides a statutory mechanism for seeking substitute consent in respect of development for which as here, planning permission has been granted. This section envisages that where planning permission has already been granted for development, an application to ACP for substitute consent can cover both the development that has been carried out to date, and development that remains to be carried out.

This statutory mechanism was referenced in the judgment of the Court of Appeal delivered by Ms Justice Butler. Specifically, at paragraph 62 of the judgment, the Court expressly recognised that prior to the insertion of section

¹ [2024] IECA 300

177E(2A) of the PDA 2000, *'as originally framed, the remedial environmental assessment to be carried out in the substitute consent process was entirely retrospective in that it related exclusively to development which was already carried out. There was no facility to link an application for prospective permission or prospective amendments to an existing permission with the application for substitute consent. Instead, the application for substitute consent had to be determined before any further application could be made'*.²

However, the Court goes on to clarify that with the change to the legislation, ie. the insertion of s177E(2A), *'[t]his provision now mends that situation at least in circumstances where there is a planning permission in existence in respect of the development.'*

The Court's summary of the impact of s177E(2A) demonstrates that developers whose projects were permitted under a planning permission, which projects include development that has not yet been carried out, can submit a single application seeking consent both to regularise the development carried out to date, and also to complete the development granted under the permission which has not been carried out, in this instance the completion of the Meenbog Wind Farm.

The Court of Appeal Judgment goes on to refer to how *'section 177E(2B) reflects this in that the developer can describe the effects of that part of the development which has not been carried out at the time of the application in an EIA or NIS to be submitted in addition to the remedial EIA or NIS which must be furnished in respect of the substitute consent application.'* Therefore, as a result of the amendments to the PDA 2000 which inserted s177E(2A) and s177E(2B),³ a single application can be lodged seeking consent to: 1) regularise the development carried out to date (the Existing Development), and 2) complete the balance of the development (the Prospective Development). This application, in line with the requirements of section 177E(2B) will include separate environmental reports which describe the effects of the development which has not yet been carried out in the prospective EIAR and NIS and separate remedial EIAR and remedial NIS which will assess the development carried out to date.

This substitute consent planning application relates to both the Existing Development and the Prospective Development, associated with the previously permitted Meenbog Wind Farm, as it constitutes a development 'for which planning permission has been granted'. It is therefore appropriately made in accordance with Section 177E (2A) and (2B) of the PDA.

Yours faithfully

A&L Goodbody LLP

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M-90363576-2

² [2024] IECA 300, para 62

³ Planning and Development, Maritime and Valuation (Amendment) Act 2022 (29/2022)