



An Bord Pleanála
64 Marlborough Street
Dublin 1

Our Ref: 191223-a

14 August 2020

Re: Application to An Bord Pleanála for Substitute Consent for the Cleanrath wind farm development in the townlands of Reananerree, Cloontycarthy, Cleanrath North, Derrineanig, Cleanrath South, Milmorane, Coombilane, Rathgaskig, Augeris, Gorteenakilla, Carrignadoura, Gurteenowen, Gurteenflugh, Lyrenageeha and Lackabaun, Co. Cork.

Dear Sir/Madam,

On behalf of our client Cleanrath Windfarm Ltd, hereafter referred to as the Applicant, MKO are lodging this application for Substitute Consent with An Board Pleanála (the 'Board') in relation to a wind farm with an operational life of 25 years from the date of commissioning and constitutes the following:

- i. 9 no. wind turbines with a ground to blade tip height of 150 metres and all associated foundations and hard-standing areas;
- ii. All associated underground electrical (33kV & 38kV) and communications cabling connecting the turbines to the national electricity grid;
- iii. Upgrade of existing access junctions and roads;
- iv. Upgrade of existing and provision of new site access roads;
- v. Borrow pit;
- vi. Temporary construction compound;
- vii. Accommodation works along the turbine delivery route;
- viii. Temporary roadway to facilitate turbine delivery;
- ix. Forestry Felling;
- x. Site Drainage;
- xi. The operation of the wind farm for a period of 25 years;
- xii. The decommissioning of the wind farm, removal of turbines and restoration of the site; and
- xiii. All associated site development and ancillary works.

The Cleanrath wind farm development is located in the townlands of Reananerree, Cloontycarthy, Cleanrath North, Derrineanig, Cleanrath South, Milmorane, Coombilane, Rathgaskig, Augeris, Gorteenakilla, Carrignadoura, Gurteenowen, Gurteenflugh, Lyrenageeha, and Lackabaun, Co. Cork.

The Applicant lodged an application seeking leave to apply for substitute consent (ABP Ref. PL PL.04.306272) to the Board under the provisions of Section 177C (2)(b) of the Planning and Development Act 2000 (as amended) (the 'Act') on the 20th December 2019. Upon consideration of the application, the Board decided to grant leave to apply for substitute consent under section 177D of the Act on the 5th May 2020. As such, this application is made pursuant to section 177E(2A)(a) of the Act.

In support of this application, the following documentation has been included along with this cover letter:

- > Application Form;



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- Site Notice;
- Newspaper Notice (incl. 1 no. original page from the newspaper);
- EIA Portal Confirmation Notice (Portal ID 2020131);
- Planning application drawings;
- Requisite 10 no. copies of the Remedial Environmental Impact Assessment Report (rEIAR) and Environmental Impact Assessment Report (EIAR) in 3 no. Volumes (Main Documents, Photomontages and Appendices);
- 10 no. copies of the Remedial Natura Impact Statement (rNIS), and
- 10 no. copies of the Natura Impact Statement (NIS);

Electronic copies of all the application documentation is also being provided as well as the application fee in the form of a cheque made payable to An Bord Pleanála in the amount of €27,900.

Legal Background and Legislative Context:

The application comprises an application for substitute consent in respect of a wind farm development constructed by the Applicant at Cleanrath, Co. Cork. As the Board will be aware, in May 2017 An Bord Pleanála granted permission (on appeal from a decision made by Cork County Council [PI Ref. 15/5966]) for a wind energy development comprising 11 no. turbines and associated works (including substation and all grid connection works) at the site of the Cleanrath wind farm development (ABP Ref. PL04.246742) (hereafter referred to as the 2017 Permission). The decision to grant permission was made on the 19th May 2017 and was subject to 22 no. conditions.

As part of its consideration of the appeal, an Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) was completed by the Board. However, judicial review proceedings challenging the decision of the Board were instituted in July 2017. These proceedings claimed inter alia that the EIA conducted by the Board was inadequate and, in particular, that the assessment of the noise impacts on neighbouring dwellings had not properly been addressed.

These proceedings were unsuccessful in the High Court and were dismissed. An application for a certificate for leave to appeal to the Court of Appeal was also unsuccessful. An application for leave to appeal to the Supreme Court was brought by the applicant in the proceedings.

At this time, the deadlines for meeting the requirements under the Renewable Energy Feed-in Tariff (REFIT) scheme were quickly approaching and, in order to meet these, construction work needed to commence on the site in order for the site to be operational and exporting electricity to the national grid by the end of 2019 as required.

The Applicant in the judicial review was ultimately granted leave to appeal by the Supreme Court, however, the planning permission remained valid, and, no stay on the operation of the permission was sought, nor was any injunction to restrain the development of the site sought by the applicant for judicial review. Accordingly, the development continued, lawfully, to near completion, with the erection of nine turbines.

The proceedings culminated in a Supreme Court judgment delivered on 12th December 2019 which held that it was necessary to quash the decision made by the Board to grant the 2017 permission. Subsequently, by way of Order of the Supreme Court made on the 19th June 2020, the order quashing the decision to grant the 2017 permission was stayed pending the decision of the Board on an application for substitute consent, on the undertaking of Cleanrath Windfarm Ltd. not to operate the wind farm development. The development is allowed to remain in sleep mode with allowances for servicing and maintenance. No electricity can however be generated.

Accordingly, in the period between the permission being granted by the Board (on 19th May 2017) and the date of this application for substitute consent, development authorised by the 2017 permission has been carried out to the extent that 9 of the 11 turbines that were granted permission have been completed



along with their ancillary infrastructure. The site has also been operational for the period between December 2019 and April 2020. The site was turned to sleep mode on the 1st May 2020.

At present therefore there remains a valid subsisting permission for the development, however, this permission has been declared invalid by the judgment of the Supreme Court. The permission has been permitted to continue pending the regularisation of the site by means of a further consent. Given that the development has been built, this must necessarily take the form of a substitute consent pursuant to Part XA of the Planning and Development Act 2000 (as amended) (the ‘Act’). The within application is made for this purpose.

This application is therefore somewhat unusual in that the development the subject matter of the application still technically has the benefit of a planning permission. However, that permission has been condemned by the Supreme Court and is therefore a planning permission that is *‘in breach of law or otherwise defective in a material respect’* for the purposes of section 177C(2)(a) of the Act.

In the circumstances leave to apply for substitute consent was granted by the Board on the 5th May 2020. The Board concluded both that section 177C(2)(a)(ii) applied procedurally and that exceptional circumstances existed pursuant to section 177C(2)(b) and 177D(2). As a result of this determination it is clear that section 177E(2A)(a) of the Act, applies to the within application. This section states in relation to an application made pursuant to a grant of leave to apply for substitute consent under section 177D in respect of a development to which section 177D(1)(a) applies as follows:

- *“that application may, subject to paragraph (b), be made in relation to –*
 - (I) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application, or*
 - (II) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application and all or part of the development permitted under the permission granted in respect of that development that has not been carried out at the time of the application.”*

Thus, in circumstances where an application for substitute consent is made where a permission has been quashed, such application may encompass both the development that has been carried out, and such part of the development as has not been carried out. That is the approach taken within this application.

In the instant case, the development is partially complete and therefore, substitute consent is being sought under this section for that part of the development that has been completed as well as for the remainder of the development that has not been completed, including its operation for a period of 25 years and its ultimate decommissioning.

The Cleanrath wind farm development has been largely constructed and was briefly operational on foot of the permission granted. This is the part of the development that has been carried out. The balance of the development, principally its operation for a period of 25 years and its decommissioning, is that part of the development that has yet to be carried out. In terms of the application procedure for such an application, section 177E(2A)(b) states that where an application for substitute consent:

“relates in part to development that has not been carried out at the time of the application, the applicant shall furnish with his or her application, in addition to the information referred to in subsection (2) –

- (I) where a direction to furnish a remedial environmental impact assessment report was issued in respect of the development under section 177B(2), 177D(7), 261A(3)(c), 261A(10) or 261A(12), an environmental impact assessment report in accordance with the permission regulations in relation to that part of the development that has not been carried out at the time of the application, and*

¹ Section 177E(2A)(a) of the Planning and Development Act, 2000 (as amended) refers



- (III) *where a direction to furnish a remedial Natura impact statement was issued in respect of the development under section 177B(2) , 177D(7) , 261A(3)(c) , 261A(10) or 261A(12) , a Natura impact statement in relation to that part of the development that has not been carried out at the time of the application. “*

Accordingly, it is clear that in the circumstances that pertain herein, an rEIAR must be furnished to describe the impacts that have arisen, are arising or are likely to arise from the part of the development that has been carried out. Simultaneously, an EIAR must be furnished to describe the effects of the carrying out of the development that has not as yet been carried out. There is necessarily a degree of overlap between these two documents, but this cannot be avoided.

In the instant case therefore, the existing development (comprising so much of the development as permitted as has been carried out) is the development for which remedial environmental impact assessment is required. Accordingly, an rEIAR has been prepared to describe the impacts of this development and is submitted herewith.

Simultaneously with this rEIAR, and given that an application for substitute consent for that part of the development that has not yet been carried out (the operation of the windfarm until its decommissioning) is also made pursuant to section 177E(2A)(a)(I) of the Act, (and this development requires a prospective environmental impact assessment) an EIAR has been prepared and is also submitted in accordance with the statutory provisions.

This EIAR describes that part of the development that has not yet been carried out comprising the operation of the wind farm for the period of 25 years and its ultimate decommissioning. The rEIAR necessarily also deals with these aspects, as, these are effects that potentially flow from the fact that the development has been in part carried out. While there is a degree of overlap between the documents, this cannot be avoided and has been kept to a minimum.

Similarly, in accordance with the provisions of section 177E(2A)(b)(II) of the Act, the application documentation also includes a remedial Natura Impact Statement (rNIS) in relation to that part of the Cleanrath wind farm development that has been carried out and a Natura Impact Statement (NIS) in relation to that part of the development that has not been carried out at the time of the application.

Notices, Drawings Scales and Documentation

The wording of the public notices and application fee's have been discussed with An Bord Pleanála prior to lodgement. The format and scale of application drawings being submitted are consistent with those provided in the previous applications that have been lodged in relation to the Cleanrath wind farm development, and which have previously been deemed acceptable by the consenting authority.

Ten copies each of the EIAR, rEIAR, NIS and rNIS are being provided as well as electronic searchable versions of all application documentation.

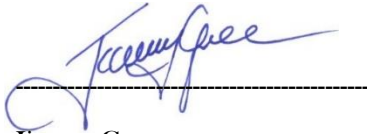
Site Access

In relation to carrying out site inspections of the Cleanrath wind farm development the applicants can facilitate appropriate health and safety induction as necessary. In this regard we request that the Board contact MKO in order to schedule the necessary site induction process.



We trust that the information provided will prove sufficient to inform the Board's determination on this matter and facilitate the Board in carrying out its EIA, rEIA and requisite appropriate assessment and that the approach adopted is in order, however, if the Board requires any additional information, the Applicant will endeavour to provide same and look forward to hearing from the Board further in due course.

Yours faithfully,



Jimmy Green,
Principal Planner,
MKO

