File With

SECTION	I 131 FORM
Appeal No ABP— 32,285	Defer Re O/H
Having considered the contents of the submiss from W.WixYeO I and Development Act, 2000 be not be invoked to the submission of the submiss	recommend that section 131 of the Planning d at this stage for the following reason(s):
Section 131 not to be invoked at this stage. Section 131 to be invoked — allow 2/4 weeks	for reply.
Signed Life (Colle	Date 15-01-25 .
EO Signed	Date
SEO/SAO	
М	
	enclosing a copy of the attached submission.
To Task No	Allow 2/3/4 weeks BP
Signed	Date

Date

Signed

AA



Date

Planning Appeal Online Observation

Online Reference NPA-OBS-004095



Online Observation Details

Contact Name William Wixted	Lodgement Date 16/12/2024 17:22:09	Case Number / Description 321285
Payment Details		
Payment Method Online Payment	Cardholder Name William Wixted	Payment Amount €50.00
Processing Section		
S.131 Consideration Required		
Yes — See attached 1	31 Form N/A	A — Invalid
Signed	Date	
EO		19/12/201
Fee Refund Requisition		
Please Arrange a Refund of Fee of	Lodgemen	t No
€	LDG-	-076822-24.
Reason for Refund		
Documents Returned to Observer Yes N		mailed to Senior Executive Officer for Approval S NO
Signed	Date	
EO		
Finance Section		
Payment Reference		Against Fee Income Online
ch_3QWhzhB1CW0EN5FC1M		counts Section)
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Amount	Reiding De	
		d D., (2)
Authorised By (1)	Authorise	a by (2)
SEO (Finance)	Chief Offic Member	er/Director of Corporate Affairs/SAO/Board

Date

Submission to ABP With respect to Lackareagh Windfarm

Bord Pleanála Case reference: PL03.321285 Planning Authority Case Reference: 2460411

15/12/2024

Case Reference: PL03.321285 In the townlands of Kilbane, Killeagy (Ryan), Shannaknock, Killeagy (Stritch), Killeagy (Goonan), Ballymoloney, Magherareagh and Lackareagh Beg, Co. Clare. (2460411)

Submitted by: Willie Wixted, Barbane, Broadford Co Clare. V94NP9F

1

Please see proof of original submission to clare county council in relation to Lackareagh Winfarm Planning Authority Case Reference: 2460411

Pan ning Department Chanomic Develo pmert Di rectorde Aras Contae an Chláir New Road Ennis, Co. Clare V95 DXPZ

E mail: planoff@clarecoco.ie

Phone: (065) 682616 (065) 484474 (AN: CH

A n Roinne leanals An Stiuithoireacht Forbairt, Ghelleag rati Aras Contae an. Chlár Bother Kua LITE Co...an Ch lái V95 OXPZ COUNCIL

Willie Wixted Ba rbane Broadford Co. Clare

THIS IS AN IMPORTANT DOCUMENT!

KEEP THISDO CUMENT SAFELY. YOU WILL BE REQUIRED TO PRODUCE THIS: ACKNOWLEDGEMENT TOAN BORDPLEANALA IF YOU WISHT DAPPEAL, THE DECISION OF THE PLANNING AUTHORITY.

P LANNING AUTHORITY NAME: CLARE COUNTY COUNCIL

PLANN ING APPLICAT IONREFERENCE NO. P24/60411

A submission/diservation in writing has been received from Willie Wixted B abane, Broadford, Co. Clare on 02/1 0/ 2024 in relation to the above mentioned panning application reference nu mber

The appropriate fee of C20.00 has beenpaid...

The submission/observation is in a coordance with the appropriate provisions of t hePlanning and DevelopmentRiegulations 2001 (as am endied) and will be taken into account by the Planning Authority in: its determination of the planning application.

Sig ned:

Ede le Costdioe Planning Department

Eco nomic DevelopmentDirectorate

3rd October 2024 Dae:

An: Roinn Pleanáta

Am StiúrthóireachtE orbairt Gheilleagrach Afas- Contagan Cuhlair, Böther Nus, Inia Co.; on Chiair, V9503(P2)

E laining Department Ec.onomic Dewl opment Directorate

Alaa Contament Charless: Road, Erms, Co. Clare, VS6 DXP2









In support of my strong objection to the development of this proposed windfarm, I wish at the start to add the observations solicited from Dr Pamela Bartley:

Hydro-G

0 Henry St. Galway H91 FA4X pamela@hydro-q.com

13th of December 2024

William Wixted Barbane Broadford Co. Clare V94 NP9F

For Bord Pleanála

Re: EDF Renewables Ireland Limited Appeal, via MKO Agents, on Clare County Council's Refusal.

Bord Pleanála Case reference: PL03.321285

Planning Authority Case Reference: 2460411

Townlands: Kilbane, Killeagy (Ryan), Shannaknock, Killeagy (Stritch), Killeagy (Goonan), Ballymoloney, Magherareagh and Lackareagh Beg, Co. Clare.

Development: Construction of 7 wind turbines, meteorological mast, temporary construction facilities and all associated site works. 10 year permission for wind farm.

Dear William

Thank you for the invitation to provide expert opinion on the Appeal lodged by EDF Renewables Ireland Limited [Bord Pleanála Case reference: PL03.321285]. Please note that we in the industry currently refer to this case as 'The Lackeragh Refusal' because it is significant and welcome, scientifically and in the interest of proper and just transition for both humans and biodiversity with respect to Climate Action.

I must tell you, and the Inspector and Board Members, that 'The Lackeragh Refusal' by Clare County Council was very much welcomed by experts in the field of EIAR. I was very impressed, positively, that Clare County Council had presented such a just planning decision (refusal) on grounds that are legally defensible and scientifically robust. I attach as Annex 1 the full text of Clare County Council's Refusal because I value the opportunity that EDF have presented us with in having it on the record and discussed robustly.

On the matter of the final paragraph of text issued by Clare County Council in their Refusal Item no.1, which reads as follows:

Having regard to the foregoing and noting also the significant potential for cumulative impacts arising when the proposed development is considered in-combination with permitted and proposed wind farm development in the surrounding area, it is considered that the proposed development, would contravene Objectives CDP14.2 and CDP14.7 of the Clare County Development Plan 2023-2029 and would be contrary to the proper planning and development of the area.

I refer you and the Bord to the full text of Annex 2, which is a copy of the letter that was hand delivered to the then Taoiseach, Mr. Simon Harris, and his aides, at a meeting in which Professor Paul Johnston of Trinity College Dublin and



lout lined our grave concerts regarding many problematica spects of 'Renewable' energyE IA and EIARs. Specifically, I draw attention to the fact that 'The Lackeragh Refusal' citesthein umerous other developments across these hills, lake of a defensible presentation of 'cumulative and in combination impact assessment' by the applicant and the significant threat plosed to protected species in the area. Clare County Columnia correct.

Overturing the Appeal and Upholding the Refusal by Clare CountyCouncil is the only defensible option available to the Bord if they are to execute their authority of proper planning, adherence with the Birds and Habitas Directive, in legal compliance with the EIADi rective and EIA Regulations, true to the National Biodiversity Action Planand the European nature Restoration Law. The Cumulative Impact Assessment presented for the applicant did not stand scientific scrutiny by Clare County Council, it does not stand scientific scrutiny by myself and it has not shoot scient if c scrutiny in manyof be WindFarm EIARs that Professon Paul Johnston, Professon MikeGormally and have evaluated together. I specifically refer be inspector to review the appeal files for cases, as follows, for which I, Paul and Mike have made very clear observations, individual of each other, that the MKO Impact Assessments are not defensible:

- PA07.319307 LAURCALVACH Ltd
- PA07.320@9 Clonberne Windfam Limited (Applicat)

h our letter to the Taoiseachin mid October 2024, which precedes Care Co unty Council's ref usalon this case, was tate as follows:

Web ring to your attention to Ireland's 4thN ato nalBiod iversity ActionPl an (2023-2030) which, is ing a "whole government, whole society" approach, "aims to deliver the transformativechanges required to the ways in which we value and protect nature". The aimis to "ensurethat every citizen, community, business, letal authorty, is emi-state and state agency has an awareness of biodiversity and its importance, and of the implications of itsloss, while alsounderstanding how they canact to address the biodiversityem ergencyas part of a renewed na tionaleffort to "act for nature". "In addition, The Wildlife (Amendment) Act 2023 introduced a new public sector dutyon biodiversity. The legislation provides that everyp ublic body, as listed in the Act, is obliged to have regard to the objectives and targets in the National Biodiversity Action Plan. Seeh test://www.npwsie/legislation for further details.

We recognize the pressing nield for the development of renewable energies which is riesal ting in considerable pressure on EIA consultancies to "deliver" for both the Government in its "Climate Objectives and for the developer, who is their client. Nevertheless, we have observed a significant a bsence of objectivity inpaints of the required EIARs. There is real conflict between the requirements of historical as well as current environmentallegist ation and the equal need for development of windfarms as sources of renewable energy A resolution for this conflict maybe in an integrated rational landuse policy but meanwhile, there is an urgentneed to have a genuine conversation about the above issues and we would be happy to be part of that conversation.

On the matter of therisks posed by thePeat &Spoi Management, Lagree with Clare County Council and their Reason is just, defensibleand Sound. The text issuedby Clare County Council in their Refusal Item no 2, which reads as follows:

Hydro-G

2. The Planning Authority notes that there is hydrological connectivity between the proposed development site and both the Lower River Shannon SAC, and the River Shannon and River Fergus Estuaries SPA. The majority of the habitats and species for which both European sites are designated are water-dependent habitats and species with requirements for high to pristine water quality.

Having regard to the particulars submitted with the planning application, with particular reference to the pest and spoil management proposals, surface water management plans, and the WFD Assessment contained in Appendix 9-3 of the submitted documents, the Planning Authority, as the competent authority in the appropriate assessment process, is unable to conclude, beyond reasonable scientific doubt, that the proposed development will not adversely affect the integrity of downstream European sites. The proposed development would be contrary to Objective CDP15.3 of the County Development Plan and contrary to the proper planning and sustainable development of the area.

Hydro-G invites the Bord's inspector and Board members to return to the significant impacts of the Meenbog case in which the EIAR stated that there would be no impact, the Board accepted the EIAR ink on paper and we have the case in Court and a Salmonid Rever wiped out. The Meenbog case file ABP Reference is 300460 and comparison with the information before them now. In 2018 the Board accepted a conclusion in the EIAR (2017) in the Lands, Soils and Geology Chapter that "No significant impacts on the soil and geology of the site of proposed development will occur." and qualifications that "A peat stability assessment undertaken for the site shows that the risk of peat failure is designated trivial and tolerable and that the site has an acceptable margin of safety.". Yet, there was a failure. In the Board's 'Reasons and Considerations' supporting a Grant of Permission for Meenbog Windfarm the opening statement is that "Having regard to: (a) the national targets for renewable energy contribution of 40% gross electricity consumption by 2020....". However, Mr. Justice Holland is reported by the Irish Times (11th April 2024) as ruling that "the integrity of the planning and environmental law systems "weighs heaviest" in this case of all the factors in play and favour granting the injunction. He did not see that the "undoubted public interest in wind energy" weighs "much at all" in favour of exercising his discretion against making the order. [Hydro-G provides clarification that Mr. Justice Holland has restrained the developers from finishing their "largely complete" 19-turbine project.] Mr Justice Holland said the developers submitted a report of a civil and environmental engineering expert to the EPA estimating that in the November 2020 incident about 86,240m3 of peat slid, of which about 65,740m3 entered a river and ended up on nearby European-protected sites, "causing significant environmental damage". Clare County Council is mindful of the experience in the last number of years when real environmental damage has occurred because 'good faith' was afforded to applicants by the Bord. To continue to grant permissions would be naïve, negligent and akin to ecological terrorism, in my professional experience. Clare County Council have acted in the interests of Proper Planning and compliance with the Irish Statutory Instruments enacting the Water Framework Directive and the Birds and Habitats Directive. We urge the Bord to support the Refusal by Clare County Council and to overturn the appeal by EDF Renewables Ireland Ltd.

On the matter of Peat, no matter whether Clare County Council made their decision on the basis that they will not permit any risk of a Meenbog repeat in County Clare, I ask the Bord and their inspector to consider the statement by Professor Paul Johnston of Tricity College Dublin, as presented in Annex 2 of this submission, as follows:

"1. Targeting peatlands and bog wetlands as potential windfarm sites:

Beyond all scientific doubt, building turbines in peat will negatively affect biodiversity and increase carbon loss from this habitat through the required drainage, foundations and infrastructure. Damage arising from construction releases more carbon from the peatland. The long-term sustainable approach is the restoration of bog wetlands. A strategy of restoration, rather than any construction whatsoever, will provide a reduction in carbon emissions from the peatland in perpetuity. The societal benefits will be better water quality, reduction in flood events, a reversal of biodiversity loss and more opportunities for people to connect with nature



Hydro-G

resulting in better physical/mental health outcomes, as recognized in the Climite Action Plan, a deriva tive of the Paris Agreement. Moreover, since 1987, Ireland has been a signatory of the international Ramsar co invention which provides for the protection and promotion of wetlands including peatlands. The case that windfarms in peatlands are incompa tible with these requirements is rarely even considered appropriately in EIARs."

On the mattero f potential impact to the protected species living inthe se hills, and incorrectly completed Cumu lative Impact Assessment, the Bord and its Inspector(s) are asked to review the detail of three adjacent SID cases near Broadford, as follows

- SIDABP-320705-24 Knodshanvo Windfarmpropo sed
- SID VA03.320727G RD Connecton proposed
- 5 ID ABP Cae File 318782 Oatfield Wind Farm proposed

There are more than those two Wind Farm Developments, listedab ove,b efore the Boardfor Fast Clare Clare County
Co until andt hecitizens of thea rea were able to reviewall information and conclude that therisk posed was toogreat
in the context of displacement ofhab itat and the known and surveyed U. TIPLE BREEDING PAIRS of endangered, close
to extinction, HenHarriers on the Knockshanvoand Oatfield hillsne ar Broadford. It is for that reason that the Reason
for Refusal No. 3 is entirely defensible and just, as follows:

3. It is an objective of Clare County Council, under Objective CDP15.12 of the Clare County Development Plan 2023-2023 to in ter aliato promote the conservation of biod iversity through the protection of sites of biodiversity importance and wild life corridors, both within and between the designated site and the wider plan area.

Having regard to the importance of the area for multiple bird species, as evidenced by the survey results so bmitted withthe development proposal it is considered that there is significant potential for cumulative effects through the in-combination effects of other proposed and permitted windarm developments in the area, allof which containsignificant numbers of birds of conservation concern andre d-listed bird species.

Again, Clare County Councilhave acted in thei interests of ProperPlan ning and compliance with the Irish Statutory Instruments enacting the Water Fram ework Directive and the Birds and Habitats Directive. We urge the Bord to support the Refusal by Clare County Council and to overturn the appeal by EDF Renewables IrelandLt d.

The final two pages of Clare County Council's Refusal are particularly strong, intelligent and scienti fically robust (urge that the Bord's ecologist must agree with thetext pesented, as pesented overleaf. The real question is why MKO agen ts fort he windfarm would lodge an appeal? It is actions like this that haveour planningsystem cau git up in urnece ssary delays and poor press representation of the realissue at hand. If do note elieve that the Board are the reason for the delays, as the media would like the general populus to believe. If firmly believe, as do many of myexpert peers, that it is the lodgment of appeals such as this, which should be so clear cut and understood to have no legally defens ible grounds, that are the real source of woe in national planning. Wind Energy Ireland expends ignificant financial resources stating that too few Wind Farmsare granted permission. What they fail to ealise is that they are proposing them in locations and water catchment that are protected in REU and Irish Law. Therefore, the risks are too high, actually not mitigatable at all, and the developments must be refused. The issue is with the applicant schoice of location and in verypoor location scoping by the planning consultants.

Hydro-G



Determination under Section 177V of the Planning and Development Act 2000 (as amended) in relation to whether Planning Application P.24/60411 would adversely affect the integrity of a European site.

I refer to the refusal of permission for the development associated with P.24/60411. In accordance with Section 177V (3) this determination is a record of the planning authorities' conclusion in accordance with the Appropriate Assessment process which was carried out in line with Article 6 (3) of the Habitats Directive and Section 177V (1) of the Planning and Development Act (as amended).

Determination

Having regard to the content of the Planning Application as submitted, the Plans and Particulars of the Application including the Natura Impact Statement together with all internal reports and third-party submissions received, it has been determined that there is insufficient information in terms of the cumulative and in-combination effects of the Proposed Windfarm in conjunction with the proposed and/or permitted windfarms within approximately 25km of the application and the mitigation measures required to avoid, reduce, or remediate the potential for adverse effects, to conclude a finding of no adverse effects beyond scientific doubt as is required under Article 6 (3) of the Habitats Directive.

I commend Clare County Council for the 10 bullet points on page 9 and 10 of their refusal. They give hope that environmental and biodiversity justice will prevail. I urge the Bord to stand with their Local Authority colleagues in their stance to uphold Proper Planning. The Appeal should be Refused, as was the application for Planning Consent. The Refusal of Clare County Council in Planning Authority Case Reference: 2460411 [Bord Pleanála Case reference: PL03.321285] should be upheld.

Yours Sincerely

Dr. Pamela Bartley B.Eng, M.Sc., Ph.D

Pamela Baretler

Director

pamela@hydro-g.com



AN NEX1

Clare County Councils Refusal

Plan ning AuthorityCase Reference: 24604.1

Under appeal

Bord Pleanála Case reference: PL03.321285



COMHAIRLE CLARE CONTAE AN CHLÁIR COUNTY COUNCIL

23rd October 2024

EDF Renewables Ireland Limited c/o MKO Planning & Environmental Consultants Tuam Road Galway H91 VW84

Ref No.: P24-60411

PERMISSION for development in the Townlands of Kilbane, Killeagy (Ryan), Shannaknock, Killeagy (Stritch), Killeagy (Goonan), Ballymoloney, Magherareagh and Lackareagh Beg, Co. Clare.

A Chara,

I refer to attached notification of the decision to refuse to grant permission for the above development.

Please find attached Determination under Section 177(V) of the Planning and Development Act 2000 (as amended).

Mise, le meas

ANNE O'GORMAN STAFF OFFICER

PLANNING DEPARTMENT

ECONOMIC DEVELOPMENT DIRECTORATE



CLARE COUNTY COUNCIL PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED) NOTIFICATION OF DECISION TO REFUSE TO GRANT PERMISSION UNDER SECTION 34 OF THE ACT.

To: " EDF Renewables Fraand L'imited c/o MKO Pla nning & Environmental Consultants Tuam Road Galway H91 VW84

Planning Register Number:

P24/60411

Valid A pplication Received:

29/08/2024

In pursuance of the powers conferred upon them by the above-mentioned Act, C lareCounty Council has by orderdated 23rd October 2024 decided to refuse to grant permission for the following works:

(i) The construction of 7 no, wind turbines with the following parameters: a. Total to height range of 179.5m - 180m, b. Rotor diameter range of 149m - 155m, c. Hub height range of 102.5m to 105m, (i) Construction of associated foundations, hardstard and assembly areas; (iii) All associated wind farm underground electrical and communications cabling connecting the turbines and mast to the proposed electrical substation; (iv) Construction of 1 no. perma nent38kV electrical substation including a single-story control building with welfare facilities, all associated electrical plant and equipment, security fencing, entance on to new access road, all associated internal u rderground cabling, drainage infrastructure, wastewater holding tank, retention separator tank, and all ancillarywo rks, in the townland of Killeagy (Goo nar), Co. Clare; (v) A Battery Energy Storage Systemwithin the 38kV electrical substation compound; (vi) 1 no. permanent meteorological mast of c. 36.5m in height, associated fou ndation and hard-standing area in the townland of Sha maknock; (vii) The permanent upgrade of 1 no. existing site entrance off the L7080 ('The Gap Road') for the provision of construction andoperational access; (viii) Provision of 3 no. new permanent silteentrances off the L7080 for the provision of constructiona rd operational access; (ix) Provision of 3no. new temporary site entrances off the L7080 for the provision of construction access; (x) Upgrade of existing tracks/ roads, including the L7080, and the provision of new site access roads, 4 no. watercourse crossings, junctions and hardstand areas; (xi) 1 no. tem poary construct ion compound with temporary offices and staff facilities in the townland of Killeagy (Goonan); (xii) 1 no. t emporary storage area in the townland of Killeagy(Goonan); (xiii) 1 no. borrow pit in the townland of Kille agy (Goona r); (xiv) Peat and Spoil Management; (xv) Tires Fel lingto accommodate the construction and operation of the proposed development; (xvi) Operational stage site and amerity signage: and (xvii) All ancil lary apparatus and site development works above and below ground, including soft and hard landscaping and drainage infrastructure. A 10-year planning permission and 35-year operational life of the wind farm from the date of commissioning of theentire wind farmis sought A Design Flexibility opinion issued by Clare County Council on 22nd April 2024 accomanies this application. The details unconfirmed in this application are the turbin tip height, rotor diameter and hub helight, therange of parameters sunder which the turbine dimensions will fall are specified on this notice and in the design flexibility opinion that accompanies this application. An Environmental Impact Assessment Report (EIAR) and Natura Impact S tatement (NIS) have been prepared in respect of the proposed development and will be submitted to the Planning Authority with the application at In the Townlands of Kilbane, Killeagy (Ryan), Shannaknock, Ki'lleagy (Stritch), Kil leagy (Goonan), Ballymoloney, Magherareagh and Lackareagh Beg, Co. Clare.

Under Article 20 of the Planning and Development Regulations 2001 (as amended), the applicant shall remove the site notice following the notification of the Planning Authority's decision.

The Planning A uthority in its decision has had regard to submissions/observations received (if any) in accordance with Planning and Development Regulations 2001 (as amended).

SIGNED on behalf of the said Council this 23rd day of October 2024.

STAFF OFFICER, PLANNING DEPARTMENT ECONOMIC DEVELOPMENT DIRECTORATE

SCHEDULE

1. The proposal site is located in the Slieve Bernagh Bog Landscape Character Area (LCA), in an area where windfarm developments are 'Open to Consideration'. In accordance with Objective WES10 of the Clare Wind Energy Strategy wind energy developments in these areas can be considered on a case-by-case basis subject to viable wind speeds, environmental resources and constraints and cumulative impacts.

Having regard to the location of the site in the more sensitive and scenic area of the LCA (Lackereagh and Glenvagalliagh Mountains), the Planning Authority considers that the proposed turbine structures, by reason of their height (tip height up to 180m), scale and siting on this open, exposed and sensitive upland landscape would constitute a prominent feature on the landscape from both local and long range viewpoints, and would therefore seriously injure the visual amenities of the area. Furthermore, it is considered that the development would be highly visible from, and negatively impact upon, the R466 Regional Road which is a designated Scenic Route and would negatively after the character of this rural landscape.

Having regard to the foregoing and noting also the significant potential for cumulative impacts arising when the proposed development is considered in-combination with permitted and proposed wind farm development in the surrounding area, it is considered that the proposed development, would contravene Objectives CDP14.2 and CDP14.7 of the Clare County Development Plan 2023-2029 and would be contrary to the proper planning and development of the area.

2. The Planning Authority notes that there is hydrological connectivity between the proposed development site and both the Lower River Shannon SAC, and the River Shannon and River Fergus Estuaries SPA. The majority of the habitats and species for which both European sites are designated are water-dependent habitats and species with requirements for high to pristine water quality.

Having regard to the particulars submitted with the planning application, with particular reference to the peat and spoil management proposals, surface water management plans, and the WFD Assessment contained in Appendix 9-3 of the submitted documents, the Planning Authority, as the competent authority in the appropriate assessment process, is unable to conclude, beyond reasonable scientific doubt, that the proposed development will not adversely affect the integrity of downstream European sites. The proposed development would be contrary to Objective CDP15.3 of the County Development Plan and contrary to the proper planning and sustainable development of the area.

3. It is an objective of Clare County Council, under Objective CDP15.12 of the Clare County Development Plan 2023-2023 to inter alia to promote the conservation of biodiversity through the protection of sites of biodiversity importance and wildlife corridors, both within and between the designated site and the wider plan area.

Having regard to the importance of the area for multiple bird species, as evidenced by the survey results submitted with the development proposal, it is considered that there is significant potential for cumulative effects through the in-combination effects of other proposed and permitted windfarm developments in the area, all of which contain significant numbers of birds of conservation concern and red-listed bird species.

In the absence of a strategic level cumulative assessment of the impact of the construction of a large number of turbines within one geographical area(66 turbine proposed or permitted), the Planning Authority cannot sat isfactorily determine that the proposed development will not give rise to, or contribute to, significant or adverse effects on either the Special Conservation Interests of the Special Protection Areas in thezone of influence of the proposed dievelopment Birds of Conservation Concern or on the Red List.

Having regard to the foregoing, the Plan ning Authority considers that the proposed development would significantly diminish the biodiversity value of the area, would be contrary to Objective CDP15.12 of the Clare County Develop mentPlan 2023-2029 and would be contrary to the proper planning and sustainable development of the area.

IMPURTANT NOTE: REGARDING APPEALS

An appeal against the decision of a Planning Authority on an application may be made to An Bord Pleanála Appeals must be received by An Bord Pleanála within <u>four weeks</u> beginning on the date of the making of the decision by the Planning Authority. (N.B. not the date on which the decision is sent or received). An appeal shall:

- (a) be made in writing and state the name and address of the appellant or person making the referral and of the person, if any, acting on his or her behalf.
- (b) state the subject matter of the appeal with details of the nature and site of the proposed development, the name of the Planning Authority, the planning register number and the applicant's name and address (if you are a third party).
- (c) state the full grounds of appeal and be accompanied by supporting material and arguments. The Board cannot take into consideration any grounds of appeal or information submitted after the appeal (except information specifically requested by the Board) and it cannot consider non-planning issues so grounds of appeal should not, therefore, include such issues.
- (d) In the case of a third party appeal, be accompanied by the acknowledgement by the Planning Authority of receipt of the submission or observations made by the person to the Planning Authority at application stage. (A copy of the notification of the decision or similar is not accepted as an acknowledgement of receipt of the submission or observation)
- (e) be accompanied by the appropriate fee (see below for details). An Appeal, submission or observation to An Bord will be invalid unless it is accompanied by the appropriate fee.

A request An Bord Pleanála for an Oral Hearing shall be accompanied by the appropriate fee and such request must be made within the period for lodging the appeal, but where the developer is sent a copy of a third party appeal, he/she is allowed four weeks from this date.

All appeals, submissions, observations and other documents should be addressed to **The Secretary, An Bord Pleanála 64, Mariborough Street, Dublin 1** or delivered by hand to an employee of An Bord Pleanála at their offices during office hours (9.15 a.m. to 5.30 p.m. on Monday to Friday, except public holidays and Good Friday). The telephone number of An Bord Pleanála is (01-8588100). Web: http://www.pleanala.ie. email: bord@pleanala.ie.

Note: Under Section 251 of the Planning & Development Act 2000 (as amended) where calculating any period referred above, the period between the 24th December & 1st January both days inclusive shall be disregarded.

App	eals/R	eferrals under Planning Acts	On or before 2 nd September 201 1	On or after 5 th September 2011
(a)		Is against decisionsof Planning A uthorites		
	Appoa	li .		
	(i)	1st party appear relating to commercial development where the application included the retention of development.	€4,500 or €9,000 if an EIS³ involved	€4500 or €9,000 if an EIS or N IS⁴involved
	(ii)	1st party appeal reliating to commercial development (no retention element inapplication).	€1 ,500or €3,000 if EIS involved	€1,500 or €3,090 if EISor NIS involved
	(iii)	1st party appeal non-commercial deve lopment where the application included the retention of development	€660	€660
	('iv)	1st party appeal solely against contribution condition(\$ - (2000 Act ⁵ section 48 or 49).	€220	€220
	(v)	Appeal following grant of leave to appeal:	€ 110	€110
	(vi)	An appeal other than referred to in (i) to (v) above .	€220	€ 220
b)	Refer	al	€220	€220
c)	Reduc	ed fee for appeal or referral (applies to certain specified bodie s ⁶)	€110	€110
d)	Applica	ation for leave to appeal (section 37(6)(a) of 2000 Act).	€ 110	€ 11.0
e)	Making	submissi onor observation (specifed bodies exempt ⁶).	€50	€50
f)	Reque	at for oral/nearing under section 134 of 2000 Act.		
em	ain unc	above fee levels for p lanning app ealsand referrals changed from those already in force since 2007 (but note not NIS in (I) and (II) above).	€50	€50
iub	stitute	Consent Part XA of 2000 Act	On or before 2 nd September 201 1	On or after 5th September 2011
a)	Applica	ition for leave to apply for substitute consent.	Nil	€3,000 except no fee where previous permission set aside- by Court decision.
b)	Applica	ationfor substitute conse nt	Nill	Simlar to fee for application to Planning Authority.
(c)	Reme	st for oralhearing under section1 77Q of 2000 Act.	Nil	€50

Nil	€5,000
Nil	€1,500
Nil	Commercial development €1,500 Non-commercial development €220
	Nil

An appeal made by the person by whom the planning application was made.

Commercial development includes residential development of 2 or more houses.

Environmental Impact Statement.

Natura Impact Statement.

2000 Act means Planning and Development Act 2000 as amended.

A list of these bodies is available from the Board.

Where cost recovery applies fees are offset against costs incurred.

Fees under section 66 of the Water Services Act 2007 will only apply when that section is commenced after the 5th September, 2011.

After 5th September, 2011 the reduced appeal fee applies to appeals made by any person entitled to appeal other than the applicant for a licence, the person causing, making or permitting the discharge or the occupier of the premises from which the discharge is made (in affect all third party appeals including those by certain specified bodies).

^cThe Board's power to set fees does not cover fees relating to appeals under section 20 of the 1977 Act and these fees remain as set by vinisterial Regulation. In these cases the reduced fee applies to certain prescribed bodies.

¹The Board has no power to amend existing fees under the Air Pollution Act and these fees remain as heretofore as set by Ministerial Regulation.



Determination uniter Section 177V of the Planning and Development Act 2000 (as amended) in relation to whether Planning Application P.24/60411 would adversely affect the integrity of a European site.

I refer to the refusal of permission for the development associated with P. 24/6041. In accordance with Section 177V (3) this determination is a record of the planning authorities' coinclusion in accordance with the Appropriate Assessment process which was carried out inline with Article 6 (3) of the Habitats Directive and Section 177V (1) of the Planning and Deve Igment Act (as amended).

Determination |

Having regard to the content of the Plan ring Application assubmitted, the Plans and Particu larsof the Application including the Natura Impact Statement together with all internal reports and third-party submissions re ceived, it has been de termined that there is insufficient information in terms of the cumulative and in-combination effects of the Proposed Windfarm in conjunction with the proposed and/or permitted windfarms within approximately 25km of the application and the mitigation measures required to avoid, reduce, or remediate the potential for adverse effects, to conclude a finding of noadverse effects beyond scientific doubt as is required under Article 6 (3) of the Habitats Directive.

This determination is made to usdering the following:

- Having reviewed t heQualifying in terest Features of theGlenomra Wood SAC [0010 13] and the Lower R iverShannon SAC [0021 65] together with the Special Conservation Interests of the Lough Derg (Shannon) SPA [004058] and River Shannon and River Fergus Estuaries SPA [004077].
- Whilethere is an absence of a direct footprint associated with the works within a European Site, there is a potential for in-direct and adverse effects due primarily to the hydrological connectivity across the landscape to the receiving environment of the River Shannon catchment which has a dual designation as a European Site.
- The finding of no adverse effects on the European sites located downstream of the Proposed
 Windfarm is based on the findings of each of the individual windfarm applications and their
 application of mitigation measures. The re is no consideration of the cumulative or incombination impacts arising from each of these windfarms albeit at a lower level which
 cumulatively could lead to adverse effects downstream.
- There is no analysis, information, or scientificassessment of indicate how this conclusion has been eached. Specifically with respect to the 2 no. wind farms which have been included in the cumulative hydrological study area. Clare County Council raised a number of issues with the Fahy Beg application both as part of the environ mental assessment and as part of the refusal reasons in the Chiefex ecutives Order. Issues pertaining to noise, the management of the excavated soils and materials on the proposal site, risk to the Qualifying Interests and Special Conservation Interests of the associated European Sites which we reiradequately addressed in the NIS almongst others were raised but have not been assessed in the application to hand as part of the cumulative and in-combination effects.

- With respect to bird species, it is difficult to see how the cumulative impact of 66 turbines comprising those already permitted or proposed in conjunction with the current application for 7. No turbines within a 25km radius have been sufficiently assessed within the NIS.
- The NIS talks to each of the previous applications but dismisses the potential for adverse effects to arise individually based on the identification and application of mitigation measures.
- Significant doubt remains as to the cumulative impact of either the construction or operational phase impacts that may arise and lead to significant or adverse effects on the Special Conservation Interests of the associated SPAs.
- With respect to the cumulative assessment of the impacts from the project on water quality
 having considered the requirements of the Water Framework Directive in terms of achieving
 at least Good Status in all surface and groundwater bodies by 2027 at the latest I am not
 satisfied that the project as proposed, can achieve this and therefore ensure the absence of
 adverse effects downstream on the associated European sites.
- This risk is predominantly associated with the identification of Doon Lough (which is an
 important NHA in Clare) as a Hydraulic Buffer which will provide a dilution effect to the River
 Shannon downstream.
- In conclusion, having regard to the Natura Impact Statement submitted as part of the planning
 application and following review of same I am not satisfied that there is no risk of adverse
 effects on the integrity of the associated European Sites (either directly or indirectly), alone
 or in-combination with other plans or projects. The application as submitted contains
 reasonable scientific doubt which in line with case law precludes the Competent Authority
 from concluding a finding of no adverse effects.

Helen Quinn

Signed Holen

Senior Planner

23-10-2094



ANNEX 2

Letter from Expertsin the Field of Water, Peatlands, Bi odiversity, Birds & EIA

.

To:

An Taoiseach Mr. Simon Harris.

Date:

12th October 2024.

From:

Professor Paul Johnston, Trinity College Dublin; Professor Mike Gormally,

University of Galway; Dr Pamela Bartley, Hydro-G.

Purpose of Note: Windfarm applications in Ireland: Effect of the Inadequacy of Environmental Impact Assessments - concerns of experts.

Dear Simon

We, the undersigned, have all acted as advisors to competent authorities and understand the intricacies of the Statutory Instruments enacted in Ireland and their parent Directives issued from Europe. We are writing this note to share with you our strong concerns relating to the implementation of Ireland's EIA Regulations and its parent Directive in relation to windfarm proposals and planning applications in Ireland.

As experts in our fields, we would ask you to consider that Ireland's Wind Energy Strategy, as it currently operates, is not sustainable and is not aligned with, among other legal instruments, the European Union's Nature Restoration Law, in which biodiversity must be restored. The European Union Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 clearly sets out targets for the year 2030, i.e. less than 7 years' time. Much other existing environmental legislation is in conflict with our national requirements for siting increasing numbers of windfarms.

We ask that you give serious consideration to this letter. With the recent changes in EU legislation we, as a nation, now have the required supports to get this right. We also have the scientific evidence to ensure that we do not repeat the mistakes of our forebears when much of our nature was destroyed by intensive agriculture, commercial forestry and peat extraction practices. While our forebears could argue that they did not realise the full extent of the environmental degradation caused by their actions, our generation does not have that excuse and the next generation will judge us on that basis.

We are writing this note as Nationally Recognised Subject Matter Experts with experience, as follows, with biographic notes below:

- Paul Johnston's 50 years of academic and state advisory positions in Hydrogeology & Peatlands.
- Mike Gormally's 30 years of academic and research experience in Applied Ecology, Biodiversity and Wetlands.
- Pamela Bartley's 30 years of Site Investigation, Construction, Research, Planning, the Law and Impact Assessment.

In our expert subject matters, we have reviewed many Environmental Impact Assessment Reports (EIARs) relating to windfarms in Ireland in the last number of years and are familiar with the details of wind turbine construction.

Here, we state categorically that there are significant problems with the EIA process for wind power. The EIAs for wind power submitted to either County Councils or An Board Pleanála as Strategic Infrastructure Development (SID) are rarely correctly informed, are most often incorrectly concluded and they are, more often than not, indefensible in the context of the legislation enacted in Ireland to protect water as a resource (The Water Framework Directive

and associated Irish Statutory Regulations), water as a Source of Public Water Supply (The Drinking Water Regulations, 2023) and our valued birds, species and habitats (The Birds and Habitats Regulations and associated Directive). It is of greatconcern to us to read in windfarm EIARs, statements such as "No Impact" or "Mitigatable Impact" regarding drinking water, peatlands, birds, bats etc., without sufficient robust data to support these statements. The repeated evidence of poor investigation practices and inadequate survey methods leads to a situation that does not align with either Ireland's Statutory Instrument or the EU Directive for Environmental Impact Assessment. This is borne out by An Bord Pleanála's continued plaming decision refusals on points of en vironmental law, and explains the frequent referrals for judicial review.

Many of the EIAR chapters we have reviewed do not adhere to EPA Guidelines on the information to be contained in Environmental Impact Assessment Reports (2022). Ona regular basis, we observe EIAR contents that provide significant potential risks to landscape, water, environment, birds, batsetc for reasons including, but not limited to the following:

- Inappropriate site and landscape selection
- Inadequate baseline data
- Outdated bird survey methodologies.
- Impact predictions being presented without satisfactory supporting evidence.
- Mitigation measures lacking sufficient detail and understanding with the result that the success of proposed mitigation measures cannot be guaranteed as demonstrated by the Meenbog Windfarm bog slide in Co. Donegal.
- Poor consultation with community groups, and a general lack of clarity tosay the least.

"Maintaining objectivity" is one the fundamental principles of best practice in Environmental Impact Assessment (EPA, 2020) yet the tone of the majority of the windfarm EIARs we have reviewed to date has been to present the proposed wind farm in the best possible light so that the development has the best chance of succeeding in the planning process. The negative impacts of built, or partially built, Irish windfarms that have made the national/international news is testament to the outcome of such practices: some Public WaterS upply Sourceshave been severely damaged with THM issues due to landslides, and salmonid rivers have been inundated with peat slides. In addition, there are unassessed potential persistent chemical risks posed to watersuse d to supply the public.

A quick snapshotis provided here to give you some bitef examples of **poor practice** we have documented in windfarm EIARs in recent years

1. Targeting peatlands and bog wetlands as potential windfarm sites.

Beyond all scientific doubt, building turbines in peat will negatively affect biodiversity and increase carbon loss from this habitat through the required drainage, foundations and infrastructure Damage arising from construction releases more carbon from the peatland. The long-term sustainable approach is the restoration of bog wetlands. A strategy of restoration, rather than any construction whatseever will provide a reduction in carbon emissions from the peatland in perpetuity. The societally enefits will be better water quality, reduction in flood events, a reversal of biodiversity loss and more opportunities for people to connect with nature resulting in better physical /mental health outcomes, as recognized in the Climate Action Plan, a derivative of the Paris Agreement. Moreover, since 1987, Ireland has been a signatory of the international Ramsar convention which provides for the protection and promotion of wetlands including peatlands. The case that windfarms in

and associated Irish Statutory Regulations), water as a Source of Public Water Supply (The Drinking Water Regulations, 2023) and our valued birds, species and habitats (The Birds and Habitats Regulations and associated Directive). It is of great concern to us to read in windfarm EIARs, statements such as "No Impact" or "Mitigatable Impact" regarding drinking water, peatlands, birds, bats etc., without sufficient robust data to support these statements. The repeated evidence of poor investigation practices and inadequate survey methods leads to a situation that does not align with either Ireland's Statutory Instrument or the EU Directive for Environmental Impact Assessment. This is borne out by An Bord Pleanála's continued planning decision refusals on points of environmental law, and explains the frequent referrals for judicial review.

Many of the EIAR chapters we have reviewed do not adhere to EPA Guidelines on the information to be contained in Environmental Impact Assessment Reports (2022). On a regular basis, we observe EIAR contents that provide significant potential risks to landscape, water, environment, birds, bats etc for reasons including, but not limited to, the following:

- Inappropriate site and landscape selection.
- Inadequate baseline data.
- Outdated bird survey methodologies.
- Impact predictions being presented without satisfactory supporting evidence.
- Mitigation measures lacking sufficient detail and understanding, with the result that the success of proposed mitigation measures cannot be guaranteed, as demonstrated by the Meenbog Windfarm bog slide in Co. Donegal.
- Poor consultation with community groups; and a general lack of clarity, to say the least.

"Maintaining objectivity" is one the fundamental principles of best practice in Environmental Impact Assessment (EPA, 2020) yet the tone of the majority of the windfarm EIARs we have reviewed to date has been to present the proposed wind farm in the best possible light so that the development has the best chance of succeeding in the planning process. The negative impacts of built, or partially built, Irish windfarms that have made the national/international news is testament to the outcome of such practices: some Public Water Supply Sources have been severely damaged with THM issues due to landslides, and salmonid rivers have been inundated with peat slides. In addition, there are unassessed potential persistent chemical risks posed to waters used to supply the public.

A quick snapshot is provided here to give you some brief examples of **poor practice** we have documented in windfarm EIARs in recent years.

1. Targeting peatlands and bog wetlands as potential windfarm sites:

Beyond all scientific doubt, building turbines in peat will negatively affect biodiversity and increase carbon loss from this habitat through the required drainage, foundations and infrastructure. Damage arising from construction releases more carbon from the peatland. The long-term sustainable approach is the restoration of bog wetlands. A strategy of restoration, rather than any construction whatsoever, will provide a reduction in carbon emissions from the peatland in perpetuity. The societal benefits will be better water quality, reduction in flood events, a reversal of biodiversity loss and more opportunities for people to connect with nature resulting in better physical/mental health outcomes, as recognized in the Climate Action Plan, a derivative of the Paris Agreement. Moreover, since 1987, Ireland has been a signatory of the international Ramsar convention which provides for the protection and promotion of wetlands including peatlands. The case that windfarms in

peatlan ds are incompatible with these requirements is rarely even considered appropriately in EIARs.

Bird survey methodologies currently employed by consultancies in Ireland for wind farm EIARs:

Bird mortality due to collision with windt urbine blades is universally accepted. The daytime observational methods used in Irish EIARs are outdated and do not record bird movements during night-time hours. Thermal imaging and passive audo recording are now best practice technologies widely available for more than 10 years, yet, to date, we have not observed these methods in any of the windfarm EIARs we have reviewed. In addition, passerines (perching birds) are not generally considered in Irish EIARs despite recent scientific literature indicating that mortal ity rates are significantly underestimated due to the smalls ize of these birds.

Failure toackno wledgethe requirements of the Drinking Water Regulations (2023) in wind farm EIARs.

The Statutory Instrument detailing the protection of drinking water and health of citizens is clear and detailed in its legal requirements. In most EIARs for wind power, there is a complete lack of acknowledgement of the Drinking Water Regulation's required Risk Assessment.

4 Failure to correctly a cknowledge the nowsh ort time frame for Ireland's compliance with the Objectives of the Water Framework Directive:

Irelandis fasta pproaching the 2027 deadline for WFD compliance, for which we have had 24 years to work towards. Time is now running out. Whilst previously County Councils and The Board may have had some justification in permitting development consent in catchments not currently meeting WFD Obligations, that time has now passed, and the nation now has 2 years to bring all riversto a t least Good Status. The impact of windfarms is frequently incompatible with meeting this objective.

We bring to your attention to Ireland's 4th National Biodiversity Action Plan (2023-2030) which, using a "whole government, whole society" approach, "aims to deliver the transformative changes required to the ways in which we value and protect nature". Thea im is to "ensureth at every citizen, community, business, local authority, semi-state and state a gency has an awareness of biodiversity and its importance, and of the implications of its loss, while also understanding how they can act to address the biodiversity emergers yas part of a renewed national effort to "act for nature". "In addition, The WI dlife (Amendment) Act 2023 introduced a new public sector dutyon biodiversity. Thele gislation provides that every public body as listed in the Act, is obliged to have regard to the objectives and targets in the National Biodiversity Action Plan. See https://wwwn.pwsie/legislaton for further details.

We recognize the pressing need for the development of renewable energies which is resulting in considerable pressure on EIA con sultancies to "deliver" for both the Government in its 'Cl imate Objectives' and for the developer, who is their client. Nevertheless, we have observed a significant absence of objectivity in parts of the required EIARs. There is real conflict between the requirements of historical as well as currente nvironmental legislation and the equal need for development of windfarms as sources of renewable energy. A resolution for this conflict maylie in an integrated national landuse policy but meanwhile, there is an urgent need to have a given ine conversation about the above issues and we would be happy to be part of that conversation.

The existing and growing resistance to terrestrial windfarms due to their environmental impact is frequently justified and exacerbated by inadequate EIARs which result in extra delays and costs as well as in poor planning decisions. This conflict between the requirements of environmental legislation and the need for increased wind power is unsustainable.

When it comes to protecting our environment and its increasingly important ecosystem services on which the human race depends, an excerpt from the famous song "Big Yellow Taxi" by Joni Mitchell comes to mind.

"Don't it always seem to go

That you don't know what you got 'til it's gone?"

We thank you for your time and look forward to discussing the issues with you.

Professor Paul Johnston

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BIOGRAPHICAL NOTES

PAUL JOHNSTON

Paul is a Professor at Trinity College Dublin's Department of Civil, Structural & Environmental Engineering, specialising in peatland hydrology, hydrogeology and ecohydrology. He has acted as a specialist advisor to An Bord Pleanála, NPWS, multiple Government Departments, Teagasc, the EPA, the National Roads Authority (now TII). Paul has advised NPWS on ecohydrology and he is the mentor for NPWS's first ever employed ecohydrologist: Professor Shane Regan, who himself is a lecturer now in UCD.

MIKE GORMALLY

Mike is the Director of the Applied Ecology Unit (AEU) at the University of Galway, which has a strong track record in applied ecological research. His unit has undertaken applied ecological research on internationally famous ecosystems such as disappearing lakes (turloughs), peatlands, unregulated flood meadows and coastal grasslands (machairs) as well as terrestrial invertebrates as bioindicators of habitat quality. Mike, an active member of the County Galway Heritage Forum and Irish Ramsar Wetland Committee, also lectures in Environmental Impact Assessment (EIA) to both BSc and MSc students.

PAMELA BARTLEY

Pamelais a civile ngineering hydrogeologist and water supply engineer. She has hadher own limited company for over 20 years. She is the only water supplye ngineering hydrogeologist in I reland to be certified accredited and experienced to act as a Construction Regulation compliant Project Supervisor Design Phase (PSDP) and Project Supervisor Construction Phase (PSCS). Her expertise includes the assessment of and interaction between the law, water and bedrock to enable functioning of Regionally Important quarries in Ireland, which are required to support the housing policies of Government. She therefore understands how construction can be completed within the legislative framework. She has adjudicated cases and Oral Hearings for An Bord PI eanála Pamela is hydrogeological lead consultant, for all counties of the western coast and northern boundary, in the delivery of Uisce Eireann's Supply Demand Balance Programme that grew from the National Water F ramework Plan. Pamela has written advice papers on Irish Statutory Instruments enacted for the Water F ramework Directive (WFD) and presented to the National Planning conference and Environmental Health Officers of the HSE. Her PhD, completed 20 years ago, is still a hot topic. Nitrates, Groundwater & Dairy Agriculture.

Introduction

Executive Summary

Clare County Council have already rejected this planned windfarm based on 3 main reasons in Order Number 84362

- 1. Visual obtrusiveness of 7 x 180m in a sensitive receiving environment which is part of the Slieve Bernagh Bog Landscape Character Area. The aforementioned development would also negatively impact upon the R466 Regional Road which is a scenic route. This development would be in breach of several objectives of the Clare County Development Plan.
- The proposed site of the wind turbines is in an area hydrologically connected to three European Sites including the Lower River Shannon SAC. The proposed plans for managing peat, soil and water do not exclude the possibility of damage to the European sites. For this reason the council have rightly refused planning.
- 3. Thirdly, the EIAR for Lackareagh failed to conduct a cumulative impact assessment as it is required to do. For this reason the Council rightly decided it could not exclude significant adverse effects on connected European sites or on Red Listed Bird Species also present on the proposed windfarm site. Of particular interest are the possible effects on Hen Harrier, one of Irelands most endangered bird species. Additionally recent scientific literature indicates that Passerine (bird) species, heretofore believed not to be significantly impacted by wind farms (EIAR), can have greater mortality rates from turbine collisions than previously thought. This needs to be addressed in full in the EIAR given that currently almost 40% of Passerines are currently classified as Birds of Conservation Concern in Ireland (BoCCI). Adherence to the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) also applies here i.e. "...to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life".

In this executive summary, in addition to the observations of Clare County Council, I wish to highlight issues around the lack of cumulative impact assessment in the EIAR and finally highlight the issue of Noise within the EIAR.

- 4. The EIAR submitted by MKO is lacking a Cumulative Impact Assessment as required by legislation. It is the purpose of EIAR to inform the competent authority of the effects of a project The EIAR do not adhere to the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) which states: "The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative.... effects of the project". Article 3(1) of the EIA Directive states that: "The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:
 - (a) population and human health;
 - (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/247/EC;
 - (c) Land, soil, water, air and climate;
 - (d) material assets, cultural heritage and the landscape;
 - (e) the interaction between the factors referred to in points (a) to (d)."

See also EPA (2022) Guidelines on information to be contained in EIARs regarding "the potential for cumulative significant effects to arise from multiple non-significant effects"

(https://www.epa.ie/news-releases/news-releases-2022/epa-publishes-guidelines-on-theinformation-to-be-contained-in-environmental-impact-assessment-reports.php
No serious and systematic attempt has been made by the developers to conduct a cumulative impact assessment across the environmental and health concerns. Indeed it is questionable how the developers might approach this. Given that the EIAR for Carrownagowan allegedly lacks input from the HSE in relation to health and given that the HSE is a statutory prescribed body, it is fair to assume that the EIAR for Carrownagowan is an incomplete document. How then are cumulative environmental impacts to aggregated or assessed by subsequent windfarm applicants. Surely a

proper cumulat ve environmental impact relies upon individual EIARs being complete an accurate.

5. Noise

There is a serious anomaly between the background noise data for the Lackareagh windfarm and the neighbouring Carrownagowan windfarm which are both on Slieve Bernagh. This is hugely significant given the significant observations made by the HSE in relation to this windfarm and the nearby Knockshanvo windfarm. I call on the board to read a nd review these documents while considering the noise aspect of their deliberations. It must also be noted that the HSE claim to not have been notified about the CarrownagowanWindfarm application despite being a prescribed statutory body that should be notified. First lets look at background noise data from both sites

Carrownagowan Base Noise Levels

Table 10-3 Prevailing Background Noise Levels - Amenity Hours

Location Refere	Wind Speed Standardised to 10m								
Monitoring Location	Representative Of	3	4	5	6	7	8	9	10
		Prevailing Background L90 dB(A)							
H27	H26 & H27	27	29	30	32	33	35	36	38
H28	H30, H31, H32, H37 & H38	22	23	25	27	30	33	35	37
H34	H33 to H35	27	28	29	30	32	33	35	36
H36	H36	37	37	37	37	37	38	39	40
H53	H42 to H55	23	24	25	27	29	31	34	36
H58	H79, 80, 58 & 59	26	26	27	28	29	31	32	34
Lowest Measur	red Background Noise Level	22	23	25	28	29	31	32	34

Table 10-4 Prevailing Background Noise Levels - Night Hours

		Wind Speed Standardised to 10m									
Monitoring	2	3	4	5	6	7	8	9	10		
Location	Representative Of		Heli	Pre	vailing	Backgr	ound				
					L90	dB(A)					
H27	H26 & H27	28	29	30	31	32	33	34	35		
H28	H30, H31, H32, H37 & H38	21	21	22	23	26	29	34	39		
H34	H33 to H35	27	27	27	28	29	31	33	35		
H36	H36	37	37	37	37	37	38	38	39		
H42 to H55	H42 to H55	20	20	21	24	26	30	33	36		
H58	H79, 80, 58 & 59	25	25	25	26	27	30	32	35		
Lowest Measured Background Noise Level			20	21	23	26	30	32	35		

Lackareagh Base Noise Levels

Table 12.9: Summary of Prevailing Background Voise Levels during QuietDa ytime Periods (dB(A))

Noise Monitoring Location	Wind	Wind Speed (ms ⁻¹) as standardised to 10m height											
	1	2	3	4	5	6	7	8	9	10	11	12	
NMLI	34.5*	34.5	34.5	34.7	35.2	36 1	37 .3	38.7	40.2	42.0	43.9	45.8	
NML2	29.4	30.5	31 .4	32.2	33.0	33 6	34.1	34.5	34.6	34.6	34.6*	34.6*	
NML3	33.0*	33.0	33.0	33.3	34.0	34.8	35.9	37.0	38.3	39.5	40.7	41.7	
NML4	31.7*	31.7*	31.7	318	31 .9	32 3	33.0	341	35.6	376	40.1	43.2	
NML5	31.1	31.1	31.2	31.4	31.8	32.5	33.4	34.6	36.2	38.2	40.6	43.3	
NML6	32.4*	324	32.5	33.2	34.2	35.4	36.7	38.1	39.3	40.3	40 .9	41.1	
NML7	29.8*	29.8	30.1	30 .7	31.7	32.8	34.1	35.4	36.8	38.0	39.0	39.8	

^{*} Flatlined where derived minimum occurs at lower wind speeds and derived maximum occurs at higher wind speeds, see Section 5.8 of Appendix 12.2 Operational Noise Report.

Table 12.10: Summary of Prevailing Background Noise Levels during Night-timePeriods (dB(A))

Noise Monitoring Location	Wind	Wind Speed (ms ⁻¹) as standardised to 10m height													
	1	2	3	4	5	6	7	8	9	10	11	12			
NMLI	31. 8*	31.8	31.9	32.4	33.3	34.3	35.6	37 .2	38.9	40.7	40.7*	40.7*			
NML2	24.1	25.6	26.6	27 .3	28.1	29.2	30.8	33.1	36.5	41.1	4. F	41.1*			
NML3	28.6*	28.6	28 7	29.5	30.8	32.3	33.8	35.0	35.8	35.7	35.7*	357*			
NML4	25.5*	255*	25.5	25.9	26.8	28.1	29.6	31.3	32.9	34.4	34.4*	34.4*			
NML5	25.5*	25.5*	25.5	25.7	26.5	27.9	29.8	32.2	35.2	38.7	38.7*	38.7*			
NML6	26.2*	26.2*	26.2	27.4	29.4	31.9	34.5	36.9	38.8	39.7	39.7*	39.7*			
NML7	25 .0*	25.0*	25.0	26.0	27.6	29.6	31.6	33.3	34.4	34.6	34.6*	34.6*			

For comparison, the average daytime background noise at various windspeeds are as follows

Site	Wind 3m/s	Wind 4m/s	Wind 5m/s	Wind 6m/s	Wind 7m/s	Wind	Wind 9m/s
						8m/s	
Lackareagh	32.0	32.5	33.1	33.9	34.9	36.1	36.1
Carrignagowan	27.0	27.8	28.8	30.2	31.6	33.5	35.2

Nighttime Values

Site	Wind 3m/s	Wind 4m/s	Wind 5m/s	Wind 6m/s	Wind 7m/s	Wind	Wind 9m/s
						8m/s	
Lackareagh	26.7	27 7	28.9	30.5	32.2	34.1	36.1
Carrignagowan	26.3	26.5	27	28.2	29.5	31.8	34.0

The implication is quite large as below 30dBel background noise is the cutoff for operational limits of 40dBel whereas, the operational limit is 45dBel when the background noise is greater than 30dbel.

It is questionable why Lackereagh would be noisier than Carrownagowan when both are rural locations on the same mountain?

The 2006 Wind Energy Guidelines state that

and global benefits. Instead, in low noise environments where background noise is less than 30 dB(A), it is recommended that the daytime level of the LA90, 10min of the wind energy development noise be limited to an absolute level within the range of 35-40 dB(A).

As someone who is intimately familiar with both areas I call into question the accuracy of the readings for Lackereagh. There is no apparent reason why the two sites might be different.

In any event, the HSE in the absence of updated Wind Energy Guidelines have called into question the relevance of the 2006 Wind Energy guidelines, after the ruling in the Webster/Rollo vs Meenaclogher (Wind) Limited 2024 case.

It is their assertion that planning decisions must take into account the potential for personal nuisance.

Given that the HSE claim that they were not notified about Carrownagowan windfarm, how is a cumulative impact assessment even possible when the EIAR for Carrownagowan is incomplete without the input of the prescribed statutory body in the area of Health.

Bord Pleanála faces questions over health scrutiny of wind farm projects - Hse | An-Bord-Pleanala

Questions for An Bord Pleanála over health review of wind farms

ARTHUR BEESLEY Current Affairs Editor

An Bord Pleanála is facing questions over its scrutiny of rural wind farms after the Health Service Executive said its environmental unit had no record of mandatory health notifications

potential health impacts, giving HSE officials an opportunity to make planning submissions. Notification is the responsibility of the promoter of a project, when advised by planners. The rules apply to strategic infra-structure applications made to An Bord Pleanála.

Two cases have come to light where An Bord Pleanála advised HSE consultation and said notification was made, only for the HSE to say its environmental unit received no records. In a third case, wind farm case planners said mandatory notification was made but the HSE said it was its own environmental unit that sought the application.

An Bord Pleanála said three

tion was mandatory only when there might be "significant effects on public health".

Community and Environ-mental Protection Alliance (Cepa), a campaign group, has collected data showing several proposals have not been notion two large projects.
Compulsory HSE notification is required in cases with lighted the cases after seeking wind farm submissions from the officials, who said they HSE officials, who said they had no records of receiving certain applications.

Our first concern is public health and it is shocking to know the vast majority of wind farm planning applications have not been sent to the HSE.

"Clearly an urgent review is required as public health is continuously put at risk," said Cepa spokesman Stephen Keogh,

"We rely on the HSE's contribution to planning and the HSE currently recommends the 2018 World Health Organisation guidance - with a maximum noise level of 37 decibels - to be the most appropriate criteria for noise assess-ment, to protect health."

were scrutinised without HSE consultation because notifica gowan wind farm in Co Clare. Planners said the HSE was notified. However, a HSE official told the Cepa its national office had "no record of receipt" of the application. The HSE said in response to questions that no such records were held by its local office or national business service unit, which is its environ-

> 66 Clearly an urgent review is required as public health is continuously put at risk

mental unit. Carrownagowan promoters were "unable to comment" because of a High Court challenge but said the applica-tion includes "notified prescribed bodies, which includes the HSE'

Asked about HSE statements, An Bord Pleanála said it can respond "only in relation to what it has documented and recorded" on applications.

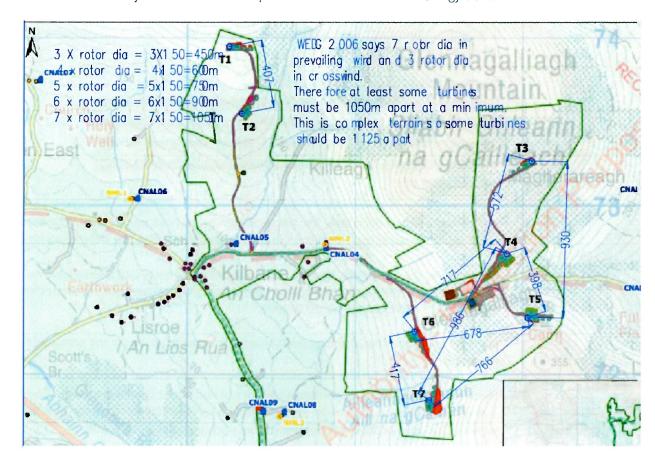
Co Clare. An Bord Pleanála again said notification was made. The HSE environmental unit had "no record of receipt" of the application but noted on-line records saying a letter went to a HSE local office.

Ballycar promoters said they sent the required correspondence and produced a January 2024 letter to the HSE "environmental health service

An Bord Pleanála said the HSE was notified of the application for Oatfield wind farm in Co Clare. However, the HSE said there was no submission to its environmental unit and that the unit itself "made a request" for the application.

Orsted, the Oatfield promoter, cited legislative guidance and best practice: "In line with this we have communicated the relevant information on time via email and hard copy to the Planners said HSE HSE. notification was not required for the 21-turbine Castlebanny wind farm in Co Kilkenny. Similarly, HSE notification was not required for the eight-turorded* on applications.

The second case centres on a the 11-turbine Clonberne wind Finally, in relation to noise, I want to draw the boards attertion to the spacing between the turbines which in my view are not in compliance with the 2006 Wind Energy Guidance.



Depending on wind direction, there could be potential for constructive interference of the soundwaves making the noise from the wind turbines greater.

This could be a transient phenomenon depending on the wind direction but has the potential for significant nuisance by combining the noise from two or more turbines.

Having reviewed the application I ask the boardl to consider my opposition to the development and consider the following in arriving at their decision:

- 1. The proposed Lackareagh Windfarm and the associated peat stripping, tree felling and Substation constructions are large-scale developments for very large turbines of a scale that have never been erected ever before in Ireland. Not only are the developers proposing a combination of hereto never ever installed 180m height turbines, they are proposing that their first ever installation should be on the top of peat and forestry covered hill walking hills.
- 2. This development is adjacent to windfarms in Carrownagowan and Faheybeg which have been granted planning by ABP but which are currently subject to judicial review. In addition, proposed windfarms in Oatfield, Knockshanvo and Ballycar, would bring to six the total number of windfarms proposed in Slieve Bernagh/East Clare. The cumulative size and effect of the combined development will be overwhelming, overbearing and highly damaging to this sensitive landscape and habitats. It should be noted that this valley is home to potentially 5% of Irelands remaining Hen Harrier, of which just over 80 pairs remain. It remains the case that the developers of the Lackereagh project have not conducted a cumulative assessment of the impacts of their development in conjunction with the aforementioned developments. This is a requirement under law and has been flagged by Clare County Council already.
- 3. The vast scale of what is planned for South-East Clare currently involves 66 wind turbines, and all of their construction pads and earthmovers, in multiple applications, across diverse parts of our community's area. This will result in a serious over-intensification and our area being overwhelmed by industrial scale turbines.
- 4. With no up-to-date Windfarm Development Guidelines in Ireland, our community is vulnerable to planning decisions that might be based on outdated science and planning control, without due cognisance of the lived experience. It is the ordinary rural dweller that must then live with those consequences. Indeed the HSE have said as much in their submission with regard to Lackareagh when referencing Judge Egans recent high court ruling:

If the Planning Authority are now considering that they are under a duty to incorporate the likelihood of a Private Nuisance into their decision making, then they should consider the judgement in **Webster/Rollo V Meenaclogher (Wind) Limited (2024 IEHC 136) 8th March 2024.** This judgement identified, in the absence of Irish Guidance, the usefulness of UK Guidance in the investigation of wind farm noise as a statutory

- 5. There are numerous residential dwellings within 2km of the proposed development which will be affected by noise, flicker and other nuisance within their homes.
- 6. Numerous properties will experience continued shadow flicker, with some of those homes enduring shadow flicker from both the Lackareagh and Faheybeg windfarms. Some homes will experience shadow flicker from multiple turbines. Please try to imagine your workplace having a semi functioning fluorescent light impeding your executive functions. Then imagine that when you go home to eat your dinner, that same semi functioning flickering fluorescent light is there at home also. How are we to remain sane? Wind farms were never meant to be this high in such close proximity to our homes. In essence the proposed development is too near and too high.
- 7. Currently, many windfarms are not in compliance with planning conditions which our Competent Authorities have not been able to enforce. Once constructed, our community have no safeguards

for protection. Until there is a 'Strategic Development Enforcement Department', we begith the Competent Authorities have no basis to impose Development Conditions to grants of permission.

- 8. The impact on our vulnerable residents, and particularly our autistic residents need to be considered by the board as these residents have a lower threshold for nuisance.
- 9. The impact o nour environment, including our protected species, special areas of conservation and natural heritage areas.
- 10. The pote ntal for flooding and landslide risks for the targeted windfarm areas.
- 11. The impact on our drinking water, land-based springs, and private wells which the vast majority of local residents are dependent on.
- 12. Resident's homes and properties will be unbearable places with a lot of land being sterilized and our children fleeing for peaceful environs in areas unaffected by this wind farm fallacy.
- 13. The issue of increased traf fc in East Clare, over a prolonged period, on roads wholly unsuitable for increases in traffic. There is not a single road or bridge within 20km of the proposed development that can accommodate both a low loader and a car travelling in the opposite direction. How are they going to get the earth movers and diggers and quarry trucks full of stone to the top of our hills, never mind five massive haulage trucks for each of the turbines proposed. They propose to turn our community into a major building site for years
- 14. Windfarms are not a panacea when it comes to clean energy. The energy is intermittent and expensive. Indeed we now have the scenar o whereby the government is subsidising both the producer and the consumer and price signals have been removed from the market. It is an artificial energy marketplace. Have alternative strategies and policies been assessed in line with the requirements of The SEA Directive Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment requires that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.
- 15. The impact on local businesses, tourism, important local amenities including hillwalking and cycling routes need to be considered by the board.
- 16. The impact on mental health needs to be assessed in light of the recent ruling by Judge Egan in Webster/Rollo vs Meenaclogher (Wind) Limited 2024 case.
- 17. Planning application ignores/contravenes parts of the Clare County Development Plan 2023-2029 and Clare Wind Energy Strategy, including objectives CDP 2.1; CDP 8.40; CDP 10.11; CDP 14.3.
- 18. Given the Minister's intervention in the County Development Plan process insisting on the continuation of the Wind Energy Strategy from the previous plan, that strategy did not receive SEA for the current plan. This is in contravention of the EIA Directive.
- 19. The devastating visual impact from both near and far of an unjustified and inappropriate scale of industrial turbines across the hilltop landscape. The board needs to consider the judgement of Clare County Council in this matter where they have referenced the negative impact on the receiving environment and on the R466 Scenic Route

20. The Clare County Development plan 2023 to 2029 states that there is an important network of network of scenic routes in the county that that must be afforded adequate protection. To build a windfarm in the very scenic mountains viewed from the scenic route R4666 Broadford to O Briensbridge is in contravention of the Clare County Development plan. Legally it could be argued that this was not what the council meant by affording adequate protection. Indeed they make it clear that these are "areas of special control"

To quote directly from the development plan:

"In the assessment of the interaction and integration of a proposed development within the receiving landscape, issues including the visibility and prominence of the development from available vantage points, the potential changes to the character of these views (including views from Scenic Routes, heritage sites and other important locations), the capacity of the landscape to accommodate the development, the height, bulk, scale, massing and finishes of the development and the cumulative impact of the development are all considered"

It is quite clear that developing a windfarm whose turbines would be amongst the tallest structures in Ireland within the receiving landscape is in contravention of the county development plan and is contrary to proper planning.

21. Conditioned mitigation is next to impossible to have enforced as many homeowners living close to existing windfarms have found to their cost. Communities are forced to take legal action either against the Planning Authority to do its enforcement duty or against developer/operators. The known difficulties and prohibitive costs associated with this process have allowed unauthorised developments to persist. Again, the landmark ruling by Justice Egan needs to be considered with regard to this issue.

S HADOW FLICKER

EDF fail to commit to zero shadow flicker as per 2019 Draft WEDG. They have the software to be able to do this but prefer to exploit more generous thresholds in 2006 WEDG. They acknowledge that 5 houses will receive shadow flicker from both the Faheybeg and Lackareagh windfarms. This is unacceptable.

They pick and choose between 2006 and 2019 WEDG according to what suits them (not the community). Comment: given that Clare Council intend changing their Development Plan when the 2019 Guidelines are issued, arguably, EDF should apply the 2019 WEDG in their totality (noise restrictions and zero shadow flicker).

SIZE, SPATIAL DOM INANCE

Simply put: the development and the size of the turbines are both too big. Turbines lke this should be restricted to sparsely populated areas, or offshore. 2006 WEDG did not anticipate turbines of this scale.

Size of turbine not at all suitable for mixed rural/residential settings. Will fundamentally and negatively alter the character of the landscape. Visually overbearing.

See pen illustrations in WEDG 2006 (Section 6) especially Fig 24: Turbines are too high relative to the scale of the hill – this results in spatial dominance; and Fig 8: Wind energy development located con fguous to an urban centre.

WEDG 2006 Section 6.8 (p45): "Turbine height is critical in landscapes of relatively small scale, or comprising features and structures such as houses, and must be carefully considered so as to achieve visual balance and not to visually dominate."

The proposed turbine heights are to be the biggest in Ireland to date and are contrary to proper planning and contravene the 2006 WEDG guidelines

Section 6.3 Siting of Wind Energy Development: "Where a wind energy development is relatively close and above a small urban node, it should respect the scale of its setting and avoid spatial dominance".

Comment: the proxim ityof the turbines to Kilbane contravenes this requirement. EDF also seek to play down the proximity to Kilbane/impact on Kilbane

Impact on designated scenic routes: the development will be prominent and a dominant visual presence from viewpoints along the three scenic routes in the area negatively impacting on their setting and outlook.

EIAR IN GENERAL

- 1. The consideration of Alternatives is required as part of the EIA process. The alternative of solar panels on each home's roof has not been given enough consideration.
- 2. No Transboundary Effects consideration even though the metal and construction are transboundary.
- 3. This lack of transboundary is critical to the lacking in the climate effect manufacture and transboundary transport.

CUMULATIVE IMPACT

The granting authorities must consider their role in the cumulative impact of all the wind farms that have sought permission? Could it be argued that the council should assess their potential role in granting too many construction activities? What is the combined and cumulative impact of 66 proposed turbines on:

Traffic, Human Heath, Noise, Flicker, Hydrology and ground water quality, Property Prices, Hen Harrier, Bats. Migratory Birds, Peatlands, Land Slides, etc.

For example, have ABP asked for considered the cumulative impacts of multiple windfarms on Hen Harrier present in the Glenomera Valley. There are nests/roosts in the Knockshanvo Area and another proximal to Lackareagh. It is possible that 10% of Irelands last remaining Hen Harrier reside in the Slieve Bernagh and it is noted as a site of national importance. While not an SAC, the Hen Harrier in this area are equally entitled to protection under the law. If the Hen Harrier go extinct in Slieve Bernagh will nature restoration laws require the turbines to be torn down? Given that ABP have already granted permission to Carrownagowan and Faheybeg in the event of an extinction, will the combined effects of all windfarms lead to their demise? Again, an extinction of any of the endangered species would be contrary to proper planning laws.

DIRECTIVE 2001/42/EC OF THE EUROPEAN PARLIAMENT & OF THE COUNCIL OF 27 JUNE 2001

The SEA Directive - Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment - requires that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

Eleven sectors are specified in the SEA Directive. Competent Authorities (plan/programme makers) must subject specific plans and programmes within these sectors to an environmental assessment where they are likely to have significant effects on the environment.

The Wind Energy Guidelines meet the definitions of plans and programmes and therefore required an SEA. As a result, the current Wind Energy Guidelines are not adequate, and the Board cannot rely on them. We ask the Board to consider this in their decision.

Article 3

Scope

- 1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.
- 2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,
- (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or
- (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

Figure 0-1: Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001.

NON -COMPLIANCE OF PLANNING APPLICATION WITH CCDP 2023-2029

Introduction

1. This section submission/objection relates to the failure of the Lackareagh proposal to comply with or satisfy the objectives of the Clare County Development Plan 2023-29 (CCDP) and in particular Volume 6 thereof (Clare Wind Energy Strategy 2023-29 [CWES);

Cl are County Development Plan 2023-2029: Vd 1 WrittenSt ate ment

- 2. Despite the fact that Clare County Council have already designated the area encompassing the proposed Lackareagh development as (in part) "strategic for wind" or (in part) "acceptable in principle [for wind]", the size of the Lackareagh development and the cumulative impact of the development in conjunction with the Faheybeg, Carrownagowan, Oatfield, Ballycar and Knockshanvo wind farm proposals, mean that the CCDP objectives and principles are still highly relevant in relation to this planning application and must be satisfied for the purposes of proper planning and sustainable development.
- 3. In submission the planning application fails to satisfy, and is in breach of, the following objectives expressed in the CCDP and CWES:
 - "To strike an appropriate balance between facilitating renewable and wind energy-related development and protecting the residential amenities of neighbouring properties" (CCDP11.47 (e) p291)
- 4. The scale and height of the development and the industrial scale of the turbines will irretrievably damage the amenities of residential property. The, frankly, huge turbines will be visually overbearing and will inevitably depreciate the value of properties in the area.
- 5. "a) To protect and promote the sustainable management of the natural heritage, flora and fauna of the County both within protected areas and in the general landscape through the promotion of biodiversity, the conservation of natural habitats, the enhancement of new and existing habitats, and through the integration of Green Infrastructure (GI), Blue Infrastructure and ecosystem services including landscape, heritage, biodiversity and management of invasive and alien species into the Development Plan;
 - b) To promote the conservation of biodiversity through the protection of sites of biodiversity importance and wildlife corridors, both within and between the designated si tesand the wider Plan area; (CCDP 15.12)
- 6. The size of development (extent and height) and the extent and duration of construction works (alone and, all the more so, when combined with the other proposed developments, particularly the immediately adjacent Carrownagowan and Faheybey development and construction) are of such magnitude that these protections cannot be guaranteed.
- 7. (d): "To ensure there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5km of known roosts" (CCDP 15.12 (d)) It is noted that Lesser Horshoe Bat are roosting within 710m of turbine 6.
- 8. It is noted that there is a known Lesser Horseshoe Bat Roost 710m west of Turbine 6 and that the mitigation measures proposed by do not confirm no net loss during construction and operation of the wind turbines. For reasons known only to the bats themselves, they have chosen a particular roost that is 710m from proposed Turbine 6, providing alternative habitat somewhere else may not satisfy the bats. Indeed, let me turn it around, for reasons only known to themselves, EDF Renewables have decided to locate a Wind Turbine 710m from the roost of the endangered species which is limited to just six counties in Ireland. It is alarming to note the sleight of hand employed in the biodiversity chapter. Section 6-69 on Horseshoe bats. They

note that there are two European Sites designated for the protection of Horseshoe bats nearby but as they are more than 2.5Km from the windfarm site, the bats are unlikely to forage there. A roost that was identified is described as not in close proximity to any works. Lets be clear that the roost mentioned here is 710m from Turbine 6. In other words, EDF have chosen to build a turbine 710m from an endangered species, the Lesser Horseshoe Bat, who has a foraging range of 2.5km and proclaim that it will not be affected by the proposed Turbine. Do they have studies and proof that turbines do not affect bats. Can they back up this claim? Or are they allowed to make false declarative statements?

I note the recent refusal of planning permission for Clare GAAs proposed expansion of the Caherlohan facility due to its proximity to Newgrove House, an SAC for the Lesser Horseshoe Bat. The Lesser Horseshoe Bat is affected by acoustic pollution from turbines. It is also the most photophobic of Irish bat species so the lights from the turbines will negatively impact on their habitat. It would seem contrary to sustainable planning to allow construction of the turbines within 2.5km of the documented roost. Thankfully it seems that Clare County Council already know this.

9. CCDP14.2 (Settled Landscapes): "It is an objective of Clare County Council: To permit development in areas designated as 'settled landscapes' to sustain and enhance quality of life and residential amenity and promote economic activity subject to: I. Conformity with all other relevant provisions of the Plan and the availability and protection of resources; II. Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts; III. Regard being had to the need to avoid intrusion on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:- a) That the site has been selected to avoid visual prominence b) That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads. c) That design of buildings and structures reduces visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact."

The choice of very large-scale turbines by the developer is contrary to this objective.

- 11. CCDP14.7 (Scenic routes) "It is an objective of Clare County Council: a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community; b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact; and c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved."
- 12. The developer's choice of very large-scale turbines is contrary to this objective and will impact deleteriously on the scenic routes in the vicinity (Bridgetown to Broadford; O'Callaghans Mills to Broadford and Tulla to Kilkishen).
- 13. CCDP 15.1 Strategic Aims: "To promote sustainable development, in harmony with local biodiversity and, if possible, take steps to enhance the natural environment;"

And p361 "...the modification of any existing habitats that maintain ecological functions should generally be avoided. Retention of existing habitats is a priority".

And, CCDP16.1 "It is an objective of Clare County Council: a) To ensure the protection of the architectural heritage of County Clare through the identification of Protected Structures, the designation of Architectural Conservation Areas, the safeguarding of historic gardens, and the recognition of structures and elements that contribute positively to the vernacular and industrial heritage of the county; and b) To ensure that the archaeological and architectural

- heritage of the countyis not damaged either through direct destruction or by unsymmetric developments."
- 14. The size and extent of the development (taking into account the associated Carrownagowan and Faheybeg developments on adjacent land) and the developer's choice of very large scale turbines means this development cannot be described as a being sympathetic to the archaeological and architectural heritage of the area.

CCDP 2023-2029 Vol 6 Clare Wind Energy Strategy (CWES)

- 15. Section 1.4 Terms and Definition p17:
 - 15.1 Defines "Large" turbines as over 100m to blade tip.
 - 15.2 Classification of size of wind farm: "Large" = 11-25 and "Very Large" = >25 turbines
- 16. The Lackeragh wind farm is therefore a development 7 of "Large" turbines. Combined with Carrownagowan(19 turbines) and Faheybeg a further 8 turbines on the same/adjacent site the development (which should in our submission be treated as one given its continuous nature) is approaching the scale of a "Very Large" development.
- 17. Under section 3.2 of CWES, General Objectives for Wind Energy Developments:

"It is the objective of the Council to support, in principle and in appropriate scales and locations, the development of wind energy resources in County Clare".

And 6.11 Cumulative impact p50:

"In areas identified as "Strategic" or "Acceptable in principle" baseline fieldwork assessed the capacity of these areas to accommodate wind farm development, and all were considered to have capacity for medium wind farm developments."

- 18. The Lackareagh development (and even more so the combined Carrownagowan/Lackareagh/Faheybeg development) is not a medium-sized development as per the Council's own definition and therefore contravenes objectives of Clare CC. IT would seem like a continuous windfarm strategically split among different developers.
- 19. 3.3 Specific Area Objectives p31 CWES states that areas designated as "strategic" should be developed in a comprehensive manner avoiding piecemeal development. The "project splitting" of the Carrownagowan/Lackareagh/Faheybeg schemes on a continuous site with consequent duplication of site access roads, grid connection routes, construction compounds, sub-stations, meteorological masts etc is precisely the sort of disjointed and piecemeal development which the Council's objectives are aimed at avoiding.
- 20. For the above reasons this development should not proceed and Clare County Council should not grant planning permission in respect of EDFs application as currently formulated.

NON-COMPLIANCE WITH EIA DIRECTIVE AND EPA GUIDELIN IS

- 1. This submission/objection relates to the failure of EDFs planning application to comply with the aims and objectives of the Environmental Impact Assessment Directive (EIA Directive) of the European Parliament (Directive 2014/52/EU amending Directive 2011/92/EU) ('the EIA Directive') and the Environmental Protection Agency Guidelines on the information to be contained in Environmental Impact Assessment Reports May 2022 ('the Guidelines').
- 2. The progression of any wind farm development from first conception through to delivery should be driven by ecological constraints. It is not at all clear from EDFs planning application that this has been done.
- 3. EDF have complied with the EIA Directive and the Guidelines in preparing an EIA Report ('the EIAR'). However, it is not evident from the report that a proper EIA process was undertaken in developing the project before arriving at the project design on which the EIAR was based.
- 4. The Guidelines anticipate that the EIA process is an ongoing process throughout development of the project:

"Having regard to the Guidelines will result in better environmental protection by ensuring that the EIA process identifies effects early and accurately. This will better inform the decision- making processes. It will also help to ensure that projects fit better with their physical, biological and human surroundings. This, in turn, contributes to improved protection of the environment, which is the objective of the EIA Directive." (Section 1.4)

- 5. There is no evidence of a compliant EIA process being employed during the progression of the project prior to the design (i.e. turbine layout, site access roads, substation, grid connection route etc.) being finalised.
- 6. The Guidelines are clear that the design of any project such as this should be driven by ecological constraints. There are no reports or other evidence to suggest that this is how the project has progressed. There are no reports to explain how the eventual site layout was designed. Instead, the EIAR simply seeks to justify retrospectively what has already clearly been decided. No explanation is given as to how the concentration and positioning of the turbines was arrived at by reference to ecological and environmental constraints.

7. As stated at section 2.4 of the Guidelines:

"At its most effective, avoidance of effects can lead to an EIAR which predicts 'no significant adverse effects'. To avoid misinterpretation of this statement it is very important for the EIAR to provide transparent and objective evidence of the evaluation and iterative decision- making processes which led to the adoption or selection of the chosen option."

"Assessment during the project design typically involves a process of repeated steps, each involving design and re-design to try to get the best fit with a wide range of environmental factors. Each stage of the conception of the project is assessed, with questions such as 'is this the best site/route?', 'is this the best way to build this?' or 'is this the appropriate technology?' asked from the beginning until the design is completed.

These stages will usually need to take account of a range of environmental issues, asking questions such as 'is this effect on this receptor significant or not?'."

- 8. What this means in practice is that the EIA process (as distinct from the EIAR) should be an iterative process via options appraisals and evaluations, taking into account all ecological and environmental factors, and also having regard to consultation and feedback from a range of 5bodies, agencies, landowners and the public. That does not appear to have occurred here.
- 9. The bodies consulted were asked for their views on the proposed project but not for input into the design of the project it was too late for that, as the design had already been decided. By way of illustration the Health Service Executive stated that they "expect that details (heigh and models) of the turbines to be installed will be available at the time planning permission is sought and will be included in the EIAR. Unfortunately, this has not been complied with, turbine models are unknown and the resultant flicker, noise and vibration is also unknown. This surely makes a mockery of the EIAR and renders noise and flicker studies meaningless. Homeowners are effectively left in the dark and at the mercy of the developer who have a blank cheque to choose whichever turbine suits them. A turbine that has not been assessed as part of an EIAR.
- 10. In conclusion, we submit the EDF Renewables has not complied with its obligations under the EIA Directive and has not followed the EPA Guidelines. The employment of a huge range of experts across the various environmental disciplines appears to have been solely for the purpose of justifying the project design rather than informing it in the first place. This design is in fact reverse engineering to maximise profits.

1.1.1 CUMULATIVE IMPACT

1.1.1.1 Introduction

- Carrownagowan Bord Pleanála Case reference: PA03.308799
- Knockshanvo Bord Pleanála Case reference: PC03.315797
- Ballycar Bord Pleanála Case reference: PC03.312193
- 12 O'Clock Hills Bord Pleanála Case reference: PC03.315239
- Lackareagh Preplanning phase with Clare County Council
- Fahybeg Bord Pleanála Case reference: PL03.317227

Higure 0-2

The cumulative effect of neighbouring wind farms in both planning and pre-planning has not been adequately assessed and reported on throughout the planning application.

11.1.2 Zoning as Strategic Area

The development area was zoned as a strategic area for wind energy as far back as 2009 in Co. Clare. It was not clear to anyone then, ircluding those voting on areas for wind energy zoning, what kind of a picture this could paint in the future. At this time the 2006 Wind Energy Guidelines were used, when turbines were ca. 50m to tip height. Contrasted with the 180m behemoths of which cumulatively there will be 34 turbines (Carrignagowan/Lackareagh/Faheybeg) on this elevated site, which are a multiple in scale of what was envisaged at the time of zoning.

It has also failed to be taken into account the effect of one large industrial wind park across East Clare. When truly assessed cumulatively, 66+ turbines equate to an industrial landscape with visually dominant turbines as the predominant feature. The only thing this zoning was meant to tell developers like Orsted is that this area could be suitable for development due to wind speeds. Certainly not that it permits overriding rare protected species and their habitats.

It is a failure of our planning system and local government to not impose any form of development limit or turbine density – which, to the joy of 2024's planning applications, means each and every strategic area is being fully maxed out. It is not credible that the intent of Clare County Council was to propose areas which would be intensely filled with turbi res a multiple of anything imaginable while such zoning and guidelines were introduced.

1 1.1.3 Cumu btive Effects

- 1. This submission/objection relates to:
 - a. the cumulative effects of the Lackareagh development taken with other proposed wind farm developments immediately adjacent, in particular the Faheybeg and Carrownagowandevelopment; and
 - b. the failure of the EDF planning application properly to deal with this issue; and

- c. the fact that the size of this development (alone, and all the more so in conjunction with the Carrownagowanand Faheybeg developments), conflicts with the Clare Council Development Plan 2023- 29.
- 2. The proposed Lackareagh wind farm development of 7 turbines is proposed visually adjacent to the Faheybeg development forming a string of 16 x 180m turbines in a relatively small rural/residential area in close proximity to two villages, Kilbane and Bridgetown, in the receiving landscape of a scenic route the R4666 from Broadford to Bridgetown.

1.1.1.4 Failure to demonstrate proper planning

- 3. The combination of the three developments means:
 - a. That the cumulative impacts on habitats, biodiversity, visual impacts, traffic and transport, waste/soil removal, and other population and environmental issues will be very significant.
 - b. That there is unnecessary duplication of site access roads, service roads, grid connection routes, substations (two required in different locations), construction compounds, forestry clearance, meteorological masts.
- 4. This is not consistent with proper planning which should ensure a joined-up and integrated approach to all planning matters precisely in order to avoid this sort of duplication and unnecessary escalation of environmental impacts. The Minister intervened in the CDP process and precluded the elected members of Clare County Council from setting policy for the County which is one of their primary functions.
- 5. It would be naïve to suppose that there has been no collaboration between these two commercial entities (EDF and RWE) in determining where to site their respective turbines especially as one windfarm begins where the other ends. That being the case, this represents a de facto case of "project splitting" by the organisations to (a) reduce the apparent size of the overall development and (b) to maximise the chances of success of at least one of the planning applications.

1.1.1.5 Failure to comply with Clare County Development Plan 2023-29

6. Despite the fact that Clare CC has designated the area where the Lackareagh/Faheybeg/Carrownagowan developments are proposed as (for the most part) 'strategic' for wind energy development (CCDP Wind Energy Strategy 2023-29 [WES]), the cumulative impact of the three developments means that the Council's expectation that this area would be suitable only for MEDIUM wind farm development, is not achieved:

"In areas identified as "strategic" or "acceptable in principle" baseline fieldwork assessed the capacity of these areas to accommodate wind farm development, and all were considered to have capacity for medium wind farm developments." (Clare Wind Energy Strategy 2023-29 (WES) 6.11 Cumulative impact p50)

- 7. Section 1.4 (p16) of the WES defines" medium" wind energy developments as those comprising 6-10 turbines and medium turbines as 75-100m at blade tip. Large developments are defined as 11-25 turbines and large turbines as over 100m to blade tip. The proposed Lackareagh windfarm of 7 x 180m turbines would bring to 34, the number of approved turbines and are 180m to blade tip. The cumulative effect is a VERY LARGE and not a Medium windfarm development.
- 8. Elsewhere in the WES the Council emphasises the need for wind energy developments to be of appropriate size:

"It is the objective of the Council to support, in principle and in appropriate scales (locations, the development of wind energy resources in County Clare" (WES 3.2 General Objectives: Development of Renewable Energy Generation p28)

9. Thus, the fact that the Council has already designated the area as suitable for wind energy development does not, and is not intended to, disapply the Council's objectives in the CCDP 2023-29 including the W B at Vol 6. Given that the size of the proposed developments exceeds the Council's own expectations of "medium" wind farm development for this area, the proposal is at odds with the Council's own Development Plan.

Failure properly to deal with cu mulative effects and impacts in thep laming application

10. Further, the issue of cumulative impacts/effects has not been properly addressed by EDF Renewables in their planning application. Whilst they have attempted to address the some of the cumulative impacts and effects of their development and Faheybeg, the data and analysis are either incomplete, flawed or based on unsupported assertion and ambiguous language.

By not specifying the type of Turbine proposed for Lackareagh, it is impossible to know a cumulative effect in combination with Faheybeg and Carronagowan. This includes the cumulative effect for noise,, vi bration, shadow flicker and indeed traffic. As will be discussed late the cumulative effects on Biodiversity are swept away with false declarative statements not supported in fact.

Landowner consents

There are grave concerns about the landowner consents provided in the planning application. This is an appeal to the Council to determine whether sufficient consents were sought by the developer, EDF Renewables.

There are legitimate concerns whether landowners have **sufficient legal interest** to develop the lands and to implement any planning permission granted on foot of the planning application.

In order for you to understand the significance of the facts, I present details for your convenience in the following pages.

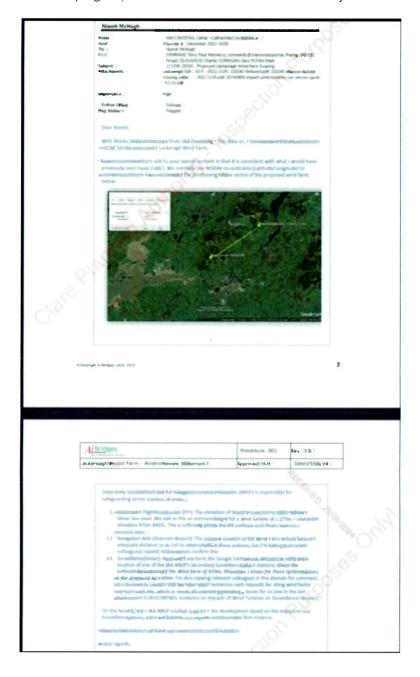
- Folio CE56707F landowner consent provided by Coillte. Coillte is not the registered landowner, the Minister of Lands is the registered owner.
- Folio CE56707F consent letter does not contain a folio number, rather an 'indicative map'. It is misleading and not clear to a reasonable person which folios of land that the consent is being given for.
- Folios CE26031, CE21277, CE21214, CE2766, The registered owner of these portfolios, Bridget
 Gunning is deceased sine April 2021. The landowner consent forms have 'entitled to be' landowners
 in the consent letters this does not align with land registry records and is not supported or co-signed
 by a solicitor to confirm same, therefore there is a query over signatory authority on these portfolios. A
 turbine will be situated on Folio CE21277.
- Folio CE24441F is prohibited to be sub-let or sub-divided under s.12 of the Land Act 1965 and to the provisions restricting the vesting of interest specified in s.45 of the Land Act 1965. Land Commission consent in writing required to the sub-letting of this folio.
- Folio CE24441F has a public right of way, this access will be restricted during construction phases.
- Folio CE24441F has right for persons to cut & take turf from this property this will be impacted during
 the construction phase and potentially permanently due to permanent fencing surrounding the
 development.
- Folio CE21277 contains a Land Purchase Annuity, together with a charge of £1,000 in favour of the HSE, therefore there is a query over signatory authority.
- Folio CE21214 landowner consent provided however this land does not form part of outline maps, therefore query over map accuracy.
- Folio CE57584F has specific right of way access that will be restricted during construction.
- Folio 8083 contains 'Sporting Rights', query over whether all 'shareholders' have given consent and their access to these sporting rights will be restricted for the lifespan of the windfarm.
- Folios CE1934F & CE1935F contain 'Fishing Rights', query whether all 'shareholders' have given consent and their access to these fishing rights will be restricted during construction phase.
- 12 out of 16 consent letters are undated.
 Aviation

Aviation

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I call the councils attention to the following points in relation to Aviation. In particular I wish to alert the Council of the following points which are important due to the proximity of the proposed site to Shannon Airport and Woodcock Hill Radar Station. The elevated location of the proposed site and its location under flight paths may be an issue for air safety and development of the airport.

1. Not all the correspondence with IAA/airnav appears to be including based on the scoping responses supplied. Fundamentally on p38 of the aviation statement, an email from IAA dated December 2022 states they could not support the development progressing, which was not included in the scoping responses section. Here is the email for your convenience:



2. The letter from Shannon airport dated 2nd sept 2024, indicates serious concerns with obstacle limitation surfaces and shares the concerns of airnay Ireland relating to potential impacts on instrument flight procedures and navaids along with radar systems. This is much later in the time line compared to the scoping responses and calls for further information from the developer

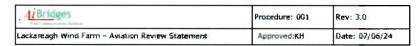
In general terms, the siting of wind turbines at this location may have implications for the operations of the communication, navigation and surveillance systems used by Air Nav Ireland for the separation and safety of aircraft. The geographical siting of these turbines may also have implications for the flight paths of aircraft.

Shannon Airport Authority DAC has specific responsibility to define the airspace around its aerodrome which must be maintained free from obstacles to permit the intended aircraft operations at the aerodrome to be conducted safely and to prevent the aerodrome from becoming unusable by the growth of obstacles around it. This is achieved by establishing a series of obstacle limitation surfaces (OLS) that define the limits to which objects (temporary or permanent) may project into the airspace. These surfaces may extend many kilometres outwards from the active runway strip at the aerodrome.

With specific reference to the Lackareagh Beg, Kilbane, Co. Clare geographical location, we will need to carry out our own internal assessment on the aerodrome OLS. To do this we will require the developer to provide the geographical location data expressed in WGS 84 format for all 7 turbine locations as well as the Above Mean Sea Level (AMSL) ground heights at each of these turbine locations also. This will allow us to consider any Annex 14 OLS impacts due to the location of the proposed wind farm.

Shannon Airport does, however, also note and share the concerns of our colleagues in Air Nav Ireland specifically relating to potential impacts on IFP's and NAVAIDS/radar systems. In this regard, we suggest the developer contacts directly the Air Nav Ireland, Airspace and Navigation Manager (Cathal.MacCriostail@airnav.ie) indicating that no issues have been identified with this development in respect of the above systems.

- 3. The developer had asked for design and siting flexibility, which is not compatible with the exacting standards required for potential aeronautical impacts. In fact there is a proposed change to 180m turbines instead of 175m turbines mentioned in the safety assessment which would change the AMSL of turbine 3 from lower the separation from ground obstacle from 1021ft to 1006ft which is just 6ft above the minimum separation required.
- 4. Minimum sector altitudes is the lowest altitude which may be used to provide a minimum clearance of 1000ft above all objects located in an area. Developer has not assessed if the windfarm is with 5nm of the adjacent MSA area (3000ft) and if the development will impact both MSA areas. Further information required.
- 5. Departure routes fly over proposed windfarm at Lackareagh. Turbine 03 at 1791ft amsl and subject to design and location flexibility sought by the developer. On the departure route to Tomto waypoint, at 3.3% climb gradient, developer assesses that aircraft will pass over T03 at 2812ft, thereby giving 1000ft required separation from the obstacle. However there is only 21 foot difference, which is within margin of error. Further inspection required and further information required from airnav Ireland in respect to this specific point in light of the developers design and height flexibility criteria. P17 visually shows aircraft flying over the proposed windfarm.





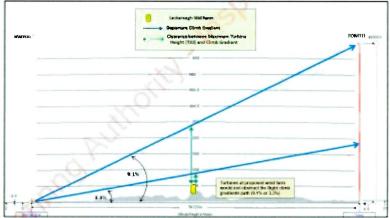


Figure 7. Standard instrument Departure Flight Pah - TOMTO

Climb Gradient	Altitude over Win	Clearance to highest	
Camb Gradient	meters	ft.	possible turbine (ft)
9 1 % (5.2")	2366	7763	5972
3.3 % (1.89*)	857	2812	1021

Table 4. Climb Gradient Clearance Calculations

6. Developer is basing it's statement of no impacts on IFPs from a December 2022 email from IAA which used estimated heights and different turbine numbering and layouts. Airnay Ireland as the now relevant body, should be contacted again for further information in this regard, to assess any changes as outlined by the developer in their PP application. For example IAA state they used an estimated

turbine height of 175m in their initial calculations which is now incorrect. Elsewhere throughout the planning documents the developer is stating turbines will be 180m.

- 7. Developer only engaged in a desktop evaluation of the impact on communications and navigation system. Airnav Ireland should be contacted directly to asses if this is true or not and also due to the cumulative effect of Faheybeg, Carrrownagowan, Ballycar, Oatfield and Knockshanvo windfarms. These have not been assessed cumulatively.
- 8. P27 of the aviation statement refers: IAA as of December 2022 state the location of the windfarm and it's elevation compared to woodcock hill radar, creates issues for the radar systems. In response developer conducted a desktop review. No formal cumulative impact assessment has been done in the impact in the radar systems and Airnav Ireland appear not to have been consulted on the total cumulative impact of the various developments and it's impact on its radar systems and their views on the matter. The proposed windfarm does lie within the accepted distance from woodcock hill that would require a detailed assessment to either the satisfaction of Airnav Ireland or Airnav Ireland conduct their own detailed assessment, neither of which appear to have happened.
- 9. Fundamentally p38, IAA state " on the face of it, the IAA ANSP could not support the development based in the impact on our surveillance systems. Developer of course says otherwise. Is the developer and it's paid for consultants taken at its word, or is IAA and Airnav deemed to be the final arbiter as they should be.
 - 3. Surveillance(Radar): As you will see form the Google Earth extract, Woodcock Hill is the location of one of the IAA ANSP's Secondary Surveillance Radar stations. Given the estimated elevation of the Wind farm of 470m, this creates issues for these systems based on the proposed location. I'm also copying relevant colleagues in this domain for comment, but I do need to caution that we have had numerous such requests for siting wind farms near our radar site, which in nearly all case are generating issues for us (see in the last attachment EUROCONTROL Guidance on impacts of Wind Turbines on Surveillance Sensors)

On the face of it, the IAA ANSP could not support the development based on the impact on our Surveillance systems, but I will defer to our experts in this in the first instance.

10. Developer has completely failed to assess the impact on the ATC minimum vectoring altitude chart. It is likely that the proposed windfarm would impact the minimum altitudes Air traffic control can use when vectoring aircraft into and out of Shannon airport. No mention or assessment of impact has been included by the developer. Airnav Ireland have not confirmed that the minimum holding altitudes used for the DERAG hold will not be impacted by the proposed development.

While I am far from an expert in aviation, I am assuming that these issues will be investigated and may be in providing an accurate location for aircraft the vicinity of the proposed windfarm. At a minimum it requires further exploration with Airnav Ireland to assess accurately if the proposed windfarm will interfere with the safe and efficient functioning of air traffic both into and out of the airport and transversing the airspace.

CUMULATIVE PLANNING & EIAR CONSIDERATIONS OF FORESTRY & WINDFAARM AND IMPLICATIONS FOR HEN HARRIER

Turbines are situated both on and near forestry that may have been planted without an EIA/AA and the site could have irregular planning. This is based on the requirement for an EIA/AA under Council Directive No 85/337/EEC not being adequately transposed into Irish Law under SI349 of 1989. That statutory instrument declated that forestry over 200Ha required an EIAR. However, the EU took Ireland to court in 1996, Case C392, on the basis that I eland had inadequately transposed the Directive into Irish law by failing to recognize the nature, location, and cumulative effects of projects. Thus, the Directive would apply directly into law. Advice on the Eur Lex website relating to Article 228 of the Treaty on the Functioning of the European Union confirms this:

"In principle, the directive only takes effect once transposed. However, the Court of Justice considers that a directive that is not transposed can have certain effects directly when:

the transposition into national law has not taken place or has been done incorrectly;

the terms of the directive are unconditional and sufficiently clear and precise;

the terms of the directive give rights to individuals."

1. 1.2 FORE STRYPLANNIN G CO NSIDERATIONS

The Irish government published SI No. 349/1989 in order to give effect to Council Directive of 27 June, 1985 (No. 85/337/EEC, O.J. No. L175/40, 5 July, 1985), on the assessment of the effects of certain public and private projects on the environment establishes the criteria needed to trigger the requirement for an EIA/AA.

In relation to forestry the requirement for an EIA/AA in 1989 is triggered by the following condition of SI349/1989

Part II (1) (c) Initial afforestation, where the area involved would be greater than 200 hectares; the replacement of broadleaf highforest by conifer species, where the area involved would be greater than 10 hectares.

However ,the EC took Ireland to court in 1996 due to a failure of the Irish state to adequately transpose the directive into Irish law. Specifically, Case C392 of 1996 states that Ireland had only set size limits on projects in order to trigger the requirement of an EIA/AA. However, at its own discretion Ireland was not evaluating the nature, location and cumulative effects of projects which constituted a failure to fulfil our obligations. Specifically, the judgement references that Ireland by only setting size limits on projects created a situation whereby all projects of a certain size were exempted from conducting an EIAR and bigger projectscould circumvent the legislation by splitting the into several smaller projects.

In effect Ireland had not adequately transposed the Council Directive and many developments may not have been in compliance with the EC Directive.

The proposed site for the Lackareagh Windfarm comprises large tracts of forestry which may have been planted without an EIAR having been completed. Currently a request has been sent to granting authority, the Department of Agriculture in relation to planning permits granted to several Folios which comprise part of the windfarm site and upon which turbines are located.

Forestry Planning and EIAR





Dear Sir Madam.

I am a resident of Broadford, Co Clare. I am writing in relation to forestry planning permission and associated EIARs.

Currently, there is a proposal by EDF Renewables to build a windfarm in Lackareagh, Kilbane Co Clare. The planning is lodged with Clare County Council and the Planning File Number is 2460411.

There are seven proposed turbines and three of the turbines are situated in Forestry as is much of the site area. Here are the Folios involved in the site and the turbines in particular.

l am writing to you, seeking confirmation from you as the competent authority that correct planning permissions are in place for forestry on the folios listed below. Can you confirm the year the forestry was planted and that you have an EIAR on file for said planning permission that has been granted.

CE56707F owned by Minister for Lands, Presumably Coillte CE24441F owned by Padraig & Margaret Egan CE1934F & CE1935F owned by Conor Hayes

In addition, could I request a copy of each of the EIARs in question by either email or hard copy to the address below. I understand that some older forestry may not have EIARs and if that is case then you might confirm same.

I thank you in advance for processing this request. If you need any other information please let me know.

Yours Sincerely William Wixted Barbane, Broadford Co Clare V94 NP9F Mobile 086 1775766





Dear Sir/Madam,

We would like to acknowledge and thank you for your correspondence to the Forestry Division in the Department of Agriculture, Food and the Marine.

Your correspondence will be brought to the attention of the relevant area in this Division within 3 working days.

Yours sincerely,

Forestry Division
Department of Agriculture, Food and the Marine

Disclaimer:

Department of Agriculture, Food and the Marine

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An Roinn Talmhaíochta, Bia agus Mara

Tá an t-eolas sa riomhphost seo, agus in aon cheangaltáin leis, faoi rún agus tá sé dírithe ar an bhfaighteoir/na faighteoirí beartaithe amháin agus nior cheart ach dóibh siúd é a úsáid. D'fheadfadh an t-eolas seo a bheith faoi reir pribhléid dhlíthiuil agus ghairmiuil. Mura tusa faighteoir beartaithe an riomhphoist seo, níor cheart duit an teachtaireacht seo, nó aon chuid dí, a úsáid, a nochtadh, a chóipeáil, a dhaileadh nó a choinneáil. Má fuair tú an riomhphost seo go hearráideach, cuir an seoltóir ar an eolas láithreach agus scríos gach cóip den riomhphost seo ó chóraílís do riomhphaire, le do thoil.

CAUTION: E-mail originated from outside the organisation. Beware of phishing attempts. Confirm sender identity before responding, forwarding, clicking links, or opening attachments.

The **cumulative planting** of the area is several hundreds of hectares is likely to have been carried out without an EIA/AA and therefore in breach of Council Directive No. 85/337/EEC which applies directly when it is inadequately transposed into national law (as per the ruling in Case C392 of 1996).

Having established there may be an issue with how planning was granted for certain forest in this country, it is timely to look at the plight of one species that has suffered because of the errors made

by the state in implementing environmental legislation. Such a species is the Hen Harrier wh (s critically endangered in Ireland.

HEN HARRIER



It should be noted that the proposed Lackareagh windfarm is situated in Slieve Bernagh, while not an SPA is a site of National importance for breeding Hen Ha rier, a designated species under the Birds Directive

The Hen Harrier is a designated species under Directive 2009/147/EC of November 30 2009 on the conservation of wild birds "The Birds Directive". It once prospered on upland peat habitats, however encroachment from both Forestry and wind farms has seen their numbers dwindle to crisis levels. The National Parks and Wildlife Service Hen Harrier Survey 2022 estimated that only 85 to 106 pair remain. Slieve Bernagh to Keeper Hill is estimated to be home to between 2 to 4 pair.

Nationally numbers have fallen by 33% between 2015 and 2022. The context of falling numbers is specifically referenced in legisla tion.

Trends and variations in population levels shall be taken into account as a background for evaluations.

The B. Directive

It is clear from the Birds Directive that Special Protection Areas (SPAs) must be established.

Article 4

1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution

In this connection, account shall be taken of:

- (a) species in danger of extinction;
- (b) species vulnerable to specific changes in their habitat;
- (c) species considered rare because of small populations or restricted local distribution;
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

However, it is also laid down in Article 4 (4) that outside of SPAs Member States shall strive to avoid pollution or deterioration of habitats.

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

IT must be noted that the Birds Directive is clear, habitat deterioration outside of SPAs should be avoided. All Hen Harrier are protected not just those living in SPAs.

Annex I, Hen Harrier are breeding on or adjacent to the proposed windfarm site. They are known to exhibit avoidance of wind turbines, with 52% less flight time around wind turbines at a distance of up to 500m. This may be due to lower prey density around turbines or because wind turbine noise interferes with auditory clues which they rely upon to locate prey. Building of a windfarm close to nesting sites of Hen Harrier is contrary to Article 41. Of the Birds Directive species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

As most foraging takes place within 2Km of the nest the particular siting of this windfarm diminishes the habitat of hen harrier when they are rearing chicks and is in breach of Article 5 (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive

In the EIAR for CarrownagowanWind farm which is also in Slieve Bernagh close to the proposed Lackareagh windfarm, Coillte admit that loss of upper peatland habitat to forestry is a contributing factor to the demise of HenHarrier. It is also clear that this in breach of the Birds Directive. In the Lackareagh planning documents Chapter 7 Birds, MKO acknowledge that "commercial forestry is a non native habitat of low ecological value". This a key point, much non native forestry was planted without an EIAR and ecologically valuable blanket bog, heath, wet grassland and woodland were replaced with commercial non-native forests without proper consideration. Examples of upland habitats are in the photos below taken from the agri-environmental ACRES website MS GLAP-Synthesis_final.pdf (acresireland.ie)

Habitats and Species

The CP is predominantly comprised of extensive upland areas with a mix of commonage and private land, and a mix of intensively and extensively farmed lowlands and valleys (Fig. 2). The farmland habitats include significant areas of blanket bog. heath, wet grassland, and woodland. Notable species include Hen Harrier (a bird of prey), breeding waders (for example Curlew), Lesser Horseshoe Bat, and Red Grouse.

Figure 2: Field images of some of the typical High Nature Value farmland habitats in the Munster South Connaught CP: extensive wet grassland (top); upland grassland (middle); heath and blanket bog (bottom).



In the court case between Carrownagowan Concern Group and ABP/Coillte et al. the court heard evidence that in relation to Slieve Bernagh "no exceptional circumstance has been identified to indicate that the development site is an ecologically valuable resource for the SPA population of Hen harrier". This is the opinion of one expert and may or may not be true. Of course this statement comes after the fact that the original environment has been changed without an EIAR. In addition, whether Slieve Bernagh is of importance to the hen harrier of Slieve Aughty and other SPAs is to deliberately mislead. According to the Birds Directive all Hen Harriers are protected and so is their habitat. So Slieve Bernagh is of its own importance and doesn't reply upon other SPAs in order to claim protection. Indeed Slieve Bernagh at 2-4 pair has more Hen Harrier than the Slieve Beagh SPA which has just 2-3 pair.

With numbers so critically low and genetic diversity lowering, all Hen Harrier must be treated with the same respect that has been enshrined in law.

Additionally it was claimed in the CarrownagowanEIAR that 31.87 Hectares of habitat loss due to the windfarm would be counterbalanced by 106 Ha of enhanced land for hen harrier. There is no way of knowing if that will hold true. However habitat loss is just one way in which windfarms affect the habitat of Hen Harriers. There are many other factors that are not mitigated by providing alternative habitat. These include bird strike, in which the WINDHARRIER study estimates between 0.8 and 2.5 birds are killed over the 25 year lifespan of a windfarm. This relates to smaller turbines than those

proposed at Lackareagh. Additionally, hen harrier hunt using acoustic cues and noise pdlutil from turbines (including infrasound) may not be mitigated by providing alternative habitats nearby. Thus the developer has cherry picked the mitigations that it is putting in place, k rowing full well that it is unlawful to put in place turbines which will knowingly kill Hen Harrier. There is no mitigation for this and there is no justification for granting planning to a windfarm that will kill critically endangered and protected birds. It is in breach of the Birds Directive and Irelands duty under EU law.

Hen Harrier in the Lackareagh EIAR

Chapter 7 Birds includes discussion of Hen Harrier. There are assertions that no cumulative effects are anticipated. However this is not in line with known effects of windfarms on Hen Harrier as published in scientific studies referenced in this objection. The assertion that there is no shortage of habitat in the vicinity of the proposed windfarm, ignores both direct effect on Hen Harrier, including bird strike and indirect effects such as noise pollution in the habitat of the hen harrier. Habitat is not measured in hectares alone. Indeed if there is no shortage of habitat why are numbers in decline?

NPWS Hen Harrier survey of 2022 cite afforestation and windfarms as the two largest threats to Hen Harrier

IWM 147 (2024) Hen Harrier National Survey 2022

Appendix 3. The range of threats and pressures observed by surveyors during 2022 within 2 km of hen harrier suitable breeding habitats

Code	Description of activity, threat or pressure	2 km (n)	%
B2	forest and plantation management & use	837	24.2
x	no threats or pressures	486	14.0
C3	wind energy production	305	8.8
C2	mechanical removal of peat	197	5.7
A2	agricultural intensification	188	5.4
D1	paths, tracks, cycling tracks (includes non-paved forest roads)	185	5.3
A6	non intensive grazing	137	4.0
A5	intensive grazing	126	3.6
B1	forest planting on open ground (increase in forest area, planting e.g. on grassland, heathland)	126	3.6
D2	roads, motorways (all paved/ tarred roads)	106	3.1
G3	walking, horse-riding and non-motorised vehicles	100	2.9
B4	forest clearance (clear-cutting, removal of all trees)	86	2.5
B3	forest replanting (i.e. replanting on forest ground after clear-cutting)	76	2.2
D3	utility and service lines (e.g. power-lines, pipelines)	66	1.9
J3	uncontrolled burning (e.g. widespread unmanaged or malicious burning)	55	1.6
G4	motorised vehicles	49	1.4

It should be noted that Hen Harrier can choose different nest sites within a habitat, so the nest is a moving target that could be nearer or further from proposed turbine sites depending on the year

CUMULATIVE EFFECTS

Cumulative impacts on biodiversity are not adequately addressed and do not adhere fully to the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) which states: "The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative.... effects of the project".

On the 24th OF October Clare County council rejected the proposed, neighboring Lackarea gh windfarm in Kılbane County Clare. In their decision Clare County Council noted that:

In the absence of a strategic level cumulative assessment of the impact of the construction of a large number of turbines within one g eographical area (66 turbine proposed or permitted), the Planning Authority cannot satisfactorily determine that the proposed development will not give rise to, or contribute to, significant or adverse effects on either the Special Conservation Interests of the Special Protection Areas in the zone of influence of the proposed development, Birds of Conservation Concern or on the Red List.

Like the Knockshanvo windfarm EIAR, the Lackareagh EIAR was also conducted by MKO.

So Clare County Council have noted the absence of a strategic level cumulative assessment within one geographical area. Because of a lack of assessment Clare County Council can not rule out signi fcant adverse impacts on ...Birds of Conservation Concern on the Red List. No Cumulative Impact Assessment was conducted by MKO for the Lackareagh windfarm

Cumulative Impact of Bird strike across all 66 turbines in East Clare

All of the windfarms proposed for Slieve Berragh/East Clare have submitted EIARs and all have published their annual Collision Morta Ity Rates. This informatio his readily available to them and they are bound by EIA legislation to assess cumulative impacts of the 5 windfarms already submitted to the pla ming authorities.

I have attempted to conduct a cumulative impact assessment of all 6 windfarms in East Clare using the published Collision Fatality Rates for each windfarm. This should have been carried out by MKO:

Windfarm	EIAR Conducted By	Number Turbines	Hen Harrier Collision Mortali tyRate Per Annum	Proposed Operating Years	Hen Harrier killed
Knockshanvo	МКО	9	0.078	35	2.73
Oatfield	RSK	11	0.01	35	0.35
lackareagh	МКО	7	0.018	35	0.63
Faheybeg	Fehily Timoney	8	0.0	35	0.00
Ballycar	MWP	12	0.0007	35	0.025
Carrownagowan	MWP	19	0.056	30	1.68
Cumulative Totals		66 Turbines	0.1627		5.5 kılled

Predicted Collision Fatality Rates for Hen Harrier in East Clare using the CMR mortality figures estimated by each developer

Based on these numbers the Knockshanvo windfarm would be responsible for 50% of Hen Harrier deaths in Slieve Bernagh over the next 35 years. Based on an in depth study of Knockshanvo we are not confident that the rate is not higher than the stated 0.078.

According to the CMR for Lackareagh, the proposed windfarm there is likely to kill one bird over the proposed 35 year lifespan of the windfarm. Again, the CMR is derived from a number of input variables and the slightest change in any of them results in a massive change in CMR

The Board now have the opportunity to complete their own determination on whether it is defensible at all to permit even one single fatality of a bird near extinction. I remind the board of that this proposed windfarm would be in breach of several aspects of the Birds Directive particularly Article 5 (a) deliberate killing or capture by any method

In addition, given that Breeding Pairs have been identified in the surveys by all agents, what is the impact if a parent collides with a turbine whilst chicks are in the nest? Does this mean that one collision results in a further number of deaths. What is the expected natural and normal breeding that has been missed out on by those dead chicks and their descendants over the 35 year operational life of the turbines.

This is just one aspect of the adverse effects the proposed development might have on Hen Harrier Survival. Whilst not as dramatic other effects might be more impactful.

Finally, I am not qualified in this area, and it is a shame that no developer including MKO thought it necessary to conduct a cumulative impact assessment as required by legislation. For that reason but not just that reason, it is the legal duty of ABP to reject this application as Clare County Council also did.

Noise Cumulative Effect

Hen harrier rely on acoustic cues to hunt. Size of habitat is just one metric, but im portantly the quality of the habitat needs to be assessed. One must also take into account the suitability of the proposed habitat. Has a baseline noise survey been carried out at the proposed windfarm site. Indeed it has. But has an effort been made by MKO to determine the effect of operational noise on hen harrier habitats. As a model of turbine has not been picked it is not possible to estimate the noise that will be generated, however we are to be assured by the developer tha twhichever turbine is chosen will not impact the hen harrier. But what are the levels of both noise and infrasound around each turbine. We know that according to Wind Energy Guidelines humans must not live within 4 rotor lengths of a turbine $(4 \times 180 \text{m} = 720 \text{m})$. We also know that hen harrier display avoidance behaviour around wind turbines.

How large an area does a turbine contaminate with sound. How large an area might 6 turbines pollute with sound. What is an acceptable level of sound? One potential cumulative effect of six winfarms with three windfarms in continuous series (Carrownagowan, Lackerreagh and Faheybeg) across Slieve Bernagh might be that on a windy day the noise generated by all six windfarms (66 turbines) might result in a large area where the hen harrier might not be able to hunt given that they rely on acoustic cues to hunt. If there were chicks in the nest, what effect might that have on survivability? Could it create large sterile zones for the hen harrier in which it could not hunt. I propose that MKO have made sweeping assertions that they cannot stand over or back up with scientific evidence. Will a continuous string of wind turbines stretching from Bridgetown to Broadford create a wildlife barrier. It is not addressed.

O THER CUMULATIVE IMPACTS NOT DSICUSSED BY MKO

Each turbine has an area around them that hen harrier try to avoid. WIND HARRIER reports 52% less flight activity on wind farm sites. This is tacitly acknowledged by MKO in their siting of enhancement areas 250m away from the nearest turbines. It is also discussed in their Compensation and Enhancement plan where they estimate 100% avoidance of turbines by hen harrier to 250m. In the WINDHARRIER study the figure proposed was 350m.

Using the Wind harrier figure of 350m for the 66 turbines proposed on Slieve Bernagh there would be 66 zones of 350m radius around turbines that become undesirable for Hen Harrier. This may be due to noise pollution, lower prey density, avoidance behavior, etc. This equates to a land area around each turbine that may be calculated in meters squared by the formula $\pi r2$ which is = 3.14 x 350 x350 . This equals 384,650 sqm or almost 38 .46 Hectare around each turbine.

Given that there are 66 turbines proposed and permitted in East Clare, it equates to an area of 2,538 Hectares that becomes less desirable to Hen Harrier in Slieve Bernagh. This is an overall degradation of the habitat which makes survival more difficult. This is in breach of the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) "...to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life". And the the Birds Directive

If we use MKOs figure of 250m it still comes to an area of 1,295 Hectares that MKO state Hen Harrier will avoid.

It is certain that whether it be 2,538 or 1,295 hectares, not all of it is currently desirable to Hen Harrier as it would contain mature commercial forestry not favoured by Hen Harrier.

_ACK OF CLARITY

The EIAR prepared by MKO contains the following four appendices not accessible to the public.

EIAR	EIAR Appendix 7-5a Confidential Survey Data (cover)	1	122 Kb	View
EIAR	EIAR Appendix 7-5b Confidential Survey Data (cover)	1	123 Kb	View
EIAR	EIAR Appendix 7-5c Confidential Survey Data (cover)	1	125 Kb	<u>View</u>
EIAR	EIAR Appendix 7-5d confidential Survey Data (cover)	1	125 Kb	View

There redactions in certain sections of the EIAR make it difficult for members of the public to engage in a meaningful way with the process infringing the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus, Denmark, 1998) which is aligned with the EU EIA Directive where "....citizens must have access to information" and "improved access to information and public participation in decision-making...."

National Significance of Hen Harriers in Slieve Be nagh

South Clare was identified as a nationally important breeding site for Hen Harrier in a 2016 study published by Ruddock et al.

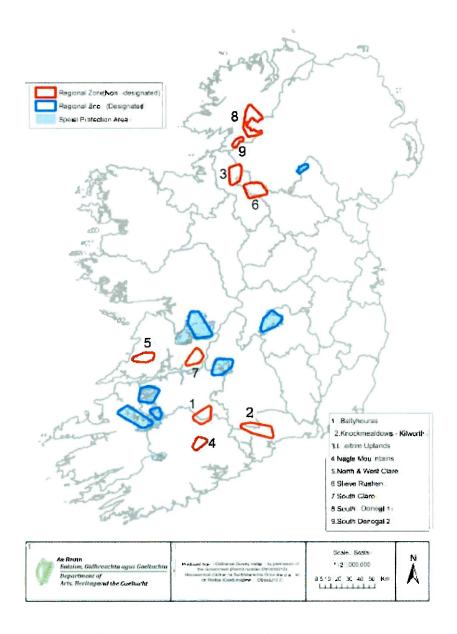


Figure 14. The distribution of relatively important breeding populations of Hen Harriers (i.e. designated and non-designated regional zones), as defined by Ruddock et al. (2016b), usi ng2010 and 201 5 survey data.

The proposed Lackareagh winfarm is situated in a site of national importance for the Hen Harrier.

National Decline of Hen Harrier Numbers an ongoing trend

The hen harrier, one of Ireland's rarest breeding raptor species, has seen its population plummet in recent decades. The last national survey species in 2015 estimated a breeding population of between 108 and 157 pairs – a decrease of 34% since the first survey in the late 1990s. The 6 SPAs in Ireland for Hen Harriers support half of Irelands Hen Harrier population. An annual report monitoring breeding has been produced since 2017. While the number of breeding pairs has remained stable the breeding success statistics for 2021 are the worst on record with just 34 chicks successfully raised:

- Sliabh Aughty in Clare/Galway 7 confirmed pair which successfully raised 4 young.
- Slieve Felim to Silvermines 5 pairs, 3 young
- Slieve Beagh with 3 breeding pair, 2 young
- Slieve Bloom 10 breeding pair, 0 young
- Mullaghanish/Musheramore 3 breeding pair, 6 young
- Stacks/Mullaghareirk 34 breeding pair, 19 young

It would seem that the population is in long term decline and not being helped by a poor breeding season in 2021. As of June 2016, there were 308 wind turbines within or close to hen harrier SPAs. The breeding territories of hen harrier have declined from 94 territories in 2005 to 77 territories in 2010, a decline of 18.1%. The habitat of the hen harrier is decreasing.

The NPWS Nation Survey of Breeding Hen Harrier in Ireland delivered shocking news about declining numbers. This has received a lot of publicity



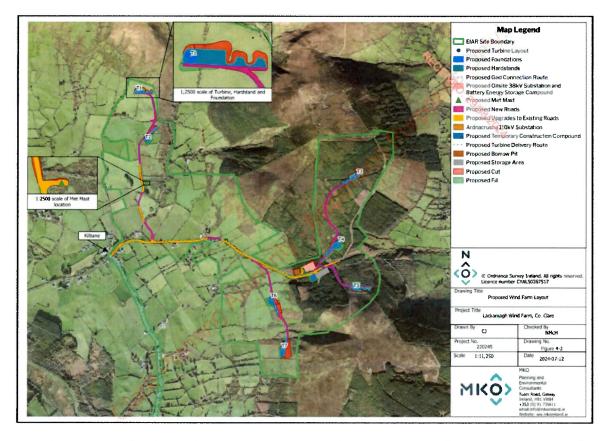
Below is a summary of the numbers once again showing the national importance of the Slieve Bernagh birds, which could account for 5% of the remaining stock.

IWM 147 (2024) HenHarrier National Survey2022

Table 9 Regional population estimates during 2015 uth sing the squares as defined in 1998-2000, 2 005 and 20 10 for regional mountain ranges or site complexes.

Reg ion	T otal pairs 1998- 2000	Total pairs 2005	Total pa irs 2010	Total pairs 2015	T otal pairs 2022	Trend since 2015	Change since 2015 (%)
Ballyhouras	6-8	1 7-19	10-15	1 012	6-7	Ψ.	-42%
Blue Stack Moun tains, Pettigo Rateau & South Donegal	1	3-5	4-5	8-12	4-6	Ψ	-50%
Boggeraghs, Derrynisaggarts	45	5	6-8	2-4	5	•	25%
Castlecomer, Blackstairs, Kilkenny	0	1	0	0	0	=	O [©] va
Curlew Mountains			0	0	0	=	0.96
Devilsbit, Slievefelim, Silvermines, King Hill*	57	7-8	10- 14	7-15	9-10	4	-33%
East Cork & Waterfort	0- 1	2	1	1	04	=	0%
Galtys	0	3	5 -6	2-3	2	4	-33%
Inishowen Peninsula	13	0	0	0	0	=	O ^c o
Kildare	-	-	0	0	0	=	Q ^c y _u
Knockmealdowns Kilworth, Comeraghs	3-7	2-4	2	5- 7	1-2	4	-71%
L eitrim Slieve Rushen, Cavan	0	3	1214	9-15	7-1 1	4	-27%
Longford ,Roscom mon	0	0	0 - 1	0-1	0	4	-100%
Nagles	3-5	9	7-11	5	0	4	-100%
North & westClare	1 -2	5	12-16	3-9	4-7	4	-22%
North-west		*	0	0	0	Total Control of the	0%
Ox Mountains, Sligo	0 - 1	1-3	0	0	0	=	0%6
Slieve Aughties	10-21	24-27	16-24	8-14	3-5	4	-64%
Slieve Beagh	3	4	5-6	3	2 -3	=	0%
Slieve Bernag hto Keeper Hill	1	1-2	2	57	2-4	4	-43%
S lieve Blooms	1 04 1	5-8	9	11-12	8-9	4	-25%
S tack's Gianarudderies, Knockanefune, Mullaghareirks, Northof Abbeyfeale	38-45	40-45	25-36	25-3	27-28	4	-10%
West Cork	0	0	0	0-1	0	4	-100%
West Kerry	*		0	0	1	^	100%
Wexford	*		1 -2	0-1	0	=	-100%
Wicklow Mountains	0	0	0	0	0	=	0%
Other Areas**	*	- 1	0	4	5-6	•	50%
Total Numbers	102-129	132-153	128-172	108-157	85-106	į.	-33%

ne following image shows the land upon which the proposed Lackareagh turbines are sited.



It can be seen that the site of the proposed windfarm is located on and adjacent to large tracts of forestry. Much of this planted forestry is in upland peat habitat, preferred by Hen Harrier. It cannot be ignored that the forestry planted in this aerial photograph may be planted without an EIAR and that locating a windfarm upon the same site will add further to the pressure on dwindling Hen Harrier numbers. It follows from our obligations under the Birds Directive that at this point a cumulative assessment must be carried out by EDF Renewables to include effects of the forestry, Carrignagowan, Faheybeg and proposed Lackareagh windfarms on the protected species.

This cumulative effect has not been addressed in the EIAR submitted by MKO on behalf of EDF Renewables and is deficient in that regard.

This highlights the extensive area of afforestation that took place on the proposed site of the windfarm without proper environmental consideration and in breach of EU Directive No. 85/337/EEC. This afforestation is likely to have caused environmental damage to habitats of Annex 1 species such as the Hen Harrier that are present on the site. While the afforestation may have been in compliance with Irish legislation at the time, that legislation was flawed as it failed to transpose correctly EU Directive No. 85/337/EEC requiring the undertaking of EIARs (as ruled in Case C392 of 1996).

Given that huge tracts of forestry were cumulatively planted on the proposed site potentially without proper EIARs, the sites therefore remain subject to irregular planning. When an EU Directive is inadequately transposed into domestic law, the Court of Justice has stated that the Directive may apply directly in the country.

What's done may be done, but what is about to be done must now be assessed.

Interactions between Wind Farms and Hen Harrier.

By way of support of previous arguments made, it is instructive to look at the WINDHARRIER report conducted of 2015 conducted by researchers from UCC. It published its findings into Interactions between Hen Harriers and Wind Turbines. The report may be found at this link:

WIND HARRIERFinalProjectReportpdf (ucc.ie) Here is a summary of the findings:

WorkPackage 1. Hen Harrier popul ations

- There was a marginally statistically non-significant negative relationship between wind farm presence and Hen Harrier bre edng numbers.
- Hen Harrier population trends were nega tively affected by a compex interaction between wind farm developments in areas at elevations of 200-400m.

Work Package 2. Bird communities

- Bird densities were lower within 100m of wind turbines, when compared with control areas.
- Differences in bird den ities (wi'hin 100m) were related to habitat changes caused by wind farm construction.
- The extent of dfferences in bird densities depends on the extent of areas affected by changes in habitat during wind farmconstruction.
- The species of birds affected by these differences will depend on which habitats are modifiedduring wind farm construction.
- Open country bird species' densities were I owerat wind farm sites This may bedue to large scale
 effects of wind farms, landscape differences in habitats, or differences in management practices, but
 further researchis required to determine the cause of these patterns.

Work Package3: Hen Harrierbreed ingparameters

- Hen Harrierbreeding succes swas statistically non-significantly lower within 1000m ofwind turbines.
- R esultswere limited by available sample size, giving cause for caution in their interpre ation.
- Combined with findings from Work Package 2 and Work Package 4, it is possible that lower breeding success recorded within 1000m of wind turbines reflects a biological llyrelevant pattern

It must be noted that due to the very low number of Hen Harrier it is difficult to gain statistical power in the trends. It is sufficient to say that there is a negative association between Hen Harrier numbers and the presence of windfarms.

It's important to note that the results of WINDHARRIER are based on studies of significantly smaller turbines with lesser rotor diameters and rotor sweep areas and the proposed turbines in Lackareagh (and also Carrownagowan& Faheybeg).

Work Package 4: Hen Harrier flight behaviour

- During sky dancing displays, Hen Harriers achieved flight heights which put them at potential risk of wind turbines.
- Average flight heights of adult Hen Harriers did not change in response to wind turbine presence,
 although it is possible that birds altered their flight height in the proximity of individual turbines.
- Adult male Hen Harriers spent up to 12% of their flight time at wind turbine rotor sweep height.
- Newly fledged juvenile Hen Harriers had not yet moved out of the nest site area spent the majority of their time below turbine rotor sweep height.

Work Package 5: Hen Harrier foraging behaviour

- Selection of foraging habitats by Hen Harriers was different at wind farm than at control sites.
- At wind farm sites, Hen Harriers selected open habitats (rough and natural grasslands, scrub and peatland) while birds at control sites foraged preferrently over peatland and young forests.
- These differences may be due to the distribution and modification of habitats around turbines or to the
 effects of wind noise (natural and wind turbine induced) on Hen Harrier foraging efficiency.

The WINDHARRIER report calculates a direct kill rate of between 0.8 and 2.5 hen harrier birds over a 25 year period of a typical Irish windfarm. For several reasons the proposed Lackareagh (and cumulatively with Carrownagowanand Faheybeg) development might be anticipated to have a higher kill rate because of i) its proximity to breeding birds in Slieve Bernagh SAC, ii) its position in the flightpath between two feeding grounds, namely Keeper Hill and Slieve Bernagh, iii) its 35 year as opposed to 25 year operation life cited in the WINDHARRIER report, iv) its increased rotor sweep area, as Lackareagh/Carrignagowan/Fahybeg turbines are larger than existed in Ireland when the report was published in 2015. Fennelly, 2015 states that few wind energy developments in Ireland conduct carcass searches for dead birds and the kill rate could thus be an underestimate.

Connectivity to a Natura 2000 site

The site of the proposed windfarm in SLieve Bernagh is connected to a Natura 2000 Site in Slievefelim to Silvermines Mountains SPA. Keeper is part of the Slievefelim to Silvermines SPA and a Natura 2000 site. Hen Harrier on Slieve Bernagh would appear to forage in the area forming a connection with that Natura 2000 site. This is not acknowledged by MKO but is referenced in the Site Synopsis of Slieve Bernagh SAC <u>SITE SYNOPSIS</u> (npws.ie) which states:

Several species of birds, typicalof open moorland, havebeen recorded from this site Theseinclude S kylark, Meadow Pipit, RedGrouse, Wheatear and Raven. At least twopairs of Hen Harriersare known to occur within the Slieve Be rnaghto Keeper Hillregi on, and birds use the cSACfor f oraging habitat. This species is listed on AnnexI of the E.U. Birds Directive.

This does not give confidence in the report and work carried out by MKO

Basis of Objection to Lackareagh windfarm.

- 1. Wind farms, smaller in scale than the proposed Lackareagh development are known to be detrimental to Hen Harrier. This can be directly through collisions and indirectly through acoustic noise, lower prey density and disturbance to nesting and roosting birds, during construction, maintenance, and operation of the windfarm. Article 3 of the Birds Directive states that member states shall take whatever measures necessary to preserve, maintain or reestablish a sufficient diversity and are of habitats for Annex 1 Birds.
- 2. The Lackareagh site is an area of national importance for the Hen Harrier and is uniquely situated between two SPAs, offering potentially important connectivity between SPAs. This is referenced in the Slieve Bernagh SAC site synopsis of 2014, with breeding pairs foraging between Slieve Bernagh SAC and Keeper Hill in the Silvermines SPA. The site is thus connected to a Natura 2000 site.
- 3. The Lackareagh Development has the pote rtial to impact negatively on the conservation goals in relation to the Hen Harrier from two Natura 2000 sites, namely Slieve Aughty SPA and Slieve Feilim/Silvermines. A Natura Impact Statement should be conducted to assess the impact of the development on these European protected sites. Adverse events must be excluded for the development to go ahead. A precautionary principle already exis is and is established in ECJ caselaw. Where negative effects may arise but are not proven a Public Authority may only give consent to a project under Article 6 (3) of the Habitats Directive once negative impacts to a protected European Site have been excluded.
- 4. Under the Birds Directive, Article 3, Paragraph 2 (b) Member states are obliged to upkeep and manage ecological needs of habitat inside and outside the protected zone. Should the Lackareagh Windfarm go ahead and result in damage to habitat detrimental to Hen Harrier success, then then Article 3, Paragraph 2 (c) enshrines the need to re-establish destroyed biotopes.

- 5. The proposed Lackareagh development, if granted permission would represent an intensification of wind turbine activity in Slieve Bernagh with demonstrable cumulative effects on Hen Harrier Numbers. Granting permission for the Lackareagh windfarm would be a reckless act given that 18 turbines are already granted permission in Carrownagowan. A further 8 turbines were granted planning permission in Faheybeg which is within 250m of the proposed Lackareagh windfarm. It is not yet possible to assess the effect of the Carrownagowan or Faheybeg windfarms on the Hen Harrier of Slieve Bernagh and the special Protection Areas of Slieve Aughty & Slieve Feilim/Silvermines until several breeding seasons after it becomes operational to allow studies and trends to be observed. Thus, it is impossible to assess the cumulative effect of a second windfarm in Faheybeg and a third windfarm if granted in Lackareagh area and the resulting increased disturbance to the breeding Hen Harrier because of increased wind turbine density.
- 6. Given the findings of numerous studies including but not limited to WINDHARRIER and the NPWS (2022) Hen Harrier Conservation and the Wind Energy Sector in Ireland, the Lackareagh development would potentially contravene the States obligation to the HEN Harrier under the Birds Directive.
- 7. Article 4 of the Birds Directive states that special conservation measures concerning habitat to ensure survival and reproduction should take account of species in danger of extinction and trends and variation in population levels should be considered as a background to evaluations. As already outlined the Hen Harrier has had its worst breeding year on record in 2021. Thus, there is an obligation on the State under the Birds Directive, Article 4, Paragraph 4 which requires Member States to strive to avoid pollution or deterioration of habitats. As pointed out above the breeding habitat of the Hen Harrier is in decline and under the Birds Directive there is a legal requirement on the state to both preserve and reestablish habitats.

