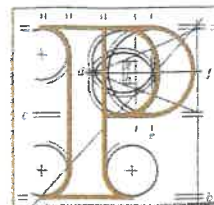


Our Case Number: ABP-319602-24

Your Reference: Futureenergy Scart Mountain Designated Activity Co.



An
Bord
Pleanála

Tobin
Block 10-4
Blanchardstown Corporate Park
Dublin
Dublin 15

TOBIN CONSULTING ENGINEERS	
PROJECT NO:	
F.E. REF:	
Date Received	29 AUG 2024
PASS TO	S.S. / Kase B.
DATE	

Date: 22 August 2024

Re: Proposed Development of Scart Mountain Wind Farm at Scart Mountain
Approximately 4 km northeast of Cappoquin, Co. Waterford

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned proposed development.

Please be advised that following consultations under section 37CC of the Planning and Development Act 2000, as amended, the Board has formed an opinion on design flexibility. A copy of the opinion is enclosed.

Please note that the Board's opinion on design flexibility will not be available for public inspection until an application is made to it under section 37E of the Act.

Information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act 2000, as amended, is also enclosed.

If you have any queries in the meantime, please contact the undersigned officer of the Board or email sids@pleanala.ie quoting the above mentioned An Bord Pleanála reference number in any correspondence with the Board.

Yours faithfully,


Raymond Muwaniri
Executive Officer
Direct Line: 01-8737125

CC03

Teil	Tel	(01) 858 8100
Glaio Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902



An
Bord
Pleanála

Board Direction
BD-017253-24
ABP-319602-24

The submissions on file and the inspector's report were considered at a Board Meeting held on the 16/8/2024.

The Board should notify the prospective applicant of its Opinion in respect of flexibility under section 37CD of the Planning and Development Act, 2000, as amended, in accordance with the following Draft Opinion.

DRAFT OPINION

An Bord Pleanála Opinion on Flexibility

(1) Request for meeting	
Request under section 37CC of the Act:	Request for Design Flexibility in relation to a proposed windfarm at Scart Mountain, Co. Waterford
Request reference Number:	ABP 319602-24
Name of the requestor/ prospective applicant:	FuturEnergy Scart Mountain DAC
Location, townland or postal address of the land or structure to which the application relates (as may be appropriate):	Scart Mountain, Co. Waterford
Nature and extent of the proposed development:	15 no. wind turbines with an electrical output of between 85.5 – 108 MW, 110kV substation, 1 no.

	meteorological mast, 2 no. temporary construction compounds, borrow pits, access roads both new and upgrade of existing and all ancillary works.
Date of receipt of the request:	24 th April, 2-24
Opinion Reference Number:	ABP 319601-24
Date of Opinion:	

(2) Was the following information included where relevant, with the Flexibility Meeting Request under section 37CC of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended.

Information	Enclosed with Request		
(a) A site location map sufficient to identify the maritime area/land on which the proposed development would be situated.	Yes: [<input checked="" type="checkbox"/>]	No: [<input type="checkbox"/>]	
(b) A brief description of the nature and purpose of the proposed development and of its possible effects on the environment.	Yes: [<input checked="" type="checkbox"/>]	No: [<input type="checkbox"/>]	
(c) A draft layout plan of the proposed development.	Yes: [<input checked="" type="checkbox"/>]	No: [<input type="checkbox"/>]	
(d) A description of the details, or groups of details, of the proposed development that, owing to the circumstances set out in (e) below, are unlikely to be confirmed at the time of the proposed application.	Yes: [<input checked="" type="checkbox"/>]	No: [<input type="checkbox"/>]	
(e) A description of the circumstances relating to the proposed development that indicate that it is appropriate that the proposed application be made and	Yes: [<input checked="" type="checkbox"/>]	No: [<input type="checkbox"/>]	

decided, before the prospective applicant has confirmed the details referred to in (d) above.			
<p>(f) An undertaking to provide with the proposed application, either -</p> <ul style="list-style-type: none"> i. two or more options, in respect of each detail or group of details referred to in (d) above containing information on the basis of which the proposed application may be made and decided, ii. parameters within which each detail referred to in paragraph (d) above will fall and on the basis of which the proposed application may be made and decided, or iii. a combination of (i) and (ii). 	Yes: [x]	No: []	
(g) Such other information, drawings or representations as the prospective applicant may wish to provide or make available.	Yes: []	No: []	N/A: [x]
(h) The appropriate fee.	Yes: [x]	No: []	

(3) Opinion of the Board under section 287B of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended.

Information	Details/ Circumstances
a) The details, or groups of details, of the proposed development that may be confirmed after the proposed application has been made and decided.	<p>1. Turbine Dimensions:</p> <ul style="list-style-type: none"> a) Turbine Tip Height b) Rotor Diameter c) Hub height <p>In deciding not to accept the request for flexibility for export capacity the Board considered that this element of the project relates is consequent of turbine design and is not a physical attribute on which it is possible to</p>

	measure or assess impact. It is accepted that there may be a variation in export capacity arising as a result of differing turbine models.
b) The circumstances relating to the proposed development that indicate that it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed the details referred to in paragraph (a) above.	<ul style="list-style-type: none"> i. To avail of ongoing advances in technology; ii. To facilitate the procurement process; iii. To ensure against the potential obsolescence of existing technology.

For each detail, or groups of details, referred to in paragraph 4(a) above, the proposed application shall, in addition to any other requirement imposed by or under the Planning and Development Act 2000, as amended, be accompanied by the information referred to in the undertaking submitted with the flexibility meeting request under section, 37CC(2)(f) of the Planning and Development Act 2000, as amended.

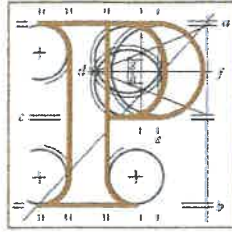
The proposed application must be consistent with the opinion provided in accordance with section 37CD of the Act.

Board Member



Date: 16/08/2024

Peter Mullan



An
Bord
Pleanála

An Bord Pleanála Opinion on Flexibility

2) Request for meeting	
Request under section 37CC of the Act:	Request for Design Flexibility in relation to a proposed windfarm at Scart Mountain, County Waterford
Request reference Number:	ABP 319602-24
Name of the requestor/ prospective applicant:	FuturEnergy Scart Mountain Designated Activity Company (DAC)
Location, townland or postal address of the land or structure to which the application relates (as may be appropriate):	Scart Mountain, County Waterford
Nature and extent of the proposed development:	15 no. wind turbines with an electrical output of between 85.5 – 108 MW, 110kV substation, 1 no. meteorological mast, 2 no. temporary construction compounds, borrow pits, access roads both new and upgrade of existing and all ancillary works.
Date of receipt of the request:	24 th April, 2024
Opinion Reference Number:	ABP 319602-24
Date of Opinion:	16 th August, 2024

pm

3) Was the following Information included where relevant, with the Flexibility Meeting Request under section 287A of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended.

Information	Enclosed with Request		
(a) A site location map sufficient to identify the land on which the proposed development would be situated.	Yes: [x]	No: []	
(b) A brief description of the nature and purpose of the proposed development and of its possible effects on the environment.	Yes: [x]	No: []	
(c) A draft layout plan of the proposed development.	Yes: [x]	No: []	
(d) A description of the details, or groups of details, of the proposed development that, owing to the circumstances set out in (e) below, are unlikely to be confirmed at the time of the proposed application.	Yes: [x]	No: []	
(e) A description of the circumstances relating to the proposed development that indicate that it is appropriate that the proposed application be made and decided, before the prospective applicant has confirmed the details referred to in (d) above.	Yes: [x]	No: []	
(f) An undertaking to provide with the proposed application, either - i. two or more options, in respect of each detail or group of details referred to in (d) above containing information on the basis of which the proposed application may be made and decided, ii. parameters within which each detail referred to in paragraph (d) above will fall and on the basis of which the proposed application may be made and decided, or	Yes: [x]	No: []	

pm

iii. a combination of (i) and (ii).			
(g) Such other information, drawings or representations as the prospective applicant may wish to provide or make available.	Yes: []	No: []	N/A: [x]
(h) The appropriate fee.	Yes: []	No: []	N/A: [x]

At a meeting held on 16th August, 2024, the Board considered the report of the Inspector, the documents submitted as part of the pre-application consultation under section 37CC of the Planning and Development Act 2000, as amended on design flexibility.

In this regard an opinion on design flexibility shall issue to the prospective applicant as set out below:

4) Opinion of the Board under section 37CC of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended.	
Information	Details/ Circumstances
a) The details, or groups of details, of the proposed development that may be confirmed after the proposed application has been made and decided.	1. Turbine Dimensions: a) Turbine Tip Height b) Rotor Diameter c) Hub height
b) The circumstances relating to the proposed development that indicate that it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed the details referred to in paragraph (a) above.	i. To avail of ongoing advances in technology; ii. To facilitate the procurement process; iii. To ensure against the potential obsolescence of existing technology.

For each detail, or groups of details, referred to in paragraph 4(a) above, the proposed application shall, in addition to any other requirement imposed by or under the Planning and Development Act 2000, as amended, be accompanied by the information referred to in the undertaking submitted with the flexibility meeting request under section, 37CC(2)(f) of the Planning and Development Act 2000, as amended.

In deciding not to accept the request for flexibility for export capacity the Board considered that this element of the project relates is consequent of turbine design and is not a physical attribute on which it is possible to measure or assess impact. It is accepted that there may be a variation in export capacity arising as a result differing turbine models.

The proposed application must be consistent with the opinion provided in accordance with section 37CD of the Act.



Peter Mullan

Member of An Bord Pleanála

duly authorised to authenticate
the seal of the Board.

Dated this *21st* day of *August*, 2024

Fógra faoi Athbhreithniú Breithiúnach

Athbhreithniú breithiúnach ar chinneadh an Bhoird Pleanála faoi fhorálacha na nAchtanna um Pleanáil agus Forbairt (arna leasú).

Ní fhéadfaidh duine ar mian leis nó léi agóid a dhéanamh in aghaidh bhailíocht an chinnidh Bhoird é sin a dhéanamh ach trí athbhreithniú breithiúnach. Tá forálacha ann in Alt 50, 50A agus 50B den Acht um Pleanáil agus Forbairt 2000, arna leasú, maidir le dúshlán i leith bhailíocht an chinnidh Bhoird.

Ní féidir bailíocht cinnidh arna ghlacadh ag an mBord a cheistiú ach amháin trí iaratas a dhéanamh ar athbhreithniú breithiúnach faoi Ordú 84 de Rialacha na nUaschúirteanna (S.I. Uimh 15 de 1986). Ceanglaíonn fo-alt 50(6) den Acht um Pleanáil agus Forbairt 2000 go gcaithfear aon iaratas ar chead chun iaratas a dhéanamh ar athbhreithniú breithiúnach a dhéanamh laistigh de 8 seachtaine ó dháta chinnidh an Bhoird, seachas cinntí a dhéantar de bhun feidhme aistrithe chuig an mBord faoi Chuid XIV den Acht um Pleanáil agus Forbairt 2000, i gcás nach mór aon iaratas ar chéad chun iaratas a dhéanamh ar athbhreithniú breithiúnach, mar atá leagtha amach i bhfo-alt 50(7), a dhéanamh laistigh de 8 seachtaine ag tosú ar an dáta a thugadh fógra faoi chinneadh an Bhoird ar dtús (nó mar a cheanglófar faoin Achtú ábharta, a aistríodh feidhmeanna faoi chuig an mBord, a foilsíodh den chéad uair). Tá na tréimhsí ama seo faoi réir aon síneadh a fhéadfaidh an Ard-Chúirt a cheasú de réir fo-alt 50(8).

Sonraítear in alt 50A(3) nach deonófar cead d'athbhreithniú breithiúnach mura bhfuil an Chúirt sásta (a) go bhfuil forais shubstaintiúla ann chun a áitiú go bhfuil an cinneadh neamhbhailí nó gur chóir é a chuir ar neamhní agus (b) go bhfuil leas leordhóthanach ag an iaratasóir san ábhar is ábhar don iaratas nó i gcásanna a bhaineann le measúnú tionchair timpeallachta ar comhlacht é a chomhlíonann critéir shonraithe.

Tá forálacha ann in alt 50B maidir le costais imeachtaí athbhreithnithe bhreithiúnaigh áirithe san Ard-Chúirt; de bhun Alt 50B(1), tá feidhm ag alt 50B maidir leis na himeachtaí seo a leanas:

(a) imeachtaí san Ard-Chúirt mar athbhreithniú breithiúnach, nó trí chead a lorg chun iaratas a dhéanamh ar athbhreithiúnach breithiúnach ar—

- (i) aon chinneadh nó cinneadh airbheartaithe a rinneadh nó a airbheartaítear a rinneadh,
- (ii) aon ghníomh a rinneadh nó a airbheartaítear a rinneadh,
- (iii) aon mhainneachtain aon ghníomh a dhéanamh, de bhun forála reachtúla a thugann éifeacht
 - I. d'fhoráil de Threoir EIA 85/337/CEE arna leasú lena mbaineann Airteagal 10a (arna cur isteach le Threoir 2003/35/CE) den Treoir sin, nó
 - II. do Threoir SEA 2001/42/CE, nó
 - III. d'fhoráil de Threoir IPPC 2008/1/CE a bhfuil feidhm ag Airteagal 16 den Treoir sin maidir leis, nó
 - IV. d'Airteagail 6(3) nó 6(4) den Treoir maidir le Gnáthóga, nó

(b) achomharc (lena n-áirítear achomharc de chás ráite) chun na Cúirte Uachtaraí i gcoinne breithe ón Ard-Chúirt in imeacht dá dtagraítear i mír (a);

(c) imeachtaí san Ard-Chúirt nó sa Chúirt Uachtarach le haghaidh faoisimh eatramhach nó idirbhreitheach i ndáil le himeacht dá dtagraítear i mír (a) nó (b).

Is í an fhoráil ghinearálta atá in alt 50B(2) ná go n-íocfaidh gach páirtí in imeachtaí lena mbaineann an t-alt a chostais féin. Féadfaidh an Chúirt áfach, costais a dhámhachtain in aghaidh aon pháirtí in imithosca sonraithe. Tá foráil ann freisin go ndéanfaidh an Chúirt costais imeachtaí nó chuid de chostais den sort sin a dhámhachtain d'iaratasóir, a mhéid a éiríonn leis an iaratasóir faoiseamh a fháil, i gcoinne freagróra nó páirtí fógra, nó an dá chean, a mhéid a chuir an chaingean nó an t-easnamh ar thaobh an fhreagróra nó an pháirtí fógra go pairteach leis an bhfaoiseamh atá á fháil.

Tá eolas ginearálta ar nósanna imeachta athbhreithnithe bhreithiúnaigh ar fáil anseo a leanas

www.citizensinformation.ie

Séanadh: Mar eolas atá an méid thuas ceaptha. Ní airbheartaíonn sé a bheith ina léirmhíniú ceangailteach ó thaobh dlí ar na forálacha ábhartha agus bheadh sé inmholta do dhaoine atá ag smaoineamh ar chaingean dlí comhairle dlí a lorg.

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000, as amended, contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that any application for leave to apply for judicial review must be made within 8 weeks of the date of the decision of the Board, save for decisions made pursuant to a function transferred to the Board under Part XIV of the Planning and Development Act 2000, where any application for leave to apply for judicial review must, as set out in sub-section 50(7), be made within 8 weeks beginning on the date on which notice of the decision of the Board was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred to the Board, was first published). These time periods are subject to any extension which may be allowed by the High Court in accordance with sub-section 50(8).

Section 50A(3) states that leave for judicial review shall not be granted unless the Court is satisfied that (a) there are substantial grounds for contending that the decision is invalid or ought to be quashed and (b) the applicant has a sufficient interest in the matter which is the subject of the application or, in cases involving environmental impact assessment, is a body complying with specified criteria.

Section 50B contains provisions in relation to the costs of certain judicial review proceedings in the High Court; pursuant to Section 50B(1), Section 50B applies to the following proceedings:

- (a) proceedings in the High Court by way of judicial review, or of seeking leave to apply for judicial review, of—
 - (i) any decision or purported decision made or purportedly made,
 - (ii) any action taken or purportedly taken,
 - (iii) any failure to take any action, pursuant to a statutory provision that gives effect to
 - (I) a provision of the EIA Directive 85/337/EEC as amended to which Article 10a (as inserted by Directive 2003/35/EC) of that Directive applies,
 - (II) the SEA Directive 2001/42/EC, or
 - (III) a provision of the IPPC Directive 2008/1/EC which Article 16 of that Directive applies, or
 - (IV) Article 6(3) or 6(4) of the Habitats Directive; or
- (b) an appeal (including an appeal by way of case stated) to the Supreme Court from a decision of the High Court in a proceeding referred to in paragraph (a);
- (c) proceedings in the High Court or the Supreme Court for interim or interlocutory relief in relation to a proceeding referred to in paragraph (a) or (b).

The general provision contained in section 50B(2) is that in proceedings to which the section applies each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant to the extent that the applicant succeeds in obtaining relief against a respondent or notice party, or both, to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.