S. 37

File With _____

SECTION 131 FORM

Appeal NO:_ABP 310788

☐ **Defer Re O/H**

TO:SEO

Having considered the contents of the submission dated/ received 5/8/2021 from

Applicant I recommend that section 131 of the Planning and Development Act, 2000 ~~be~~/not be invoked at this stage for the following reason(s):. No new Material issues raised

E.O.: Aisling Kelly **Date:** 10/08/2021

To EO: _____

Section 131 not to be invoked at this stage. ☐

Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____ **Date:** _____

S.A.O: _____ **Date:** _____

M _____

Please prepare BP _____ **- Section 131 notice enclosing a copy of the attached submission**

to: _____ **Task No:** _____

Allow 2/3/4weeks – BP _____

EO: _____ **Date:** _____

AA: _____ **Date:** _____

S. 37

File With _____

CORRESPONDENCE FORM

Appeal No: ABP 310788

Mr. Sutton

Please treat correspondence received on 5/8/2021 **as follows:**

1. Update da tabase with new agent for Applicant/Appe lant _____	
2. Acknowledge with BP 20	**1. RETURN TO SENDER with BP** _____
3. Keep copy of Board's Letter ☐	2. Keep Envelope: ☐
	3. Keep Copy of Board's letter ☐

Amendments/Comments
1st Party Response to Appeals

4. Attach to file	**RETURN TO EO** ☐
(a) R/S ☐ (d) Screening ☐	
(b) GIS Processing ☐ (e) Inspectorate ☐	
(c) Processing ☐	

	Plans Date Stamped ☐
	Date Stamped Filled in ☐
EO: Soraha Stelly	**AA:**
Date: 6/8/21	**Date:** 17/08/21

A. Doherty

Patrick Buckley

From: Bord
Sent: Thursday 5 August 2021 17:11
To: Appeals2
Subject: FW: ABP-310788-21- Croagh Wind Farm (Sligo)
Attachments: 2021.08.05- Peter Sweetman Associates RGOA SCC- 180511- F.pdf

Follow Up Flag: Follow up
Flag Status: Completed

From: Paul Sweeney <psweeney@mkoireland.ie>
Sent: Thursday 5 August 2021 16:54
To: Bord <bord@pleanala.ie>
Cc: Jimmy Green <JGreen@mkoireland.ie>; Eoin McCarthy <emccarthy@mkoireland.ie>
Subject: ABP-310788-21- Croagh Wind Farm (Sligo)

Dear Sir/Madam,

MKO have been instructed on behalf of our Client, **Coillte CGA, Newtownmountkennedy, Co. Wicklow**, to prepare and lodge this Response to Grounds of Appeal (RGOA) document in relation to the third-party planning appeal reference **ABP-310788-21** by Peter Sweetman and Associates on behalf of Wild Irish Defence in respect of a decision by Sligo County Council (Pl.Ref.20/251). Our client was notified by An Bord Pleanála of the third party appeal which has been made in relation to the noted planning application by Peter Sweetman & Associates on behalf of Wild Ireland Defence on the 9th of July 2021 and as such are within the four week response period.

Should you require any additional information with respect to any of the contents of this email please feel free to get in touch.

Kind regards,
Paul

Paul Sweeney
Planner

MKO
Tuam Road, Galway
Ireland, H91 VW84
+353 (0) 91 735611
www.mkoireland.ie

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Planning and Environmental Consultants

Response to Grounds of Appeal

Croagh Wind Farm

DOCUMENT DETAILS

Client:	Coillte CGA
Project Title:	Croagh Wind Farm
Project Number:	180511
Document Title:	Response to Grounds of Appeal
Document File Name:	2021.08.05- Sligo RGOA- 180511- F
Prepared By:	MKO Tuam Road Galway Ireland H91 VW84

Planning and Environmental Consultants

Rev	Status	Date	Author(s)	Approved By
03	Draft	29/07/2021	PS /EMC	JG
03	Final	05/08/2021	PS/EMC	JG

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APPENDICES

Appendix 1 –

1. INTRODUCTION

MKO have been instructed on behalf of our Client, **Coillte CGA, Newtownmountkennedy, Co. Wicklow**, to prepare and lodge this Response to Grounds of Appeal (RGOA) document in relation to the third-party planning appeal reference ABP-310788-21 by Peter Sweetman and Associates and on behalf of Wild Irish Defence in respect of a decision by Sligo County Council (Pl.Ref.20/251) ('the Planning Authority') to grant planning permission for that part of the Croagh Wind Farm located in County Sligo ("the Proposed Development"). The entirety of the proposed Croagh Wind Farm development constitutes the provision of a ten-turbine wind farm and all associated works including recreational facilities on lands in both Counties Sligo and Leitrim with 2 No. turbines and their associated infrastructure proposed within the functional area of Sligo County Council and 8 No. turbines and all associated infrastructure proposed within the functional area of Leitrim County Council.

The project description for the proposed development as sought from Sligo County Council reads as follows:

> *Coillte CGA, intend to apply for permission for a ten-year planning permission for a renewable energy development with a 30-year operational life (from the date of commissioning) along with a recreational and amenity facility. The entirety of the renewable energy development constitutes the provision of a ten-turbine wind farm and all associated works on lands in both Counties Leitrim and Sligo.*
>
> *The development for which planning permission is being sought from Sligo County Council at this site in the townlands of Carrowmore and Carrownyclowan County Sligo.*
> *The development will consist of*
> *i. Construction of 2 No. wind turbines with a maximum overall blade tip height of up to 170 metres and associated hardstand areas;*
> *ii. 1 no. permanent Meteorological Mast with a maximum height of up to 100 metres;*
> *iii. All associated underground electrical and communications cabling connecting the turbines to the proposed wind farm 38kV electricity substation (which is proposed to be located in the townland of Garvagh Glebe, Co. Leitrim);*
> *iv. Upgrade of existing tracks, roads and provision of new site access roads;*
> *v. Recreation and amenity works, including marked trails and associated recreation and amenity signage*
> *vi. Site Drainage;*
> *vii. Permanent Signage;*
> *viii. Ancillary Forestry Felling to facilitate construction and operation of the proposed development; and*
> *ix. All associated site development works*
>
> *An Environmental Impact Assessment Report (EIAR)and a Natura Impact Statement (NIS) have been prepared in respect of the proposed development."*

Our client was notified by An Bord Pleanála of the third party appeal which has been made in relation to the noted planning application by Peter Sweetman & Associates on behalf of Wild Ireland Defence on the 9th of July 2021.

The Third-Party appeal lodged in relation to the decision of the Planning Authority to grant permission has been fully considered within this RGOA. We wish to reiterate that the applicants support the decision issued by the Planning Authority which clearly evidences that the development as proposed complies in full with the provisions of the County Development Plan, is in accordance with the principles of the proper planning and sustainable development of the area and can be provided without significant effects on the environment or having an adverse impact on any Natura 2000 sites.

This Response to Grounds of Appeal should be read in conjunction with the suite of information which accompanied the planning application, further information as well as the first party grounds of appeal which was submitted by MKO on behalf of Coillte CGA on the 9th of July 2021.

This response is structured as follows:

- **Section 1**- Introduction, setting out the instruction received and the RGOA structure.
- **Section 2**- Detailed responses to each of the third party grounds of appeal.
- **Section 3**- Conclusion and summary.

1.1 Application Background

In 2014, Coillte's Renewable Energy Development Team undertook a detailed screening process, through Geographical Information Spatial software (GIS), using a number of criteria and stages to assess the potential of a large number of possible sites, on lands within its stewardship (c. 441,000 hectares), suitable to accommodate a wind energy development. The GIS database drew upon a wide array of key spatial datasets such as forestry data, ordnance survey land data, house location data, transport, wind speeds, existing wind energy and grid infrastructure data and environmental data such as ecological designations, landscape designations and wind energy strategy designations available at the time. At a strategic level the site of the Croagh Wind Farm emerged as a suitable candidate site.

Further examination of the site was then carried out to confirm its suitability for wind energy development on a site specific basis. The relevant planning policy from both the Leitrim and Sligo County Development Plans was examined and the provision of a wind farm at this location was considered to be consistent with both (as evidenced in the decisions that issued from both these local authorities).

The Croagh Site is not located within any SACs, SPAs, NHAs or pNHAs, nor is it sited within any archaeological heritage areas. Furthermore the site is not located within any designated scenic areas but is within a landscape that can (and does already) accommodate wind energy infrastructure. The site does not have a high population density, can accommodate significant separation distances to residential properties, offers proximity to existing electrical substations while also having appropriate wind speeds.

The site of the proposed development is also located within an existing commercial forestry which allows the site to take advantage of existing roads. These features combine to make the Croagh site highly appropriate and an ideal candidate site for the provision of wind energy infrastructure and accordingly further assessments, surveys and studies were carried out to inform the design of a wind farm development at this location and which ultimately resulted in the current planning application being lodged.

On the 18th September 2020, following lodgement of the Planning Application on the 29th of July 2020, Sligo County Council issued a request in accordance with Section 33 of the Planning and Development Regulations 2001 (as amended) which sought further information in relation to a total of 13 items. MKO on behalf of the applicant submitted a comprehensive further information response on the 7th of April 2021, which was subsequently re-advertised as being significant to facilitate further third party engagement. Following review of all application documentation, including EIAR, NIS, further information response and all relevant submissions and observations Sligo County Council issued their notification of decision to grant permission on the 15th of June 2021 subject to 20 no. conditions. As is evident the subject planning application has been through a full and comprehensive assessment by the Planning Authority who were satisfied on review of all documentation to grant permission for the proposed development.

In issuing its notification of decision to grant permission for the Proposed Development the Planning Authority concluded as follows:

> *"...it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities or landscape character of the area, would not have an adverse impact on the integrity of any Natura 2000 sites, would not seriously injure the amenities or property values of residential properties or farms in the vicinity, would not be prejudicial to public health, to the environment in general or be otherwise contrary to the proper planning and sustainable development of the area.*
>
> *The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area."*

The applicants welcome the decision of the Planning Authority which recognises that the Proposed Development is entirely appropriate at this location and will '*make a positive contribution'* to Irelands renewable energy and low carbon future. It is evident based on the decisions that have issued (from both Sligo and Leitrim County Council) as well as the results of the comprehensive analysis presented within the application documentation that the subject site is entirely appropriate to cater for a wind farm development.

A concurrent planning application was lodged with Leitrim County Council in relation to the elements of the Croagh Wind Farm within that jurisdiction (i.e. the provision of 8 no. wind turbines, electrical substation, underground cabling, connection to national electricity grid, access tracks/roads, access junction improvements, amenity works and all associated works) and was assigned the reference Pl. Ref. 20/120. Further information was also sought and issued to Leitrim County Council and readvertisement provided along the same timeframe as the Sligo application. Leitrim County Council issued their notification of decision to grant permission on the 15th of June 2021 subject to 34 conditions.

Both the Sligo and Leitrim planning applications have been subject to first and third party appeals that are currently before the Board for consideration.

On the 9th of July 2021 MKO lodged a first party grounds of appeal to An Bord Pleanála with respect to the Proposed Development. This response to third party grounds of appeal should be read in conjunction with the information submitted previously within that first party appeal.

From the outset, however, we note the concerns that have been raised by the third party appellant refer entirely to general matters of process and the appeal submitted does not point to any specific shortcoming in relation to the application documentation and the decision that has issued, the statement of Grounds of Appeal are set out in the final page of the appeal and is concluded by stating that, *"It is our submission that it is not possible for An Bord Pleanála, having carried out its legal functions de novo to grant permission for this development."* Our responses to the grounds are set out in Section 3 below, however, our position, and that of the planning system and all associated legislation, is that the Board can absolutely grant permission for the Proposed Development regardless of any previous consideration, reporting or decisions that has arisen in relation to the proposed development. In this regard Section 37(1)(b) of the Planning and Development Act 2000 (as amended) ("the Act") clarifies that on appeal any proposed development must be considered "de novo" and the decision and consideration of the Board serves to annul the previous consideration of the Planning Authority, should additional details be required by the Board on appeal these can be sought under Article 73 of the Planning and Development Regulations 2001 (as amended) ("the Regulations") are noted. Additionally, we note that the appellants have stated that the Planning Authority has 'failed to publish the Environmental Impact Assessment and/or the Appropriate Assessment'. As noted above the decision in relation to the Proposed Development and the associated AA and EIA is now a matter for An Bord Pleanála under the provisions of Section 37(1)(b) of the Act, as they will be considering the application in full "de novo". We also note that should the Board consider it appropriate they can request additional submissions or observations on this matter from any party under the provisions of Section 131 of the Planning and Development Act 2000 (as amended). For ease, these specific provisions from the legislation are set out below:

Section 37(1)(b) of the Act

"Subject to paragraphs (c) and (d), where an appeal is brought against a decision of a planning authority and is not withdrawn, the Board shall determine the application as if it had been made to the Board in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time when it was given; and subsections (1), (2), (3) and (4) of section 34 shall apply, subject to any necessary modifications, in relation to the determination of an application by the Board on appeal under this subsection as they apply in relation to the determination under that section of an application by a planning authority.."

Article 73 of the Regulations

"The Board may, when considering an appeal under section 37 of the Act, invite the applicant for the permission concerned to submit to the Board revised plans or other drawings modifying, or other particulars providing for the modification of, the development to which the appeal relates and an applicant so invited may submit to the Board such number of plans, drawings or particulars as the Board may specify."

Section 131 of the Act

"Where the Board is of opinion that, in the particular circumstances of an appeal or referral, it is appropriate in the interests of justice to request—

a) any party to the appeal or referral,
b) any person who has made submissions or observations to the Board in relation to the appeal or referral, or
c) any other person or body,

to make submissions or observations in relation to any matter which has arisen in relation to the appeal or referral, the Board may, in its discretion, notwithstanding section 127(3), 129(4), 130(4) or 137(4)(b), serve on any such person a notice under this section—

requesting that person, within a period specified in the notice (not being less than 2 weeks or more than 4 weeks beginning on the date of service of the notice) to submit to the Board submissions or observations in relation to the matter in question, and

(ii) stating that, if submissions or observations are not received before the expiration of the period specified in the notice, the Board will, after the expiration of that period and without further notice to the person, pursuant to section 133, determine the appeal or referral."

Accordingly, the Board is in a position to fully consider and assess the proposed development in the context of all the available information on file, and furthermore, should the Board require any further revised plans, other drawings or particulars it can seek additional detail, therefore the Board can carry out its legal functions, review the application in detail, request additional particulars if required and grant permission for the Proposed Development should it be considered appropriate and in accordance with the proper planning and sustainable development of the area.

2. RESPONSE TO THIRD-PARTY GROUNDS OF APPEAL

This Section of the RGOA addresses the Grounds of Appeal raised by Peter Sweetman & Associates on behalf of Wild Ireland Defence ('the appellants') in their appeal document. It is noted from the outset that the third-party Grounds of Appeal submitted lack a degree of specificity in terms of the appellant identifying in particular the elements of the application documentation and the decision/consideration of the Planning Authority that are being questioned, however, notwithstanding this the responses to the discussion presented within the third-party appeal are responded to in the three sections below.

2.1.1 Articles 22 and 23 of the Planning Regulations

The first issue raised in the third party grounds of appeal relates to the recent Derryadd judgment (Humphries J Sweetman v An Bord Pleanála 2020 No.557 JR). In this instance the appellant notes that:

> *"It* [An Bord Pleanála] *must examine the application to ascertain if the contents of the application comply with the Planning Regulations, in particular Articles 22 and 23 of the 2001 regulations."*

In response to this Grounds of Appeal we must initially refer to the first party grounds of appeal (FPGOA) which has been lodged with An Bord Pleanála by the applicants on the 9th of July 2021. The FPGOA was submitted to An Bord Pleanála in light of the Derryadd judgment (which was issued the day after the decision of the Planning Authority in this case) and while supporting the decision of the Planning Authority it was requested that the Board clarify the nature of the development that has been both assessed and consented through the appeal process.

While the Board will, no doubt, be familiar with the Derryadd judgement to give a brief synopsis it found that the "plans and particulars" that were submitted with the application documentation were not sufficiently precise in that they allowed too much flexibility. The proposed Derryadd Wind Farm application sought permission for 24 turbines along with all related works, and as it constituted Strategic Infrastructure Development (SID) the application was made directly to An Bord Pleanála, the grant of permission issued by An Bord Pleanála was subsequently challenged by way of Judicial Review (JR). A judgment on the JR was delivered on the 16th of June 2021 by Justice Humphreys, in which the High Court found that the "Plans and Particulars" that were submitted under article 214 of the Planning and Development Regulations 2001 needed to be "*something specific – in particular something specifically measured and capable of being drawn on a plan*". The application documentation was not sufficiently precise and allowed too much flexibility. Essentially the Judge broke down the issue to the following three elements:

- The application did not give precise details of the design of the structures but only "typical" arrangements;
- The application did not specify dimensions for the structures, only maximum dimensions; and
- The application did not specify the exact location of all the structures.

In light of the findings of the Derryadd judgment MKO on behalf of the applicants submitted FPGOA in which it was requested that the Board grant permission for the proposed development and in doing so include a condition specifying the nature and scale of the turbines which have been consented. This will clarify the overall range of turbine parameters (as set out and assessed in the application documentation including the EIAR and NIS) that have been consented. In specifying the relevant parameters of the turbines the Board will be clarifying that the plans and particulars submitted for the planning application fall within the *"certain limited degree of flexibility"* referenced in the Derryadd judgment. The application documentation submitted, EIAR, NIS and detailed further information response provides comprehensive details and assessments of all elements of the Proposed

Development, however, in the interests of clarity and specificity in relation to the plans and particulars the FPGOA invited the Board to request additional plans and particulars from the applicant under the provisions of Article 73 of the Regulations to allow the applicant to augment the extant application documentation with additional drawings, plans and particulars and highlight the detail of the relevant infrastructure. It should also be noted that any additional such details could be re-advertised to allow further formal engagement from all relevant stakeholders and third parties.

Accordingly while the application documentation and assessments submitted are comprehensive in scope and content, it is acknowledged that in light of the Derryadd judgement the Board may require additional plans and particulars to be submitted. The FPGOA submitted has addressed this issue and the Board can address any such matters through the appeal processes available to it as this application is now under their jurisdiction for consideration.

2.1.2 Environmental Impact Assessment

While no specific shortcomings been identified within the third party grounds of appeal in relation to the Environmental Impact Assessment Report that has been submitted, nor the EIA and reporting of the Planning Authority in relation to the Proposed Development the appellant has stated that An Bord Pleanála must examine the EIAR to ascertain full compliance with particular regard to Article 4(4) of the Environmental Impact Assessment Directive which generally relates to the description of a project as a whole. In this regard the appellant claims that the EIAR which has been submitted with the planning application (and the additional details submitted in response to the Further Information request) in some way does not comply with the Environmental Impact Assessment Directive.

As no specific issue has been identified within the third party appeal it appears that the appellants concern in this regard relates to the plans and particulars issue raised in the Derryadd judgement. In regard to this issue we wish to state that the documentation submitted as part of the application process is comprehensive in detail and scope and wholly assesses the potential environmental impacts arising from the proposed development. We also wish to note that both Sligo County Council and Leitrim County Council have fully considered the various planning application particulars within their functional areas and were fully satisfied with the detail of the assessments and scope of information which were submitted and carried out. It is the consideration of both MKO and the applicants that the information submitted as part of the application is fully comprehensive and assesses in full the proposed development and all potential impacts that could arise on the environment. In this regard the claims which have been made by the appellants in this instance are wholly unfounded and the planning application documentation, EIAR and NIS are wholly appropriate.

The environmental impact assessment report (EIAR) and associated application documentation considers a range of turbine types and assesses the worst case scenario in terms of each of the relevant disciplines, for example turbine delivery considers the longest blade as this is the largest component to deliver to site, similarly the longest blade is used for collision risk (Birds) and shadow flicker assessments, while the highest hub height and maximum tip height is used for Landscape Visual Impact Assessment (LVIA) purposes on the basis of professional judgement by the EIAR landscape contributors. It should also be noted that the EIAR, assesses the potential impacts arising from the range of turbine parameters considered throughout the various assessments in order to identify the residual impacts which may arise from the turbines to be installed. As such the planning application documentation including EIAR, and the Further Information response submitted are comprehensive, robust and objective in their assessment. The EIAR assesses the worst case scenario within each competency as considering the larger impact arising from the Proposed Development allows the identification and application of any required appropriate mitigation measures and by ensuring worst-case scenarios are mitigated will obviously also ensure that any lesser impacts arising from within the range considered will also be comprehensively mitigated. **In the interest of clarity, irrespective of the turbine model procured within the parameters proposed, the overall outcome of the assessments contained within the EIAR would not change as the very slight variation between maximum and minimum parameters is limited to 5 metres.** For example, for the landscape and visual assessment, the

difference in visual effects when considering the maximum and minimum dimensions would be negligible, becoming imperceptible as the distance between the turbines and the visual receptor increases. Table 2-1 overleaf sets out the range of turbine parameters considered within the plans and particulars of the application and the "worst case" scenario assessments within the impact assessment chapters of the EIAR(Chapter 5-14). The determination of the worst-case scenario in the assessments contained within the EIAR was based on the professional judgment of the relevant, expert contributors to the same. In this regard the European Commission "Guidance document on wind energy developments and EU nature legislation, (November 2020)[1] notes that *"The key issue for a competent national authority to authorise a wind energy development project based on an envelope rather than a specific design relates to environmental impact. From an environmental impact perspective, the applicant must ensure that the EIA and the Appropriate Assessment undertaken has considered the worst-case design possible within the different options available in the design envelope[2]*." Additionally, please refer to Figure 2.1 which provides a schematic allowing a direct comparison between the range of turbines which have been assessed within the EIAR. It should be clear to An Bord Pleanála that the range of turbines as presented in Table 2-1 and Figure 2.1 is very narrow with a difference of 5m within the turbine envelopes outlined. Please note that Figure 2.1 is being provided for information purposes only and it is anticipated that should the Board require more detailed drawings in this regard that they would be requested under Article 73 of the Regulations.

Not every section/chapter of the EIAR chapter needs to specify the size range of each turbine component, Table 2-1 below sets out those that do. It should be noted that the Natura Impact Statement (NIS) submitted similarly assessed the worst case scenario as the same project design parameters and description were considered. The actual range of turbine configurations is limited throughout with only a variation of 5 metres being considered and not being open at one end of the scale, so that the application documentation submitted considers turbines within the following parameters:

- Turbine Tip Height – Maximum height 170 metres, Minimum height 165 metres
- Hub Height – Maximum height 105 metres, Minimum height 100 metres
- Blade Length: - Maximum length 70 metres, Minimum length 65 metres.

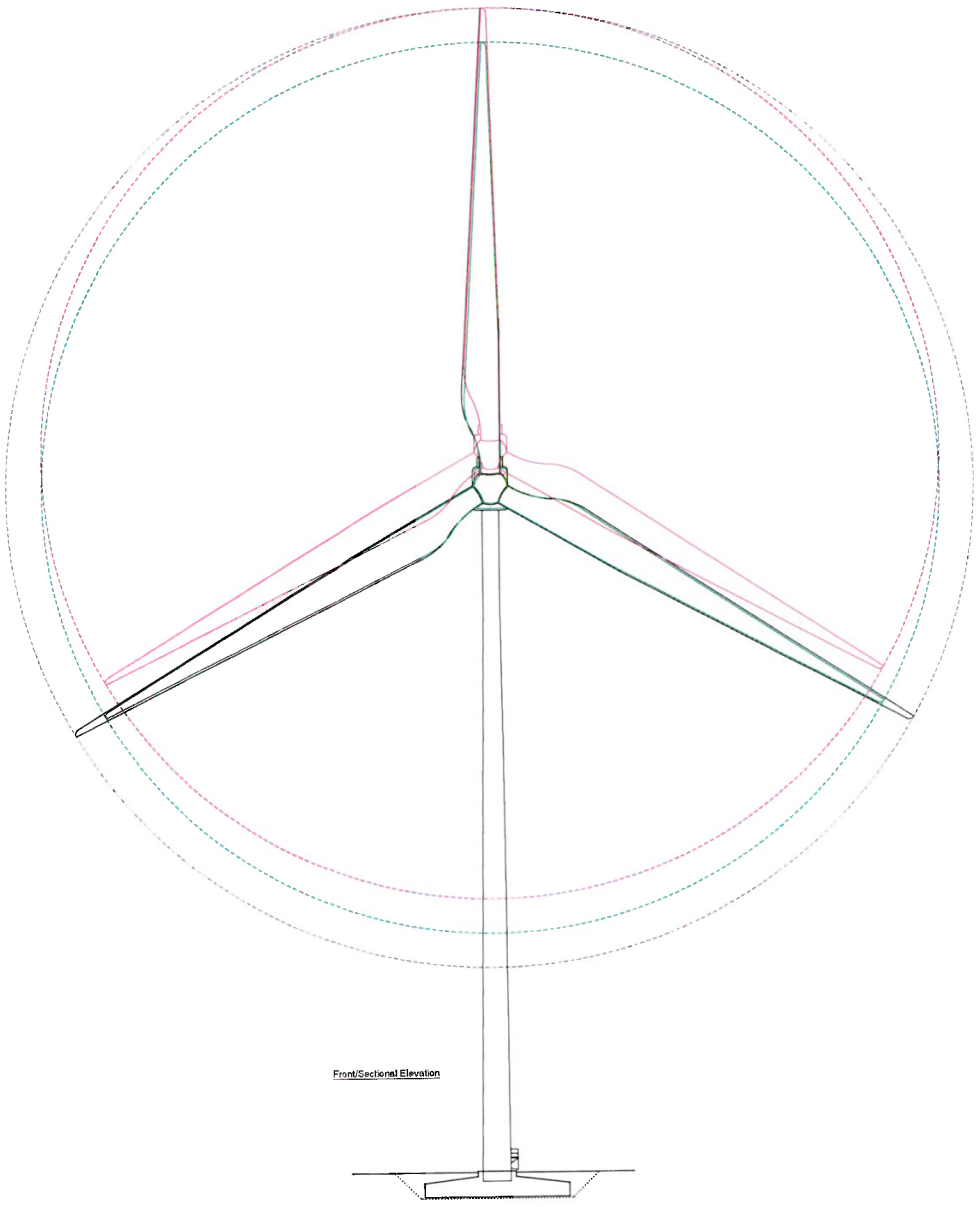
For the avoidance of doubt it should be noted that in the opinion of the applicant and design team the decision that has been issued by the Local Authority requiring that development be carried out in accordance with the documentation lodged, only grants permission for turbines within the above specified parameters.

The FPGOA has previously clarified that the layout of the Proposed Development (roads, hardstands, amenity works, locations of turbines, cut and fill requirements etc.) have been accurately scaled and comprehensively detailed within the site layout plans submitted (19 no. layout plans provided, Drawing no.'s 180511-03 to -22 refer). The submitted layouts detail the locations and extent of all proposed site infrastructure (and amenity works) that include the locations of all proposed wind turbines (with grid references) showing the actual locations that each of the proposed turbines are to be erected, as well as the accurate locations, orientation and extent of the proposed hardstand areas, roadways, amenity paths, foundations as well as all associated cut and fill requirements. A detailed suite of comprehensive drawings plans and particulars have been submitted including in relation to drainage, construction compounds, borrow pit, peat and spoil repositories, met mast, roads drawings/sections, visitor car park, boardwalk, watercourse crossings, gate details, cable circuits, and all junction arrangements. These drawings show the location and extent of all relevant works associated with the proposed Croagh Wind Farm and it is this layout that has been assessed within the EIAR, and described in full within chapter 4 of same.

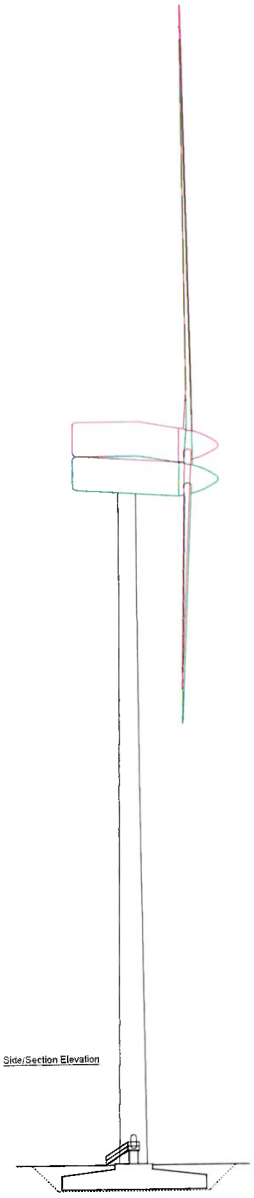
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[1] *https://ec.europa.eu/environment/nature/natura2000/management/docs/wind_farms_en.pdf*
[2] *Page 38, Ibid.*

Turbine Legend
100m [illegible] and 70m blade
100 [illegible] d 65m blade
105m [illegible] nd 65m blade



Front/Sectional Elevation



Side/Section Elevation



Plan

Drawing Notes

1. Proposed wind turbines to have a maximum ground to blade tip height of up to 170m.
2. Exact make and model of the turbine to be dictated by a competitive tender process.
3. Installed wind turbine not to exceed maximum size envelope set out above in any blade length and hub-height configuration.
4. Turbine foundation diameter may vary.
5. Ground level represents the top of turbine foundation.

TITLE
Indicative Comparison of Turbine Dimensions Considered within EIAR

PROJECT TITLE
Croagh Wind Farm, Co. Leitrim

DRAWING BY	CHECKED BY
Joseph O Brien	Eoin McCarthy
PROJECT No. 180511	Figure No. Fig 2-1
SCALE 1:750 @ A3	DATE 04.08.2021

MKO
Tuam Road, Galway
Ireland, H91 VW84
+353 (0) 91 735611
email: info@www.mkoireland.ie
Website: www.mkoireland.ie

Figure 2-1 above provides a comparison drawing of the range of turbine configurations considered, this drawing shows –

- 100m hub with a 70m blade length (black outline)
- 100m hub with a 65m blade length (green outline); and
- 105m hub with a 65m blade length (pink outline).

The figure above is being provided to inform the Boards consideration of this matter and to demonstrate the range in turbines considered. It is accepted and anticipated that in light of the recent Derryadd judgement that the Board can seek additional formal drawings of the turbine types considered under the provisions of Article 73 of the Regulations should additional detail be required.

Table 2-1 Turbine Parameters Used in EIAR Assessments

Assessment	Hub Height	Rotor Diameter (Blade Length)	Tip Height	Discussion – Worst Case Assessment
Chapter 5 Population and Human Health - Shadow Flicker Assessment	100m	140m (Blade Length 70m)	170m	Chapter 5 considers population and human health, including shadow flicker. A combination of the largest rotor diameter and the lowest hub height (therefore providing the maximum tip height) is considered as the worst case scenario for shadow flicker. This configuration has the potential to generate most shadow flicker at the largest number of sensitive receptors. The shadow flicker study area extended to 1.4km (or 10 rotor diameters from the proposed turbine locations).This configuration has been used numerous wind farm assessments and provides the worst-case scenario for shadow flicker. Consideration of impacts from other sections (e.g. Noise, visual, traffic) are also incorporated based on their individual assessments in later chapters.
Chapter 6 Biodiversity Bat assessment	N/A			The turbine parameter envelope is not relevant for this assessment. Terrestrial assessment of impacts on habitats and species considers the fixed development footprint as set out in detail on the layout drawings submitted with the application. In relation mitigation measures for bat species, regardless of the final turbine type installed best practice is to provide a buffer of 50m from the edge of the swept path of the rotor and canopy of the nearest habitat feature (hedgerow/wall/trees) that could be used as a transit pathway by Bats. Please refer to Section 5.1.3 (Plate 5.1) of Appendix 6-2 of the EIAR for further detail. This mitigation measure is included within the forestry felling calculation outlined in Section 4.3.10 of the EIAR and assumes the largest rotor diameter (i.e. longest blade), the minimum hub height and maximum tip height.
Chapter 7 Ornithology - Bird Collision Risk	100m	140m (Blade Length 70m)	170m	This combination represents the maximum rotor diameter and lowest hub height (providing the maximum tip height). Therefore, the largest swept path is considered in collision risk calculations which is used to inform the significance of effects on key ornithological species.

Assessment	Hub Height	Rotor Diameter (Blade Length)	Tip Height	Discussion – Worst Case Assessment
Chapter 8 Land, Soils, & Geology	N/A			The turbine parameter envelope is not relevant for this assessment. Chapter 8 Refers to land, soils and geology and the impact assessment is based on fixed development footprint as set out in detail in the layout plans submitted with the Planning Application. Appendix 8-1 incorporates a geotechnical and peat stability assessment report.
Chapter 9 Water	N/A			The turbine parameter envelope is not relevant for this assessment. Chapter 9 refers to hydrology and hydrogeology and impact assessment is based on the development footprint as set out in the layout drawings and drainage plans submitted.. A further surface water management plan was provided within the Further Information response submitted to the Planning Authority.
Chapter 10 Air & Climate	N/A			The turbine parameter envelope is not relevant for this assessment. Chapter 10 considers Air and Climate and sets out the potential effects on air quality and climate arising from construction, operation and decommissioning and presents carbon calculations. The worst-case scenario in terms of construction methods from other sections are considered within this Chapter, and the fixed development footprint as set out in the layout drawings is considered however, a turbine type is not specified. This chapter considers the maximum and minimum (worst-case) export capacities of the proposed development for the purposes of the carbon loss and savings analyses.
Chapter 11- Noise & Vibration	103.5m	N/A		Sound power levels for a combination of turbine models have been reviewed and an envelope method used whereby the worst case, i.e. highest noise levels at any windspeed, for the proposed turbine models have been selected and input into the assessed noise model. The 103.5m hub height was chosen for this assessment as it is the highest hub height of the turbine models considered in the noise model which provides the worst-case for noise emissions.

Assessment	Hub Height	Rotor Diameter (Blade Length)	Tip Height	Discussion – Worst Case Assessment
Chapter 12- Landscape & Visual	105m	130m (Blade length 65m)	170m	A combination of the maximum hub height and minimum rotor diameter (providing the maximum overall tip height)was chosen for the visual assessment. This combination has been identified as the worst case scenario for landscape assessment on the basis that the greatest extent of the entire turbine structure (blades and tower) would potentially be visible from the viewpoints assessed in the EIAR.
Chapter 13 Archaeology & Cultural Heritage	N/A		170m	No specific turbine type identified within Chapter 13 of the EIAR. Chapter 13 relates to heritage and archaeology. The assessment does draw on Visual Assessment (Chapter 12) in order to consider visual setting impacts on particular archaeological sites/monuments. The assessment also considers the fixed development footprint as set out in the layout drawings submitted with the application when assessing the potential for archaeological impacts to arise.
Chapter 14- Material Assets Traffic and Transport	N/A	140m (Blade Length 70m)	N/A	The turbine tip height is not relevant in the traffic assessment as the turbine blade is the largest single component for delivery. As such the longest blade length is considered as the worst case scenario in determining the requirement for accommodation works along the turbine delivery route.

2.13 Habitats Directive

The appellants also raise questions in relation to the Boards ability to carry out and complete an Appropriate Assessment of the Proposed Development. In this regard again no specifics are detailed, however the appellant does allege the following:

> *"On the basis of the total lack of certainty in the information submitted it is not possible for An Bord Pleanála to make a decision to grant permission which would comply with;*
>
> > *'So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."*

In quoting the above the appellant references the findings of CJEU case 258/11. As this application is now before An Bord Pleanála under appeal, it is now the competent authority. In relation to Appropriate Assessment comprehensive details, and analysis of the project and its potential for impact on European sites have been set out within the Natura Impact Statement (NIS) (which includes an Appropriate Assessment Screening Report as Appendix 1) that has been provided within the application documentation and fully assesses the Proposed Development and provides the required scientific certainty to allow the Board (and previously the Planning Authority) to complete their required Appropriate Assessment.

In considering the potential impacts and appropriate mitigation measures to ensure European sites are not impacted the NIS identifies the potential linkages/pathways between the designated sites and the proposed development, which in this case are all hydrological (therefore, the NIS draws on the assessment in Chapter 9: Water of the EIAR) and appropriate mitigation is built into the construction phase, and in particular in the drainage measures that have been incorporated into the project design. Accordingly, while the NIS considers the worst case scenario as the only identified linkages to designated sites are hydrological the turbine design envelope does not influence the suite of required mitigation measures to ensure impacts on protected sites will not arise. The required scientific certainty required by the competent authority to complete its Appropriate Assessment is provided throughout the NIS which clearly concludes as follows:

> *"For the reasons set out in detail in this NIS, in the light of the best scientific knowledge in the field, all aspects of the proposed development which, by itself, or in combination with other plans or projects, which may affect the relevant European Sites have been considered. The NIS contains information which the competent authority, may consider in making its own complete, precise and definitive findings and conclusions and upon which it is capable of determining that all reasonable scientific doubt has been removed as to the effects of the proposed development on the integrity of the relevant Natura 2000 sites.*
>
> *In conclusion, in the light of the conclusions of the assessment which it shall conduct on the implications for the European sites concerned, the competent authority is enabled to ascertain that the proposed development will not adversely affect the integrity of any of the European sites concerned."*

3. CONCLUSION

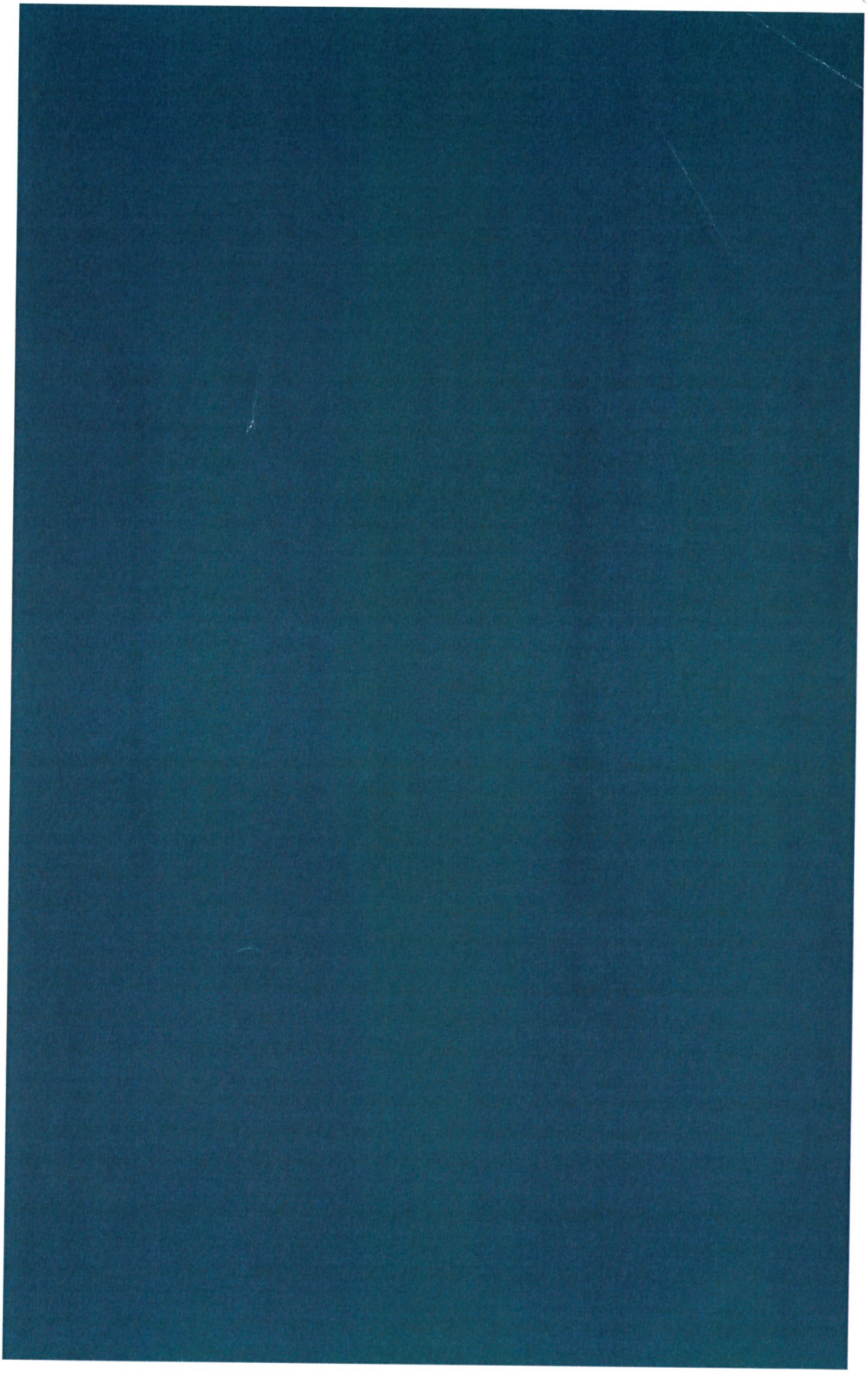
This Response is to the Third-Party Appeal by P. Sweetman and on behalf of Wild Ireland Defence circulated by An Bord Pleanála on the 9th July 2021 which was lodged in respect of planning permission ref: 20/251. This response reviews the content of the third party appeal and provides additional clarity and discussion in relation to the proposed development and highlights the comprehensive details that are provided throughout the application documentation. This response document acknowledges the Derryadd judgement that has issued and highlights that the development as proposed and as considered within the EIAR and NIS reviews the worst case scenario within a very narrow range of turbine configurations, representing a difference of 5m between blade length and hub height variables. This response document also references the First Party Grounds of Appeal that has been previously submitted by the Applicants and highlights that should additional plans and particulars be required by the Board to inform their decision that this can be provided in response to any such request from the Board under Article 73 of the Regulations.

This response also highlights that the EIAR and NIS submitted are comprehensive and assess the relevant worse case scenarios in each of the relevant sections/specialisms and clarifies the qualifications of each of the contributors.

In relation to Appropriate Assessment this submission also clarifies that the Board have sufficient information available to fully complete its required assessment as the competent authority to inform its decision with respect to the Proposed Development.

In respect of the current application the subject of this appeal, the Planning Authority have assessed the proposal and any potential impact on the site and its environs, and sensitive receptors and concluded that the Proposed Development is in accordance with proper planning and sustainable development of this area. Having considered all of the above, it is concluded that there is no basis to refuse the proposed development in the context of the grounds of appeal made and that the proposed development is entirely suitable and appropriate at this location.

We therefore request that the Board uphold the Planning Authority's decision and grant permission for the development as set out. Furthermore, should the Board require any further plans or particulars in relation to the proposed development in light of the recent Derryadd judgement we would welcome any request from the Board in this regard under Section 73 of the Regulations, furthermore in relation to the availability of decision documentation from the Planning Authority the provisions of Section 131 of the Act is noted whereby the Board can, if considered necessary request additional submissions or observations from any party.

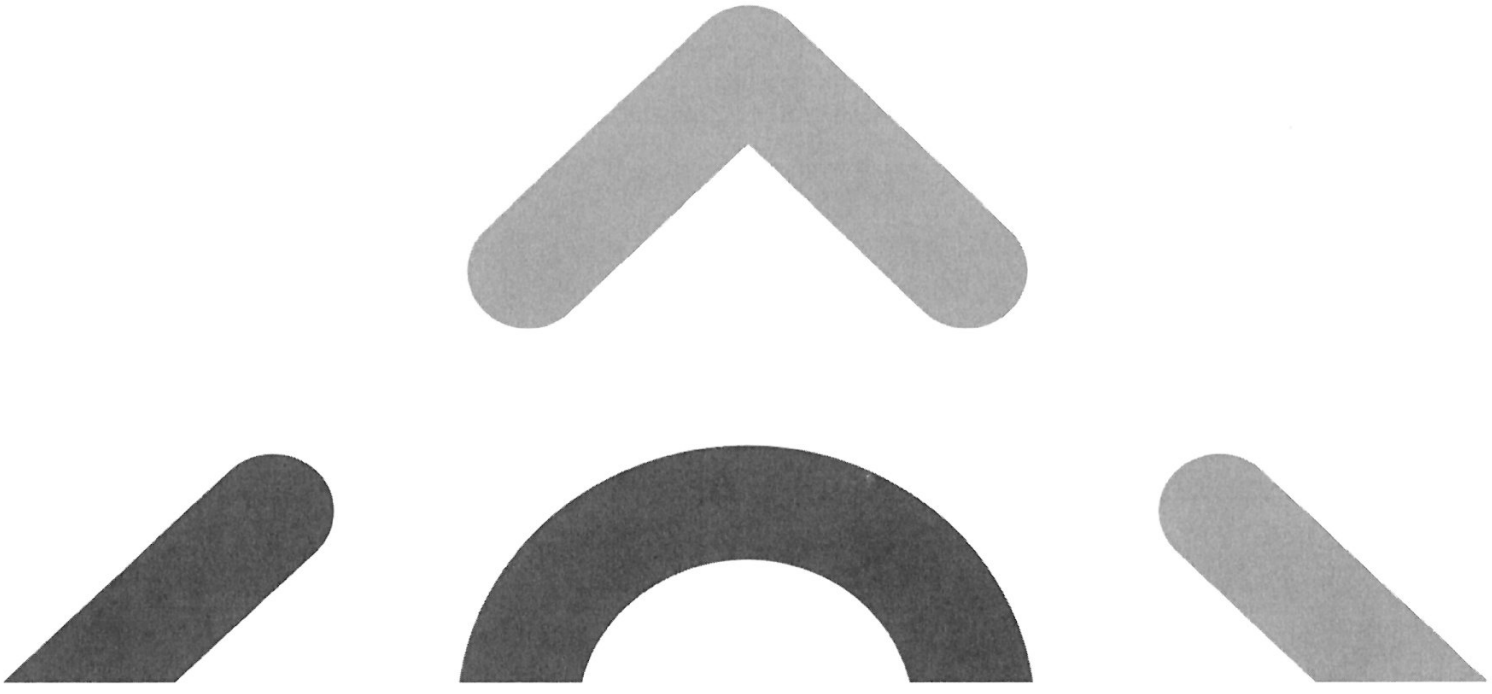


MKO Planning and Environmental Consultants

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Response to Grounds of Appeal

Croagh Wind Farm



DOCUMENT DETAILS

Client:	Coillte CGA
Project Title:	Croagh Wind Farm
Project Number:	180511
Document Title:	Response to Grounds of Appeal
Document File Name:	2021.08.05- Sligo RGOA- 180511- F
Prepared By:	MKO Tuam Road Galway Ireland H91 VW84

Planning and Environmental Consultants

Rev	Status	Date	Author(s)	Approved By
03	Draft	29/07/2021	PS/E MC	JG
03	Final	05/08/2021	PS/EMC	JG

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APPENDICES

Appendix 1 –

1. INTRODUCTION

MKO have been instructed on behalf of our Client, **Coillte CGA, Newtownmountkennedy, Co. Wicklow**, to prepare and lodge this Response to Grounds of Appeal (RGOA) document in relation to the third-party planning appeal reference ABP-310788-21 by Peter Sweetman and Associates and on behalf of Wild Irish Defence in respect of a decision by Sligo County Council (Pl.Ref.20/251) ('the Planning Authority') to grant planning permission for that part of the Croagh Wind Farm located in County Sligo ("the Proposed Development"). The entirety of the proposed Croagh Wind Farm development constitutes the provision of a ten-turbine wind farm and all associated works including recreational facilities on lands in both Counties Sligo and Leitrim with 2 No. turbines and their associated infrastructure proposed within the functional area of Sligo County Council and 8 No. turbines and all associated infrastructure proposed within the functional area of Leitrim County Council.

The project description for the proposed development as sought from Sligo County Council reads as follows:

> *Coillte CGA, intend to apply for permission for a ten-year planning permission for a renewable energy development with a 30-year operational life (from the date of commissioning) along with a recreational and amenity facility. The entirety of the renewable energy development constitutes the provision of a ten-turbine wind farm and all associated works on lands in both Counties Leitrim and Sligo.*
>
> *The development for which planning permission is being sought from Sligo County Council at this site in the townlands of Carrowmore and Carrownyclowan County Sligo.*
> *The development will consist of*
> *i. Construction of 2 No. wind turbines with a maximum overall blade tip height of up to 170 metres and associated hardstand areas;*
> *ii. 1 no. permanent Meteorological Mast with a maximum height of up to 100 metres;*
> *iii. All associated underground electrical and communications cabling connecting the turbines to the proposed wind farm 38kV electricity substation (which is proposed to be located in the townland of Garvagh Glebe, Co. Leitrim);*
> *iv. Upgrade of existing tracks, roads and provision of new site access roads;*
> *v. Recreation and amenity works, including marked trails and associated recreation and amenity signage*
> *vi. Site Drainage;*
> *vii. Permanent Signage;*
> *viii. Ancillary Forestry Felling to facilitate construction and operation of the proposed development; and*
> *ix. All associated site development works*
>
> *An Environmental Impact Assessment Report (EIAR)and a Natura Impact Statement (NIS) have been prepared in respect of the proposed development."*

Our client was notified by An Bord Pleanála of the third party appeal which has been made in relation to the noted planning application by Peter Sweetman & Associates on behalf of Wild Ireland Defence on the 9th of July 2021.

The Third-Party appeal lodged in relation to the decision of the Planning Authority to grant permission has been fully considered within this RGOA. We wish to reiterate that the applicants support the decision issued by the Planning Authority which clearly evidences that the development as proposed complies in full with the provisions of the County Development Plan, is in accordance with the principles of the proper planning and sustainable development of the area and can be provided without significant effects on the environment or having an adverse impact on any Natura 2000 sites.

This Response to Grounds of Appeal should be read in conjunction with the suite of information which accompanied the planning application, further information as well as the first party grounds of appeal which was submitted by MKO on behalf of Coillte CGA on the 9th of July 2021.

This response is structured as follows:

- **Section 1**- Introduction, setting out the instruction received and the RGOA structure.
- **Section 2**- Detailed responses to each of the third party grounds of appeal.
- **Section 3**- Conclusion and summary.

1.1 Application Background

In 2014, Coillte's Renewable Energy Development Team undertook a detailed screening process, through Geographical Information Spatial software (GIS), using a number of criteria and stages to assess the potential of a large number of possible sites, on lands within its stewardship (c. 441,000 hectares), suitable to accommodate a wind energy development. The GIS database drew upon a wide array of key spatial datasets such as forestry data, ordnance survey land data, house location data, transport, wind speeds, existing wind energy and grid infrastructure data and environmental data such as ecological designations, landscape designations and wind energy strategy designations available at the time. At a strategic level the site of the Croagh Wind Farm emerged as a suitable candidate site.

Further examination of the site was then carried out to confirm its suitability for wind energy development on a site specific basis. The relevant planning policy from both the Leitrim and Sligo County Development Plans was examined and the provision of a wind farm at this location was considered to be consistent with both (as evidenced in the decisions that issued from both these local authorities).

The Croagh Site is not located within any SACs, SPAs, NHAs or pNHAs, nor is it sited within any archaeological heritage areas. Furthermore the site is not located within any designated scenic areas but is within a landscape that can (and does already) accommodate wind energy infrastructure. The site does not have a high population density, can accommodate significant separation distances to residential properties, offers proximity to existing electrical substations while also having appropriate wind speeds.

The site of the proposed development is also located within an existing commercial forestry which allows the site to take advantage of existing roads. These features combine to make the Croagh site highly appropriate and an ideal candidate site for the provision of wind energy infrastructure and accordingly further assessments, surveys and studies were carried out to inform the design of a wind farm development at this location and which ultimately resulted in the current planning application being lodged.

On the 18th September 2020, following lodgement of the Planning Application on the 29th of July 2020, Sligo County Council issued a request in accordance with Section 33 of the Planning and Development Regulations 2001 (as amended) which sought further information in relation to a total of 13 items. MKO on behalf of the applicant submitted a comprehensive further information response on the 7th of April 2021, which was subsequently re-advertised as being significant to facilitate further third party engagement. Following review of all application documentation, including EIAR, NIS, further information response and all relevant submissions and observations Sligo County Council issued their notification of decision to grant permission on the 15th of June 2021 subject to 20 no. conditions. As is evident the subject planning application has been through a full and comprehensive assessment by the Planning Authority who were satisfied on review of all documentation to grant permission for the proposed development.

In issuing its notification of decision to grant permission for the Proposed Development the Planning Authority concluded as follows:

> *"...it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities or landscape character of the area, would not have an adverse impact on the integrity of any Natura 2000 sites, would not seriously injure the amenities or property values of residential properties or farms in the vicinity, would not be prejudicial to public health, to the environment in general or be otherwise contrary to the proper planning and sustainable development of the area.*
>
> *The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area."*

The applicants welcome the decision of the Planning Authority which recognises that the Proposed Development is entirely appropriate at this location and will '*make a positive contribution'* to Irelands renewable energy and low carbon future. It is evident based on the decisions that have issued (from both Sligo and Leitrim County Council) as well as the results of the comprehensive analysis presented within the application documentation that the subject site is entirely appropriate to cater for a wind farm development.

A concurrent planning application was lodged with Leitrim County Council in relation to the elements of the Croagh Wind Farm within that jurisdiction (i.e. the provision of 8 no. wind turbines, electrical substation, underground cabling, connection to national electricity grid, access tracks/roads, access junction improvements, amenity works and all associated works) and was assigned the reference Pl. Ref. 20/120. Further information was also sought and issued to Leitrim County Council and readvertisement provided along the same timeframe as the Sligo application. Leitrim County Council issued their notification of decision to grant permission on the 15th of June 2021 subject to 34 conditions.

Both the Sligo and Leitrim planning applications have been subject to first and third party appeals that are currently before the Board for consideration.

On the 9th of July 2021 MKO lodged a first party grounds of appeal to An Bord Pleanála with respect to the Proposed Development. This response to third party grounds of appeal should be read in conjunction with the information submitted previously within that first party appeal.

From the outset, however, we note the concerns that have been raised by the third party appellant refer entirely to general matters of process and the appeal submitted does not point to any specific shortcoming in relation to the application documentation and the decision that has issued, the statement of Grounds of Appeal are set out in the final page of the appeal and is concluded by stating that, *"It is our submission that it is not possible for An Bord Pleanála, having carried out its legal functions de novo to grant permission for this development."* Our responses to the grounds are set out in Section 3 below, however, our position, and that of the planning system and all associated legislation, is that the Board can absolutely grant permission for the Proposed Development regardless of any previous consideration, reporting or decisions that has arisen in relation to the proposed development. In this regard Section 37(1)(b) of the Planning and Development Act 2000 (as amended) ("the Act") clarifies that on appeal any proposed development must be considered "de novo" and the decision and consideration of the Board serves to annul the previous consideration of the Planning Authority, should additional details be required by the Board on appeal these can be sought under Article 73 of the Planning and Development Regulations 2001 (as amended) ("the Regulations") are noted. Additionally, we note that the appellants have stated that the Planning Authority has 'failed to publish the Environmental Impact Assessment and/or the Appropriate Assessment'. As noted above the decision in relation to the Proposed Development and the associated AA and EIA is now a matter for An Bord Pleanála under the provisions of Section 37(1)(b) of the Act, as they will be considering the application in full "de novo". We also note that should the Board consider it appropriate they can request additional submissions or observations on this matter from any party under the provisions of Section 131 of the Planning and Development Act 2000 (as amended). For ease, these specific provisions from the legislation are set out below:

Section 37(1)(b) of the Act

"Subject to paragraphs (c) and (d), where an appeal is brought against a decision of a planning authority and is not withdrawn, the Board shall determine the application as if it had been made to the Board in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time when it was given; and subsections (1), (2), (3) and (4) of section 34 shall apply, subject to any necessary modifications, in relation to the determination of an application by the Board on appeal under this subsection as they apply in relation to the determination under that section of an application by a planning authority.."

Article 73 of the Regulations

"The Board may, when considering an appeal under section 37 of the Act, invite the applicant for the permission concerned to submit to the Board revised plans or other drawings modifying, or other particulars providing for the modification of, the development to which the appeal relates and an applicant so invited may submit to the Board such number of plans, drawings or particulars as the Board may specify."

Section 131 of the Act

"Where the Board is of opinion that, in the particular circumstances of an appeal or referral, it is appropriate in the interests of justice to request–

a) any party to the appeal or referral,
b) any person who has made submissions or observations to the Board in relation to the appeal or referral, or
c) any other person or body,

to make submissions or observations in relation to any matter which has arisen in relation to the appeal or referral, the Board may, in its discretion, notwithstanding section 127(3), 129(4), 130(4) or 137(4)(b), serve on any such person a notice under this section–

requesting that person, within a period specified in the notice (not being less than 2 weeks or more than 4 weeks beginning on the date of service of the notice) to submit to the Board submissions or observations in relation to the matter in question, and

(ii) stating that, if submissions or observations are not received before the expiration of the period specified in the notice, the Board will, after the expiration of that period and without further notice to the person, pursuant to section 133, determine the appeal or referral."

Accordingly, the Board is in a position to fully consider and assess the proposed development in the context of all the available information on file, and furthermore, should the Board require any further revised plans, other drawings or particulars it can seek additional detail, therefore the Board can carry out its legal functions, review the application in detail, request additional particulars if required and grant permission for the Proposed Development should it be considered appropriate and in accordance with the proper planning and sustainable development of the area.

2. RESPONSE TO THIRD-PARTY GROUNDS OF APPEAL

This Section of the RGOA addresses the Grounds of Appeal raised by Peter Sweetman & Associates on behalf of Wild Ireland Defence ('the appellants') in their appeal document. It is noted from the outset that the third-party Grounds of Appeal submitted lack a degree of specificity in terms of the appellant identifying in particular the elements of the application documentation and the decision/consideration of the Planning Authority that are being questioned, however, notwithstanding this the responses to the discussion presented within the third-party appeal are responded to in the three sections below.

2.1 Articles 22 and 23 of the Planning Regulations

The first issue raised in the third party grounds of appeal relates to the recent Derryadd judgment (Humphries J Sweetman v An Bord Pleanála 2020 No.557 JR). In this instance the appellant notes that:

> *"It* [An Bord Pleanála] *must examine the application to ascertain if the contents of the application comply with the Planning Regulations, in particular Articles 22 and 23 of the 2001 regulations."*

In response to this Grounds of Appeal we must initially refer to the first party grounds of appeal (FPGOA) which has been lodged with An Bord Pleanála by the applicants on the 9th of July 2021. The FPGOA was submitted to An Bord Pleanála in light of the Derryadd judgment (which was issued the day after the decision of the Planning Authority in this case) and while supporting the decision of the Planning Authority it was requested that the Board clarify the nature of the development that has been both assessed and consented through the appeal process.

While the Board will, no doubt, be familiar with the Derryadd judgement to give a brief synopsis it found that the "plans and particulars" that were submitted with the application documentation were not sufficiently precise in that they allowed too much flexibility. The proposed Derryadd Wind Farm application sought permission for 24 turbines along with all related works, and as it constituted Strategic Infrastructure Development (SID) the application was made directly to An Bord Pleanála, the grant of permission issued by An Bord Pleanála was subsequently challenged by way of Judicial Review (JR). A judgment on the JR was delivered on the 16th of June 2021 by Justice Humphreys, in which the High Court found that the "Plans and Particulars" that were submitted under article 214 of the Planning and Development Regulations 2001 needed to be "*something specific – in particular something specifically measured and capable of being drawn on a plan*". The application documentation was not sufficiently precise and allowed too much flexibility. Essentially the Judge broke down the issue to the following three elements:

- The application did not give precise details of the design of the structures but only "typical" arrangements;
- The application did not specify dimensions for the structures, only maximum dimensions; and
- The application did not specify the exact location of all the structures.

In light of the findings of the Derryadd judgment MKO on behalf of the applicants submitted FPGOA in which it was requested that the Board grant permission for the proposed development and in doing so include a condition specifying the nature and scale of the turbines which have been consented. This will clarify the overall range of turbine parameters (as set out and assessed in the application documentation including the EIAR and NIS) that have been consented. In specifying the relevant parameters of the turbines the Board will be clarifying that the plans and particulars submitted for the planning application fall within the *"certain limited degree of flexibility"* referenced in the Derryadd judgment. The application documentation submitted, EIAR, NIS and detailed further information response provides comprehensive details and assessments of all elements of the Proposed

Development, however, in the interests of clarity and specificity in relation to the plans and particulars the FPGOA invited the Board to request additional plans and particulars from the applicant under the provisions of Article 73 of the Regulations to allow the applicant to augment the extant application documentation with additional drawings, plans and particulars and highlight the detail of the relevant infrastructure. It should also be noted that any additional such details could be re-advertised to allow further formal engagement from all relevant stakeholders and third parties.

Accordingly while the application documentation and assessments submitted are comprehensive in scope and content, it is acknowledged that in light of the Derryadd judgement the Board may require additional plans and particulars to be submitted. The FPGOA submitted has addressed this issue and the Board can address any such matters through the appeal processes available to it as this application is now under their jurisdiction for consideration.

2.1.2 Environmental Impact Assessment

While no specific shortcomings been identified within the third party grounds of appeal in relation to the Environmental Impact Assessment Report that has been submitted, nor the EIA and reporting of the Planning Authority in relation to the Proposed Development the appellant has stated that An Bord Pleanála must examine the EIAR to ascertain full compliance with particular regard to Article 4(4) of the Environmental Impact Assessment Directive which generally relates to the description of a project as a whole. In this regard the appellant claims that the EIAR which has been submitted with the planning application (and the additional details submitted in response to the Further Information request) in some way does not comply with the Environmental Impact Assessment Directive.

As no specific issue has been identified within the third party appeal it appears that the appellants concern in this regard relates to the plans and particulars issue raised in the Derryadd judgement. In regard to this issue we wish to state that the documentation submitted as part of the application process is comprehensive in detail and scope and wholly assesses the potential environmental impacts arising from the proposed development. We also wish to note that both Sligo County Council and Leitrim County Council have fully considered the various planning application particulars within their functional areas and were fully satisfied with the detail of the assessments and scope of information which were submitted and carried out. It is the consideration of both MKO and the applicants that the information submitted as part of the application is fully comprehensive and assesses in full the proposed development and all potential impacts that could arise on the environment. In this regard the claims which have been made by the appellants in this instance are wholly unfounded and the planning application documentation, EIAR and NIS are wholly appropriate.

The environmental impact assessment report (EIAR) and associated application documentation considers a range of turbine types and assesses the worst case scenario in terms of each of the relevant disciplines, for example turbine delivery considers the longest blade as this is the largest component to deliver to site, similarly the longest blade is used for collision risk (Birds) and shadow flicker assessments, while the highest hub height and maximum tip height is used for Landscape Visual Impact Assessment (LVIA) purposes on the basis of professional judgement by the EIAR landscape contributors. It should also be noted that the EIAR, assesses the potential impacts arising from the range of turbine parameters considered throughout the various assessments in order to identify the residual impacts which may arise from the turbines to be installed. As such the planning application documentation including EIAR, and the Further Information response submitted are comprehensive, robust and objective in their assessment. The EIAR assesses the worst case scenario within each competency as considering the larger impact arising from the Proposed Development allows the identification and application of any required appropriate mitigation measures and by ensuring worst-case scenarios are mitigated will obviously also ensure that any lesser impacts arising from within the range considered will also be comprehensively mitigated. **In the interest of clarity, irrespective of the turbine model procured within the parameters proposed, the overall outcome of the assessments contained within the EIAR would not change as the very slight variation between maximum and minimum parameters is limited to 5 metres.** For example, for the landscape and visual assessment, the

difference in visual effects when considering the maximum and minimum dimensions would be negligible, becoming imperceptible as the distance between the turbines and the visual receptor increases. Table 2-1 overleaf sets out the range of turbine parameters considered within the plans and particulars of the application and the "worst case" scenario assessments within the impact assessment chapters of the EIAR(Chapter 5-14). The determination of the worst-case scenario in the assessments contained within the EIAR was based on the professional judgment of the relevant, expert contributors to the same. In this regard the European Commission "Guidance document on wind energy developments and EU nature legislation, (November 2020)[1] notes that *"The key issue for a competent national authority to authorise a wind energy development project based on an envelope rather than a specific design relates to environmental impact. From an environmental impact perspective, the applicant must ensure that the EIA and the Appropriate Assessment undertaken has considered the worst-case design possible within the different options available in the design envelope[2]."* Additionally, please refer to Figure 2.1 which provides a schematic allowing a direct comparison between the range of turbines which have been assessed within the EIAR. It should be clear to An Bord Pleanála that the range of turbines as presented in Table 2-1 and Figure 2.1 is very narrow with a difference of 5m within the turbine envelopes outlined. Please note that Figure 2.1 is being provided for information purposes only and it is anticipated that should the Board require more detailed drawings in this regard that they would be requested under Article 73 of the Regulations.

Not every section/chapter of the EIAR chapter needs to specify the size range of each turbine component, Table 2-1 below sets out those that do. It should be noted that the Natura Impact Statement (NIS) submitted similarly assessed the worst case scenario as the same project design parameters and description were considered. The actual range of turbine configurations is limited throughout with only a variation of 5 metres being considered and not being open at one end of the scale, so that the application documentation submitted considers turbines within the following parameters:

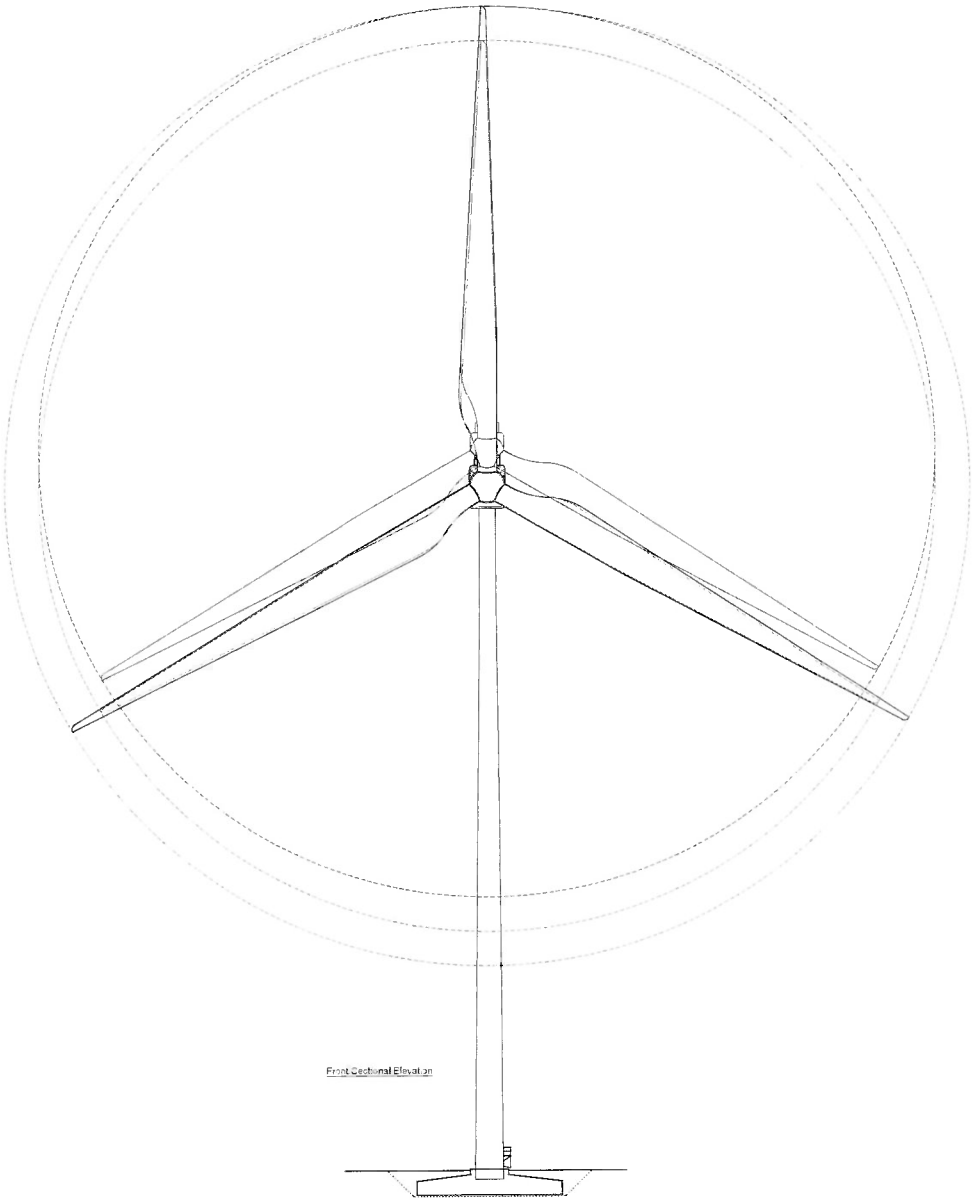
- Turbine Tip Height – Maximum height 170 metres, Minimum height 165 metres
- Hub Height – Maximum height 105 metres, Minimum height 100 metres
- Blade Length: - Maximum length 70 metres, Minimum length 65 metres.

For the avoidance of doubt it should be noted that in the opinion of the applicant and design team the decision that has been issued by the Local Authority requiring that development be carried out in accordance with the documentation lodged, only grants permission for turbines within the above specified parameters.

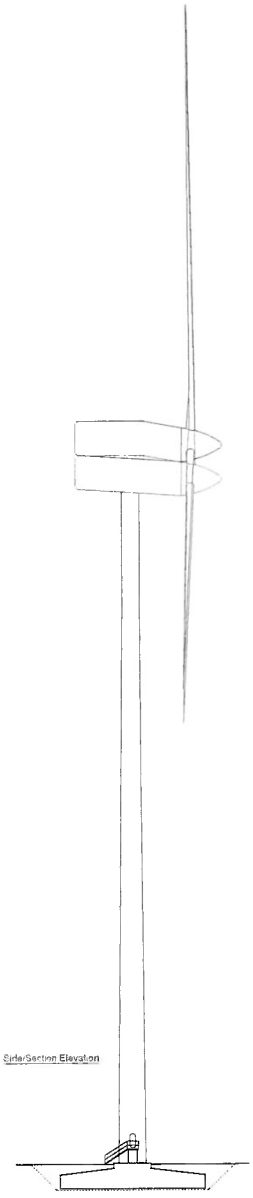
The FPGOA has previously clarified that the layout of the Proposed Development (roads, hardstands, amenity works, locations of turbines, cut and fill requirements etc.) have been accurately scaled and comprehensively detailed within the site layout plans submitted (19 no. layout plans provided, Drawing no.'s 180511-03 to -22 refer). The submitted layouts detail the locations and extent of all proposed site infrastructure (and amenity works) that include the locations of all proposed wind turbines (with grid references) showing the actual locations that each of the proposed turbines are to be erected, as well as the accurate locations, orientation and extent of the proposed hardstand areas, roadways, amenity paths, foundations as well as all associated cut and fill requirements. A detailed suite of comprehensive drawings plans and particulars have been submitted including in relation to drainage, construction compounds, borrow pit, peat and spoil repositories, met mast, roads drawings/sections, visitor car park, boardwalk, watercourse crossings, gate details, cable circuits, and all junction arrangements. These drawings show the location and extent of all relevant works associated with the proposed Croagh Wind Farm and it is this layout that has been assessed within the EIAR, and described in full within chapter 4 of same.

[1] *https://ec.europa.eu/environment/nature/natura2000/management/docs/wind_farms_en.pdf*
[2] *Page 38, Ibid.*

Turbine Legend	
———	100m hub and 70m blade
———	10[illegible] nd 65m blade
———	10[illegible] and 65m blade



Front Sectional Elevation



Side/Section Elevation



Plan

Drawing Notes

1. Proposed wind turbines to have a maximum ground to blade tip height of up to 170m.
2. Exact make and model of the turbine to be dictated by a competitive tender process.
3. Installed wind turbine not to exceed maximum size envelope set out above in any blade length and hub-height configuration.
4. Turbine foundation diameter may vary.
5. Ground level represents the top of turbine foundation.

TITLE

Indicative Comparison of Turbine Dimensions Considered within EIAR

PROJECT TITLE

Croagh Wind Farm, Co. Leitrim

DRAWING BY	CHECKED BY
Joseph O Brien	Eoin McCarthy
PROJECT No.	Figure No.
180511	Fig 2-1
SCALE	DATE
1:750 @ A3	04.08.2021

MKO
Tuam Road, Galway
Ireland, H91 VW84
+353 (0) 91 735611
email: info@mkoireland.ie
Website: www.mkoireland.ie

Figure 2-1 above provides a comparison drawing of the range of turbine configurations considered, this drawing shows –

- 100m hub with a 70m blade length (black outline)
- 100m hub with a 65m blade length (green outline); and
- 105m hub with a 65m blade length (pink outline).

The figure above is being provided to inform the Boards consideration of this matter and to demonstrate the range in turbines considered. It is accepted and anticipated that in light of the recent Derryadd judgement that the Board can seek additional formal drawings of the turbine types considered under the provisions of Article 73 of the Regulations should additional detail be required.

Table 2-1 Turbine Parameters Used in EIAR Assessments

Assessment	Hub Height	Rotor Diameter (Blade Length)	Tip Height	Discussion – Worst Case Assessment
Chapter 5 Population and Human Health - Shadow Flicker Assessment	100m	140m (Blade Length 70m)	170m	Chapter 5 considers population and human health, including shadow flicker. A combination of the largest rotor diameter and the lowest hub height (therefore providing the maximum tip height) is considered as the worst case scenario for shadow flicker. This configuration has the potential to generate most shadow flicker at the largest number of sensitive receptors. The shadow flicker study area extended to 1.4km (or 10 rotor diameters from the proposed turbine locations).This configuration has been used numerous wind farm assessments and provides the worst-case scenario for shadow flicker. Consideration of impacts from other sections (e.g. Noise, visual, traffic) are also incorporated based on their individual assessments in later chapters.
Chapter 6 Biodiversity Bat assessment	N/A			The turbine parameter envelope is not relevant for this assessment. Terrestrial assessment of impacts on habitats and species considers the fixed development footprint as set out in detail on the layout drawings submitted with the application. In relation mitigation measures for bat species, regardless of the final turbine type installed best practice is to provide a buffer of 50m from the edge of the swept path of the rotor and canopy of the nearest habitat feature (hedgerow/wall/trees) that could be used as a transit pathway by Bats. Please refer to Section 5.1.3 (Plate 5.1) of Appendix 6-2 of the EIAR for further detail. This mitigation measure is included within the forestry felling calculation outlined in Section 4.3.10 of the EIAR and assumes the largest rotor diameter (i.e. longest blade), the minimum hub height and maximum tip height.
Chapter 7 Ornithology - Bird Collision Risk	100m	140m (Blade Length 70m)	170m	This combination represents the maximum rotor diameter and lowest hub height (providing the maximum tip height). Therefore, the largest swept path is considered in collision risk calculations which is used to inform the significance of effects on key ornithological species.

Assessment	Hub Height	Rotor Diameter (Blade Length)	Tip Height	Discussion – Worst Case Assessment
Chapter 8 Land, Soils, & Geology	N/A			The turbine parameter envelope is not relevant for this assessment. Chapter 8 Refers to land, soils and geology and the impact assessment is based on fixed development footprint as set out in detail in the layout plans submitted with the Planning Application. Appendix 8-1 incorporates a geotechnical and peat stability assessment report.
Chapter 9 Water	N/A			The turbine parameter envelope is not relevant for this assessment. Chapter 9 refers to hydrology and hydrogeology and impact assessment is based on the development footprint as set out in the layout drawings and drainage plans submitted.. A further surface water management plan was provided within the Further Information response submitted to the Planning Authority.
Chapter 10 Air & Climate	N/A			The turbine parameter envelope is not relevant for this assessment. Chapter 10 considers Air and Climate and sets out the potential effects on air quality and climate arising from construction, operation and decommissioning and presents carbon calculations. The worst-case scenario in terms of construction methods from other sections are considered within this Chapter, and the fixed development footprint as set out in the layout drawings is considered however, a turbine type is not specified. This chapter considers the maximum and minimum (worst-case) export capacities of the proposed development for the purposes of the carbon loss and savings analyses.
Chapter 11- Noise & Vibration	103.5m	N/A		Sound power levels for a combination of turbine models have been reviewed and an envelope method used whereby the worst case, i.e. highest noise levels at any windspeed, for the proposed turbine models have been selected and input into the assessed noise model. The 103.5m hub height was chosen for this assessment as it is the highest hub height of the turbine models considered in the noise model which provides the worst-case for noise emissions.

Assessment	Hub Height	Rotor Diameter (Blade Length)	Tip Height	Discussion – Worst Case Assessment
Chapter 12- Landscape & Visual	105m	130m (Blade length 65m)	170m	A combination of the maximum hub height and minimum rotor diameter (providing the maximum overall tip height)was chosen for the visual assessment. This combination has been identified as the worst case scenario for landscape assessment on the basis that the greatest extent of the entire turbine structure (blades and tower) would potentially be visible from the viewpoints assessed in the EIAR.
Chapter 13 Archaeology & Cultural Heritage	N/A		170m	No specific turbine type identified within Chapter 13 of the EIAR. Chapter 13 relates to heritage and archaeology. The assessment does draw on Visual Assessment (Chapter 12) in order to consider visual setting impacts on particular archaeological sites/monuments. The assessment also considers the fixed development footprint as set out in the layout drawings submitted with the application when assessing the potential for archaeological impacts to arise.
Chapter 14- Material Assets Traffic and Transport	N/A	140m (Blade Length 70m)	N/A	The turbine tip height is not relevant in the traffic assessment as the turbine blade is the largest single component for delivery. As such the longest blade length is considered as the worst case scenario in determining the requirement for accommodation works along the turbine delivery route.

2.1.3 Habitats Directive

The appellants also raise questions in relation to the Boards ability to carry out and complete an Appropriate Assessment of the Proposed Development. In this regard again no specifics are detailed, however the appellant does allege the following:

> *"On the basis of the total lack of certainty in the information submitted it is not possible for An Bord Pleanála to make a decision to grant permission which would comply with;*
>
> > *'So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."*

In quoting the above the appellant references the findings of CJEU case 258/11. As this application is now before An Bord Pleanála under appeal, it is now the competent authority. In relation to Appropriate Assessment comprehensive details, and analysis of the project and its potential for impact on European sites have been set out within the Natura Impact Statement (NIS) (which includes an Appropriate Assessment Screening Report as Appendix 1) that has been provided within the application documentation and fully assesses the Proposed Development and provides the required scientific certainty to allow the Board (and previously the Planning Authority) to complete their required Appropriate Assessment.

In considering the potential impacts and appropriate mitigation measures to ensure European sites are not impacted the NIS identifies the potential linkages/pathways between the designated sites and the proposed development, which in this case are all hydrological (therefore, the NIS draws on the assessment in Chapter 9: Water of the EIAR) and appropriate mitigation is built into the construction phase, and in particular in the drainage measures that have been incorporated into the project design. Accordingly, while the NIS considers the worst case scenario as the only identified linkages to designated sites are hydrological the turbine design envelope does not influence the suite of required mitigation measures to ensure impacts on protected sites will not arise. The required scientific certainty required by the competent authority to complete its Appropriate Assessment is provided throughout the NIS which clearly concludes as follows:

> *"For the reasons set out in detail in this NIS, in the light of the best scientific knowledge in the field, all aspects of the proposed development which, by itself, or in combination with other plans or projects, which may affect the relevant European Sites have been considered. The NIS contains information which the competent authority, may consider in making its own complete, precise and definitive findings and conclusions and upon which it is capable of determining that all reasonable scientific doubt has been removed as to the effects of the proposed development on the integrity of the relevant Natura 2000 sites.*
>
> *In conclusion, in the light of the conclusions of the assessment which it shall conduct on the implications for the European sites concerned, the competent authority is enabled to ascertain that the proposed development will not adversely affect the integrity of any of the European sites concerned."*

3. CONCLUSION

This Response is to the Third-Party Appeal by P. Sweetman and on behalf of Wild Ireland Defence circulated by An Bord Pleanála on the 9th July 2021 which was lodged in respect of planning permission ref: 20/251. This response reviews the content of the third party appeal and provides additional clarity and discussion in relation to the proposed development and highlights the comprehensive details that are provided throughout the application documentation. This response document acknowledges the Derryadd judgement that has issued and highlights that the development as proposed and as considered within the EIAR and NIS reviews the worst case scenario within a very narrow range of turbine configurations, representing a difference of 5m between blade length and hub height variables. This response document also references the First Party Grounds of Appeal that has been previously submitted by the Applicants and highlights that should additional plans and particulars be required by the Board to inform their decision that this can be provided in response to any such request from the Board under Article 73 of the Regulations.

This response also highlights that the EIAR and NIS submitted are comprehensive and assess the relevant worse case scenarios in each of the relevant sections/specialisms and clarifies the qualifications of each of the contributors.

In relation to Appropriate Assessment this submission also clarifies that the Board have sufficient information available to fully complete its required assessment as the competent authority to inform its decision with respect to the Proposed Development.

In respect of the current application the subject of this appeal, the Planning Authority have assessed the proposal and any potential impact on the site and its environs, and sensitive receptors and concluded that the Proposed Development is in accordance with proper planning and sustainable development of this area. Having considered all of the above, it is concluded that there is no basis to refuse the proposed development in the context of the grounds of appeal made and that the proposed development is entirely suitable and appropriate at this location.

We therefore request that the Board uphold the Planning Authority's decision and grant permission for the development as set out. Furthermore, should the Board require any further plans or particulars in relation to the proposed development in light of the recent Derryadd judgement we would welcome any request from the Board in this regard under Section 73 of the Regulations, furthermore in relation to the availability of decision documentation from the Planning Authority the provisions of Section 131 of the Act is noted whereby the Board can, if considered necessary request additional submissions or observations from any party.

