APPENDIX 1-1

LEAVE APPLICATION PLANNING REPORT

Planning and Environmental Consultants

Planning Report

Application for Leave to Apply for Substitute Consent for Alterations of the Permitted Meenbog Wind Farm

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1. INTRODUCTION

This Planning Report forms part of an application under Section 177C of the Planning and Development Act 2000, by Planree Limited (Planree), for leave to apply for substitute consent with respect to some deviations to the permitted Meenbog wind farm development, following receipt of a written request from Donegal County Council (DCC) to do so.

An Bord Pleanála (the Board) granted planning permission via the Strategic Infrastructure Development (SID) process to Planree (applicant) for a 19-turbine wind farm development in Meenbog, Co. Donegal (ABP Ref: PA05E.300460) on 25th June 2018. The Meenbog wind farm site is located approximately 8km southwest of the twin towns of Ballybofey and Stranorlar and approximately 12km northeast of Donegal Town.

Construction work commenced on the permitted wind farm in November 2019. Approximately 90% of the civil engineering works, including wind farm access roads, electricity substation, turbine hardstands, turbine bases, peat repositories and borrow pit areas at the wind farm site were substantially completed over the following 12-month period up to November 2020.

On 12th November 2020, during the construction of a permitted access road to turbine T7, a peat slide or peat failure occurred. The works that were underway at the time in the area where the peat slide occurred, were fully permitted and were being undertaken in line with the project design that had been subject to both Environmental Impact Assessment (EIA) and Appropriate Assessment (AA). The Environmental Protection Agency (EPA) engaged the services of ARUP Consulting Engineers, to advise and represent the EPA on the geotechnical and peat stability aspects of the investigations. Following extensive additional site investigation work, geotechnical analysis, site meetings and reporting undertaken by both Fehily Timoney and Company and Ionic Consulting on behalf of Planree, and ARUP on behalf of the EPA, the EPA, by notice dated 28th April 2021, concluded that the issues identified had been satisfactorily addressed pursuant to the Environmental Liability Regulations.

Following the November 2020 peat failure, a detailed retrospective comparison between what had been built with what was permitted, was undertaken by Planree and by DCC. Planree also engaged MKO to prepare an Environmental Report (ER) to consider and assess the effect of identified deviations, individually and cumulatively. While Planree was (and remains) of the view that the deviations or alterations were not material and did not give rise to any additional environmental impact either individually or cumulatively/in combination with existing works, in April 2022, DCC took the advice of SLR Consulting Limited (SLR) and concluded that there were a number of deviations from the original planning permission that required regularisation via the substitute consent process. This application is made at the request of DCC but without prejudice to Planree's belief that substitute consent is not required.

For the avoidance of doubt, in the 20+ months since the November 2020 peat failure at the Meenbog wind farm site, and following investigations by DCC (and SLR on their behalf), EPA (and ARUP on their behalf) and Planree (and FTC and Ionic on their behalf), nothing has emerged to suggest that any deviation from the original permitted development was in any way responsible for the peat failure event.

For the Board to grant Planree leave to apply for substitute consent under Section 177C of the Act, it must be satisfied that exceptional circumstances exist such that the Board deems it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent. The following planning report will outline how and why the necessary exceptional circumstances exist, as required under Section 177D(2) of the Act, to allow the Board grant leave to apply for substitute consent.

2. BACKGROUND

2.1 Planning History

Planning permission was granted under the Strategic Infrastructure Development (SID) process by the Board (ABP Ref: PA05E.300460) on 25th June 2018, for a 19 no. turbine wind farm development in Meenbog (and surrounding townlands), Co. Donegal, subject to 20 no. conditions.

The full development description of the Meenbog wind farm, for the purposes of the SID application is set out as follows:

> *"In accordance with Section 37E of the Planning and Development Act 2000, as amended, Planree Limited gives notice of its intention to make an application for a ten year planning permission to An Bord Pleanála in relation to the following proposed development in the townlands of Meenbog (ED Goland), Croaghonagh and Cashelnavean, County Donegal.*
>
> *The proposed development will constitute the provision of the following:*
>
> *(i) Up to 19 no. wind turbines with a generating capacity in excess of 50MW, and maximum overall ground to blade tip heights of up to 156.5 metres;*
> *(ii) 1 no. permanent Meteorological Mast up to a maximum height of 110 metres;*
> *(iii) 1 no. 110kV Electrical substation with 2 no. control buildings with welfare facilities, associated electrical plant and equipment, security fencing and waste water holding tank;*
> *(iv) Internal wind farm underground cabling;*
> *(v) 110kV underground grid connection cabling;*
> *(vi) Upgrade of access junctions;*
> *(vii) Upgrade of existing tracks, roads and provision of new site access roads and hardstand areas;*
> *(viii) 3 no. borrow pits;*
> *(ix) 2 no. temporary construction compounds;*
> *(x) Recreation and amenity works, including marked trails (upgrade of existing tracks and provision of new tracks), picnic, amenity and play areas, car parking and vehicular access;*
> *(xi) Site drainage;*
> *(xii) Forestry Felling;*
> *(xiii) Permanent signage;*
> *(xiv) All associated site development and ancillary works.*
>
> *This application is seeking a ten-year permission and 30 year operational life from the date of commissioning of the wind farm.*
>
> *An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) have been prepared in respect of the proposed development. The proposed development is likely to have significant effects on the environment of Northern Ireland."*

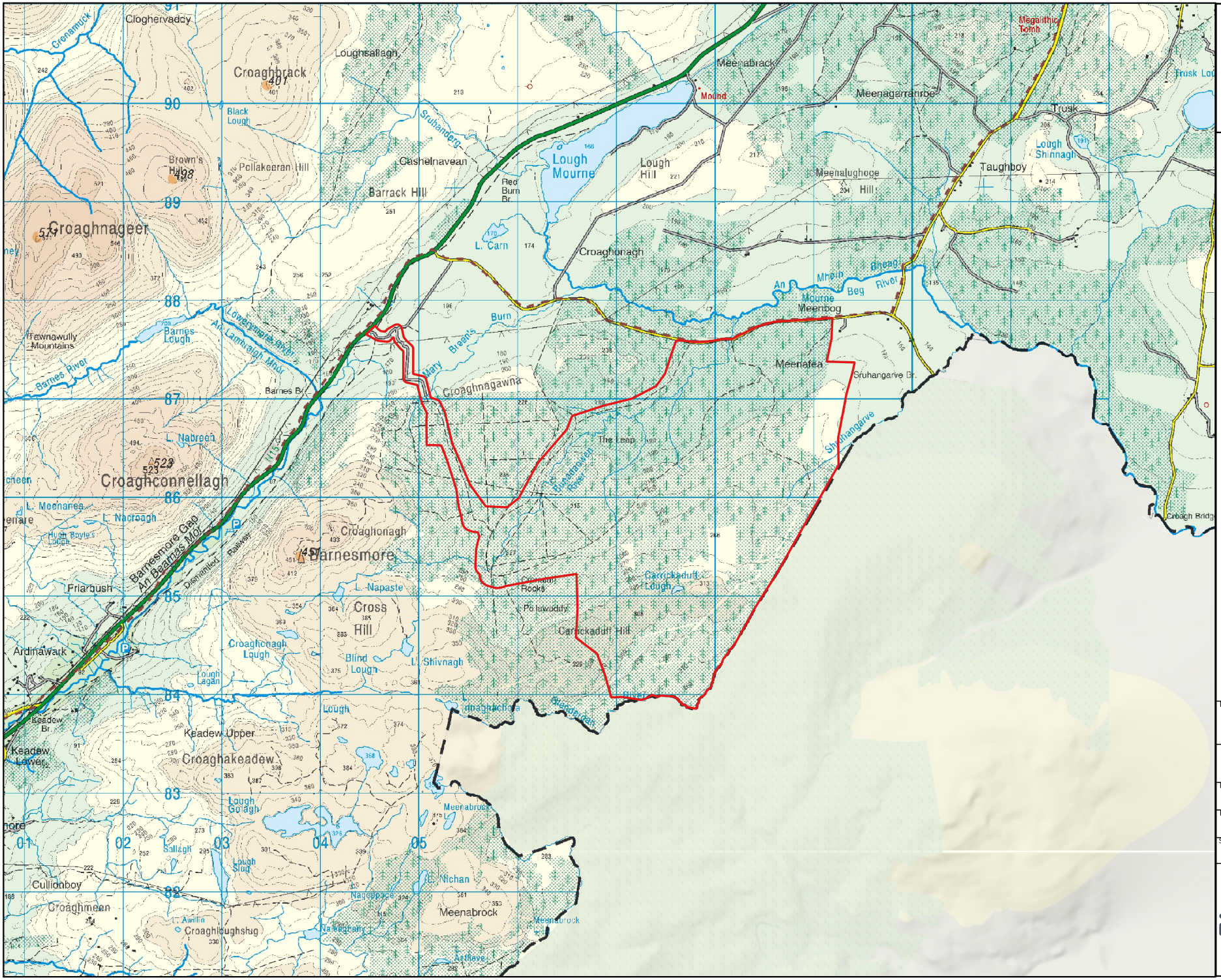
This was varied on 7th June 2019, when the Board determined that in accordance with section 146B(3)(a) of the Planning and Development Act, 2000, the previously issued planning consent for the permitted wind farm development should be altered in accordance with the plans and particulars received on 14th day of February, 2019. This was to allow the applicant to utilise-a larger turbine rotor diameter but which remains within the consented design envelope and parameters (i.e. tip-height of 156.5m, with no alteration to permitted layout).

2.2 Site Location

The site of the Meenbog Wind Farm development is located at Meenbog, Croaghonagh and other townlands (associated with the wind farm's off-site grid connection), approximately 8km southwest of the twin towns of Ballybofey and Stranorlar and approximately 12km northeast of Donegal Town. The site adjoins County Tyrone and is located approximately 19km west of Castlederg. A site location map is presented in Figure 2.1 on the following page.

The wind farm site is dominated by commercial forestry plantations that have been planted over blanket bog. The elevation of the wind farm ranges between approximately 86 metres O.D. and 327 metres O.D. with the majority of the site sloping in a north or north-westerly direction. A small section on the south of the site slopes to the southeast. The wind farm site adjoins Northern Ireland border along its eastern and south-eastern boundaries.

There was a network of long-established existing forestry roads providing access in and around the site. The site drains directly to the Bunadowen River and the Shruhangarve River which are tributaries of the Mourne Beg River. The closest Natura 2000 site is the River Finn, Special Area of Conservation (SAC). The River Finn SAC runs along the south-eastern boundary of the site and forms the County boundary between Donegal and Tyrone. The SAC follows the river network established by the River Finn and its tributaries which flow along the border with and within County Tyrone in Northern Ireland, as well as flowing through Ballybofey /Stranorlar. Natural Heritage Areas (NHAs) can be found to the west of the study area. These areas are Lough Hill Bog NHA, Meenagarranroe Bog NHA, Cashelnaveen NHA, Barnesmore Bog NHA and Croaghonagh bog which is a proposed NHA and SAC. Croagh Bog, an Area of Special Scientific Interest (ASSI) runs along a portion of the southern boundary of the study area. The River Foyle (ASSI), Killester Forest, Bogs and Lakes (ASSI) and Essan, Burn and Moneyfarmore (ASSI) can be found further south of the study area in County Tyrone.



Map Legend

Meenbog Wind Farm Site Location

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Drawing Title

Site Location Map

Project Title

Meenbog Wind Farm

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3. LEGISLATIVE & POLICY CONTEXT

3.1 Legislation

The Planning and Development Act 2000 (as amended), hereafter referred to as '*the Act*', sets out the legislative planning process to which all development must adhere.

Part XA of the Act refers to the legislative process for Substitute Consent, with Section 177C to 177G being of most relevance to this application for Leave to Apply for Substitute Consent for certain deviations at the Meenbog Wind Farm.

Section 177B of the Act relates to applications for Substitute Consent where notice is served by the Planning Authority directing the applicant to apply for substitute consent. While the applicant herein received a letter from DCC suggesting that there were a number of deviations from the original planning permission that required regularisation, the letter was not a direction to apply for substitute consent within the meaning of Section 177B of the Act.

Section 177C of the Act relates to applications for Leave to Apply for Substitute Consent where notice is not served by the Planning Authority. This section includes:

> *"(1) A person who has carried out a development referred to in subsection (2), or the owner or occupier of the land as appropriate, to whom no notice has been given under section 177B, may apply to the Board for leave to apply for substitute consent in respect of the development.*
>
> *(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which— ...*
>
> *(a) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.*
>
> *(3) An applicant for leave to apply for substitute consent under subsection (1) shall furnish the following to the Board:*
>
> *(a) any documents that he or she considers are relevant to support his or her application; ...*
> *(b) any additional information or documentation that may be requested by the Board, within the period specified in such a request."* (Our emphasis added)

Section 177D, which relates to decisions of the Board on whether to grant Leave to Apply for Substitute Consent provides that:

> *"(1) ...The Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied— ...*
>
> *(b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.".* (Our emphasis added)

Subsection 2 of this section 177D sets out the exceptional circumstances which the applicant for substitute consent must demonstrate have been satisfied. These are:

"(2) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

a) *whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
b) *whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
c) *whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;*
d) *the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
e) *the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
f) *whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
g) *such other matters as the Board considers relevant".*

This Planning Report accompanies an application for leave to apply for substitute consent, being submitted to the Board, under Section 177C of the Act.

3.2 Policy

The favourable planning, renewable energy and climate change policies relevant to the permitted Meenbog wind farm were outlined in the application documents submitted to the Board with the PA05E.300460 SID planning application. Those supportive policies were recognised in the Board's order granting permission for the Meenbog wind farm. It is not intended to re-state those policies herein. However, in addition to the planning, renewable energy and climate change policy that was in effect in mid-2018, in the intervening period, new local, national and international policy has added further weight to the need for the Meenbog wind farm. The additional policies most relevant to the Meenbog wind farm are outlined below.

The permitted Meenbog wind farm consists of a 19-tubine, strategic infrastructure development, which will be capable of generating approximately 90MW of renewable electricity at peak capacity. This scale of project would place it in the top five wind farms by generating capacity in the country, out of the 309 wind farms connected to the Irish electricity grid as of 1st March 2022. The project will make a significant contribution towards Ireland's 2030 renewable energy targets and assisting Ireland in meeting its European and international climate change commitments.

3.2.1 International Policy

3.2.1.1 COP25 Madrid

COP25, the 25th session of the Conference of the Parties (COP), was held between the 2nd and 13th of December 2019 in Madrid. The conference was characterised by repeated warnings from civil society (NGOs and corporates) on emerging evidence and scientific consensus on climate change risk. Specifically, it is noted that there are only '10 years left' before the opportunity of limiting global warming to 1.5°C is no longer feasible. As such, the only scenario that makes it possible is a '*7.6% reduction of global GHG emissions every year between 2020 and 2030, and to reach net zero emissions by 2050'.*

In addition, the European Union's Green Pact was introduced on the 11th of December with agreement of the European Council and all Member States (except Poland) on the ambition of climate neutrality in 2050, supported by a financing plan of €1,000 billion over 10 years.

3.2.1.2 COP26 – Glasgow

COP26 took place in Glasgow, Scotland between the 31st October and 12th November 2021. The summit was centred around the fact that "*climate change is the greatest risk facing us all.*" The UK, as hosts for the summit, have developed a ten-point plan to deliver a green industrial revolution, seeking to lead the world in tackling and adapting to climate change.

The key items COP26 seeks to achieve are:

- Secure global net zero by mid-century and keep 1.5 degrees within reach
- Adapt to protect communities and natural habitats
- Mobilise finance
- Work together to deliver

All world leaders at the summit confirmed the need to urgently address the gaps in ambition and work together to achieve climate action.

3.2.1.3 EU Policy and Targets

On the 27th of June 2018, EU ambassadors endorsed the provisional agreement reached by the Bulgarian Presidency on the revision of the renewable energy directive. The new regulatory framework paved the way for Europe's transition towards clean energy sources such as wind, solar, hydro, tidal, geothermal, and biomass energy. The agreement sets a headline target of 32% energy from renewable sources at EU level for 2030.

Additionally, Ireland supported the adoption of a net zero target by 2050 at the EU level. In this regard it should be noted that the Climate Change Advisory Council notes within their 2019 Annual Review that while the share of renewable electricity generation, (particularly wind), is increasing in Ireland, the overall pace of the decarbonisation of the electricity generation sector is not compatible with a low-carbon transition to 2050.

In Ireland, it is widely acknowledged that the vast majority of the renewable electricity requirement is expected to be met through the development of indigenous wind power, as Ireland has a strong wind resource potential, with one of the best onshore wind speed averages in Europe ('The Value of Wind Energy to Ireland', Pőyry, 2014). Further, the SEAI *Energy In Ireland 2019 Report* (December 2019) confirms that most of the growth in renewable energy has come from wind. Wind provided 84% of all renewable energy generated in 2018.

3.2.1.4 RePower EU

RePower EU: A plan to rapidly reduce dependence on Russian fossil fuels and fast forward the green transition was published on 18th May 2022 by the European Commission. This plan intends to phase out Europe's dependency on Russian energy imports as soon as possible, by fast forwarding the clean transition and joining forces to achieve a more resilient energy system and a true Energy Union.

This Plan puts forward an additional set of actions to:

- save energy;
- diversify supplies;
- quickly substitute fossil fuels by accelerating Europe's clean energy transition;
- smartly combine investments and reforms.

It is stated that "*a massive speed-up and scale-up in renewable energy in power generation, industry, buildings and transport will accelerate our phasing out of Russian fossil fuels. It will also, over time, lower electricity prices and reduce fossil fuel imports*". There is concern internationally of severe fossil fuel supply disruptions, and Nations are being implored by the EU to ensure contingency plans and measures are in place to speed up the planning process and ensure that renewable energy supply is secure within each individual country.

3.2.2 National Climate Change Policy

3.2.2.1 Report of the Joint Committee on Climate Action Climate Change 2019

In March 2019 the Joint Committee on Climate Action Change released a report detailing a cross-party consensus for action. The report in its introduction notes that *"Irelands performance in meeting international obligations has to date been poor"*. The Committee places concern that predictions of emissions indicate that the state is off track in meeting its 2020 and 2030 targets under the Kyoto protocol and the EU Directives.

The committee recommended that new climate change legislation be enacted by the Oireachtas in 2019. The following recommendations were listed:

1. A target of net zero economy-wide Green House Gas (GHG) emissions by 2050;
2. A provision for a 2030 target, consistent with the GHG emissions reduction pathway to 2050 to be set by 2020 by Statutory Instrument requiring the formal approval of both Houses of the Oireachtas following receipt of advice from the Climate Action Council;
3. Provision for five-yearly carbon budgets, consistent with the emissions reduction pathway to 2030 and 2050 targets, to be set by Statutory Instrument requiring the formal approval of both Houses of the Oireachtas following receipt of advice from the Climate Action Council;
4. A target for the renewable share of electricity generation of 70% by 2030.

3.2.2.2 Climate Action and Low Carbon Development (Amendment) Bill 2021

The Climate Action and Low Carbon Development (amendment) Bill 2021 was signed into Law on the 23rd July 2021. The Bill supports Ireland, in a legal capacity, to move to a climate resilient and climate neutral economy by 2050. It establishes a legally binding framework with clear targets and commitments set in law, and ensure the necessary structures and processes are embedded on a statutory basis to ensure we achieve our national, EU and international climate goals and obligations in the near and long term. The Bill significantly strengthens the framework for governance of climate action by the State in order to achieve national, EU and international climate goals and obligations.

The Bill includes, but is not limited to, the following elements:

- Places the commitment to achieve a climate neutral economy no later than 2050 on a statutory basis. Introduces system of successive 5-year, economy-wide carbon budgets starting in 2021;
- Provides that the first two carbon budgets proposed by the Climate Change Advisory Council should equate to a total reduction of 51% in emissions over the period to 2030.

3.2.2.3 Climate Action Plan 2019

The Climate Action Plan 2019 (CAP 2019) was published on the 1st of August 2019 by the Department of Communications, Climate Action and Environment. The CAP 2019 set out an ambitious course of action over the coming years to address the impacts which climate may have on Ireland's environment,

society, economic and natural resources. The CAP 2019 clearly recognised that Ireland must significantly step up its commitments to tackle climate disruption.

The CAP 2019 set out an ambition to deliver a step-change in our emissions performance over the coming decade, so that we would not only meet our EU targets for 2030, but would also be well placed to meet our mid-century decarbonisation objectives.

Under section 7.2 of the CAP, the following targets were set out to meet the required level of emissions by 2030:

- *"Reduce CO^2 eq. emissions from the sector by 50–55% relative to 2030 Pre-NDP projections*
- *Deliver an early and complete phase-out of coal- and peat-fired electricity generation*
- *Increase electricity generated from renewable sources to 70%, indicatively comprised of:*
  - *at least 3.5 GW of offshore renewable energy*
  - *up to 1.5 GW of grid-scale solar energy*
  - ***up to 8.2 GW total of increased onshore wind capacity***
- *Meet 15% of electricity demand by renewable sources contracted under Corporate PPAs"* (emphasis added)

Achieving the 70% renewable electricity target in CAP 2019 by 2030 would involve phasing out coal- and peat-fired electricity generation plants, increasing our renewable electricity, reinforcing our grid (including greater interconnection to allow electricity to flow between Ireland and other countries), and putting systems in place to manage intermittent sources of power, especially from wind.

Section 7.2 of the CAP 2019 noted the '*measures to deliver targets*' in which efforts to meet the 2030 ambitions which included increased harnessing of renewable energy. CAP 2019 identified a need for 8.2GW of onshore wind generation and stated that in 2017 there was 3.3GW in place, therefore Ireland needed to more than double its installed capacity of wind generation. Accordingly, the CAP 2019 presented clear and unequivocal support for the provision of additional renewable energy generation, and provided yet further policy support for increased wind energy.

3.2.2.4 Climate Action Plan 2021

The Climate Action Plan 2021 (CAP 2021) was published on the 4th of November 2021 by the Department of Communications, Climate Action and Environment, as a revision to the CAP 2019. The key renewable electricity policy change in the 2021 CAP, is the increase in the proportion of renewable electricity from 70%, to up to 80% by 2030, including an increased target of up to 5 Gigawatts of offshore wind energy.

3.2.2.5 National Energy Security Framework (April 2022)

The National Energy Security Framework (April, 2022) highlights clearly the impacts the Russian invasion of Ukraine and the resulting war has had on Europe's energy system. The resulting decision by the European Union to phase out the import of Russian gas, oil and coal has brought to the fore the importance of security of supply and how energy policy is designed for long-term resilience. It takes account of the need to decarbonise society and economy, to reduce Ireland's emissions by 51% over the decade to 2030 and reach net zero emissions by 2050.

Ireland's response per the Framework is set out over three themes:

- Theme 1 – managing the impact on consumers and businesses
- Theme 2 – ensuring security of energy supply in the near-term
- Theme 3 – reducing our dependency on imported fossil fuels in the context of the phasing out of Russian energy imports across the EU

In relation to Theme 3, the Framework highlights that replacing fossil fuels with renewables, including wind energy, will be a focus area of work. The Framework calls for "*Supportive policies across Government and State agencies"* which *"can reduce barriers and fast track permitting for renewable energy generation projects. Similarly, renewable energy developers need to match this through taking a leadership role in delivering high quality applications to relevant consenting authorities, meeting project milestones on time and minimising delays."*

Response 25 within this Framework relates to the alignment of all elements of the planning system to support accelerated renewable energy development.

3.2.2.6 Programme for Government

The Programme for Government released in June 2020 also highlights the need for a clean and reliable supply of energy:

> *"Energy will play a central role in the creation of a strong and sustainable economy over the next decade. The reliable supply of safe, secure and clean energy is essential in order to deliver a phase-out of fossil fuels. We need to facilitate the increased electrification of heat and transport. This will create rapid growth in demand for electricity which must be planned and delivered in a cost-effective way."*

3.2.3 Regional Policy

3.2.3.1 Regional Spatial and Economic Strategy (RSES) - Northern and Western Region 2020

The Regional Spatial and Economic Strategy (RSES) provides a high-level development framework for the Northern and Western Region that supports the implementation of the National Planning Framework (NPF) and the relevant economic policies and objectives of Government. It provides a 12-year strategy to deliver the transformational change that is necessary to achieve the objectives and vision of the Assembly.

A key issue for the strategy is how climate change will impact on land-use change and increasing demands on natural resources into the future. The strategy recognises that:

> *"There is marked evidence that Ireland's climate is changing with projections for Ireland indicating that there is a likelihood of a rise in sea levels, changes in rainfall events, increased frequency of storm events, changes to air and soil temperate and periods of increased drought."*

Furthermore, it is also recognised that climate change commitments and EU targets mean that power generation, transport and heat increasingly have to be produced from sustainably produced electricity. As an EU member state, as well as a signatory to the UN Paris Agreement, Ireland has committed itself to a reduction of greenhouse gases along with a multitude of other sustainability-related measures. The strategy notes that how we produce our energy is going to play a major role in determining how successful the country is in tackling climate change targets, especially GHG emissions.

Section 4.5.2 of the RSES lists the strategy surrounding '*renewable energy and low carbon future*'. The section opens with the following statement:

> *"Energy is needed for economic growth, and access to affordable, reliable energy is an essential development objective. Historically most incremental energy demand has been met through fossil fuels, however in future that energy will have to be low-carbon and ultimately zero-carbon. Decarbonisation can and needs to happen and it is an objective of the NPF that Ireland becomes a Low Carbon Economy by 2050. This reflects the Government's 2014*

National Policy Position on Climate Action and Low Carbon Development and is also a binding EU requirement."

The RSES regards it important that the region sets out its ambitions concerning renewable energy in this context and shows its ability to help contribute to achieving national targets. This will build on the present provision of renewable energy success from sources including hydropower and onshore wind energy infrastructure. The RSES considers the region to have a unique natural endowment of ample carbon-neutral, energy supplies that gives an opportunity of forging and leading the new clean economy of the future. To achieve the noted policies and targets the strategy notes that the following must be encouraged:

- Practices to reduce the production of CO_2;
- Increase in our energy security;
- Increased efficiency in the development of renewable energy production;
- Greater protection of environmentally sensitive areas; and,
- Increase cluster of R&D focused on technological application to renewable energy.

The following regional policy objectives have been included under this section:

- **RPO 4.17**: To position the region to avail of the emerging global market in renewable energy by: [inter alia]
  - stimulating the development and deployment of the most advantageous renewable energy systems" ....
- **RPO 4.18**- Support the development of secure, reliable and safe supplies of renewable energy, to maximise their value, maintain the inward investment, support indigenous industry and create jobs.

3.2.4 Local Planning Policy

3.2.4.1 Proposed Variation to the County Donegal Development Plan 2018-2024 (As Varied) in respect of a Wind Energy Policy Framework

Following a Judicial Review and subsequent High Court Order, on 5th November 2018, certain provisions of the County Donegal Development Plan 2018-2024, being Section 6.5(c) and (f) of the Wind Energy standards at Part B: Appendix 3, Development Guidelines and Technical Standards and Map 8.2.1 as contained in the County Donegal Development Plan 2018-2024 as published, were ordered to be deleted and/or removed from the County Donegal Development Plan 2018-2024.

A proposed variation to the County Donegal Development Plan 2018-2024 (as varied) in respect of a Wind Energy Policy Framework has recently been published, and was open to the public for consultation between Friday the 29th April to Friday the 3rd June 2022.

In the proposed variation, the referenced Wind Energy Map 8.2.1 sets out that the Meenbog site is now largely classified as "Not Normally Permissible" for wind development, however, this subject site was granted planning permission by An Bord Pleanála in 2018 and construction has been ongoing since this grant of permission.

For areas designation of Not Normally Permissible, the proposed variation specifically states:

"... On foot of this determination, and in-line with national guidelines, it follows that most windfarm developments will not normally be permissible ... Notwithstanding, and having regard to previous planning assessments and decisions and the subsequent investment incurred, it is the position of Donegal County Council that a more balanced approach is

required when dealing with windfarm proposals in these areas where, crucially, there is an already existing strong planning history. This refers to the following categories: Existing Windfarms; Developments Under Construction; Developments Where Permissions Have Lapsed But Where Substantial Works Have Been Completed; and Sites With a Live Permission but not yet started. For such sites, it is considered reasonable to allow for the consideration of proposals for the augmentation, upgrade and improvement of such developments in accordance with the details set out in Policy E-P-12 below."

However, it is noted in this proposed variation that under Reference no. 4, in Part A Chapter 8: Natural Resource Development within Section 8.2.1, it is stated:

"*Donegal County Council acknowledges the importance of wind energy as a renewable energy source which can play a vital role in achieving national targets in relation to reductions in fossil fuel dependency and therefore greenhouse gas emissions. The Council's approach to wind energy has been prepared having regard to the draft Wind Energy Development Guidelines, 2019 DHPLG that clearly set out Ireland's objectives to support international obligations relating to climate change and renewable energy to achieve net zero carbon emissions by 2050. Whilst the importance of addressing climate change is at the fore of international and national policy, and the government's commitment to achieving targets as discussed above, there is a commitment to achieve this in a balanced way; the Draft Wind Energy Development Guidelines (2019) states that "the development plan must achieve a reasonable balance between responding to Government Policy on renewable energy and enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development, taking into account the legitimate views of local communities." Map 8.2.1 entitled 'Wind Energy' designates areas considered suitable or unsuitable for new wind energy development in the County. These areas have been identified using a step-by-step sieve mapping analysis as a basis for constructing the map, by carrying out a comprehensive analysis of the environmental sensitivities and the wind energy potential of the County (in accordance with the Draft Wind Energy Development Guidelines 2019) subject to amendments made by resolution of the Council (refer to Section 28 Statement)."*

Despite the fact the Meenbog wind farm site is largely classified as "Not Normally Permissible" in the map forming part of the proposed variation, the text of the proposed variation clearly states that for existing wind farms or projects that are still under construction, it is reasonable to allow for the consideration of proposals for the augmentation, upgrade and improvement of such developments. With respect to the Meenbog project, there is a clear discrepancy between the text/objectives and the map of the proposed variation, and the variation clarifies as follows that in such circumstances the written objectives and policies should take precedence:

In the event of a discrepancy occurring between Map 8.2.1 and the written objectives and policies contained in the Plan, the written text shall be the key material consideration and take precedence over Map 8.2.1."

Policy E-P-12 is proposed to be inserted, which includes that

"It is a policy of the Council that the principle of the acceptability or otherwise of proposed wind farm developments shall be generally determined in accordance with the three areas identified in Map 8.2.1 'Wind Energy' and the specific biodiversity related requirements detailed below:

1. Areas in Map 8.2.1 Wind Energy: ...

(c) Not Normally Permissible ...

(ii) The augmentation, upgrade and improvements of: existing windfarms; windfarm developments under construction; developments where permission has lapsed but substantial works have been completed, or on sites with an extant planning permission will be open to consideration where such proposals shall be generally confined to the planning unit of the existing development."

3.2.5 Summary of Policy Compliance

Since the Meenbog wind farm was granted planning permission in 2018, the policy support for wind and other renewable energy developments, and for decarbonisation and speedy transition away from imported fossil fuels, has been heavily reinforced, as climate change and energy security challenges have become more acute. The Meenbog wind farm remains a project of significant, strategic scale, which will make a significant contribution to Donegal and the Irish state meeting its renewable energy objectives and targets, and assist the state further deliver on its international climate change and energy transition obligations.

4. PROJECT INFORMATION

4.1 Project Timeline and Progress

Construction work commenced on the permitted Meenbog wind farm in November 2019. Most of the civil works, such as access roads, electricity substation, hard stands, turbine bases, peat repositories and borrow pit areas at the wind farm site were substantially completed over the following 12-month period up to November 2020. At present, approximately 90% of the groundworks are completed, comprising of:

- Circa 21km of new and upgraded roadways;
- Ground works relating to 17 of the 19 turbines;
- Borrow pits;
- Substation;
- Drainage and ancillary works for the above;
- Peat storage areas;
- Bridge widening EC5 near complete;
- 14 of 19 concrete turbine foundations poured.

Table 4.1 provides a summary of the status of the main civil works carried out to-date.

The permitted wind farm access roads are substantially complete with the exception of the further widening of the existing road to T18.

Turbine hardstands are similarly substantially complete, except T7, T16 and T18 (approx. 50% complete). Hardstands comprise a suitable mass of crushed stone founded on a competent bearing stratum, such as competent mineral soil or bedrock below the peat.

Of the 19 permitted turbines bases on the site, all have been started with the exception of T7. Of the 18 turbines bases that have been started, all except T2, T16, T18 and T19 have been substantially completed with concrete turbine foundations having already been poured. Turbine bases comprise gravity bases formed of reinforced concrete founded on a competent bearing stratum, such as typically bedrock. T2, T16, T18 and T19 are at various stages of completion ranging from exposure of formation, blinding, steel fixing and shuttering.

The permitted electricity substation is complete, along with associated wind farm control buildings.

The meteorological mast, and other smaller elements of the project have yet to be completed.

Table 4.1 Status of progress of wind farm civil works

Location	Access Road	Hard Stand	Turbine Foundation
T1	Substantially complete	Substantially complete	Poured
T2	Substantially complete	Substantially complete	Steel fixed
T3	Substantially complete	Substantially complete	Poured
T4	Substantially complete	Substantially complete	Poured
T5	Substantially complete	Substantially complete	Poured
T6	Substantially complete	Substantially complete	Poured
T7	Substantially complete	Not started	Not started
T8	Substantially complete	Substantially complete	Poured
T9	Substantially complete	Substantially complete	Poured

Location	Access Road	Hard Stand	Turbine Foundation
T10	Substantially complete	Substantially complete	Poured
T11	Substantially complete	Substantially complete	Poured
T12	Substantially complete	Substantially complete	Poured
T13	Substantially complete	Substantially complete	Poured
T14	Substantially complete	Substantially complete	Poured
T15	Substantially complete	Substantially complete	Poured
T16	Substantially complete	Substantially complete	At formation level; rock
T17	Substantially complete	Substantially complete	Poured
T18	Road upgrade 15% complete	50% complete	Blinded
T19	Substantially complete	Substantially complete	Steel fixed and shuttered
Met mast	Not started	Not started	Not started
Substation	Complete	Complete	Complete

A summary of the remaining permitted civil works to be completed is provided in Table 4.2. The remaining works are generally minor in nature and do not require extensive groundworks, except for the works at T7, T16 and the access road to T18, as mentioned above. Most of the remaining works to be completed involve small elements that are often only completed closer to the delivery of turbine components to site, such as turning heads near turbine hardstands (to allow large delivery vehicles to reverse) or the installation of blade fingers (onto which the turbine blades are placed until they are lifted into position onto the turbine.

Table 4.2 Summary of civil works to be completed

Type and Location of Works
Complete main access road, particularly bends at CH 950, CH 1350, CH 2650, CH 2970
All roads to be capped
Access roads to T6, T12, T15 to be regraded, realigned or otherwise completed
T2, T7, T16 hardstands and base to be excavated and access completed
Turning heads at T1, T2, T3, T4, T5, T16, T19
Bend to be widened or realigned at T17/T19 junction, T9/T13 junction
Stripping of Borrow Pit B
Fencing at peat storage 1 & 2, peat storage SE of substation
Complete access road to T18
Peat storage areas at T15, T17
Complete excavation to T7 turbine base
Blade finders at T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T12, T13, T14, T15, T16, T17, T18, T19
Complete hardstands at T18, T19
Pour turbine bases at T7, T19
Cable ducting (excavating peat) at T12-T5, peat storage area-1, T15, T-Junction - T18
Ducting (floating road) at T3/T1 junction - T1 & T2
Completion of amenity car-park and walkways/cycleways

5. DESCRIPTION OF WORKS SUBJECT TO LEAVE APPLICATION

The works associated with the Meenbog wind farm, which are the subject of this application for leave to apply for substitute consent, are described as follows:

Alterations to the permitted Meenbog wind farm development, including:

- *Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands;*
- *Additional peat storage areas;*
- *Extension or repositioning of previously permitted borrow pit;*
- *Additional borrow pit in place of previously permitted borrow pit at alternative location;*
- *Peat containment berm;*
- *All ancillary works associated with the above, including environmental mitigations measures and water quality (drainage design) protection measures.*

5.1 Alterations to Permitted Development

Following a site visit by DCC in November 2020 subsequent to the 12th November peat failure, Planree was requested to provide 'As Built' drawings of the works completed up to that date. Planree commissioned the 'As Built' survey which identified 21 locations at the site where works could be potentially considered to differ from the permitted development. The drawings, including the identified 21 locations, were submitted to DCC on 18th of December 2020.

In a letter dated 15th January 2021, DCC referenced the 21 potential deviations identified by Planree and in addition, noted a further 19 potential deviations or alterations where the as-built works may have differed from the original planning drawings. The additional 19 potential deviations along with the 21 originally identified by Planree brought the total number of potential deviations under consideration to 40. Planree engaged MKO to prepare an Environmental Report (ER) to consider and assess the effect of all identified deviations, individually and cumulatively.

DCC engaged SLR in 2021 to *"review the ecological risks associated with 45 deviations from the planning consent for the Meenbog Windfarm, County Donegal"*. The 45 deviations considered by SLR, was five more than the 40 identified by Planree and DCC, with the difference in number arising as a result of SLR sub-dividing certain deviations into two (e.g. deviation No. 7 was considered by SLR as 7A and 7B), for the purposes of their assessment. In how SLR's analysis was reported, a total of 47 deviations were considered, again the differential arose as a result of further sub-division of a single item into two separate items. DCC wrote to Planree by letter dated 27th April 2022 (copy of letter included in Appendix 1) and submitted that these deviations should be regularised by means of an application for substitute consent. No direction relative to S.177B issued, and no enforcement action has been taken or threatened by DCC. Despite the fact that Planree consider that none of these deviations are in fact sufficiently material to require substitute consent, this application is made without prejudice to that assertion and in order to adhere to DCC's expressed preference.

The SLR report prepared for DCC is included in Appendix 2 to this report.

For the purposes of this application for leave to apply for substitute consent, of the 47 deviations considered by SLR consulting, Planree is seeking leave to apply for substitute consent for 25 deviations. The other 22 potential deviations considered by SLR do not require substitute consent, as will be detailed in Section 5.3 below.

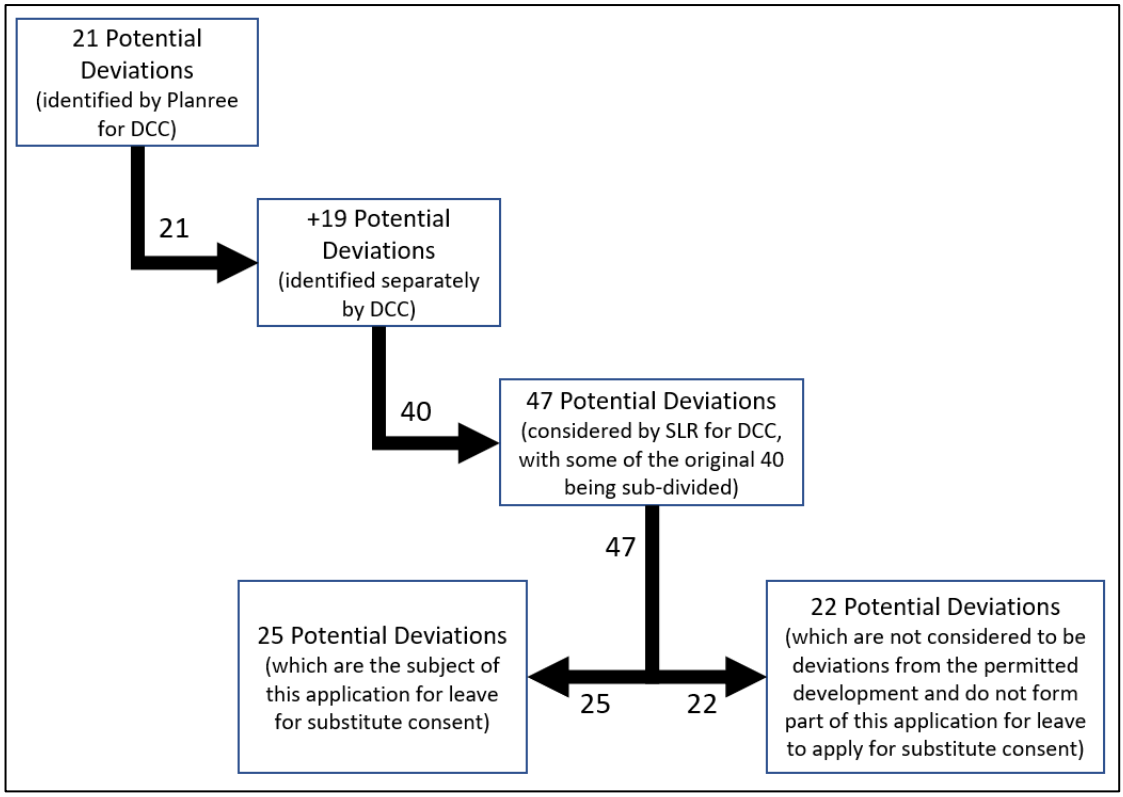


Figure 5.1 Potential deviations identified through thorough, iterative process, resulting in the 25 that are subject to this application for leave to apply for substitute consent

For the avoidance of doubt, in the 20+ months since the 12th November 2020 peat failure at the Meenbog wind farm site, and following investigations by DCC (and SLR on their behalf), EPA (and ARUP on their behalf) and Planree (and FTC and Ionic on their behalf), nothing has emerged to suggest that any deviation from the original permitted development was in any way responsible for the failure event.

5.2 Description of Alterations Forming Part of Application for Leave to apply for Substitute Consent

The Meenbog wind farm development is a large-scale civil engineering project that has been granted consent by the Board having been considered and permitted as a Strategic Infrastructure Development (SID) due to its nature, scale and characteristics. The identified deviations that are the subject of this application for leave to apply for substitute consent, are located within the study area assessed in the EIAR for the permitted Meenbog wind farm project and/or are contiguous with the permitted development footprint. The development as constructed to-date, including the subject 25 deviations, is consistent in terms of the nature, scale, and extent of impacts to the environment as assessed in the EIAR for the permitted Meenbog wind farm, and as assessed in the EIA and AA undertaken by the Board.

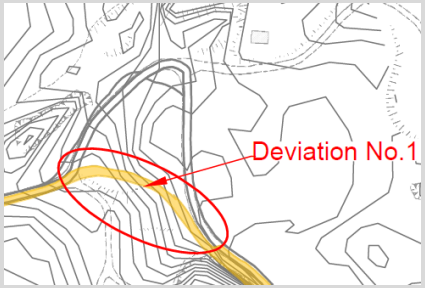
The deviations from the permitted development are mostly minor in scale, occur in similar habitats and locations to the previously assessed and permitted plans, do not change the nature or scale of the development originally permitted, and in addition do not materially alter the environmental impacts associated with it.

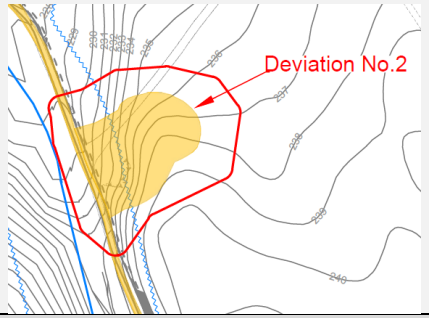
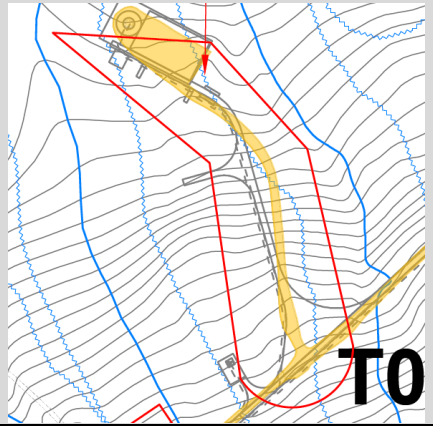
The primary reason for the majority of the subject 25 deviations relates to the need to often make minor deviations to the internal layout of a permitted road network and ancillary infrastructure, in

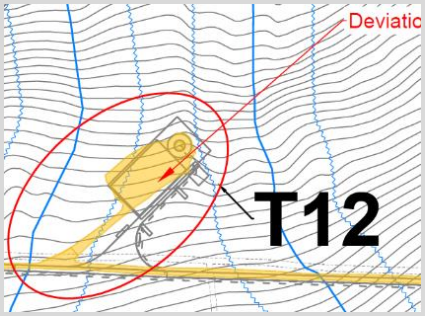
response to actual conditions encountered on the ground, during the construction of such SID wind farm developments. In large-scale strategic infrastructure and civil engineering projects, some minor deviations from planning-stage designs are commonplace due to the greater level of detail required for the preparation of detailed engineering and construction designs prior to construction, or to adapt to ground conditions encountered on-site. The project engineers may make minor modifications in order to ensure the safety and constructability of the development as and when circumstances, unforeseen at planning level, dictate. These circumstances often do not become apparent until construction has commenced. Notwithstanding this, and for the sake of completeness, this application includes any deviation from the permitted development, identified as a result of analysis by Planree, DCC or SLR, that is considered appropriate to include in an application for leave to apply for substitute consent. Again, this position is without prejudice to Planree's belief that substitute consent is not required.

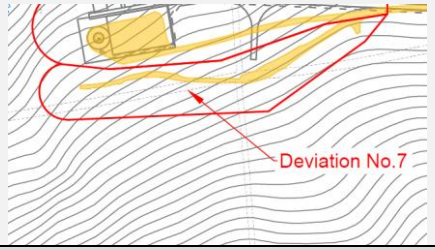
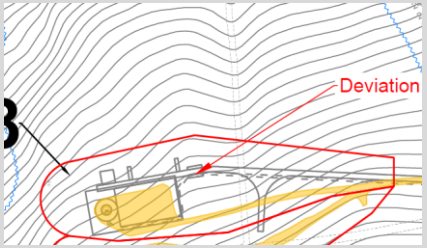
The individual 25 deviations from the permitted development that were identified during the review of the as-built development undertaken by Planree and DCC/SLR, and which form part of this application for leave to apply for substitute consent, are detailed in Table 5.1 below.

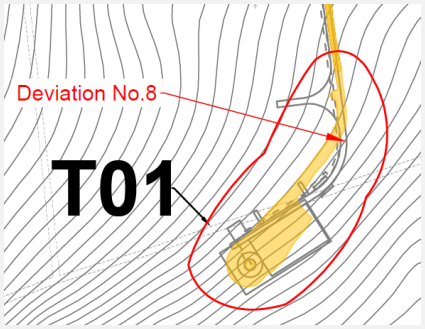
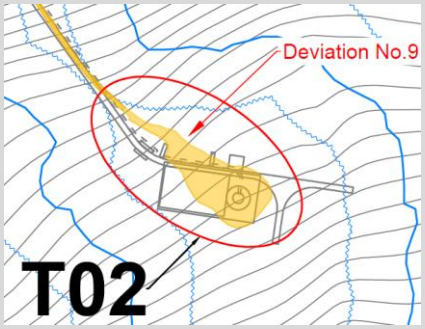
Figure 5.1 Alternations to the permitted development that are subject to the application for leave to apply for substitute consent

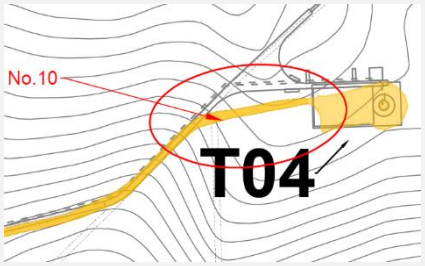
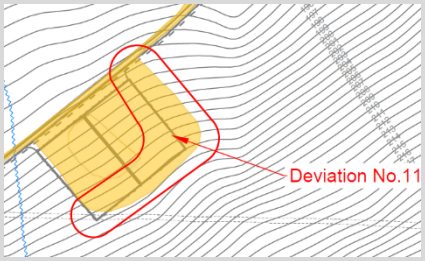
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
1	1	Entrance road off N15 (the hairpin bend)		*"An unconsented element of the development which lies wholly or partially outside the consented footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The existing hairpin bend was unsafe as it did not provide adequate line of sight for vehicles using the road. This was a safety concern that only came to light when prior to construction and after it was established that the as-built route was feasible from a geotechnical perspective with the benefit of site investigations. The as-built alignment would have required a reduced construction footprint compared to the permitted.

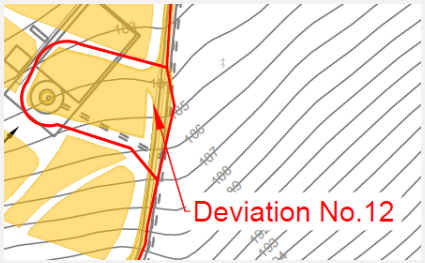
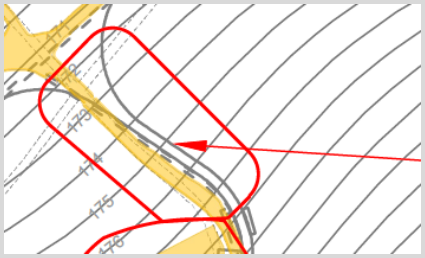
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
2	3	Peat cell southeast of substation		*"An unconsented element of the development which lies wholly or partially outside the consented footprint."*	Additional peat storage areas.	Peat cells were created as part of the engineering plans for excess peat that was generated during the course of construction and required management, greater than the volumes estimated pre-construction.
3	4	T10 access road:		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	Realigned road was adjusted to follow more favourable ground conditions and topography.

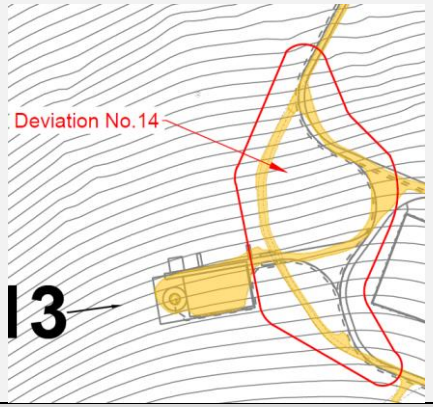
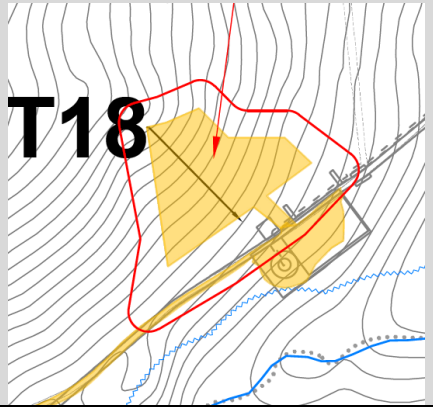
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
4	5	Borrow Pit southwest of T12		*"An unconsented element of the development which lies wholly or partially outside the consented footprint."*	Additional borrow pit (expansion of pre-existing borrow pit) in place of previously permitted borrow pit at alternative location. Additional peat storage areas (making use of the void space created after extraction of rock from borrow pit).	Existing forestry borrow pit was expanded to win stone on-site ahead of gaining access to the wind farm borrow pits. Excavation of the existing forestry borrow pit continued in lieu of excavation at the permitted BP1 borrow pit.
5	6	T12 access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The natural topography on site required a slight realignment of the approach to T12 due to rising ground to the east of the planned road. Moving the road approximately 30 metres to the west negated the need for excessive cut at this location.

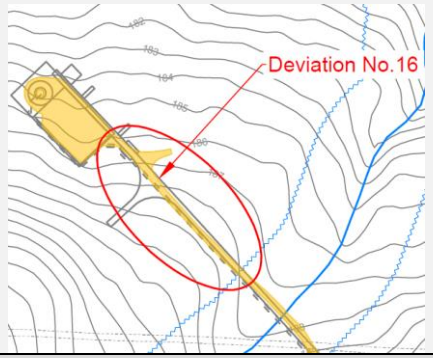
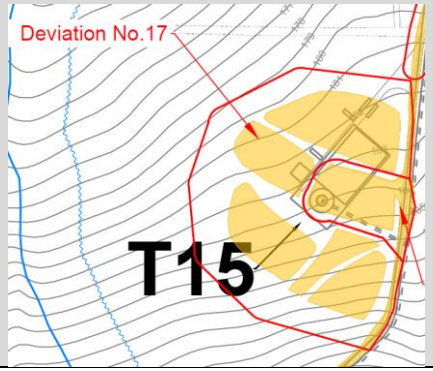
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
6	7a	Peat containment berm near T8		*"An unconsented element of the development which lies wholly or partially outside the consented footprint."*	Peat containment berm.	A berm was constructed to the south of T8 as a peat containment safety measure prior to constructing T8.
7	7b (see 7a further above for peat containment berm)	T8 access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The access road to T8 was amended to approach the southern side of the turbine and align with the berm.

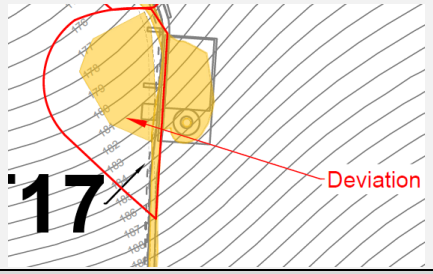
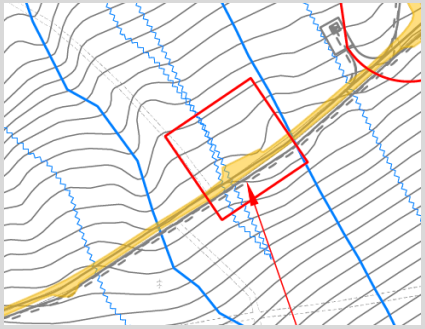
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
8	8	T1 access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The approach to T1 was slightly amended to provide a more effective alignment for delivery vehicles based on detailed design of road alignment pre-construciton.
9	9	T2 access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The approach to T2 was slightly amended to provide a more effective alignment for delivery vehicles based on detailed design of road alignment pre-construciton.

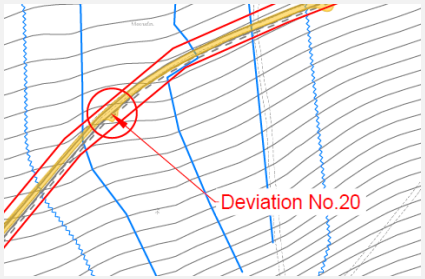
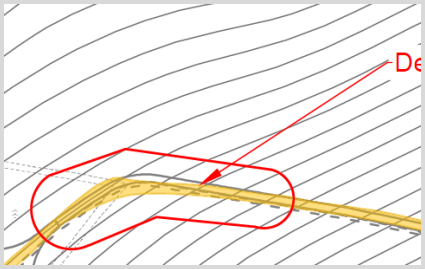
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
10	10	T4 access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The approach to T4 was slightly amended to provide a more effective alignment for delivery vehicles based on detailed design of road alignment pre-construciton.
11	11	Borrow pit (BP2) south of T15		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment with a greater footprint."*	Extension to a permitted borrow pit.	Permitted borrow pit was expanded slightly to win more rock on-site.

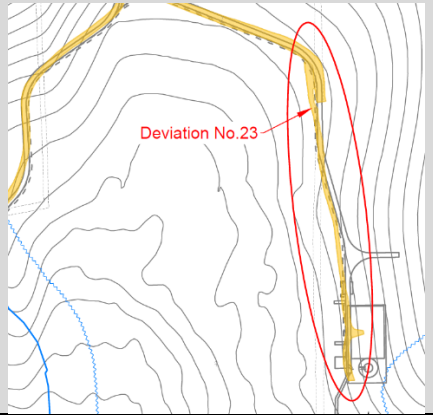
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
12	12	T15 hardstand and access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The natural topography on site facilitated direct access to T15 off the main spine road at this location which negated the need for the proposed road to T15. This was achieved by rotating the hardstand by 90 degrees.
13	13	T17 access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The permitted road followed the route of a pre-existing forestry firebreak, and the as-built road was constructed as intended, along that firebreak. The intent was clear, but a minor difference in alignment arose between the permitted road and as-built road.

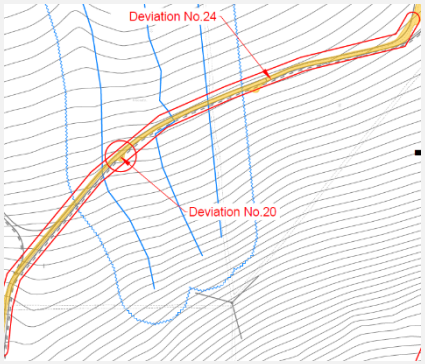
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
14	14	T13 road alignment (upgrade of existing forestry track)		*"An unconsented element of the development which lies wholly or partially outside the consented footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	An existing road alignment was upgraded and used, thus preventing the need for the construction of the section of new permitted road based on detailed design of road alignment pre-construciton.
15	15	Peat cells NW of T18		*"An unconsented element of the development which lies wholly or partially outside the consented footprint."*	Additional peat storage areas (created through the excavation of rock to create peat storage cell)	Peat cells were created as part of the engineering plans for excess peat that was generated during the course of construction and required management, greater than the volumes estimated pre-construction.

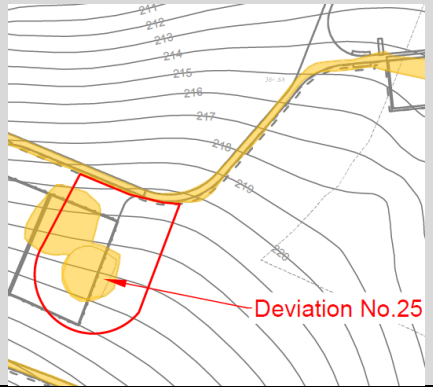
No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
16	17	T14 turning head		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	Position of turning head altered to suit the natural topography on the ground.,
17	18	Peat cells near T15		*"An unconsented element of the development which lies wholly inside the consented footprint."*	Additional peat storage areas.	Peat cells were created as part of the engineering plans for excess peat that was generated during the course of construction and required management, greater than the volumes estimated pre-construction.

No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
18	19	Peat cells near T17		*"An unconsented element of the development which lies wholly inside the consented footprint."*	Additional peat storage areas.	Peat cell was created as part of the engineering plans for excess peat that was generated during the course of construction and required management, greater than the volumes estimated pre-construction..
19	25	Layby south of T10 with welfare facilities		*"An unconsented element of the development which lies wholly or partially outside the consented footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	This was an existing forestry access for harvesting, which was repurposed for locating site office and welfare facilities, which will be removed upon completion of construction.

No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
20	26	Layby northeast of T15		*"A consented element which has been constructed wholly or partially outsdie the consented footprint; a slight relocation or realignment with a greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	Layby in this area installed as a safety measure to allow construction traffic to pass. It is along the original permitted road alignment to T15. Passing bays were included in the planning drawings though actual location on the ground may have varied as conditions dictated.
21	28	T19 access road		*"A consented element which has been constructed wholly or partially outsdie the consented footprint; a slight relocation or realignment with a greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	Slight widening and curve realignment to increase horizontal bend radius for turbine blade delivery.

No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
22	29	T9 access road		*"A consented element which has been constructed wholly or partially outside the consented footprint; a slight relocation or realignment but no greater footprint."*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The permitted road followed the route of a pre-existing forestry track, and the as-built road was constructed as intended, along that forestry track. The intent was clear, but a minor difference in alignment arose between the permitted road and as-built road.
23	32	Additional storage area and access road to T7		*"Not a deviation"*	Alteration to alignment of permitted internal wind farm roads, road junctions, turning heads and or turbine hardstands (at design/construction to account for local topography and ground conditions).	The realigned road served the dual purpose of acting as a peat containment berm following the November 2020 peat failure.

No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
24	37	Roadside berms and settlement ponds		*"An unconsented element of the development which lies wholly or partially **outside** the consented footprint."*	Ancillary works consisting of environmental mitigations measures and water quality (drainage design) protection measures.	Small, low-level roadside berms were used to contain mud within the road corridor surface and prevent run-off into the wind farm drainage system or settlement ponds, check dams and silt fences. Settlement ponds are entirely consistent with the permitted wind farm's drainage design, but wouldn't have been shown on planning drawings and therefore may appear to have been outside the permitted footprint.

No.	Deviation No. as per SLR Report	Deviation Description	Drawing Extract	SLR Report Deviation Type Description	Nature of Alteration	Reason for Alteration
25	40	Assessment of additional excavated borrow pit and peat storage cell at T-13		*"Not a deviation"*	Repositioning of permitted borrow pit. Additional peat storage areas.	Position of permitted borrow pit was repositioned to suit local topography.

5.3 'Deviations' Not Forming Part of Application for Leave to Apply for Substitute Consent

A total of 22 of the potential deviations originally identified by Planree, DCC or considered by SLR on behalf of DCC, do not form part of this application for leave to apply for substitute consent. Every one of these potential deviations has been considered in detail, in terms of whether it should form part of this application for leave to apply for substitute consent, but for the reasons outlined below, it has been concluded that substitute consent is not required. The 22 potential deviations that fall into this category are deemed not to require substitute consent, for one or more of the following reasons.

1. *What has been built on-site is different to what was permitted and shown on the original planning application drawings, only because what has been permitted, has not yet been constructed or completed.*

2. *What has been built on-site is different to what was permitted and shown on the original planning application drawings, only because what has been built now occupies a smaller footprint than what was originally permitted.*

3. *Elements of the permitted development have not been constructed/developed, and will not be constructed/developed, giving rise to a difference between what is on-site and what was permitted and shown on the original planning application drawings.*

4. *Elements of the permitted development were identified as potential deviations, before being confirmed as having formed part of the original planning permission application and having the benefit of planning permission.*

5. *Elements of the development were identified as potential deviations, even though they were temporary construction-related installations, such as storage containers or temporary site offices.*

6. *An identified potential deviation was a pre-existing forestry road, and was not developed as part of the works to the permitted wind farm.*

7. *Some identified potential deviations were emergency works undertaken in the period immediately after the peat failure, which have now been removed or reverted back to the permitted design/layout.*

8. *"Tree movement" was identified as a potential deviation, but would not constitute works or development within the meaning of the Planning and Development Act for which substitute consent may be required.*

9. *Some potential deviations were enhanced water protection measures (as provided for in the EIAR's drainage design) in the form of additional silt ponds, check dams and roadside berms, and therefore integral to the protection of water quality during the construction of the permitted wind farm.*

The individual 22 potential deviations, which were part of the Planree and DCC/SLR consideration, but which do not form part of this application for leave to apply for substitute consent, are detailed in Appendix 3 of this report, together with whichever of the above reason(s) is/are the basis for the conclusion that substitute consent is not required.

6. STATEMENT OF GROUNDS

Section 177D(1) of the Act states that the Board can only grant leave to apply for substitute consent in respect of an application under Section 177C where it is satisfied that an EIA, a determination as to whether an EIA is required or an AA was or is required in respect of a development concerned and where it is further satisfied that exceptional circumstances exist that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

For the purpose of this application, an EIA and AA was required in respect of the subject 19 no. turbine wind farm development which is under construction. The deviations from this granted application, the subject of this application, were not expressly assessed within the respective EIAR and NIS at the time of the application. Therefore, in order to regularise the 25 no. deviations, and ensure that they are fully authorised in a manner consistent with the remainder of the previously permitted wind farm development, leave to apply for substitute consent is sought.

In considering whether 'exceptional circumstances' exist, the Board must have regard to the matters listed at Section 177D(2)(a)-(g), as follows.

a) *whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
b) *whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
c) *whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;*
d) *the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
e) *the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
f) *whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
g) *such other matters as the Board considers relevant.*

It is submitted that the applicant meets the "exceptional circumstances" test on the basis that there was a reasonable belief that the said deviations were authorised in the context of this SID development, and/or that there is no unacceptable impact on the environment either individually or cumulatively in terms of either EIA or AA arising from those deviations.

On the basis of the Environmental Report (ER) of the identified deviations previously prepared by MKO and submitted to DCC to assess whether the deviations materially altered the findings of project's EIAR, it is anticipated that any remedial EIAR and remedial NIS prepared for a substitute consent application (as deemed necessary by the Board) will demonstrate that the identified deviations have not had any significant effects on the environment beyond those already considered in the original EIAR. The identified deviations that are the subject of this application for leave to apply for substitute consent, are located within the study area assessed in the EIAR for the permitted Meenbog wind farm project and/or are contiguous with the permitted development. All works completed on-site, including those resulting in the deviations, adhered to the mitigation measures and methodologies set out in the permitted wind farm's planning permission application documentation in all material respects.

The said deviations are considered to be non-material changes to a SID wind farm development, particularly in the context of the established precedent for the Board considering alterations to infrastructure within SID wind farm development projects as non-material under S.146B of the Act. As a large-scale civil engineering and renewable energy project that has been assigned SID status due to its nature and scale and then granted planning permission by the Board, the 25 deviations are non-material in the context of the scale of the overall project.

Leave to apply for substitute consent is being sought with respect to 25 deviations to the permitted Meenbog wind farm development at the request of DCC. The basis for this contention is that the necessary exceptional circumstances exist, as required under Section 177D(2) of the Act, to allow the Board grant leave to apply for substitute consent, as set out below, using the headings under S.177D(2) aid the Board's consideration of this case.

(a) Whether the regularisation of the development concerned would circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.

The regularisation of the 25 deviations to the already permitted development would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.

An EIA and AA has already been undertaken for the permitted Meenbog wind farm development, supported by the EIAR and NIS that accompanied the planning permission application submitted to the Board, which was subject to public consultation. The development as constructed to-date, including the subject 25 deviations, is consistent in terms of the nature, scale, and extent of potential impacts on the environment as assessed in the EIAR prepared for the permitted Meenbog wind farm, and as assessed in the EIA and AA undertaken by the Board.

The Environmental Report of the identified deviations previously prepared by MKO and submitted to DCC assessed whether the deviations materially altered the findings of the submitted EIAR. The report concluded the identified deviations did not have any significant effects on the environment beyond those already considered in the original EIAR. None of the identified deviations either individually, or cumulatively have resulted in any increase in negative environmental effects on Population and Human Health, Air and Climate, Noise and Vibration, Cultural Heritage, Landscape, or Material Assets. The identified deviations are all contiguous with the original development footprint and are minor in relation to the overall scale of the development. Furthermore, detailed analysis of the identified deviations concludes that the identified deviations have not resulted, either individually or cumulatively, in any increase in negative environmental effects on Biodiversity, Ornithology, Land, Soils and Geology, or Water.

If leave is granted by the Board, a full remedial EIAR and/or remedial NIS will be submitted to the Board (as deemed necessary by the Board) with respect to the 25 deviations to the permitted development, as part of the application for substitute consent, and the preparation of these documents is already underway. As such, the purpose and objectives of the EIA and Habitats Directives will be met by being granted leave to apply for substitute consent, and will not, and have not, been circumvented. This includes the requirement for public participation in the EIA and AA processes, opportunities for which will be available to any person or a planning authority following lodgement of any substitute consent application.

(b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised.

The applicant could reasonably have had a belief that the 25 alternations to the already permitted strategic infrastructure development were not unauthorised.

As is common with large scale wind farm development and other strategic infrastructure projects of this nature, the planning permission application documentation and permission have a degree of built-in flexibility to allow construction activities to be further refined in response to specific on-site conditions that may be encountered. Accordingly, it is common for wind farm projects to be constructed with minor deviations from the original planning drawings that were submitted. However, such deviations should not be considered to represent a material departure from the terms of the consented project, as the full suite of mitigation measures provided within the relevant EIAR, Construction and Environmental Management Plan (CEMP) and as conditioned in the planning permission apply.

There is established precedent in the context of the S.146B process for the Board to be entitled to consider sometimes significant deviations to infrastructure within strategic wind farm development projects as non-material.

Many of the deviations for which leave to apply for substitute consent is being sought, are only evident from a detailed retrospective analysis and comparison of what had been built with what was originally permitted. They are not material. Where, for example, the general alignment of permitted roadways was accurately followed, but the as-built road ended up 1-2 metres offset from the permitted footprint, in the context of a site that measures 990 hectares and includes over 22 kilometres of access road, it is considered reasonable to believe such deviations would not have been considered to be unauthorised development.

Notwithstanding planning opinion provided by MKO to DCC, SLR advising DCC nonetheless considered the identified deviations to require regularisation, and highlighted the substitute consent process as the means by which they could be regularised.

The development as constructed to-date, including the subject 25 deviations from the permitted development, is entirely consistent in nature, scale, and extent to the works originally proposed, assessed (for the purposes of EIA and AA) and permitted as part of the Meenbog wind farm, and therefore the applicant could reasonably have had a belief that the alternations to the already permitted strategic infrastructure development would not been considered unauthorised.

(c) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA or AA and to provide for public participation in such assessment has been substantially impaired.

The ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA or AA and to provide for public participation in such assessment has not been substantially impaired, nor impaired to any degree.

If leave to apply for substitute consent is granted by the Board, a full remedial EIAR and/or remedial NIS will be prepared (as deemed necessary by the Board) with respect to the 25 deviations to the permitted development, and submitted to the Board as part of the application for substitute consent.

The Environmental Report (ER) on the identified deviations previously prepared by MKO and submitted to DCC assessed whether the deviations materially altered the findings of the submitted EIAR. The report concluded the identified deviations did not have any significant effects on the environment beyond those already considered in the original EIAR. The ER concluded that none of the identified deviations either individually, or cumulatively have resulted in any increase in negative environmental effects on Population and Human Health, Air and Climate, Noise and Vibration, Cultural Heritage, Landscape, or Material Assets. The identified deviations are all contiguous with the original development footprint and are minor in relation to the overall scale of the development. Furthermore, detailed analysis of the identified deviations concludes that the identified deviations have not resulted, either individually or cumulatively, in any increase in negative environmental effects on Biodiversity, Ornithology, Land, Soils and Geology, or Water. In anticipation of an application for substitute consent, a remedial EIAR and remedial NIS is already underway which will expand on the

survey, monitoring and assessment work previously undertaken and presented in the ER submitted to DCC, and there is no impediment to the preparation of any such rEIAR or rNIS.

Section 177H of the Act, provides for any person, or a planning authority, making submissions or observations to the Board in relation to an application for substitute consent, including any remedial EIAR and remedial NIS. Any such submissions must be taken into account by the Board, as the competent authority responsible for the preparation of the remedial EIA and remedial AA, thereby ensuring that public participation in such assessment has not been impaired.

(d) The actual or likely significant effects on the environment or adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development.

The Meenbog wind farm development has been previously assessed for the purposes of EIA and AA, and was not deemed likely to have significant effects on the environment or adverse effects on the integrity of a European Site. The works remaining to be completed on the 19-turbine permitted wind development, as set out in Table 4.2 above, are fully permitted, and with 90% of the groundworks already completed, the remaining works mainly comprise of turbine installation and the some final preparatory works required prior to the delivery of turbine components to-site.

No further work is proposed or envisaged as necessary with respect to any of the 25 deviations to the permitted development for which leave to apply for substitute consent is now sought, and therefore, those deviations will not result in any significant effects on the environment or adverse effects on the integrity of a European Site.

In the event that the Board grants leave to apply for substitute consent, a full remedial EIAR and/or remedial NIS will be submitted to the Board (as deemed necessary by the Board) with respect to the 25 deviations to the permitted development, as part of the application for substitute consent, and the preparation of these documents is already underway. These assessments will present a detailed examination, analysis and evaluation of the actual and likely significant effects on the environment and on European sites of the 25 deviations to the permitted Meenbog wind farm development, cumulatively and in-combination with the previously permitted wind farm development.

(e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

The 25 deviations to the permitted development that are the subject of this application for leave to apply for substitute consent, were undertaken as part of a permitted and previously assessed (EIA/AA) SID development. All works, including the 25 deviations, adhered to the mitigation measures and methodologies set out in the permitted wind farm's planning permission application documentation that had been submitted to, and consented by the Board, in every material way.

Therefore, it is not anticipated that any significant effects on the environment, or adverse effects on the integrity of a European site, arising as a result of any of the 25 deviations, will require remediation. However, should any remedial EIAR or remedial NIS identify residual effects that require remediation, it is anticipated that any such effects will be capable of being fully remediated.

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.

The applicant. Planree, with the exception of the 25 deviations to the permitted development to which this application for leave to apply for substitute consent relates, has implemented the permitted wind farm development as constructed to-date, in accordance with the planning permission granted. As a strategic infrastructure development, the Meenbog wind farm is a project of significant scale, consisting of 19 wind turbines with a generating capacity of over 90MW, over 22km of roads (upgraded or new), a

110kV electricity transmission substation. Many of the 25 deviations to the permitted development, only came to light as a result of a forensic analysis of the site undertaken by Planree and DCC, and many similar minor deviations would likely be found on many other large-scale wind farm or strategic infrastructure projects, were a similar detailed retrospective analysis and comparison of as-built and permitted layouts to be undertaken.

The applicant in this case, has complied with all pre-commencement, condition compliance obligations with DCC, and responded promptly and comprehensively to any queries or correspondence received from DCC (and any other agencies) since the commencement of construction on the Meenbog wind farm.

The applicant has not carried out any other unauthorised development, other than that for which leave to apply for substitute consent is now sought and even that is sought on a without prejudice basis at the request of DCC.

(g) Such other matters as the Board considers relevant.

The Board will be aware that a peat slide occurred at the development site in November 2020. Whilst the 25 deviations the subject of this application did not cause that peat slide, and there is no assertion on the part of either DCC or SLR to the contrary and indeed no evidence to that effect, for completeness the detail regarding that peat slide is set out in Section 7, below.

7. PEAT SLIDE AND RESTORATION WORKS

On 12th November 2020, during the construction of a permitted access road to turbine T7, a peat slide or peat failure occurred. The works that were underway at the time in the area where the peat slide occurred, were fully permitted and were being undertaken in line with the project design that had been subject to EIA. Nothing that is the subject of this application for leave to apply for substitute consent contributed to the cause of the peat slide.

7.1 Sequence and Mechanism of Peat Failure

This report sub-section provides a summary of a description of the sequence and mechanism of the peat failure, as presented in a Peat Stability Assessment report prepared by Fehily Timoney & Company (FTC) and submitted to the Environmental Protection Agency.

A floating road was under construction towards T7. Construction works for the floating road had progressed to what was to prove to be the failure location, and preparatory works had started on the remainder of the access track and T7 hardstand with the laying of timbers and brash along the line of the access track to T7. The failure occurred at about 13:25pm whilst the floating road was being constructed, when a localised section of floating road about 20m in length failed.

The loading from the construction of the floating road would have increased the applied stress through the full depth of the underlying peat over the full width of the road. The failure, initially localised beneath the recently loaded area, resulted in the development of a rupture surface and hence a decrease to the residual strength of the peat. This localised area of peat would have continued to fail along the rupture surface.

Once the initial localised failure had occurred below the floating road and the failed peat started to move downslope this removed lateral support to the peat upslope within the flat plateau area. The slope immediately upslope of the initial localised bearing failure would have then subsequently failed. This successive localised failure and movement of peat downslope retrogressed upslope until a critical mass of peat had failed that sufficient lateral stress was applied to cause failure of the intact peat on the downslope side of the floating road. Once a critical mass of peat had failed upslope then the lateral applied stress would have exceeded the shear strength of the intact peat on the downslope side of the floating road. At this point, the peat downslope would have failed progressively.

As the downslope peat progressively failed and moved this caused subsequently more peat to fail within the upper scar. The peat in the margins of the upper scar were significantly weak that they were not self-supporting. As such, the upper scar enlarged as material locally and retrogressively failed by localised sliding then flowing from the side and the upslope margins of the scar into the centre of the scar to form a saucer shape.

Figure 4.1 below outlines the various locations referred to in the above.

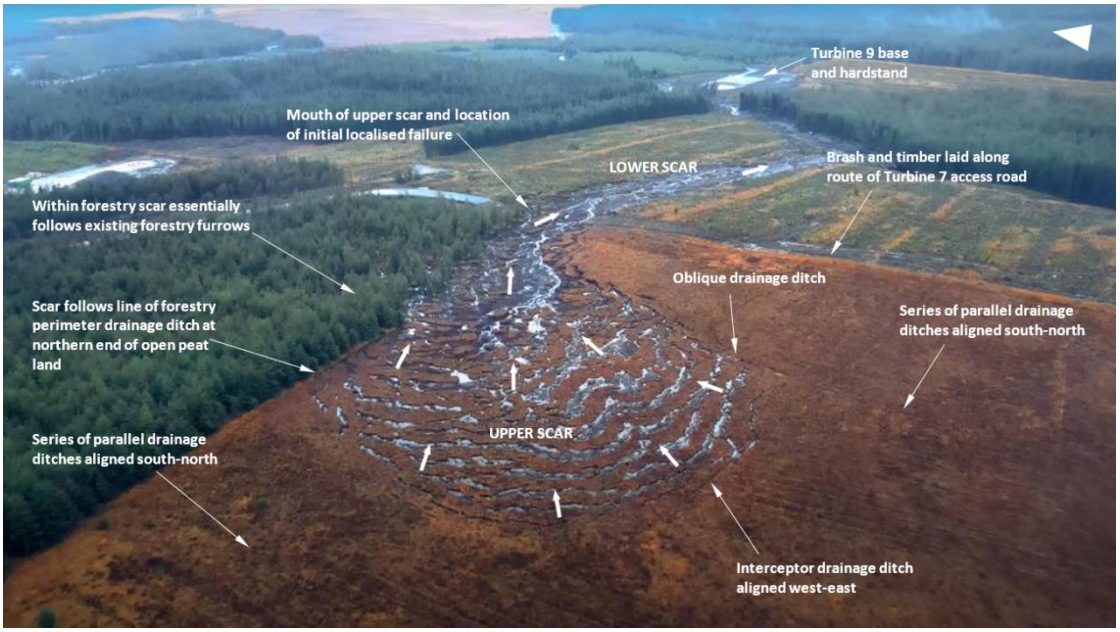


Figure 7.1 Peat failure location

In a Peat Stability Assessment report prepared by FTC and submitted to the Environmental Protection Agency, the volume of peat that moved in the peat slide was quantified to be 86,240m^3, of which 65,740m^3 is estimated to have left the scar areas.

7.2 Contributory Causes of Peat Failure

This report sub-section provides a summary of a description of the contributory causes of the peat failure, as presented in a Peat Stability Assessment report prepared by FTC and submitted to the Environmental Protection Agency. For the peat failure to occur all or at least most of these key contributory factors were required to be present. One or a few of these factors only are highly unlikely to cause the scale of the peat failure that occurred.

1. *Construction of floating road. The construction works for the floating road triggered a localised initial peat failure within the underlying insitu peat. It would not be uncommon for sections of floating road to undergo excessive movement due to localised weakening within the underlying peat, however at this location a number of other contributory factors caused an escalation of the initial localised failure.*

2. *Unforeseen zone of weak peat. It is considered that a zone of unforeseen weaker peat was present below the floating road that resulted in localised failure within the underlying insitu peat. The nearest strength testing showed undrained shear strengths in the range 7 to 12kPa, which would not be considered sufficiently low to result in failure.*

3. *Body of very weak peat immediately upslope. Immediately upslope of the floating road was a flat plateau area that was partly formed of notably saturated and very weak peat. This body of saturated and very weak peat relied for lateral stability on the peat slope upon which the floating road was being constructed. Hand vane results post-failure showed undrained shear strengths in the range 2 to 9kPa, with an average value of slightly less than about 5kPa, significantly lower than the site-wide results and would represent a body of very weak peat.*

4. *Rainfall intensity and pattern. A combination of preceding heavy rainfall and the pattern of weather recorded over the preceding months likely contributed to the failure.*

The failure was not triggered by an intense rainfall event. Whilst there was no clear significant peak rainfall duration period immediately prior to the peat failure, the combination of a significant dry spell (April and May 2020) followed by relatively high daily rainfall amounts (from June 2020 onwards) likely contributed to the peat failure. The significant and sustained dry spell would have caused drying leading to shrinkage and cracking of the near surface acrotelm layer in the peat particularly along forestry furrows and drainage lines. Subsequent run-off from rainfall would have then gained ingress to the peat at depth via the cracking.

5. *Drainage and surface water ingress into peat. The existing forestry drainage pattern, which is present in the 1995 aerial photographs of the site, in the flat plateau area directed surface water from rainfall towards the body of very weak peat that ultimately failed, notably along a series of parallel drainage ditches aligned south-north which run for about 230m and flow towards the southern limit of the upper scar. Whilst these forestry drainage ditches meet an forestry interceptor drainage ditch aligned west-east it is not known if this interceptor ditch was functioning.*

6. *Topography. The initiation of the failure occurred at a convex break in the peat slope, at the location of the floating road. A convex break in slope is commonly cited as the location for peat failures for a number of reasons. In this particular case, the convex break in slope marks the transition from a plateau area upslope containing deeper and very weak and saturated peat compared to downslope where the peat is not as deep and has relatively greater strength. At the convex break in slope it is likely that in many cases there is a zone of relatively higher strength peat, due to a greater degree of drainage, that essentially acts to support the very weak and saturated peak present in the plateau area upslope.*

7. *Downslope felled forestry on peat. The area downslope of the floating road comprised a forestry plantation that had been felled a few years in advance of the wind farm construction. The area comprised forestry furrows and drains aligned downslope on peat slopes with a peat depth of about 1.8m. In itself, this area is not unique nor would it represent an increased stability risk. However the presence of furrows and drains aligned downslope on peat slopes, which have severed the acrotelm layer and the likely blockage of drainage following felling operations allowed the slope to readily fail once localised failure was initiated upslope. The failure through this area exploited the existing forestry furrows which are lines of weakness. Peat failures controlled by existing forestry furrows has been previously recorded many times.*

8. *Existing drainage and extent of failure. The existing forestry drainage within the peat is considered to have directed and concentrated surface run-off to the upper scar located in the flat plateau area. To the south of the upper scar a series of parallel drainage ditches (less than about 1m deep) feed water northwards towards the failure scar. Following the failure, inspection of these ditches showed water feeding into the scar. Whilst not a direct cause of the peat failure the existing drainage ditches and forestry furrows significantly controlled the extent of the upper scar. The extent of the lower scar was essentially controlled by existing forestry furrows aligned downslope in the direction of peat failure movement. Adjacent to the scar the existing forestry furrows have generally acted as tension cracks with the furrows opening up.*

7.3 EPA Investigation

As a result of the November 2020 peat failure on-site, the Environmental Protection Agency (EPA) initiated an investigation in early December 2020, the scope of which included the peat stability assessments carried out in relation to the development at Meenbog, both as part of development consent applications and ones carried out pursuant to the failure incident. The EPA engaged the

services of ARUP Consulting Engineers, to advise and represent the Agency on the geotechnical and peat stability aspects of the investigations.

Over the course of the following ten months, extensive additional site investigation work, geotechnical analysis, site meetings and reporting, was undertaken by both Fehily Timoney and Company and Ionic Consulting on behalf of Planree, and ARUP on behalf of the EPA. By 28th April 2021, the EPA were able to confirm in writing for Planree that:

> *"... the revised Peat Stability Assessment prepared by FTC and submitted to the EPA pursuant to 1 and 2 above addresses the conclusions/recommendations set out in previous EPA correspondence. The issues identified in correspondence from the EPA on the 29th July 2021 have been satisfactorily addressed. Compliance with the EPA Direction from 1st April is now confirmed."*

A copy of the EPA letter dated 28th April 2021 from which the above text is extracted, is included in Appendix 4 to this report.

7.4 Restoration Works Action Plans

Following the 12th November peat failure, on behalf of Planree, MKO immediately commenced the preparation of a detailed programme of environmental protection measures and habitat restoration measures. In a letter dated 17th November 2020, DCC requested an "Action Plan" in the form of a written report detailing measures to:

a) *"eliminate or limit the release of further polluting matter from the area where the landslide occurred, from areas up gradient of the land slide and from areas down gradient of the landslide where material has been deposited*
b) *prevent the catastrophic release of material built up behind the existing improvised impoundment structure on site, (taking into consideration projected rainfall amounts) and,*
c) *mitigate against the further dispersal of peat and sediment, deposited along the banks of the Shruhangarve, by the watercourse through and beyond the confines of the site"*

The first Action Plan (Version 1.0) was submitted to DCC on 3rd December 2020, was approved by DCC on 5th March 2021, and all proposed measures were completed in the subsequent weeks. Three further action plans were submitted to DCC subsequently, with all being approved by DCC prior to the proposed and approved restoration measures being implemented on-site.

Following receipt of the necessary approvals from DCC with respect to the proposals contained within each of the Action Plans, the proposed measures were implemented on-site as expeditiously as possible or at the appropriate time of year where certain measures were seasonally dependent. All measures proposed in the four separate Action Plans and approved by DCC to mitigate the effects of the peat failure through the installation of enhanced environmental protection measures and habitat restoration measures, have now been completed.

8. CONCLUSION

The Meenbog wind farm development is a large-scale civil engineering project that has been granted consent by the Board having been considered and permitted as a Strategic Infrastructure Development (SID) due to its nature, scale and characteristics. The 19-tubine wind farm will be capable of generating approximately 90MW of renewable electricity at peak capacity, placing it in the top five wind farms by generating capacity in the country, out of the 309 wind farms connected to the Irish electricity grid as of 1st March 2022. The project will make a significant contribution towards Ireland's 2030 renewable energy targets and assisting Ireland in meeting its European and international climate change commitments.

The development as constructed to-date, including the subject 25 deviations, is consistent in terms of the nature, scale, and extent of impacts to the environment as assessed in the EIAR for the permitted Meenbog wind farm, and as assessed in the EIA undertaken by the Board. The deviations from the permitted development are mostly minor in scale, occur in similar habitats and locations to the previously assessed and permitted plans, and do not change the nature or scale of the development originally permitted or the environmental impacts associated with it.

The Environmental Report (ER) of the identified deviations previously prepared by MKO and submitted to DCC concluded the identified deviations did not have any significant effects on the environment beyond those already considered in the original EIAR. The ER concluded that none of the identified deviations either individually, or cumulatively have resulted in any increase in negative environmental effects on Population and Human Health, Air and Climate, Noise and Vibration, Cultural Heritage, Landscape, or Material Assets. The identified deviations are all contiguous with the original development footprint and are minor in relation to the overall scale of the development. Furthermore, detailed analysis of the identified deviations concludes that the identified deviations have not resulted, either individually or cumulatively, in any increase in negative environmental effects on Biodiversity, Ornithology, Land, Soils and Geology, or Water.

The primary reason for the majority of the subject 25 deviations relates to the need to often make minor deviations to the internal layout of the permitted road network and ancillary infrastructure in response to actual conditions encountered on the ground during the construction of such developments. In large-scale strategic infrastructure and civil engineering projects, some minor deviations from planning-stage designs are commonplace due to the greater level of detail required for the preparation of detailed engineering and construction designs prior to construction, or to adapt to ground conditions encountered on-site.

Some potential deviations identified by DCC do not form part of this application for leave to apply for substitute consent. Following detailed consideration of those 22 potential deviations, it has been concluded (for the reasons provided in Section 5.3 of this report) that substitute consent is not required.

This report has demonstrated that the necessary exceptional circumstances exist to allow the Board permit the opportunity for regularisation of the development by permitting an application for substitute consent, such that:

- The regularisation of the development concerned would not circumvent the purpose and objectives of the EIA Directive or the Habitats Directive.
- The applicant could reasonably have had a belief that the 25 alternations to the already permitted strategic infrastructure development were not unauthorised.
- The ability to carry out an assessment of the environmental impacts of the development for the purpose of an EIA or AA and to provide for public participation in such assessment, has not been substantially impaired.
- No further work is proposed or envisaged as necessary with respect to any of the 25 deviations to the permitted development for which leave to apply for substitute

consent is now sought, and therefore, those deviations will not result in any significant effects on the environment or adverse effects on the integrity of a European Site.

- Nothing that may form part of a future substitute consent application has had a significant effect on the environment, or adverse effect on the integrity of a European site, which might require remediation.
- With the exception of the 25 deviations to the permitted development, the applicant has implemented the remainder of the permitted wind farm development, entirely in accordance with the planning permission granted. The applicant has not carried out any other unauthorised development. The applicant has also discharged all its pre-commencement, condition compliance obligations with DCC, and responded promptly and comprehensively to any queries or correspondence received from DCC (and any other agencies) since the commencement of construction on the Meenbog wind farm.

The Board may grant leave to apply for substitute consent, where an EIA, a determination as to whether an EIA is required, or an AA, was or is required in respect of the development concerned and where, exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent. This planning report has clearly outlined how and why the required exceptional circumstances exist, and how, given that the 25 deviations to the permitted development were undertaken as part of a development previously assessed for EIA and AA, the necessary requirements are present to allow the Board grant leave to apply for substitute consent.

APPENDIX 1

DCC LETTER

(27TH APRIL 2022)

Comhairle Contae
Dhún na nGall
Donegal County Council

www.ccdhunnangall.ie www.donegalcoco.ie

Our Ref: UD20254

27th April 2022

Planree Limited,
Lissarda Industrial Estate,
Lissarda,
Co. Cork.
P14YN56

and

Mid Cork Electrical Limited,
Lissarda Industrial Estate,
Lissarda,
Co. Cork.
P14YN56

Re: Non-compliance with condition's of SID planning permission granted by An Bord Pleanala under ABP-300460-17 Meenbog Windfarm at Meenbog, Croaghonagh and Cashelnavean, Co. Donegal.

A Chara,

I refer to the abovementioned matter, to ongoing communications and write now to clarify the position on the case.

As per our previous correspondence of 12th October 2021 to A&L Goodbody LLP, the Planning Authority, informed by NPWS's ecological expertise and the totality of all other available evidence at the time concluded its initial position in respect of the significance of 'as constructed' deviations, following examination also of legal opinion from Oisin Collins BL on the 'planning materiality' of same.

This position is essentially that certain deviations may individually and cumulatively have had the potential to give rise to significant risk of adverse impact, that certain deviations did not have the benefit of planning permission, were considered to be potentially 'material' to the permitted development and may need regularisation through the planning process and / or substitute consent process,

At the start of November 2021 the Planning Authority appointed SLR as consultants to provide an ecological assessment of a total of 45 no. deviations to the permitted

windfarm development which had been carried out on site. They were tasked with producing a report assessing: (a) the significance of any / all ecological risks that have arisen from these deviations, (b) whether or not said risks (and associated new and / or modified mitigation measures as implemented on site) have been appropriately considered within the scope of the original application EIAR / AA and (c) conclude whether or not these deviations would individually or cumulatively require separate regularisation through the planning process / substitute consent process,

As you will be aware in mid December 2021 an Appropriate Assessment Screening Report (AASR) was submitted to the Planning Authority by yourselves for consideration. In the interests of seeking a comprehensive report to include all material available the Planning Authority engaged SLR to review and assess this also as part of their deliberations.

Having assessed the submitted AASR and the totality of the other information provided and available, SLR has concluded that 'likely significant effects' cannot be excluded. It has been concluded that approximately one third of the deviations pose medium or higher ecological risk, with approximately half of these posing a higher ecological risk. These were not appropriately considered within the scope of the original EIAR / AA, and the impacts of same cannot definitively be excluded within the AASR provided.

The Planning Authority has also passed the report to the National Parks and Wildlife regional ecologist for comment, the response received concurs with the findings of SLR's report.

As such the only available route to regularisation at this time is through an application to An Bord Pleanála for 'substitute consent' under Part XA of the Planning and Development Act 2000 (as amended).

I trust that this clarifies the position at this time.

Is mise le meas,

pp

Carol Margey
Senior Executive Planner
Planning Enforcement Unit

c.c. Brian Keville, Environmental Director, MKO, Tuam Road, Co. Galway, Ireland, H91 VW84.

APPENDIX 2

SLR REPORT

MEENBOG WINDFARM

Ecological Assessment of Planning Deviations

Prepared for: **Donegal County Council**
Client Ref: Ud20254 DCC:017800000216

SLR Ref: 425.02036.00795/501.00677.00001
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BASIS OF REPORT

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APPENDICES

Appendix 1 Detailed Assessment of Ecological Risks

Appendix 2 Review of AA Screening Report

1.0 Introduction

SLR Consulting Ltd (SLR) was commissioned by Donegal County Council to review the ecological risks associated with 45 deviations from the planning consent for the Meenbog Windfarm, County Donegal.

1.1 Background

The Meenbog Windfarm was given planning permission by An Bord Pleanála (ABP-300460-17) on 19th June 2018. Construction commenced in late 2019/ early 2020 and the enabling works were ongoing with much of the infrastructure (tracks, hardstanding and some of the bases) in place but no turbines on site when a large 'bog burst' event occurred on the site in November 2020. Construction activity then ceased other than emergency works to contain the peat slide and remedial works to restore habitats damaged by the 'bog burst' event. The wind farm proposal was the subject of an Environmental Impact Assessment Report and a Natura Impact Assessment which were submitted with the planning application. Following the event, the construction work in progress was compared to the planning consent and found to differ in up to 45 places, ranging from areas of hard standing not yet constructed, deviations to planned access tracks, the creation of a large borrow pit, and additional peat storage cells.

1.2 Brief Site Description

Meenbog wind farm is located in County Donegal in the townlands of Meenbog and Croaghonagh, approximately 8km southwest of Ballybofey/Stranorlar and approximately 12km northeast of Donegal Town. The wind farm site adjoins County Tyrone and is located approximately 19km west of Castlederg. The land use is commercial forestry (Coillte occupied and managed), with conifer trees planted on blanket bog. Some areas of intact bog are also present. The site is accessed from the N15 road with the main wind farm area lying about 2km east of the road.

1.3 Details of the Proposed Development

The consented wind farm development comprises the construction of a wind farm along with all associated site and access works to include:

- 19 wind turbines, associated foundations and hard standing areas. The turbines will have a generating capacity in excess of 50MW and a blade tip height of 156.5m.
- 1 x permanent c.110m high meteorological mast.
- 1x 110kV electrical sub-station with 2 x control buildings & fencing.
- All associated internal underground cabling.
- 110kV underground grid connection cabling (to Clogher substation).
- Upgrade of access junctions.
- Upgrade existing tracks and roads.
- Provide new site access roads and hardstand areas.
- Excavation of 3 x borrow pits.
- Installation of 2 x temporary construction compounds.
- Provide a new public amenity area (tracks & trails, picnic & play areas, car parking & vehicular access).
- Installation of a site drainage system.

- Forestry felling and replacement planting.
- Permanent signage.
- All associated site developments and ancillary works.
- A 10-year permission with a 30-year operational life.

The consented layout of the wind farm is provided in drawing on drawings in the EIAR, including Figure 9.4, Chapter 9 - Water.

1.4 Purpose of this Report

The scope of works is as follows:

1. Review the following documents:
   - An Bord Pleanála SID documents i.e. Inspector's Report, Order and Direction,
   - Relevant chapters of the EIAR, namely
     - Chapter 4 Project Description,
     - Chapter 6 Flora and Fauna,
     - Chapter 8 Land, Soils and Geology and
     - Chapter 9 Hydrology,
   - Stage 1 AA Screening Report and a Stage 2 Natura Impact Statement (NIS) for the project;
   - Construction Environmental Management Plan and relevant appendices;
   - Council's planning assessment of deviations to date (supported by matrix of deviations, site layout of deviations and deviation descriptions) and
   - Ecological submissions from the developer (these documents are to be treated as private and confidential and the information contained therein is not for dissemination outside of this project).
2. Carry out a joint site inspection with Council staff to examine the deviations and evaluate the ecological risk of each of these, where possible.
3. A report providing an ecological opinion of the 45 no. identified deviations to the permitted windfarm development, excluding those associated with emergency works.

The report should consider the significance of any / all ecological risks that have arisen from these deviations, whether or not said risks (and associated new and / or modified mitigation measures as implemented on site) have been appropriately considered within the scope of the original application EIAR / AA; and conclude whether or not these deviations would individually or cumulatively require separate regularisation through the planning process / substitute consent process.

1.5 Evidence of Technical Competence and Experience

The review team comprises Richard Arnold and Colin Duncan.

Richard Arnold BSc(Hons) MRes MCIEEM CEnv is a Technical Director – Ecology, with responsibilities for a team of ecologists based in Cork, Ireland and a second team based in London. He has 23 years of ecological consultancy experience encompassing the UK and Ireland. His recent work has included assisting An Bord Pleanála on several major development projects, including the Seven Hills Windfarm in Co. Roscommon. Richard is a botanist and habitat specialist with expertise in Annex I habitats and the EIA and AA processes as they are practised in Ireland.

Colin Duncan BSc (Hons) MSc is a Technical Director – Land Quality in SLR's Stirling office. He has over thirty years' experience in environmental consulting and geology. Colin's recent specialist area is Engineering Geological Assessment in the renewables sector. Currently, Colin is working on a number of EIA projects for proposed wind farms, providing both pre and post consent services, in geological and geotechnical services. Colin has worked on over 100 wind farm projects and 15 substation projects from initial site selection to cable routing and site investigation for engineering design purposes, in Scotland, Ireland and Wales and has experience, in infrastructure design, geological assessment, borrow pit assessments, mining related studies and peat slide risk assessments. This includes sites on behalf of RES, SSE Renewables, ScottishPower Renewables, Vattenfall, Ridgewind/Blue Energy, RWE nPower, Falck Renewables, Gamesa, Wind2, ESB, Coriolis and Infinis. He has been involved in engineering and geological assessment of a number of sub-station sites, cabling routes and transmission line routes in Scotland, including site selection, site investigation and outline design. Colin has previously prepared Hearing Statements and presented at Public Inquiry on peat and historic mining, for sites in Scotland, including Harryburn, Arecleoch Dell and in Ireland on Curraghinalt Gold Mine, for peat landslide risk.

1.6 Relevant Legislation

1.6.1 Environmental Impact Assessment

- Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment 1985, as amended in 1997 (Council Directive 97/11/EC), 2003 (2003/35/EC) and 2009 (2009/31/EC), codified in 2011 (2011/92/EU) and amended again in 2014 (2014/52/EU) (the EIA directive).
- European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018, as amended.
- The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 20122017, as amended.

1.6.2 Habitats and Species

- European Union Habitats Directive, (1992). Council Directives 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.
- European Union Birds Directive (2009) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version).
- European Communities (Birds and Natural Habitats) Regulations, 2011, as amended.
- The Conservation (Habitats &c.) Regulations (Northern Ireland) 1995, (as amended).
- Wildlife Act, 1976, as amended.
- Wildlife (Amendment) Act, 2000, 2010, 2012.
- Flora (Protection) Order 2015.
- Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, as amended, together with Commission Implementing Regulation (EU) 2016/1141 and Implementing Regulation (EU) 2019/1262.
- The Heritage Act 2018.

1.6.3 Water

- European Communities (Water policy) Regulations, 2003, as amended.

- European Communities Environmental Objectives (Surface Waters) Regulations 2009.
- The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017, as amended.

1.6.4 Environmental Liabilities

- European Communities (Environmental Liability) Regulations 2008.
- Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009, as amended.

1.6.5 Planning

- Planning and Development Act 2000, as amended, including S.34 (12) and (12C) and Part XAB.

2.0 Document Review

The documents listed in section 1.4 were reviewed prior to the site inspection and were consulted again during the preparation of this report. The review of these documents forms the basis of sections 4, 5 and 6 of this report.

3.0 Site Inspection

A site visit was undertaken on 25th November 2021. It was attended by representatives of Donegal County Council, SLR Consulting and the construction contractor. All 45 of the identified deviations were inspected, as well as the emergency works and other elements of the infrastructure and surrounding land.

4.0 Baseline Conditions

4.1 Designated Sites

There are a number of designated sites in proximity to the windfarm site. These are given in Tables 6.6, 6.7 and 6.8 of Chapter 6 of the EIAR and shown on Figure 6.1. The designated sites include:

- Croaghonagh Bog SAC (000129) and pNHA (000129), adjoins the windfarm site, with its western boundary coinciding with the access track to the windfarm for 0.75km and connected directly to the windfarm site by Mary Breen's Burn, which flows northwards from the wind farm site through the centre of the SAC before joining the Mourne Beg River which, further downstream, is included in the River Finn SAC and, on the NI side of the border, the River Foyle and Tributaries SAC.
- River Finn SAC (002301), 1km North-east of windfarm site and connected by streams, including Mary Breen's Burn (crossed by the access track), Bunadaowen River and the Shruhangarve Stream, all of which flow northwards through the windfarm site to join the Mourne Beg River which, as described above, becomes part of the River Finn/Foyle SAC downstream. Included in this SAC is an area of blanket bog on the west side of the Shruhangarve Stream (see Croagh Bog ASSI).
- River Foyle and Tributaries SAC (UK0030320) and ASSI (ASSI229), adjoins windfarm site and is connected to it by the Glendergan River and its tributaries, which flow directly from the southern part of the wind farm site towards the SAC; the Glendergan River is included in the SAC and ASSI further downstream and the wind farm site is also connected to the River Foyle and Tributaries SAC in the same way as described above for the Croaghonagh Bog SAC and River Finn SAC.
- Lough Eske and Ardnamona Wood SAC (000163) and pNHA (000163), c.4.6km from the windfarm site and connected by surface water flows from the land around the site entrance off the N15 and the first c. 1km of the access track via a tributary of the Lowerymore River and then the Lowerymore River itself, which is included in the Lough Eske and Ardnamona Wood SAC further downstream.
- Cashelnavean Bog NHA (000122), adjacent to the wind farm site on the opposite side of a tributary of the Lowerymore River and mostly on the opposite side of the N15, however there is a small area of the NHA which is immediately adjacent to the windfarm site entrance on the same side of the N15 as the wind farm site.
- Barnesmore Bog Complex NHA (002375), adjoins the windfarm to the south and is effectively part of the same peat mass as the windfarm site, with the NHA and the wind farm site having been a continuous area of blanket bog in the past, before the wind farm site was planted with conifer trees.
- Killeter Forest and Bogs and Lakes ASSI (ASSI357) 550m south, includes part of the same peat bog as the Barnesmore Bog on the Northern Ireland site of the border, with the same connections to the wind farm site as described for the Barnesmore Bog Complex NHA.

- Croagh Bog ASSI (ASSI378) lies 550m east of the windfarm at the base of the valley drained by the Shruhangarve Stream, on the east side of the stream, and adjoins an area of blanket bog to the west side of the Shruhangarve Stream which is included in the River Finn SAC.; these areas of blanket bog lie directly downslope from the wind farm site.

Given the connections described above, all these designated sites are at risk from indirect effects arising from the wind farm during construction and decommissioning, principally through the release of suspended solids and organic material (peat) into watercourses and/or the movement of peat downslope, as has been clearly demonstrated by the bog burst event.

4.2 Habitats and Soils

The habitats present on the windfarm site are listed in Table 6.14 of the EIAR and described in the EIAR p6.22 to p6.31 and mapped in Figure 6.4 of the EIAR. The habitats present include:

- Conifer plantation (WD4) 823.5ha 91.9%, known as Croaghonagh Forest, planted over blanket bog and wet heath in the 20th century. It has been subject to more than one tree harvest, producing the current patchwork of mid-aged and young conifer trees. The vegetation reverts to a degraded wet heath-blanket bog community after tree removal which persists until the canopy closes; therefore, a good deal of the area mapped as conifer plantation could more accurately be considered degraded blanket bog with small conifer trees, as evidenced from aerial photographs and Plate 6.1 in the EIAR. The peat depth ranges from less than 0.5m to 6m, with most of the site having over 0.5m of peat. The forestry areas are capable of restoration to blanket bog (Coillte has been undertaking some restoration works here).
- Upland blanket bog (PB2)/ Wet Heath (HH3) 54.9ha 6.1%, the native vegetation of the wind farm site which is intact in areas which have escaped tree planting, principally on the hill above the Shruhangarve Stream and parts of the hill above Carrickaduff Lough. These are Annex I habitats which, within the wind farm site, are outside any SAC, however adjoining areas are included in the Croaghonagh Bog SAC and the River Finn SAC (alongside the Shruhangarve Stream). Some areas have been subject to peat harvesting (Cutover blanket bog (PB4) 4.6ha 0.5%) and others considered to be purely wet heath (Wet Heath (HH3) 4.2ha 0.4%). The intact bog/wet heath is of high nature conservation value.
- Dystrophic lakes (FL1) 0.5ha 0.05%, Carrickaduff Lough, which is an Annex I habitat (Natural dystrophic lakes and ponds) and is of high nature conservation value.
- Eroding/upland rivers (FW1) 13.3 km, as described for the designated sites, there are several named streams and their tributaries which drain the wind farm site; Mary Breen's Burn, the Bunadaowen River, the Shruhangarve Stream, a tributary of the Lowerymore River and the Glendergan River. As well as connecting the wind farm site to the various designated sites downstream, these are habitats of high nature conservation value in their own right.
- Other habitats including Active quarries and mines (ED4) 1.6ha 0.1%, existing borrow pits, Scrub (WS1) 2.7ha 0.3%, Wet grassland (GS4) 0.7ha 0.1%, Other artificial lakes and ponds (FL8) 0.05ha 0.005%, a pond in one of the old borrow pits.

The upland blanket bog / Wet Heath, Carrickaduff Lough and the streams/rivers are all high value and sensitive habitats which are at risk during the construction and decommissioning of the wind farm. The areas planted with young conifer plantation should not be disregarded as these have elements of the blanket bog/wet heath structure and vegetation and are capable of being restored to blanket bog.

As part of the enabling works, trees have been cleared along all the access roads and for an 84m radius around each of the turbine bases. Following forestry clearance around the turbine bases, *Molinia*, *Juncus* and *Agrostis* have colonised or increased in abundance, creating further areas of grassy wet heath/blanket bog type

vegetation. The same species are also colonising the newly created peat cells within the borrow pits and elsewhere.

4.3 Topography and Hydrology

The windfarm site includes parts of five valleys, which are each drained by one of the five streams/rivers mentioned previously. The head of these valleys is a range of five connected hilltops to the south of the wind farm site, including Barnsmore (451m), Croaghanagh (433m), Cross Hill (350m) and Carrickaduff Hill (329m). Three of the valleys radiate north-eastwards, the fourth eastwards and the fifth lies to the west.

The first valley is drained by Mary Breen's Burn, which flows on to join the Mourne Beg River, which is itself a tributary of the River Derg, itself a tributary of the Mourne River which meets the River Finn at Lifford. Due to this downstream connection, the Mourne Beg River is included in the River Finn SAC (Ireland) and it is also part of the Foyle and its tributaries SAC (Northern Ireland).

The second valley, to the east of the first, is drained by the Bunadaowen River, several tributaries, and a network of small forest drains. The Bunadaowen River also flows northwards to join the Mourne Beg River. Two relatively small peat slides occurred on this eastern flank of Bunadaowen River valley during the construction period, one between turbines T5 and T8, in the direction of T8, and another in proximity to T12 (see Section 5.0 for details of the wind farm layout).

The third valley, to the east of the second, is drained by the Shruhangarve Stream and a tributary. The Shuhangarve Stream also flows northwards to meet with the Mourne Beg River (and therefore the River Finn/Foyle SACs). This is the valley which was affected by the main bog burst event, with peat moving down the valley from the native peat bog/wet heath above Carrickaduff Lough and the location of turbine T7 northwards (away from the Lough) and down the Shruhangarve Stream towards the Mourne Beg and the blanket bog included in the River Finn SAC and Croagh Bog ASSI.

The fourth valley lies to the east of the hills and is drained by the Glendergan River and its tributaries. The Glendergan River and its tributaries drain to the southeast where they also join with the River Derg. The Glendergan River is also included in the Foyle and its tributaries SAC from the point where both banks are within Northern Ireland.

The fifth valley is the Barnesmore Gap, to the west of the hills, which carries a tributary the Lowerymore River, which flows southwards to join the Lowerymore River, which further downstream is included within the Lough Eske and Ardnamona Wood SAC.

4.4 Species

The surveys undertaken to support the EIAR confirmed the presence of protected species, Annex II species and other species of conservation concern within and around the wind farm site. These include:

- Fish species, including brown trout, Atlantic salmon, stone loach and European eel
- Common frog
- Smooth newt
- Ground nesting birds such as meadow pipit, skylark and snipe
- Tree nesting birds such as crossbill, siskin, song thrush, willow warbler and coal tit
- Bats (pipistrelles, *Myotis* and Leisler's)
- Red squirrel
- Pine marten

- Irish hare

Other species were presumed to be present including common lizard, otter and badger.

4.5 Summary of Baseline Conditions

All the valleys which overlap with the windfarm site contain a layer of blanket peat over the bedrock, forming blanket bog which is intact (or restored) in places but mostly degraded by forestry; by both the planting of trees and forestry drains which were installed to facilitate tree growth.

The area has high rainfall which may come in heavy and sustained downpours. Rainfall that washes off the site will eventually reach a section of river designated as an SAC by one of five routes.

The receiving environment is therefore fragile and surrounded by or connected to sites of high nature conservation, many of which are vulnerable to waterborne pollution. These factors mean that any development in this location must be very carefully designed and implemented, with particular attention to surface water management.

5.0 Wind farm layout

The wind farm layout is shown on drawings in the EIAR, including Figure 9.4, Chapter 9 – Water and on Figure 1. The lowest elevation of the turbines is c. 86m ASL and the highest 327m ASL.

Most of the turbines for the proposed windfarm site (13 turbines; T5, T6 and T10 to T17 and T19) are located on the eastern flank of the valley drained by Bunadaowen River, with a further turbine (T18) located on the western flank of the same, towards the valley floor. Two of the remaining turbines (T7 and T9) are on the western flank of the valley drained by the Shruhangarve Stream. The last four turbines (T1 to T4) are in the head of the valley which is drained by the Glendergan River and its tributaries. Most of the infrastructure is within the same valleys as the turbines, however, the access road crosses the valley which is drained by Mary Breen's Burn and the site access off the N15 is on the eastern flanks of the valley carrying the tributary of the Lowerymore River.

Two turbines (T16 and T19) are located in high quality Annex I priority habitat blanket bog, while two (T7 and T6) are within forestry but immediately adjacent to the same type of habitat. The remainder of infrastructure is located in forestry which has been planted on former blanket bog/wet heath. As described above, the trees have been variously cleared and replanted as part of the forestry cycle, resulting in patchwork of mid-aged, closed canopy conifer plantation interspersed with open areas with young trees growing in a degraded wet heath/banket bog type vegetation. Most of the turbines are in the mid-aged conifers while a few are in or overlap with the open areas (these are T1, T3, T9, T10 and T11). The access roads have largely followed the alignment of pre-existing forestry tracks plus extensions of varying lengths to reach each of the turbine bases.

The consented layout includes three borrow pits, an electricity substation and two construction compounds, all in specific locations, as showing on the EIAR drawings.

6.0 Deviations from Planning Consent

There are up to 45 deviations in the planning consent. These are listed in Appendix 1 of this document and shown on maps provided in Appendix 1 of the Environment Report: Meenbog Wind Farm (MKO, 2021) and on Figure 2. The deviations range from elements of the wind farm which have not yet been built to the creation of a 2ha borrow pit which has subsequently been used to store excess peat. It has been agreed that some of the 45 deviations are not now considered to be deviations. A summary of the type of deviation is given in Table 1.

Table 1. Summary of Deviation Types

Category	Description	Deviation
1	An **un**consented element of the development which lies wholly or partially **outside** the consented footprint.	1 (the hairpin bend) 3 (peat cell southeast of substation) 5 (borrow pit south of T12) 7a (a peat containment berm nr. T8) 14 (upgrade of existing forestry track nr. T13) 15 (peat cells nr. T18) 24 (existing T-junction) 25 (existing layby nr T10 for welfare) 37 (settlement ponds) 38a (some peat cells, retaining wall)
2	An **un**consented element which lies wholly **inside** the consented footprint.	18 (peat cells nr. T15) 19 (peat cells nr. T17) 38b (some peat cells, retaining wall) 41 (storage container at T11)
3	A **consented** element which has been constructed wholly or partially **outside** the consented footprint; a slight relocation or realignment **with a greater footprint.**	11 (borrow pit [BP2] south of T15) 26 (layby northeast of T15) 28 (T19 access road)
4	A **consented** element which has been constructed wholly or partially **outside** the consented footprint; a slight relocation or realignment but **no** greater footprint.	4 (T10 access road) 6 (T12 access road) 7b (T8 access road) 8 (T1 access road) 9 (T2 access road) 10 (T4 access road) 12 (T15 access road) 13 (T17 access road)

Category	Description	Deviation
		17 (turning head nr. T14) 29 (T9 access road)
5	A **consented** element which has been built within the consented footprint, not yet finished and will be **expanded later** but still within the consented footprint	21a (some turning heads and junctions) 27 (junction nr. T15) 34 (junction nr. T1) 36 & 39 (T16 access road)
6	A **consented** element which has been built within the consented footprint,but occupying a smaller area and is complete or will **not** be expanded later.	21b (some turning heads and junctions) 31 (T11 junction) 33 (junction nr. T5 & T3) 35 (junction nr. T2)
7	A **consented** element which has not been built but **will be built** later.	16 (the Northern Construction Compound) 23 (T-junction south of sub-station) 30 (T9 turning head)
8	A **consented** element which has not been built and will **not** be built.	2 (the Substation Construction Compound) 42 (borrow pit BP1)
9	Not a deviation.	20 (Walls 1, 2 & 3 peat containment berms) 22 (bridge over the Bunadaowen River) 32 (access road to T7) 40 (borrow pit BP3 nr. T13) 43 (water management at T2) 44 (tree movement at T10/T8 45 (met mast)

Deviations in categories 1 to 3 and, to a lesser extent, 4 (totalling 27 no. identified deviations) require most scrutiny, whereas deviations in all the other categories can generally be deemed acceptable within limits of constructability. There are exceptions; 36 & 39 (T16 access road), 42 (borrow pit BP1) and 44 (tree movement at T10/T8), which may have ecological risks associated with incomplete construction works.

7.0 Potential Ecological Risks

There are two categories of potential ecological risks associated with the deviations from the planning consent. The first is a physical risk, i.e. the deviations from the consent could have resulted in actual ecological harm such as the loss of an area of habitat. The second is a legal and procedural risk in that certain assessments should have been undertaken prior to the works being carried out on the site.

The types of **physical risk** arising from the deviations *potentially* include:

- **Loss of habitat:** Loss of Annex I habitat, potential Annex I habitat or other uncommon habitat as a result of an increased footprint or development in a different place from consented.
- **Loss of flora:** Loss of individuals of protected or uncommon flora present within or near the area affected by deviation. The only detailed botanical data in the EIAR is for T16 and T19, so we have no information about what was present in the areas affected by many of the deviations, other than it being commercial forestry/conifer plantations. The description of conifer plantation in the EIAR is seven lines, with a list of tree species but no description or species lists for the ground flora. Whilst it is likely that there were common species within the areas affected by the deviation, there is no data or evidence to confirm.
- **Loss of fauna:** Loss of individuals or breeding sites of protected or uncommon fauna present within or near the area affected by deviation. Examples could include common frog, smooth newt, common lizard, any breeding bird (ground nesting and tree nesting), red squirrel and pine marten.
- **Disturbance of wildlife:** Disturbance of mammals and birds as a result of construction activity including blasting, felling of trees and other noisy activity, or the presence of construction workers.
- **Water pollution:** Water pollution because of inadequate surface water management at the location of the deviation; the submitted and consented Surface Water Management Plan cannot have taken into account significant deviations from the planning consent leading to a risk that mitigation measures were inadequate, and then a risk of suspended solid and organic matter pollution affecting watercourses with the site and downstream, including areas designated as SAC.
- **Peat movement:** Peat movement in and around areas affected by the deviations, resulting in damaged habitats within and around the area of the deviation. This could include (i) a peat slide above a borrow pit leading to habitat loss above and potentially below borrow pits, (ii) potential failure of peat cell retaining walls at some point in the future leading to downstream impacts on terrestrial and aquatic ecosystems, or over flow from peat cells to the same effect and (iii) general movement of peat around construction activity, noting that the wind farm site adjoins several sites designated for nature conservation because of their peat bog habitats.
- **Invasive Species**: Spread of invasive species should these be present at the location where the deviation from the consented development took place. Spread of invasive plants would have negative effect on native habitats and flora and is legally controlled.

The **legal and procedural risks** *potentially* include:

- **Protected species licences:** Protected species licences may have been required but not obtained because the need for such licences was not identified at the assessment stage.
- **Environmental Impact Assessment:** The starting point of an Environmental Impact Assessment is the description of the project and all subsequent steps in the assessment are based upon the project being implemented as described. Omissions and inaccuracies in the project description, and later variations from it, could therefore undermine the whole of the assessment. including the identification of likely significant effects and their description, and potentially the adequacy of the

mitigation measures, and conclusions on residual impacts. The accurate description of likely significant effects is a legal requirement in EIA.

- **Natura Impact Statement:** The Project description for the NIS may not be accurate This could undermine the assessment of effects in a similar way as for EIA. This time, however, it may undermine the conclusion that was reached on adverse effects on the integrity of Natura 2000 sites and therefore the planning consent.
- **Appropriate Assessment (AA) Screening:** The deviations from the planning consent can be considered as a project in their own right and therefore should have undergone screening for AA and potentially AA, both in combination with the consented wind farm development, prior to any works taking place which were not described in the existing NIS.

These risks were considered for each of the 45 deviations, with the physical risks for each set out in Appendix 1 and the legal and procedural risks considered in Section 9. A summary of the risk assessment in Appendix 1 is provided in Table 2.

Table 2.Summary of Ecological Risks

Category	Description	Deviation
A	Higher ecological risk	1 (the hairpin bend) 3 (peat cell southeast of substation) 5 (borrow pit south of T12) 15 (peat cells nr. T18) 18 (peat cells nr. T15) 19 (peat cells nr. T17) 38a&b (some peat cells, retaining wall)
B	Medium ecological risk	4 (T10 access road) 7b (T8 The access road) 10 (T4 access road) 11 (borrow pit [BP2] south of T15) 25 (existing layby nr T10 for welfare) 36 & 39 (T16 access road) 42 (borrow pit BP1) 44 (tree movement at T10/T8)
C	No material change in ecological risk, or reduced	2 (the Substation Construction Compound) 6 (T12 access road) 8 (T1 access road) 9 (T2 access road) 12 (T15 access road)

Category	Description	Deviation
		13 (T17 access road) 14 (upgrade of existing forestry track nr. T13) 16 (Northern Construction Compound) 17 (turning head nr. T14) 21ab (turning heads and junctions) 23 (T-junction south of sub-station) 24 (existing T-junction) 26 (Layby northeast of T15) 27 (realignment of junction northeast of T15) 28 (T19 access road) 29 (T9 access road) 30 (T9 turning head) 31 (T11 junction) 32 (T7 access road) 33 (junction nr T5 & T3) 34 (Junction nr T1) 35 (junction nr T2) 41 (storage container at T11)
D	Not a deviation	22 (bridge over the Bunadaowen River) 40 (borrow pit BP3 nr. T13) 45 (met mast)
E	Mitigation for ecological risk	20 Walls 1, 2 & 3 peat containment berms 7a (a peat containment berm nr. T8) 37 (settlement ponds) 43 (water management at T2)

(i) deviation 20 has been excluded from ecological assessment and (ii) assessment of deviations 10, 16, 23, 30, 34 and 35 is based on these works having been rectified / completed as consented on site.

8.0 Ecological Clerk of Works Advice

It is understood that an Ecological Clerk of Works was present on site during the construction works. The presence and the advice of the Ecological Clerk of Works is likely to have addressed some of the physical ecological risks associated with the deviations. For example, the Ecological Clerk of Works is likely to have checked for the presence of protected species prior to the clearance of any vegetation and appears to have also advised on additional surface water management actions that are in place alongside some of the deviations.

9.0 Planning considerations

Our brief includes (i) an assessment of whether the ecological risks that have arisen from the deviations have been appropriately considered within the scope of the original application EIAR / AA; and (ii) a conclusion on whether these deviations would individually or cumulatively require separate regularisation through the planning process / substitute consent process.

As set out in Table 1, there are several deviations which fall outside the planning consent and were therefore not specifically described in the EIA/AA. Seven were also judged to have higher ecological risks. These were 1 (the hairpin bend), 3 (peat cell southeast of substation), 5 (borrow pit and peat storage area south of T12), 15 (peat cells nr. T18), 18 (peat cells nr. T15), and 19 (peat cells nr. T17) and 38 (some peat cells, retaining walls), as listed in Table 2. A further eight (or nine) were considered to have medium ecological risk, also as listed in Table 2. Some of these elements of the development may have been assessed generically in the planning documents, however ecological risks are location specific, as are the requirements for mitigation. The deviations listed above may have resulted in significant effects which were not described in the EIAR. For example, the loss of the pond within the existing borrow pit which was expanded, with potential impacts on amphibians. Therefore, our view is that these 16 deviations were not appropriately considered within the scope of the original application EIAR / AA.

There is also potential for the risks associated with those 16 deviations to combine variously with each other. Deviations 5, 15, 18, 19, 42 and 44 all have a potential risk of suspended solid pollution in the Bunadaowen catchment, all except four had a risk of impacts on protected species, and Deviations 1, 3 and 5 all resulted in additional habitat loss.

Therefore, our view is that the deviations require separate regularisation, both individually and cumulatively with each other and the consented development and other mitigation works.

There are two potential routes for regularisation through the planning process. These are (i) to make an application to the local planning authority under Section 34 (12)[1] of the Planning and Development Act 2000, as amended; and (ii) to make an application to An Bord Pleanála for 'substitute consent' under Part XA of the Planning and Development Act 2000, as amended. This is in two stages, firstly an application for leave to apply for substitute consent and secondly the application for substitute consent.

To determine if route (i) applies, the planning authority must first consider the deviations as if they had not been constructed and an application to construct them has been made. In that scenario, the planning authority must consider whether any of the following would have been required (a) an environmental impact assessment, (b) a determination as to whether an environmental impact assessment is required, or (c) an appropriate assessment.

For (a), the deviations would not on their own exceed thresholds for an environmental impact assessment however they are part of a development which does exceed such thresholds and, moreover, sub-threshold development may still require an environmental impact assessment if it is likely to have significant effects on the environment. For (b), a screening assessment (i.e. a determination) for an environmental impact assessment for

[1] as inserted in 2011 by the Planning and Development (Amendment) Act 2010 (30/2010), s. 23(a)(i)-(iii) and (c), S.I. No. 132 of 2011.

sub-threshold development is generally required unless likely significant effects on the environment can be readily excluded. This is therefore a low bar as the trigger for a screening is just the possibility of likely significant effects on the environment. For (c), a Stage 1 AA screening assessment, as set out in the Habitats Directive/Regulations is required to determine if a Stage 2 appropriate assessment is needed. If any of these assessments (a - c) are required then route (i) is closed, leaving only route (ii) substitute consent.

Separately there is a need to comply with the Habitats Directive and Regulation 41 (1) and (2) of the European Communities (Birds and Natural Habitats) Regulations, 2011, as amended. These do not allow for retrospective assessments and therefore the assessment under the Directive/Regulations may need to consider the ongoing existence of the deviations in combination with the consented development.

10.0 AA Screening Report

During the preparation of this report, the wind farm developer submitted an AA screening report which covered the deviations from the planning consent. A detailed review of this document is provided in Appendix 2. The AA screening report confirms that the deviations are not directly connected with or necessary to the management of any Natura 2000 site, which completes Step 1 of the assessment. For the remaining three steps, the AA screening report is not consistent with the latest methodological guidance provided by the EC (EC, 2021) and does not provide sufficient information to enable Donegal County Council reach the conclusion that 'likely significant effects' can be excluded. Therefore, Donegal County Council must either ask for further information or conclude that a Stage 2 appropriate assessment is, or would have been, required.

11.0 Conclusion

Approximately two thirds of the deviations are ecologically benign, posing no greater risk to ecological features than the consented wind farm, and many are covered by the original consent or are a very slight deviation. The remaining third pose some risk with approximately half of these posing a higher ecological risk. The risks encompass suspended solid pollution during construction, peat instability post-construction, loss of features used by protected species, loss of habitat and compromising the ability to restore peat bog habitats. The Natura Impact Statement and Environmental Impact Assessment Report for the consented wind farm should therefore be revisited.

To meet with the tests set out in Section 34 (12) of the Planning and Development Act 2000, as amended, there was a need to assess the c.16 deviations as if they were proposed to be implemented and an application was being made to implement them now. This assessment should determine whether, in that scenario, a Stage 2 Appropriate Assessment would have been required and whether an EIA screening would have been required.

Separately, there is no provision in the Directive or Regulations for retrospective screening of actions already taken. To meet with the requirements of the Directive and Regulations, the AA screening would also have needed to consider the ongoing existence of the deviations in combination with the consented wind farm.

In any event, the project and the legislative basis of the AA screening should have been carefully defined.

The submitted AA screening report does not provide sufficient information upon which to reach the conclusion that 'likely significant effects' can be excluded. Without requesting further information, where 'likely significant effects' cannot be excluded, the conclusion has to be that a Stage 2 appropriate assessment is required. This would also suggest that screening for an environmental impact assessment is also required.

The regularisation of the deviations through the planning process is contingent on the assessed need for AA and EIA screening under S.34 (12). If neither a Stage 2 Appropriate Assessment nor an EIA screening would have been needed, then regularisation could have been sought through the application of S.34 (12) of the Planning and Development Act, 2000 (as amended) through a standard regularisation application lodged with the Planning Authority.

However, as the 16 no. deviations posing a higher ecological risk were not appropriately considered within the scope of the original EIAR / AA, and the submitted opinion on the AA Screening report does not provide sufficient information upon which the planning authority can reach a screening conclusion of no 'likely significant effects', then the remaining route is an application to An Bord Pleanála for 'substitute consent' under Part XA of the Planning and Development Act 2000 (as amended). This is in two stages firstly an application for leave to apply for substitute consent and secondly the application for substitute consent. This would involve the preparation of a remedial Natura impact statement and/or a remedial environmental impact assessment report.

Separately, any negative effects that resulted from the deviations at the time of construction may need to be addressed under other legislation such as the Wildlife Act 1979, as amended, the European Communities (Environmental Liability) Regulations 2008 and the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009, as amended.

12.0 References

EC. (2001). *Assessment of plans and projects significantly affcting Natura 2000 sites: Methodological guidance on the provisons of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.* Luxembourg: European Commission.

EC. (2018). *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC.* Brussels: European Commision.

EC. (2021). *Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC.* Brussels: European Commission.

NPWS. (2010). *Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities.* Dublin: National Parks and Wildife Service .

FIGURE 1

Wind Farm Layout, map extracted from MKO response of 1/03/2020, 'Required Actions List and associated actions map'

Map Legend

- Site Boundary
- Development Footprint
- Turbine Locations
- River/Streams

Actions List

- Open
  0)

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N

Drawing Title
Site Audit Actions Sections

Project Title
Meenbog Wind Farm

Drawn By	Checked By
SC	MW
Project No.	Drawing No.
190501	N/A
Scale	Date
1:15000	18.02.21

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FIGURE 2

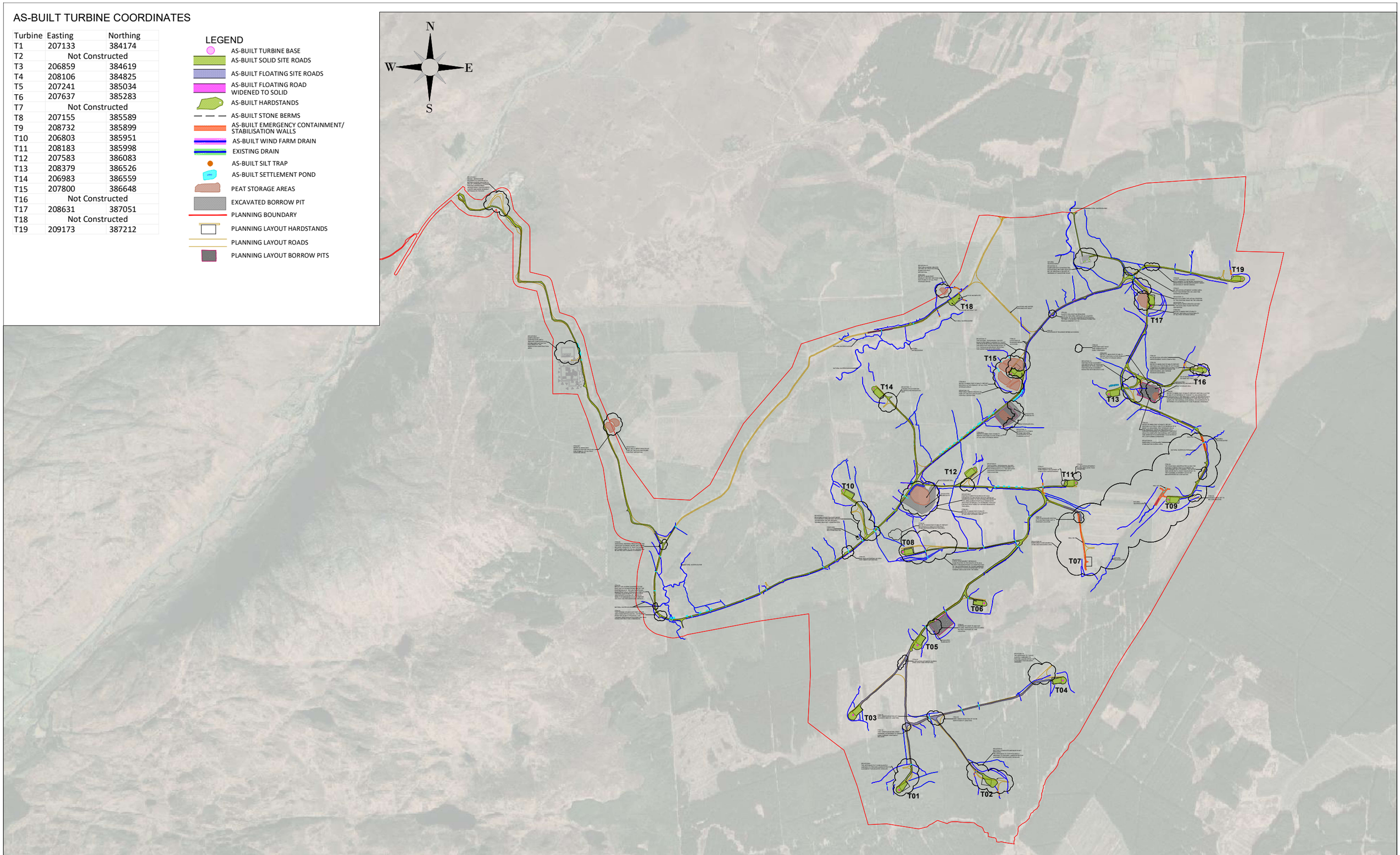
As Constructed Drawings, map extract from MKO Environmental Report, 'Appendix 1 - As constructed drawings'

AS-BUILT TURBINE COORDINATES

Turbine	Easting	Northing
T1	207133	384174
T2	Not Constructed	
T3	206859	384619
T4	208106	384825
T5	207241	385034
T6	207637	385283
T7	Not Constructed	
T8	207155	385589
T9	208732	385899
T10	206803	385951
T11	208183	385998
T12	207583	386083
T13	208379	386526
T14	206983	386559
T15	207800	386648
T16	Not Constructed	
T17	208631	387051
T18	Not Constructed	
T19	209173	387212

LEGEND

- AS-BUILT TURBINE BASE
- AS-BUILT SOLID SITE ROADS
- AS-BUILT FLOATING SITE ROADS
- AS-BUILT FLOATING ROAD WIDENED TO SOLID
- AS-BUILT HARDSTANDS
- AS-BUILT STONE BERMS
- AS-BUILT EMERGENCY CONTAINMENT/ STABILISATION WALLS
- AS-BUILT WIND FARM DRAIN
- EXISTING DRAIN
- AS-BUILT SILT TRAP
- AS-BUILT SETTLEMENT POND
- PEAT STORAGE AREAS
- EXCAVATED BORROW PIT
- PLANNING BOUNDARY
- PLANNING LAYOUT HARDSTANDS
- PLANNING LAYOUT ROADS
- PLANNING LAYOUT BORROW PITS



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NOTES

REV	DATE	DRAWN BY	CHECKED BY	DETAILS
B	11/02/2021	E.A.	C.O.D.	DRAINAGE AND GENERAL AS-BUILT UPDATED
A	18/12/2020	S.O.M.	C.O.D.	FIRST ISSUE

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CLIENT

PROJECT: MEENBOG WIND FARM

TITLE: AS-BUILT LAYOUT OVERVIEW

REVISION: B

DRAWN BY	DATE	PAPER SIZE	SCALE
S.O'MAHONY	15/12/2020	A1	1:10000

CHECKED AND APPROVED	DATE	STATUS	DRAWING NUMBER
C.O'DUBHTHAIGH	15/12/2020	AS-BUILT	MNBG d024.1.0

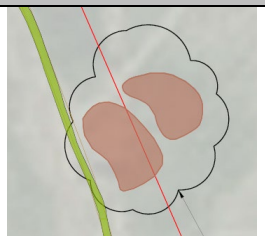
Plotted: - 12/02/2021 12:21:11
Z:\Projects\Ireland\Meenbog\MNBG\Drawings\MNBG 2024 Asbuilts\MNBG D024.1 Asbuilt Layout

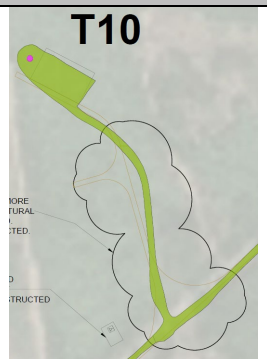
APPENDIX 1

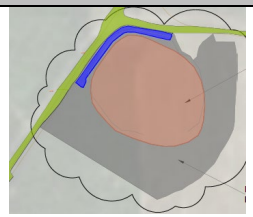
Detailed Assessment of Ecological Risks

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
1	Entrance road off N15: Minimal works were required to construct a bypass access link here in lieu of upgrading the existing hairpin bend access road. This provides a safer and more sensible approach to the site by eliminating a sharp, blind bend in the main entrance road to the site.	Mapped as scrub in EIAR but described as disturbed ground in response. Aerial imagery suggests that disturbed ground is more accurate. Recolonising vegetation is now present alongside the new track. Within 50m of Croaghonagh Bog SAC. In the Lowerymore catchment.	Approximately 60m of new forestry track at approximately 5m wide, so an additional 0.03ha. Standard forestry track construction in appearance.	Loss of scrub(?) habitat, not assessed in EIAR, however, the affected area is small. Loss of species, e.g. breeding birds if at wrong time year, timing unknown, mitigation unknown. Straightened road could create conduit for drainage, dewatering above, flood risk or suspended solid risk below, works c. 200m from tributary of Lowerymore River which becomes (6.3km downstream) part of Lough Eske and Ardnamona Wood SAC, designated for *inter*		

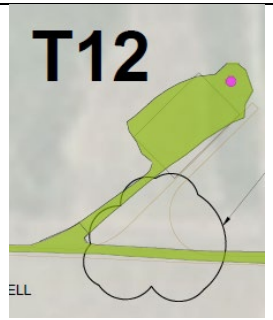
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
				alia FWPM and salmon, timing unknown, mitigation unknown. Risk is low, and possibly averted by N15 drainage system, but this cannot have been assessed pre-consent.		
2	Construction Compound opposite Substation: Compound not constructed and a smaller compound was established within the footprint of the Substation construction area	Mapped as forestry in EIAR for both compound and substation, confirmed by aerial imagery. However compound area is now mainly *Molinia* with scattered conifer trees presumably following earlier removal of trees. 250m from Croaghonagh Bog SAC.	Reduced development footprint as the compound was not built. All ground works and surfacing of the substation are now complete., and the construction compound within the footprint of the substation has been removed.	No material change in ecological risk. Some benefit to biodiversity as the conifer trees have largely been replaced by a wet heath type habitat at the original location of the proposed compound.		

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
3	Peat cell southeast of substation: Peat cells were created as part of the engineering plans for peat deposition. This was however not part of the consented development	Mapped as forestry plantation in EIAR however aerial imagery suggests about 50% open habitat, such as wet heath/disturbed ground and 50% conifer plantation. It is located <50m from watercourse, a tributary of Mary Breen's Burn, in the Mourne Beg River catchment. Croaghonagh Bog SAC is c.750m downstream.	Peat stored in a two peat cells, borrow pit and retaining wall (piled-up rocks and finer material) with 10m depth of peat in the cell. Peat was added up until c. July 2020. Retaining wall adjacent, parallel and above forestry road. Ground then falls away to a watercourse which is a tributary of Mary Breen's Burn, which in turn is a tributary of the Mourne Beg River (c.2.3km downstream to confluence), reaching the SAC boundary c.7.3km downstream. Water filters through the retaining wall and there is also a pipe.	Loss of habitat, mapped as conifer plantation however also some open habitat which could have been (degraded) wet heath and some disturbed ground. Loss of species during site clearance. Risk of suspended solid pollution during construction, mitigation unknown. Risk of pollution event should the retaining wall fail or be over-topped by liquified peat.		

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
4	T10 access road: Realigned road followed more favourable ground and natural topography on the ground. Turning Head not constructed	Forestry plantation, confirmed by aerial imagery. It is in the Bunadaowen catchment.	Adjacent to permitted access road. Road moved to the east a maximum of 10-15m and for a maximum length of 200m. The habitat that would have been affected along the approved alignment and the as built alignment was originally the same. Reduced development footprint and therefore a reduced area of habitat loss.	Additional tree removal required to facilitate access road construction with risk to species such as breeding birds, squirrel and pine marten. However, also some benefit to biodiversity, as conifer trees had already cleared for the turning head and permitted route alignment, resulting in the effective reinstatement of wet heath type habitat which will now not be developed.		

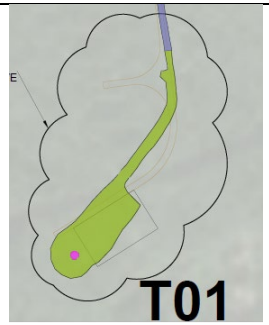
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
5	Borrow Pit south of T12 Existing Forestry Borrow Pit was expanded to win stone on site ahead of gaining access to the designated borrow pits. Area already partially reinstated with peat storage. It is intended to place further peat here to further reinstate this area.	Existing small borrow pit, young plantation, and semi-mature plantation, according to imagery, but simply mapped as conifer plantation in EIAR. The young plantation would have been dominated by *Molinia* etc on peat c.0.5m deep (assessed from exposed peat at cliff tops) so essentially wet heath or blanket bog with small conifer trees. Aerial imagery indicates that this is at least the second crop of trees in this location. The borrow pit is > 50m from watercourse, but still connected	Unconsented use of an existing forestry borrow pit, involving blasting out of rock and expanding the borrow pit to 10 times its original size (was < 0.2ha and is now c.2ha). The resultant pit was then filled with peat to a depth of 20m (with more material than expected due to clearing up after the 'event') held in on the downslope side with a ~2m high retaining wall constructed from rock and finer material. Peat and other soil has been stripped back above the 'quarry face' however vertical peat 'cliffs' are present above. Water discharged from the peat cells via two pipes into the forestry drains which ultimately discharges to	Disturbance of wildlife due to blasting of rock. Loss of 2ha of habitat, comprising the existing borrow pit, a small pond within the borrow pit, some semi-mature conifer plantation and some young conifer plantation/degraded wet heath. The pond in the borrow pit is described as a small artificial pond, see p6-30 of EIAR, with only two plant species recorded however this may reflect a lack of survey effort rather than an impoverished flora.		 

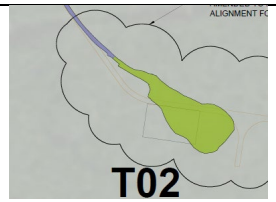
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
		to surface waters via the forestry drains. It is within the Bunadaowen catchment	Bunadaowen River. There was suspended solid pollution mitigation in place. It is adjacent to the permitted development and has increased the development footprint by about 2ha.	Loss of protected animals, frogs and newts may have bred in the pond (both species recorded elsewhere on the site), while the young forestry plantation probably offered suitable habitat for common lizard, a species presumed in the EIAR to be present. The semi-mature forestry may have supported breeding birds, pine marten and red squirrel. Suspended solid pollution of water courses during blasting etc possible, although there is mitigation in place now. About 310m directly to a tributary		

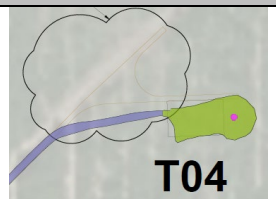
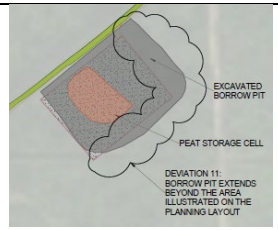
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
				of the Bunadaowen River.		
6	T12 access road: The natural topography on site required a slight realignment of the approach to T12. The road was moved west, and downslope approximately 30 metres. This negated the need for excessive cut at this location.	Forestry plantation, mix of young and semi-mature trees. Area now cleared of trees and recolonising with *Molinia* etc. (or *Molinia* etc. was already present among small conifer trees). Bunadaowen catchment.	Adjacent to permitted access road, reduced development footprint, realignment within area cleared of trees around the turbine location so no or little additional loss of trees or creation of open habitats as a result of the change.	No material change in ecological risk between consented and as built.		

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
7a	T8: A Peat Containment Berm was constructed to the south of T8 as a safety measure prior to constructing T8.	Forestry plantation, adjacent to permitted development Increased development footprint, Bunadaowen catchment	The berm (wall) was constructed in response to a peat slide on the hill above the access road (and below an unused borrow pit, having the effect of halting the peat slide at the position of the wall, or preventing further peat slide beyond its position. The wall is c250m long and 21m wide at the base. Water is carried under the wall by a pipe which discharges into the forestry drains. It could be considered emergency works rather than a deviation. The peat slide happened a few months before the main event, as did another in the vicinity of T12.	Loss of habitat at the position of the wall; semi-mature conifer trees were present prior to the wall being constructed. Loss of species at the position of the wall; potential habitat for red squirrel, pine marten and breeding birds. Prevented further ecological impact below (and above?) the wall by halting the peat slide.		

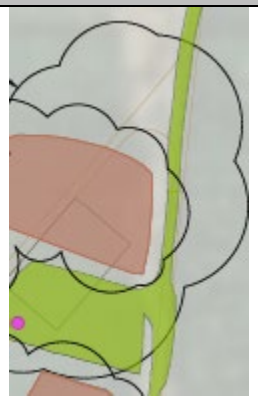
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
7b	T8: The access road to T8 was amended to approach the southern side of the turbine and align with the Containment Berm (see 7a).	Forestry, a mix of semi-mature and small conifer trees, Bunadaowen catchment	Access road to T8 moved to the south of the T8 turbine base rather than joining with the north side, around 250m of access road has been constructed outside the consented footprint about 25m southwards at its furthest. A turning head (small than consented) has also been constructed c.90m east of the consented location.	A small area of semi-mature conifers had already been cleared for the consented alignment; therefore, some additional tree clearance appears to have been needed for the southern alignment. This is potential habitat for red squirrel, pine marten and breeding birds, therefore a slight increase in ecological risk. The overall footprint is about the same as was consented and the retained areas where trees have been removed may provide an ecological benefit. The realignment moves the access road slightly further away from a tributary of	As above	

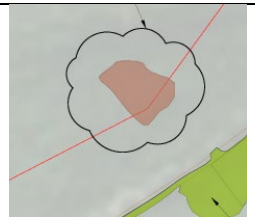
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
				the Bunadaowen River.		
8	T1: The approach to T1 was slightly amended to provide a more effective alignment for delivery vehicles.	Forestry plantation, but recently cleared of trees and now resembling a degraded blanket bog/wet heath with open vegetation. Glendergan catchment, c200m from river.	As built road is adjacent to permitted access road, alignment moved to northwest by c.10m max for c.60m. Reduced development footprint overall. A new Coillte tree felling track has also been constructed or refurbished in this locality, as shown in the aerial images below (first image before, second image after construction). 	No material change in ecological risk. The same type of habitat was affected by the amended route as would have been affected following the consented route.		

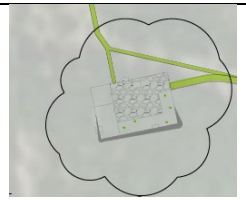
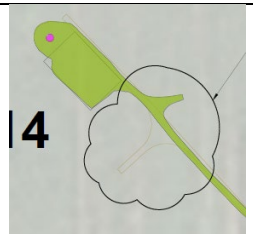
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
						
9 & 43	T2: Not fully complete and base is not installed. The approach to T2 was slightly amended to provide a more effective alignment for delivery vehicles.	Forestry plantation, cleared of trees for bat mitigation around the turbine base, with regenerating wet heath evident. Glendergan catchment c200m from river.	Similar situation as for Ref 8. 'As built; is to northeast of consented by c.10m and for c.60m. No change to development footprint.	No material change in ecological risk.		

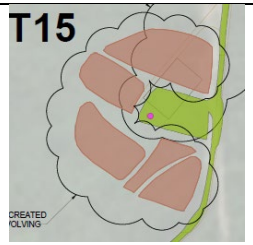
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
10	T4: The approach to T4 was slightly amended to provide a more effective alignment for delivery vehicles.	Forestry plantation, mid-aged trees some of which have now been cleared for bat mitigation. Glendergan catchment	Similar to Refs 8 and 9, with access track moved south by c.10m for c.100m. Reduced development footprint. However, the amended route may be removed and the original alignment constructed at a later date.	Possibly a small amount of additional tree clearance than consented due to realignment. As above, risks for protected species during tree removal and a potential benefit by providing the opportunity for wet heath/bog, which will be compromised but not lost if road is moved 'back' to the consented location.		
11	Borrow Pit [BP2] south of T15: Borrow pit extends beyond the area illustrated on the planning layout.	Forestry plantation, mid-aged conifers, now cleared for the borrow pit and surrounding area. Bunadaowen catchment, c.130m from a tributary of the Bunadaowen River.	The borrow pit is a new borrow pit which is consented but has been expanded further by blasting rock deeper into the hills side, creating a larger borrow pit, steeper cliffs and larger (and deeper?) peat cells. It is said to be <10% larger than consented	Loss of habitat, due to increased footprint of the borrow pit; this was all dense forestry plantation (over peat). Additional disturbance of wildlife due to		

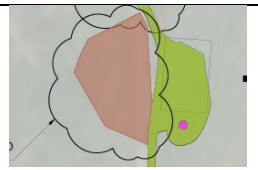
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			size (not verified) and is now c.1ha. Some cells are filled and others not. There is a settlement pond prior to discharge to the forestry drains. The trees, vegetation and soil around the cliffs of the pit have been stripped away and a berm created. The land continues to slope upwards from the borrow pit cliffs, with conifers planted on peat on hill slope.	additional blasting of rock. Loss of species, pine marten, red squirrel and nesting bird risks of loss of breeding or resting habitat. Risk that surface water management plan/ mitigation measures were not adequate due to larger size of borrow pit. Higher peat volumes may exacerbate risks in the event of wall failure or overtopping.		

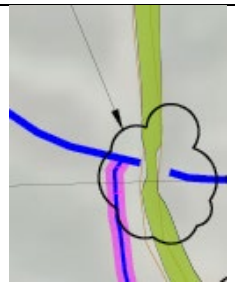
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
12	T15: The natural topography on site facilitated direct access to T15 off the main spine road at this location which negated the need for the proposed road to T15. This was achieved by rotating the hardstand by 90 degrees.	Forestry plantation, mid-aged conifers which have now been cleared for bat mitigation. Bunadaowen catchment.	Approximately 140m of access road not constructed leading to a potential reduction of the development footprint, however much of this area has now been developed as peat cells see Ref 18.	Reduced risk as slightly less vegetation clearance required.		
13	T17 approach road: Road followed the actual position of the existing road on the ground.	Existing forest road and adjoining vegetation, Bunadaowen catchment	It is unclear if trees had already been cleared along the route of the consented alignment before the decision was made to use the existing road.	No material change in ecological risk. Removal of conifers and retention of regenerating vegetation along the consented alignment may have provided an ecological benefit.		

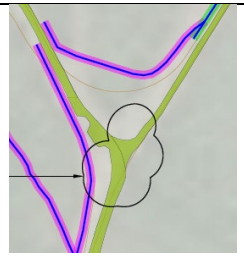
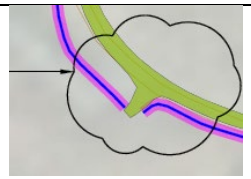
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
14	T13: Existing road alignment utilized in lieu of proposed new road at this location.	Forestry track. The area for the new road was mid-aged conifers but now the trees have been removed, with regenerating wet heath/bog vegetation. Bunadaowen catchment	A c.220m section of existing forest track, the curve to the west , has been upgraded and brought into use while c.80m of consented road has not been constructed.	No material change in ecological risk. Removal of conifers and retention of regenerating vegetation along the consented alignment may have provided an ecological benefit.		
15	T18 peat storage: Peat cells [and a borrow pit] were created as part of the engineering plans for peat deposition	Forestry plantation, was mid-aged conifers, now cleared of trees for bat mitigation around turbine. Bunadaowen catchment, less than 50m from the Bunadaowen stream.	Peat cell and a borrow pit which were not part of the planning consent, has been constructed with no silt curtains and no settlement lagoon.	Risk of suspended solid pollution during construction. Loss of species; common frog, smooth newt and common lizard during site clearance. Reduced area for regenerating wet heath/blanket bog around turbine (although a less natural form may develop on the peat cell).		

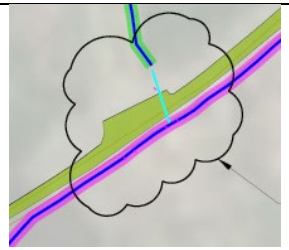
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
				Risk of peat cell wall failure or overtopping with wet peat and reaching Bunadaowen River.		
16	Northern Construction Compound: Compound not constructed - offices and welfare facilities set up centrally on site at widening of main spine road.	*Molinia* dominated vegetation, within the Bunadaowen catchment.	Compound not constructed yet; however it is intended to provide permanent visitor/welfare facilities here, in accordance with the planning consent.	No material change in ecological risk (but see Ref. 25).		No photo.
17	T14: Turning head position altered and reduced in size	Forestry, small trees. Bunadaowen catchment	Standard turning head. Turning head moved to opposite side of track and reduced to about half the length of the consented turning head. Trees already cleared from consented turning head so more trees	No material change in ecological risk. Trees too small to support red squirrel and nesting birds. Risks to other species is the same as consented, or less.		

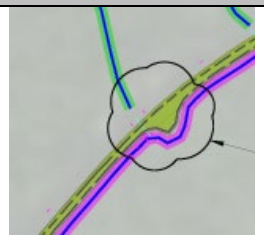
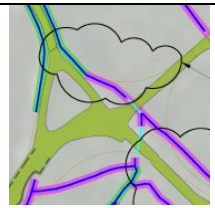
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			removed despite the smaller footprint.			
18	T15 peat storage: Peat cells were created as part of the engineering plans for peat deposition	Forestry plantation, mid-aged conifers now cleared of trees as bat mitigation around the turbine. Bunadaowen catchment, c.250m upslope from a tributary of the Bunadaowen Stream.	Large peat storage cells collectively c2ha. These are within an 84m radius of T15 which had been cleared of trees as bat mitigation, surrounding area suggests mid-aged conifers were present. The removal of trees is therefore included in the consent but not the peat storage cells. There was no evidence of surface water mitigation measures (settlement ponds, silt curtains etc) and no pre-construction designs, just as built	Loss of species (smooth newt, common frog and common lizard) during the ground clearance works prior to construction, although habitat has now been replaced albeit on deeper peat than before. Loss of opportunities to restore natural wet heath/blanket bog around turbine although similar vegetation may develop on the peat cells.		

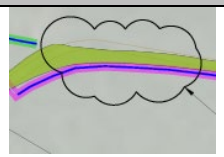
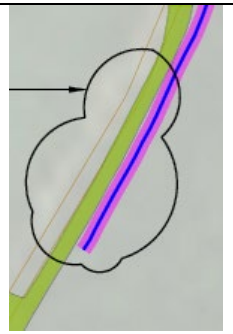
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			drawings. Water discharges to forestry drains and then on to natural watercourses.	Suspended solid pollution during construction, and in the event of an engineering failure or peat liquefying in the cells and overtopping the retaining wall, with knock-on effects for aquatic life potentially as far downstream as the Mourne Beg, designated SAC, where there may be important spawning grounds for salmon, one of the QI species for the SAC.		
19	T17 peat storage: Peat cells were created as part of the engineering plans for peat deposition.	Forestry plantation, Bunadaowen catchment, c.500m upslope form the Bunadaowen River.	Unconsented peat cell, c.0.32ha, constructed with a rock/fines retaining wall within area of forestry cleared of trees for bat mitigation around the turbine base, along the same lines as Ref 18.	As for Ref 18.		

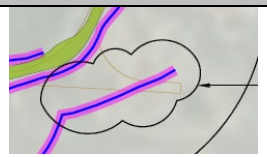
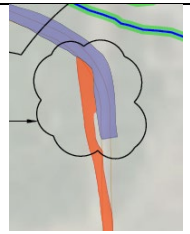
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
20	Walls 1, 2 & 3 peat containment berms: Emergency works – Not assessed in this document.	N/A	N/A	Emergency works which are therefore excluded from the assessment.	N/A	N/A
21	General comment - Turning heads and junctions. Not all turning heads at hardstands constructed. Junctions not constructed to the extents indicated on the planning layout.	N/A	The general effect is to reduce the development footprint.	No material change in ecological risk.	No map, general comment.	N/A
22	Culvert Widening: Full scope and extent of works ongoing to widen of bridge/ river crossing on site southeast of substation.	Bunadaowen catchment	Culvert/bridge widened over the Bunadaowen River which was consented, existing trackway and bridge replaced with a wider structure. It has now been agreed that	N/A		

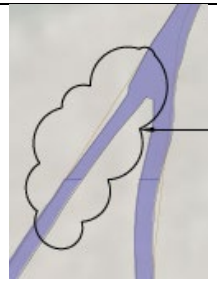
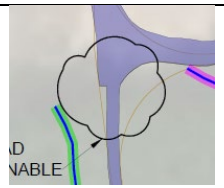
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			this is not a deviation from the consent.			
23	Realignment of T-junction south of sub-station/ compound,	Cleared forestry now supporting a mix of *Juncus* and *Molinia*, Bunadaowen catchment	Full route not constructed yet, with the alignment shown by the blue markers in the photograph.	No material change in ecological risk.		
24	Turning head south of T-junction. This turning head is not part of the wind farm works and will be removed from the as-built provided. This turning head was in place before wind farm	Existing trackway.	The turning head was existing and has simply been re-surfaced and other minor upgrades. It is not part of the windfarm development.	No material change in ecological risk.		

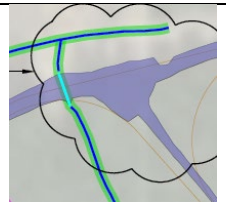
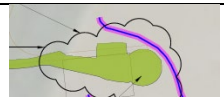
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
	construction commenced.					
25	Layby with containers stored and welfare services southwest of T10	Existing layby and adjoining vegetation, Bunadaowen catchment, c.70m upslope from a tributary of the Bunadaowen River.	Small layby which was made bigger and resurfaced, used for welfare, drains into forestry drains. No plumbing, with facilities serviced once per week. This welfare should have been provided at the Northern Construction Compound (see Ref. 16).	Slight risk of water pollution associated with chemicals which may have been used and stored here, similar risk associated with leaks of fluids from vehicles. Forest drains would carry any pollution directly to natural watercourses, with a forest drain directly draining the layby area. No evidence of mitigation.		

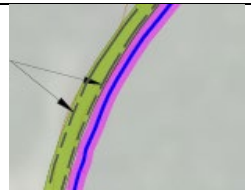
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
26	Layby northeast of T15. Layby in this area installed as a safety measure to allow construction traffic to pass. It is along the original permitted road alignment to T15. Passing bays were included in the planning drawings though actual location on the ground may have varied as conditions dictated.	Forestry plantation, mid-aged trees. Bunadaowen catchment	Small layby/passing bay. This may be a changed location rather than an additional layby; the original location is not clear.	No material change in ecological risk assuming consented layby in equivalent habitat.		No photo
27	Realignment of junction northeast of T15, less than permitted	Existing track and forestry plantation, mid-aged trees. Bunadaowen catchment	Trees already removed to create a larger junction. Whilst junction is currently less than permitted it may be expanded at a later date to somewhere between current and consented extent.	No material change to ecological risk.		 Retained vegetation.

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
28	Realignment of road leading to T19 and revised hard standing base. Slight widening and curve realignment to increase horizontal bend radius for blade delivery. Minor deviation at hardstanding.	Existing track and forestry plantation, mid-aged trees. Bunadaowen catchment	The road alignment has been altered slightly. The hard standing base for the turbine is incomplete and to be completed.	No material change to ecological risk.		
29	Alteration on road leading to T9, the road was constructed along the existing forest track alignment, in accordance with planning. The intent was clear, but a slight inaccuracy in the planning alignment could be misinterpreted as a deviation.	Existing track and forestry plantation, mid-aged trees. Shruhangarve catchment, less than 50m from the Shruhangarve stream.	The road was built to the slightly to the east of the consented alignment however the 'as built' road was apparently on the alignment of the existing forest track.	No material change to ecological risk. Possible improvement if the consented track was not exactly aligned with the existing forest track.		

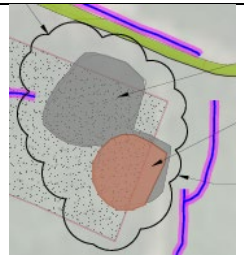
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
30	No turning head at T9, as project is incomplete	Existing track and forestry plantation, mid-aged trees. Shruhangarve catchment	Standard turning head which has not been constructed; however, it is intended to do so should the project progress.	No material change in ecological risk.		No photo
31	Realignment of junction at T11, within planning footprint.	Existing track and forestry plantation, mid-aged trees. Deep peat. Bunadaowen catchment	The junction has been built without requiring the full land take allowed in the consent. The as built layout is adequate and there is no need to expand the junction at a later stage.	No material change in ecological risk. Some ecological benefit as trees have been removed and wet heath type habitat has effectively been reinstated.	 NB map indicates a different location, which seems to be an error.	No photo
32	Additional storage area north of wall 3 leading to T7	Existing track and forestry plantation, mid-aged trees. Shruhangarve catchment, less than 50m from Shruhangarve stream.	Rather than being an additional storage area, it is the stub of the original alignment of the track which was truncated after the event, with the new alignment for the track now on top of the wall which was built to arrest further peat	No material change in ecological risk.		 'Storage area' in middle distance beyond raised part of the road.

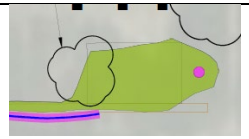
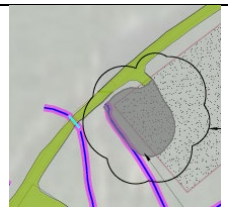
Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			slippage. In effect, it is not a deviation as it is along the alignment of the consented track.			
33	Realignment of junction southwest of T5, leading to T3.	Forestry, young trees, with degraded wet heath/bog vegetation. Bunadaowen catchment	Trackway not built to the full extent permitted, reduced land take.	No material change in ecological risk.		No photo.
34	Realignment of junction north of T1,	Forestry, recently cleared, now supporting degraded wet heath/blanket bog vegetation. Deep peat, Glendergan catchment	The constructed junction is less than consented however it is proposed to enlarge the junction to somewhere between as built and consented. It is a 'floating' road construction, built on a timber base over deep peat. The existing road may be showing signs	No material change in ecological risk.		

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			of movement as it is uneven.			
35	Realignment of junction northwest of T2	*Molinia* and young conifer trees growing on deep peat. Recently cleared of more mature conifer trees and replanted. Glendergan catchment.	Road realigned by 1m to the north side of the T-junction. The constructed junction is less than consented however it is proposed to enlarge the junction to somewhere between as built and consented.	No material change in ecological risk.		
36	Realignment of road leading to T16 and revised hard standing base. Hard standing not completed (40% constructed).	Turning head and track lie within forestry while the turbine base is on bog/wet heath, on deep, spongy peat. Bunadaowen catchment	The turning head has not been constructed and it is not intended to do so. The turbine base is partially constructed; it is intended to complete it. Evidence of collapsing peat at the edges of the	Incomplete construction of turbine base may be resulting in peat instability around it; this is affecting areas within the intended footprint of the turbine.		

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			construction area below newly cut drain around the turbine base location.			
37	Additional low level roadside berms, both side of access road, settlement ponds/silt fencing along roadside and within roadside drains/river courses northeast of T15 and silt fencing in water course west of T16.	Existing track and forestry plantation, mid-aged trees. Bunadaowen catchment	Settlement ponds have been created alongside the forestry tracks.	Potential reduction in ecological risk provided by surface water management provisions and the ponds are a potential enhancement. However, additional habitat may have been lost to facilitate the construction of these features.		No photo.

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
38	Assessment of water management/ runoff and stability of all peat storage cell is required.: Not assessed in this document. See Section 2.3.5 below.	Applies to all peat storage cells	See Refs 3, 5, 15, 18, 19	See Refs 3, 5, 15, 18, 19	See peat cell maps in Refs 3, 5, 15, 18, 19	See peat cell photos in Refs 3, 5, 15, 18, 19
39	Assessment of the overall stability of T16, which is an isolated turbine located outside the cover of adjoining forestry and down gradient of bog slip area is required.: No Deviation from original planning drawings– Not assessed in this document. Stability of T16 is assessed in the Ionic Consulting	As for Ref. 36	Not a deviation from the consented development.	As for Ref. 36	As for Ref. 36	As for Ref. 36

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
	Site Stability Report attached as Appendix 1 to this report.					
40	Assessment of additional excavated borrow pit [BP3] and peat storage cell at T13	Forestry plantation, was mid-aged trees, now cleared to make way for borrow pit. Bunadaowen catchment	A new and consented borrow pit, may not be any bigger which was always intended as a peat cell and therefore the peat cell is also consented. Will be 2 to 3 cells eventually, with one cell now full, a second constructed and half full and the potential third cell still to be constructed. The rock in the base of the cell is fissured and water therefore seeps into the ground. There is water seeping from the cell walls. Not a deviation from the	N/A		

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			consented development.			
41	Assessment of additional storage container at T11.	Forestry plantation, was mid-aged conifer trees, now hard standing. Bunadaowen catchment	An additional storage container was placed on the completed hard standing for T11. No vegetation clearance was undertaken, and the container has now been removed.	No material change in ecological risk.		No photo.
42	Assessment of excavated borrow pit [BP1]and peat storage cell at T5.	Forestry plantation, previously cleared, and now supporting *Molinia* and *Juncus*. Bunadaowen catchment	The borrow pit was not used for stone extraction and the peat storage cell was therefore not created or used. However, trees were removed from the area in anticipation and a peat slide occurred below the cleared area at about the same time	The removal of trees has provided an ecological benefit as it has been replaced by (species poor) wet heath or similar but may also have resulted in a peat slide and therefore damaged adjoining habitats. This is not a construction deviation however		

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
			that the trees were removed.	assurances were provided in the planning application documents that peat slides would not occur and the planning consent was issued on this understanding. The peat slide could therefore be described as a deviation from the planning consent.		
43	Assessment of water management/ control of discharge of flooded base at T2 required.: No Deviation from original planning drawings.	Glendergan catchment	Surface water management measures.	Not a deviation and therefore no material change in ecological risk.		No photo.

Ref	Brief Description (from MKO)	Location/Habitat	Description and notes	Ecological Risks of Deviation	Map Extract	Photo
44	Evidence of tree movement northeast of T10 below T8 where peat movement event occurred in June 2020.: No Deviation from original planning.	Bunadaowen catchment	Tree movement, as a result of peat movement, rather than a constructed deviation from the consented development; however the documents submitted with the planning application gave assurances that such movement would not happen. See Ref 42.	Clear ecological risk if this is indicative of peat movement; association with the wind farm development is unclear and needs to be ascertained.		
45	Planning status of meteorological mast on site: No Deviation from original planning drawings.	Bunadaowen catchment, less than 50m form the Bunadaowen River	Temporary meteorological mast which was dismantled in February 2021.	Not a deviation and therefore no material change in ecological risk.		No photo.

APPENDIX 2

Review of AA Screening Report

General and Background

1. The consultant refers to the Habitats Directive however does not make clear the other statutory provisions with which the assessment is aligned.
2. The intended statutory provisions could be Regulations 42 (1) and 42 (2) of the European Communities (Birds and Natural Habitats) Regulations, 2011, as amended. As set out in these Regulations, the screening assessment should have been completed by the public authority before the occurrence of the deviations which go beyond the original planning consent. The public authorities screening assessment should have been based on information provided to it by the wind farm developer prior to the occurrence of the deviations. The Directive and Regulations do not allow for retrospective assessments. An assessment under this legislation could therefore be based on the ongoing existence of the deviations as 'the project'.
3. Alternatively, the AA screening report may have been submitted pursuant to S.34 (12) of the Planning and Development Act 2000, as inserted in 2011 by the Planning and Development (Amendment) Act 2010 (30/2010), s. 23(a)(i)-(iii) and (c), S.I. No. 132 of 2011. This would be a retrospective assessment based on scenario that the deviations had not yet occurred but were about to be the subject of an application to the planning authority. An assessment under this legislation would include assessment of the construction impacts of the deviations.
4. Both of the two alternatives above are likely to be required and it may be that the AA screening report is seeking to cover both, as in column four of Table 3.1, comment is provided on whether the deviations may result (i.e. ongoing) or have resulted in (i.e. retrospective) direct or indirect impacts on a European site.
5. Given the project's location, the statutory provisions may include those of Northern Ireland, and there may be requirements for cross-border consultation and assessment. There is no evidence of consultation with the prescribed bodies/statutory agencies on either side of the border.
6. The consultant states that the method is based on EC guidance from 2001 (EC, 2001), however, it also lists the most recent guidance available for the screening assessment (EC, 2021) and (EC, 2018). This is an update on the 2001 guidance. The updated version forms the basis of my review of the methodology and it is recommended that the more recent guidance is used by the competent authority in making its assessment.
7. As acknowledged by the consultant, the purpose of the AA screening document is to inform an AA screening to be undertaken by the competent (public) authority. Therefore, I will consider whether there is adequate information in the document to enable such an exercise to be completed by the competent authority. Any conclusion in the AA screening report is simply the opinion of the consultant.
8. Background, Paragraph 4 appears to pre-judge the outcome of the assessment. The document repeats the same assertions throughout that (i) the deviations are minor (many times), (ii) the deviations are commensurate with the consented development (repeated eight times) and (iii) the deviations do not need additional mitigation measures (also repeated eight times), all without providing much supporting evidence. The assessment should be sufficient, objective and scientifically based or evidenced, or in the words of the Regulations '*in view of best scientific knowledge*'.
9. The Appendices include a Peat Stability Report which is nearly 100 pages long and includes detailed technical assessment, suggesting that this work was a necessary part of the AA screening assessment. NPWS/ DEHLG guidance (NPWS, 2010) is that "*if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA)*." However, it is not clear how much the AA screening report relies on the peat stability report.

10. The Peat Stability Report appears to suggest that some mitigation is required to ensure peat stability to the T10 access road; in the peat stability report this mitigation is not directly linked to protection of an SAC but there is at least a potential link. The AA screening report suggests this work will bring the access road back into line with the consented development but does not explain why this is necessary. Moreover, there was some evidence of additional measures on site that are associated with at least one of the deviations (silt curtains and settlement ponds).
11. As this AA screening deals with the already constructed, there should be data from monitoring work undertaken during the construction of the wind farm (to date) which would also therefore encompass the deviations. This data has the potential to demonstrate no LSE during construction but none is provided in the AA screening report (expect an assessment of current peat stability which pertains to ongoing risks, or the lack of them).
12. The AA screening assessment should be related to the original NIS submitted with the original application for the wind farm development, including the influence of the deviation(s) on any 'conditions, restrictions or requirements' that were relied upon in reaching the conclusions within the original NIS. The influence of the current project, i.e. the deviations, on these conditions should be examined, i.e. it should be determined whether the deviations undermine the conclusion within the original NIS.

Step 1: Ascertain whether the project is directly connected with, or necessary to, the management of a Natura 2000 site.

13. The applicant is required to clarify, and the public authority must confirm, if the planned works are 'directly connected with or necessary to the management of the Natura 20000 site. Step 1 is completed in section 1.1 and it makes clear that the project is not directly connected with, or necessary to, the management of a Natura 2000 site. However, the status of the emergency works should be clarified.

Step 2 Description of the plan or project and its impact factors.

14. The site location is described in 2.1 and a description of the deviations is provided in 2.2. The term 'the project' is used throughout to refer to the whole wind farm development however the description in 2.2. pertains to the deviations only. Defining the project for assessment is an important procedural point. It is clear that the author intends that the project is the deviations, collectively and individually, and my review will continue on this basis, noting that the windfarm project excluding deviations has already been subject to an AA screening and was screened in for Appropriate Assessment by An Bord Pleanála, the competent authority making the assessment. It is essential that the project which is being assessed is defined precisely. Treating the deviations, collectively and individually, as the project is an acceptable approach, noting that these will also have to be assessed 'in combination' with other plans or projects, i.e. including the consented wind farm, and the need to assess the project as if the deviations were not constructed yet and their ongoing existence.
15. The deviations are mapped and described over 7 pages. Five deviations, No. 38, 39, 43, 44 and 45 are not assessed. Deviations No. 10, 3, 15, 18 and 19 are given individual descriptions, while the rest are described collectively but grouped in to four categories.
16. The description for deviation 10 is a description of proposed future changes to the approach road to T4. It is unclear but perhaps this work is intended to be included as part of the project subject to AA screening, as well as the existing deviations. This would appear to be an unnecessary complication now however it will need to be considered later.

17. Overall, the description of the deviations as presented in the AA screening report are considered inadequate. For each deviation, expected information would include location, timing, duration, dimensions, materials, topography, any environmental mitigation, distance from the nearest Natura 2000 sites and potential links to such sites (including to their interest features and conservation objectives). The descriptions should be systematic, quantified, and factual, without efforts to diminish their significance. For example, assessing LSE for the changes to the road network requires information on the location of changes (and distance from the Natura 200 sites and their interest features) as well as the changes in the length of the road. And for another example, there is more description provided about the consented borrow pits than the unconsented borrow pit. Some of this information is provided in Appendix 2 however the description of the project, i.e. the deviations, should be provided in the AA screening report for clarity.
18. Two of the unassessed deviations relate to unstable peat, which the consultants say are not deviations from the consented development. I can agree that these not normally be considered a part of project for the purposes of AA screening. However, assurances may have been provided that the peat was stable and the peat would not move in the way described. They are therefore material to the assessment and could be classed as a deviation from the consent.
19. At Step 2, there is no attempt to describe impact factors that may or could potentially have arisen as result of each deviation. If the deviations are the project, potential impact factors should be described for the deviations in their own right and independently of the consented wind farm. The potential impact factors could include site run-off, other water pollution, noise, emissions to air, removal of trees, effects on supporting habitats and populations of species, and peat movement.
20. The impact factors should be related to the European sites, and their qualifying interest features, explaining the potential impact pathways. In this case, potential indirect effects, such as suspended solid pollution, are relevant and matters such as the development footprint, which is mentioned several times in the AA screening report, are much less relevant, since the deviations occurred outside any Natura 2000 site.
21. In summary, Step 2 has not been adequately completed and further information is required to inform an updated assessment.

Step 3: Identify which Natura 2000 sites may be affected by the plan or project

22. Fifteen Natura 2000 sites are identified which lie within 15km of the wind farm site. The use of 15km is standard practice as a starting point for a screening assessment and is appropriate here. The 15km search area is not the same as the Zone of Influence/Impact since this can only be known after an impact assessment is completed. In this case, there is the possibility of effects occurring downstream at greater distances than 15km, although this would normally only be the case if effects are identified closer to the project site.
23. The report provides the name and list of qualifying interest and a link to the conservation objectives. It says that the COs were considered in the assessment however there is no evidence provided to show how. For example, there is no information provided on the conservation condition of the qualifying interest, whether it requires maintenance or restoration, where it occurs in relation to the project site or how any of its specific conservation objectives could be affected without mitigation.
24. An assessment in the fourth column of the table. is provided of potential pathways and effects arising from the deviations on the Natura 2000 sites. However, this is really a set of assertions, more or less copied and pasted from row to row, and provides no evidence of proper consideration of the potential effects of the deviations on the Natura 2000 sites. To exclude an effect and therefore a particular designated site from AA, the evidence needs to be unequivocal, backed up with scientific evidence and

(ideally) obvious without the need for detailed assessment or mitigation. Furthermore, there is no evidence that an understanding of site pressures or threats, which are available on the standard data form, has been applied to the consideration of risks to the conservation objectives arising from the project.

25. The assessment denies the existence of a pathway for impact which was acknowledged in the AA screening report for the wind farm project and does not mention the risk of peat movements, which have obviously occurred on the site and demonstrated the existence of this pathway. The risks from the deviations may be small but they are real and it is important to acknowledge this for the next stage of the assessment. Only sites with no pathway at all can be ruled out prior to the consideration of in combination effects.
26. The conclusion in 3.2 on the sites potentially affected is just an assertion; there is no scientific evidence provided to demonstrate that Likely Significant Effects can be excluded without further assessment and mitigation.
27. Section 3.3 refers to emergency works, which have not been described previously. The works have the potential to constitute part of the 'plan or project' within the scope of the screening and the relationship of the emergency works to the project described here should be clearly set out in earlier sections.
28. In summary, this step is unclear/incomplete and requires the submission of further information. Specifically, the assertions in Table 3.1 of the absence of potential pathways needs further explanation for example it needs to be explained whether there is a potential ground water or surface water connection with an SAC. The relationship of the emergency works with the description of works within this document should also be clarified.

Step 4: Assess whether likely significant effects can be ruled out in view of the site's conservation objectives

29. In combination effects must be considered. In this case, the deviations must be considered in combination with the consented wind farm development (which was previously screened in for AA). This means assessing all the deviations, the consented wind farm and any other relevant plans and projects together. Furthermore, it must include the emergency works undertaken to contain the bog burst and associated remedial works, since these should also be considered a project.
30. In combination effects must be assessed based on all identified pathways, whether these are significant for the project alone or not. There are clearly pathways between the windfarm site which includes the deviations and several Natura 2000 sites.
31. No assessment against the conservation objectives is apparent to determine if LSE can be excluded.
32. In summary, Step 4 is unclear/incomplete and requires the submission of further information or evidence that supports the conclusions derived.

Conclusion

33. The evidence presented in the AA Screening Report is incomplete and insufficient to support the presented conclusions. On that basis it is reasonable to request further information or to conclude either uncertainty or precautionary Likely Significant Effects.

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APPENDIX 3

POTENTIAL DEVIATIONS NOT FORMING PART OF APPLICATION FOR LEAVE TO APPLY FOR SUBSTITUTE CONSENT

*Potential deviations to the permitted development that **are not** subject to the application for leave to apply for substitute consent*

Deviation No. as per SLR Report	Deviation Description	SLR Report Deviation Description	Justification for Not Including in Application for Leave to Apply for Substitute Consent (numbered points reference numbers as per Section 5.3 of Planning Report)
2	Substation construction compound	*"A **consented** element which has not been built and will **not** be built."*	3. This element of the permitted development has not been developed, and will not be developed. A substation construction compound was originally proposed and permitted, but was not necessary and therefore not developed. The permitted and development substation footprint was sufficient to act as a construction compound.
16	Northern Construction Compound	*"A **consented** element which has not been built but will be built later."*	1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 of Planning Report. It was possible to progress the work on the permitted wind farm without the need for this northern construction compound, and therefore it was not developed. Some or all of the remaining permitted works remain to be completed to complete the amenity car park.
20	Walls 1, 2 and 3 peat containment berms	*"Not a deviation"*	7. The "walls" used to contain peat from the November 2020 peat failure have either now been removed or already take the form of permitted wind farm roads.
21a	Turning heads and junctions	*"A **consented** element which has been built within the consented footprint, not yet finished and will be expanded later but still within the consented footprint."*	1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above. Some or all of the remaining permitted works remain to be completed.
21b	Turning heads and junctions	*"A **consented** element which has been built within the consented footprint, but occupying a smaller area and is*	2. These elements of the development are fully permitted, but as-built, now occupy a smaller footprint than was originally permitted.

Deviation No. as per SLR Report	Deviation Description	SLR Report Deviation Description	Justification for Not Including in Application for Leave to Apply for Substitute Consent (numbered points reference numbers as per Section 5.3 of Planning Report)
		*complete or **will not** be expanded later."*	The detailed geometric design developed for the permitted wind farm post-planning and pre-construction determined that smaller junctions or turning heads than were originally permitted would suffice, to accommodate the turbine components that were finally selected for installation.
22	Full scope and extent of works ongoing to widen of bridge/ river crossing on site southeast of substation.	*"Not a deviation"*	4. This elements of the development were identified as potential deviations, before being confirmed as having formed part of the original planning permission application and having the benefit of planning permission. The upgrade of this water crossing via was provided for in the permitted development's planning permission application.
23	T-junction south of sub-station	*"A consented element which has not been built but will be built later."*	1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above. Some or all of the remaining permitted works remain to be completed.
24	Existing turning head / T-junction	*"An unconsented element of the development which lies wholly or partially **outside** the consented footprint."*	6. This existing junction was a pre-existing forestry road, and was not developed as part of the works to the permitted wind farm. The forestry road leading from this junction has been in-situ for decades.
27	Realignment of junction northeast of T15	*"A **consented** element which has been built within the consented footprint, not yet finished and will be expanded later but still within the consented footprint."*	1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above. Some or all of the remaining permitted works remain to be completed.

*Potential deviations to the permitted development that **are not** subject to the application for leave to apply for substitute consent*

Deviation No. as per SLR Report	Deviation Description	SLR Report Deviation Description	Justification for Not Including in Application for Leave to Apply for Substitute Consent (numbered points reference numbers as per Section 5.3 of Planning Report)
30	T9 turning head	*"A consented element which has not been built but will be built later."*	1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above. Some or all of the remaining permitted works remain to be completed.
31	T11 junction	*"A **consented** element which has been built within the consented footprint, but occupying a smaller area and is complete or **will not** be expanded later."*	2. These elements of the development are fully permitted, but as-built, now occupy a smaller footprint than was originally permitted. Some or all of the remaining permitted works remain to be completed.
33	Junction/road between T5 & T3	*"A **consented** element which has been built within the consented footprint, but occupying a smaller area and is complete or **will not** be expanded later."*	2. These elements of the development are fully permitted, but as-built, now occupy a smaller footprint than was originally permitted. The detailed geometric design developed for the permitted wind farm post-planning and pre-construction determined that smaller junctions or turning heads than were originally permitted would suffice, to accommodate the turbine components that were finally selected for installation.
34	Junction north of T1		1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above. Some or all of the remaining permitted works remain to be completed.
35	Junction northwest of T2		1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above. Some or all of the remaining permitted works remain to be completed.

*Potential deviations to the permitted development that **are not** subject to the application for leave to apply for substitute consent*

Deviation No. as per SLR Report	Deviation Description	SLR Report Deviation Description	Justification for Not Including in Application for Leave to Apply for Substitute Consent (numbered points reference numbers as per Section 5.3 of Planning Report)
38a	Water management/ runoff and stability of all peat storage cells	*"An unconsented element of the development which lies wholly or partially **outside** the consented footprint."*	9. This is a reference to an aspect of the development that DCC requested be assessed by Planree, and it was assigned the number "38" on the table of deviations for reporting purposes. Water management measures around the peat cells form part of the overall drainage design for the site. The drainage design as assessed in the original EIAR provided for flexibility to adjust to site conditions. Item 38 specifies that it applies to the items referred to at nos 3, 5, 15, 18 and 19 of the SLR table of deviations. All of these items are separately included in the alterations to the permitted development for which leave for substitute consent is now sought.
38b	Water management/ runoff and stability of all peat storage cells	*"An unconsented element of the development which lies wholly or partially **inside** the consented footprint."*	9. This is a reference to an aspect of the development that DCC requested be assessed by Planree, and it was assigned the number "38" on the table of deviations for reporting purposes. Water management measures around the peat cells form part of the overall drainage design for the site. The drainage design as assessed in the original EIAR provided for flexibility to adjust to site conditions. Item 38 specifies that it applies to the items referred to at nos 3, 5, 15, 18 and 19 of the SLR table of deviations. All of these items are separately included in the alterations to the permitted development for which leave for substitute consent is now sought.
36 / 39	T16 access road	*"A **consented** element which has been built within the consented footprint, not yet finished and will be expanded later but still within the consented footprint."*	1. These elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above. Some or all of the remaining permitted works remain to be completed.

*Potential deviations to the permitted development that **are not** subject to the application for leave to apply for substitute consent*

Deviation No. as per SLR Report	Deviation Description	SLR Report Deviation Description	Justification for Not Including in Application for Leave to Apply for Substitute Consent (numbered points reference numbers as per Section 5.3 of Planning Report)
41	Storage container at T11	*"An unconsented element of the development which lies wholly or partially **inside** the consented footprint."*	5. This element of the development was identified as a potential deviation by DCC, even though it was just a storage containers placed on the constructed turbine hardstand temporarily while construction work was ongoing.
42	Borrow pit 1	*"A **consented** element which has not been built and will **not** be built."*	3. This element of the permitted development has not been developed, and will not be developed. The permitted borrow pit was not utilised. Some overburden was removed, but the pit was then abandoned, and the overburden reinstated and the ground restored.
43	Water management/ control of discharge of flooded base at T2.	*"Not a deviation"*	9. This is a reference to an aspect of the development that DCC requested be assessed by Planree, and it was assigned the number "43" on the table of deviations for reporting purposes. Water management measures around the peat cells form part of the overall drainage design for the site. The drainage design as assessed in the original EIAR provided for flexibility to adjust to site conditions. The T2 hardstand and access road are separately included in the alterations to the permitted development for which leave for substitute consent is now sought.
44	Tree movement at T10/T8	*"Not a deviation"*	8. This is a reference to observation recorded by on-site by DCC who requested it be assessed by Planree, and it was assigned the number "44" on the table of deviations for reporting purposes. Tree movement was tracked as if it was a potential deviation, but would not constitute works or development within the meaning of the Planning and Development Act for which substitute consent may be required.
45	Met mast	*"Not a deviation"*	1. This elements of the development are fully permitted, but have not yet been constructed or completed, as detailed in Table 4.2 above.

*Potential deviations to the permitted development that **are not** subject to the application for leave to apply for substitute consent*

Deviation No. as per SLR Report	Deviation Description	SLR Report Deviation Description	Justification for Not Including in Application for Leave to Apply for Substitute Consent (numbered points reference numbers as per Section 5.3 of Planning Report)
			Some or all of the remaining permitted works remain to be completed.

APPENDIX 4

EPA LETTER

(28TH SEPTEMBER 2021)

South/South West Region
Environmental Protection Agency
Regional Inspectorate, Inniscarra
County Cork, Ireland

Cigireacht Regíunach, Inis Cara
Contae Chorcaí, Éire

T: +353 21 487 5540
F: +353 21 487 5545
E: **info@epa.ie**
W: **www.epa.ie**

LoCall: 1890 33 55 99

Via e-mail to michaelmurnane@turnkeydev.com 28th September 2021

To: Planree Limited
Lissarda Industrial Estate
Lissarda
Co Cork

EPA Reference Number ELD200005/Corr(2) /Planree

The EPA Direction issued pursuant to Regulation 8(1) of the European Communities (Environmental Labilities) Regulations 2008 (as amended), dated 1st April 2021 required, inter alia, that;

1. **Planree Limited** shall arrange for the completion, by an appropriately qualified independent person, of a revised and updated peat stability assessment in line with best practice and guidance and addressing the conclusions and recommendations of the EPA report.
2. **Planree Limited** shall arrange for the submission of a report on the assessment in 1 above which shall provide all relevant information and evidence necessary for the EPA to assess the adequacy of the peat stability assessment. This report shall be submitted by the 30th April 2021

The Environmental Protection Agency refers to email correspondence dated 27/08/2021 to the Agency from MKO, consultants acting on behalf of Planree Limited, received in response to EPA correspondence issued 29th July 2021 2021, attaching *Peat Stability Assessment of Meenbog Windfarm Site* (August 2021; Fehily Timoney).

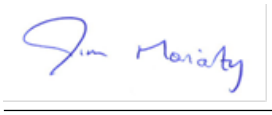
I am to advise that the revised Peat Stability Assessment prepared by FTC and submitted to the EPA pursuant to 1 and 2 above addresses the conclusions/recommendations set out in previous EPA correspondence. The issues identified in correspondence from the EPA on the 29th July 2021 have been satisfactorily addressed. Compliance with the EPA Direction from 1st April is now confirmed.

It is important that the mitigation measures proposed are implemented for the remaining works to be completed at the site. The detailed design for civil works should be informed by this updated assessment.

This correspondence is without prejudice to any legislative obligations on the operator other than under the Environmental Liability Regulations, or interactions with other Regulatory Authorities in respect of Meenbog Wind Farm. You are reminded of your obligations under Regulation 7(1) of the European Communities (Environmental Liability) Regulations 2008 (S.I. 547 of 2008) to take necessary preventive measures to deal with any imminent threat of environmental damage.

Dated this 28th day of September 2021

Signed on behalf of the Agency:



Jim Moriarty
Senior Inspector
Office of Environmental Enforcement, EPA