

OBSERVATION

In the matter of ABP-320094-24

Proposed 400kV Gas insulated SwitchGear electricity substation and high voltage transmission lines/cables and electric plant, Coolpowra, Co. Galway

Observation	ABP-320094-24 — Proposed 400kV Gas insulated SwitchGear electricity substation and high voltage transmission lines/cables and electric plant.
One project	Co-located and, on the applicant's own concession, functionally connected: this GIS; the Reserve Gas-Fired Generator (ABP-320095-24); and the Long Duration Energy Storage Facility (ABP-320916-24).
Applicant	Coolpowra Flex Gen Limited (and related entities).
Submitted by	Eamonn O'Hara, Neale, Killimor, Ballinasloe, Co. Galway
Date	June 2026

Introduction

This observation is made on the appeal of the Proposed 400kV Gas insulated SwitchGear electricity substation and high voltage transmission lines/cables and electric plant. The GIS is one of three concurrent, co-located and — on the applicant's own concession — functionally connected applications on the same site: the GIS (this Observation); the Reserve Gas-Fired Generator ("RGFG", ABP-320095-24); and the Long Duration Energy Storage Facility ("LDES", ABP-320916-24).

The grounds below are advanced not as matters that might improve the application, but as present legal bars: on the record now before it, the Commission cannot lawfully grant permission for this component. Each ground is intended to stand alone. Several — project splitting and prematurity, the contradicted project purpose, the fire-safety case calibrated to a different installation, the climate-evidence and Appropriate Assessment defects, and the national-road access — are not curable by condition or by further information, and on each of those the only lawful course is refusal.

These are not speculative third-party points. They track concerns already on the record of the two competent authorities that have examined this development.

The three reasons Galway County Council refused the LDES (30 August 2024) – Reasoning Applies to this proposed development also.

- **Reason 1 — Traffic hazard and road network.** The local road network and the proposed site access are unsuitable; restricted forward sight distances at the road frontage preclude a safe access; the scale of widening and sightline works on the N65 junction and the L-8763 would be significant roadside intervention contrary to DM Standard 28, DM Standard 33a and Policy Objectives NR 1 and NNR 2, and at variance with National Roads Policy — endangering public safety by traffic hazard.
- **Reason 2 — Appropriate Assessment / Lough Derg.** Given the site's topography and direct hydrological link, the Council could not be certain the development would not adversely affect the integrity of the Lough Derg North-East Shore SAC (002241) and Lough Derg (Shannon) SPA (004058), materially contravening Policy Objectives NHB 1, NHB 2 and WR 1 and DM Standard 50.
- **Reason 3 — Prematurity.** By reason of its design to complement and support the Reserve Gas-Fired Generator and the GIS substation, the development is premature pending determination of those two strategic-infrastructure applications.

The Commission's Further Information request of 9 January 2026 then raised — in its own words — the same matters: the functional interdependence of the three projects, the adequacy of the environmental impact assessment and its treatment of cumulative and major-accident effects, ground-investigation sufficiency, the absence of fisheries evidence for the Treananearla Stream, fire safety and firewater, and Appropriate Assessment of the Lough Derg sites and Barroughter Bog SAC.

Part A — Further Information item 1: the environmental impact assessment

1a(i) — Likely significant effects per factor, and cumulative effects

The Commission asked for a clear description of the likely significant effects on the environment for each environmental factor, and the cumulative impacts from the other proposed development on this site.

The applicant's response supplies revised effects chapters and states that the three projects are “assessed individually and in combination.”

The deficiencies are these. No genuine cumulative determination of the whole project is possible while two-thirds of it — the generator and the substation — remain undetermined applications with unsettled design, mitigation and conditions (see 1b(i)). More fundamentally, the cumulative assessment omits the most obvious nearby development. The EIAR Addendum contains a “Consented Development in the Vicinity” review (§16.4) and a Cumulative Effects chapter (§16.5); neither mentions Tynagh, and every reference to an “OCGT” is to the applicant's own Reserve Gas-Fired Generator. The Addendum reviews “developments granted permission in the vicinity,” asserts they were “conditioned to secure sustainable development outcomes,” and concludes that “in-combination or

cumulative effects with other consented development are not anticipated” — without assessing, or even naming, the cluster of gas generation a few miles away at Derryfrench, Tynagh: an operational 384 MW combined-cycle plant (running since 2006 on the former Tynagh lead-zinc mine site), a consented 299 MW open-cycle gas turbine, and a consented c.350 MW open-cycle gas turbine (“Tynagh North”, ABP case 317810).

That omitted cluster is a marked concentration of fossil-gas capacity in one small rural part of East Galway, with in-combination implications the chapter never reaches: air emissions and nitrogen deposition relevant to the actively-restored Barroughter Bog SAC, electricity-sector carbon-budget loading, landscape and traffic.

The applicant’s own “Consented Development in the Vicinity” review concludes there are no cumulative effects — yet it never mentions Tynagh, where one gas plant operates and two more are consented within a few miles. A cumulative assessment that omits the obvious neighbouring cluster cannot ground the conclusion it reaches.

1a(ii) — A single schedule of all mitigation measures

The Commission asked that the EIAR be revised to include a single, separate schedule of all mitigation measures, for each environmental factor.

The deficiency. A mitigation schedule is only adequate if it is comprehensive and presented factor-by-factor, with each measure capable of being conditioned and enforced. To the extent the schedule defers measures to later design, or omits factors, it does not meet the requirement, and the heavy dependence of this assessment on mitigation (rather than on inherently low-impact design) makes the completeness of that schedule central, not formal.

1a(iii) — Reasonable alternatives, with particular emphasis on alternative locations

The Commission asked for a more considered and comprehensive description of the reasonable alternatives studied, with particular emphasis on alternative locations.

The applicant’s response considers internal layout variants of the construction access, a do-nothing baseline, and a justification for the chosen site, and states that alternative sites along the 400 kV network “were evaluated at high level” but discounted.

The deficiencies are these. By the applicant’s own account alternative 400 kV sites were studied — yet the addendum identifies, describes and compares not one of them. Article 5(1)(d) of, and Annex IV(2) to, the EIA Directive require the studied alternatives to be described and their environmental effects compared against the chosen option; in *Holohan* (C-461/17) the Court of Justice confirmed that the main alternatives studied, including any rejected at an early stage, must be described together with their environmental effects. A report that omits a mandatory Annex IV element cannot ground a lawful assessment, and the omission cannot be cured by asserting an unfavourable outcome without the underlying comparison.

A material alternative location existed and was not compared: Tynagh. The contrast is stark:

- **Land-use character.** Tynagh is a brownfield former-mine site of established industrial character already hosting gas-to-power generation; Coolpowra is a rural greenfield agricultural site of c.46 ha — the applicant's own description is "rural greenfield" — adjoining the delicate, actively-restored Barrougher Bog SAC and hydrologically linked to the Lough Derg European Sites.
- **Existing infrastructure.** Tynagh is already connected to the 400 kV and 220 kV transmission network and to a major gas pipeline; Coolpowra requires new connections on greenfield land beside a European Site.
- **Planning acceptability.** Gas generation has repeatedly been found acceptable at Tynagh; the same use at Coolpowra was refused by Galway County Council.
- **Proximity.** Tynagh lies about five miles away; Coolpowra sits by Portumna, and Tynagh/Derryfrench is a short distance to the north-west, both in the same pocket of East Galway.

The likely objection — that the gas supply at Tynagh is insufficient — answers itself. The Tynagh plants are gas-fired (with diesel backup), so the supply there must already be capable of serving two further consented gas plants on top of the operational combined-cycle plant; and were any reinforcement required, it would follow the existing pipeline corridor, avoiding the environmental consequences of opening an entirely new gas-line route across undisturbed ground.

The applicant studied alternative 400 kV sites and compares none. A brownfield former-mine site at Tynagh — already hosting gas generation, already grid- and gas-connected, and industrial in character — sits a few miles away, while Coolpowra is rural greenfield agricultural land beside a delicate SAC bog. The mandatory comparison of environmental effects is absent, and on the facts it points the other way.

1a(iv) — A comprehensive baseline environment

The Commission asked for a baseline complying with Schedule 6, the EIAR having deferred a baseline site report to separate licensing.

The deficiency. Deferring the baseline to a later licensing stage is the very defect the Commission flagged; the assessment must contain the baseline now, not promise it later. As set out at 1d, the Ground Investigation Report is preliminary and disclaims design status, so the baseline it supplies is not adequate for the scale proposed.

1a(v) — Vulnerability to major accidents and disasters

The Commission asked for a comprehensive consideration, across all three projects, of effects deriving from vulnerability to major accidents and disasters — expressly instancing explosion at the gas generator and fire at the BESS.

The applicant's response provides a Fire Risk Assessment, major-accidents material and a quantitative risk assessment.

The deficiency is not that fire is unaddressed — a Fire Risk Assessment and Emergency Response Plan are provided (Appendix 17.3) and a consequence and Technical Land-Use-Planning study (Appendix 17.2) — but that the assessment's conclusion of acceptability cannot be tested on this record. The risk case rests on the consequence study's frequency analysis: a major-accident-to-the-environment scenario at an unmitigated frequency of 3.3×10^{-4} events per year, which the applicant places in the "tolerable if ALARP" region of the CDOIF risk matrix, reduced to 1.65×10^{-7} events per year — the "broadly acceptable" region — once "protection layers" are credited. But those protection layers are themselves expressly deferred: the firewater and contaminated-water containment "will be detailed and confirmed at detailed design stage (including isolation strategy, capacities, discharge controls)," transformer containment likewise, and "further risk assessment at detailed design (including QRA where appropriate)" is promised. A "broadly acceptable" figure produced by crediting protections that are not yet designed cannot be relied upon at the point of determination.

The escalation pathway between the gas installation and the battery compound — the principal multi-fatality mechanism — is addressed only by a commitment to "maximise separation, where practicable," with no fixed minimum separation. The development is, on the applicant's own account, a major-accident (Seveso III / COMAH) establishment requiring a Major Accident Prevention Policy; that engages the obligation to take the need for appropriate separation distances into account now, at every stage of the authorisation procedure (Mücksch, C-53/10), not to defer it to detailed design.

The applicant's own risk study moves the major-accident risk into the "broadly acceptable" band only by crediting protection layers it has not yet designed, and leaves the gas-to-battery separation to "where practicable." The Commission cannot make a major-accident finding on protections that do not yet exist.

1a(vi) — Estimates of residues and emissions; topsoil for landscaping

The Commission asked for estimates by type and quantity of expected residues and emissions, and clarification of topsoil sufficiency for the landscaping proposals.

The applicant's response states a cut of approximately 69,700 m³, asserts no off-site disposal, and claims the cut-and-fill balance is met with on-site material re-used in berms.

The deficiency. The applicant's own figures do not reconcile: a cut of approximately 69,700 m³ against a stated berm fill requirement of approximately 80,000 m³ leaves a gap of about 10,300 m³, which the response does not reconcile — it says only that the "majority" of the fill can come from site-cut. Any imported fill has effects that are not assessed. The operational greenhouse-gas estimate is itself internally contradictory (see AG-3): Table 15.2 gives approximately 0.616 MtCO₂e per year, while Table 15.3, on the following page, carries 1.85 in a column headed "per year."

1b(i) — Functional and operational dependence: the splitting and prematurity bar

The Commission asked whether the storage and synchronous condenser could operate independently of the gas generator and the GIS substation, or must operate with them.

The applicant's response confirms, in terms, that the storage and the generator are operationally dependent on the GIS substation and cannot export or import power, meet connection requirements, or deliver system services without it. The only independence conceded is that the GIS switchgear could energise unused bays — trivial and one-directional.

The consequence is decisive. That concession settles the legal character of the development: as a matter of EU environmental law these are not three projects but one, and the lawful unit of assessment is the whole (O'Grianna [2014] IEHC 632, where a wind farm and its grid connection were held to be a single project requiring cumulative assessment; and Commission v Ireland C-392/96, where the Court of Justice held that thresholds may not be set so as to allow the objectives of the EIA Directive to be circumvented by the splitting of projects, the cumulative effect to be assessed). It follows that this one component cannot lawfully be granted now, while two-thirds of the project are undetermined applications: a complete Appropriate Assessment and environmental impact assessment of the whole is presently impossible; a cumulative narrative in a single report is not a lawful determination of the whole; and the Council has already found the same (Reason 3). The lawful course is to refuse, or to determine all three applications — now before the Commission — as a single project in one consolidated decision.

The applicant has itself conceded operational interdependence; the Council has itself found the component premature for the same reason. The Commission is asked to determine one-third of a single project while the other two-thirds remain undetermined — which the assessment standards make presently impossible.

1b(ii) — Private roads and Schedule 5, Class 10(dd)

The Commission asked whether the internal roads are private roads, their total length, and revision of the EIAR in respect of Class 10(dd).

The applicant's response concedes internal private roads exceeding 2,000 m (approximately 2,200 m, plus a further approximately 1,185 m), bringing the development within mandatory-EIA Class 10(dd). This confirms the development is mandatory-EIA in its own right and cannot be treated as a minor or sub-threshold component.

1b(iii) — Class 10(a) and 10(b)(iv): scale

The Commission asked for consideration of the proposal against Class 10(a) (industrial estate over 15 ha) and Class 10(b)(iv) (urban development over 20 ha).

The applicant's response concedes that the site scale — a red-line boundary of approximately 46 ha — engages these thresholds. This is further confirmation that the development is a major-EIA development, consistent with the whole-project analysis at 1b(i).

1c — Biodiversity: survey authorship and the winter bird surveys

The Commission asked who conducted the flora and fauna walkover and what other mammals were considered; the bird-survey author, absent from the EIAR; and justification of winter bird surveys that did not commence in October.

The applicant's response names survey personnel and defends the survey window as proportionate, citing the distance to the nearest Special Protection Area.

The deficiency. The applicant in substance concedes that the winter bird surveys did not commence in October as they should have, and defends adequacy by desk judgement rather than by completing the survey. An incomplete survey window is not a complete data set, and the "proportionate distance" defence is contestable. Incomplete survey data feeds directly into the Appropriate Assessment defect at Part D: the standard requires complete, precise and definitive findings, which incomplete surveys cannot supply.

1d — Foundations and site investigation

The Commission asked for clarity on foundations and structural requirements (considered insufficient for the scale proposed) and comprehensive site investigations.

The applicant's response submits a Ground Investigation Report (Rev B).

The deficiency. The report is preliminary and expressly disclaims design status, stating that its recommendations should be verified in design using full loading details — yet it is relied upon to establish feasibility for open-cycle gas turbines, a GIS substation and a 224-container battery array. It lacks the dynamic foundation design for rotating machinery, the settlement and containment analysis for the battery array, adequate dewatering and groundwater characterisation, and demonstrated soakaway performance. The site moreover lies on a regionally important karstified limestone aquifer, which heightens the need for proper dewatering and groundwater characterisation rather than the preliminary treatment given.

The report itself disclaims the design status it is being relied upon to provide, yet it is the basis on which feasibility for a development of this scale and risk profile is to be established.

1e — Watercourses, the Treananearla Stream realignment, and fisheries

The Commission asked for scaled drawings of all watercourses, the existing course and extent of the Treananearla realignment, a detailed justification for it, an aquatic and fisheries assessment with methodology and author supporting the "no fisheries value" claim, a method statement, and evidence of consultation with Inland Fisheries Ireland.

The applicant's response supplies revised drawings and a justification, maintains the Treananearla has "no fisheries value," and describes the new channel.

The deficiencies are these. No evidence of consultation with Inland Fisheries Ireland appears in the response, despite the express requirement. The "no fisheries value" claim is internally contradicted: the same material designs the realigned channel for "fish passage and spawning," and the downstream Kilcrow holds salmon, trout and eel. The claim rests on a walkover with no named fisheries author and no electrofishing data. It is also contradicted by the State's own science: the Treananearla is a tributary of the Kilcrow, which the genetic stock study (Magee et al., 2017) found to be among the lake's top contributing tributaries — about 11% of Lough Derg's adult brown trout, behind only the Camcor (13%). Absence of sampling is absence of investigation, not absence of value. The realignment is, moreover, justified expressly to "consolidate" the plant layout near the Oldstreet node — that is layout convenience, the opposite of the requirement to avoid impacts before mitigating them.

The "no fisheries value" claim is contradicted by the largest brown-trout genetic study in the State, which places the receiving river among Lough Derg's top contributing tributaries — and by the applicant's own design of the new channel for spawning.

1d / 1e (water) — The development's water demand and effect on the catchment cannot be assessed

The Commission's information requirements on hydrogeology, drainage and firewater also engage the development's water demand, which the response does not quantify.

The deficiency. The assessment field-measures the existing residential well on the lands (which is to be demolished) and places the site within the Tynagh groundwater body, but it does not quantify the development's own operational water demand: it states no maximum daily operational abstraction, and no source for operational use, against the statutory registration threshold of 25 m³ (25,000 litres) per day. Separately, the battery system's firewater requirement — which the Commission itself put at no less than 1,900 litres per minute for two hours, some 228,000 litres per event — and the containment of contaminated run-off are not adequately resolved. While the operational-demand figures are absent, the Commission cannot decide whether any abstraction is significant, whether it requires registration or licensing, or what its effect on the Kilcrow / Lower Shannon catchment and the Lough Derg European Sites would be. The assessment is to that extent incapable of completion.

The report omits the very figures — maximum abstraction, source and cooling configuration — needed to test compliance with the 25 m³/day registration threshold. That gap cannot be filled by any exercise of planning judgement.

Part B — Further Information item 2: site access

The Commission asked for clarification of site access for construction and operation, including all necessary landowner consents, warning that a boundary change requires a revised EIAR and a re-review of the AA Screening Report and NIS.

The applicant's response introduces a new construction access of approximately 810 m onto the N65 and a revised red-line boundary, stating the new access is "independent of third-party consent"; a footnote concedes the new access exists because the original junction's landowner sightline consents were withdrawn.

The deficiencies are these. Access onto a national road is a planning gateway: if the access is not permissible, the use of this site is not permissible, and no condition can cure it.

Most fundamentally, nothing has changed since the Council last refused development at this frontage. The adjoining frontage carries a settled refusal history over more than twenty years (Galway references 05/4009, 06/1200 and 08/2697), refused because adequate visibility could not be achieved without extensive intervention to the roadside hedgerow and the resulting development would constitute a traffic hazard. That hedgerow remains substantially intact and the road network is unchanged — so the very hazard the Council identified persists, and the historic refusal reasons apply with equal force to the present proposal. The applicant has not shown what has materially changed to displace those settled findings.

The prescribed authority has objected on the record. Transport Infrastructure Ireland wrote to the Council on 9 August 2024 that the proposal is at variance with the Spatial Planning and National Roads Guidelines (2012), that insufficient data had been submitted, that the standards proposed are not in accordance with TII Publications, and that no Design Report had been submitted or approved, the matter to be resolved "prior to any decision." The applicant must demonstrate that this has since been resolved and agreed with the authority. The access is also at variance with the development plan: the Galway County Development Plan 2022–2028 (Policy NR 4) avoids new access points onto national roads where speed limits exceed 60 km/h, and the applicant's own survey records 85th-percentile speeds of 91.98 and 94.68 km/h. The submitted visibility splay of 215 m is shown crossing dense vegetation and stone walls, with no demonstrated control or clearance of the splay land, and no arrangement for maintaining the sightlines — against seasonal hedge growth — over the operational life of the development.

Separately — and this goes to whether the development can be delivered at all — the traffic work carried out assesses the capacity of the junctions to accommodate traffic flow, but it does not demonstrate the capacity of the route to carry the development's heaviest, abnormal, indivisible loads. Plant on the scale of a turbine of the order of 500 tonnes, together with large transformers and electrical units, must travel a rural route that includes structurally constrained bridges (including at Heathlawn) and sections crossing soft bog ground in the vicinity of Loughrea. The load-bearing capacity of those bridges, and the stability of the bog-crossing sections, for indivisible loads of this magnitude is not demonstrated. A route that cannot physically and safely carry the heaviest loads is not one

on which this development can be built — a deliverability matter and a road-safety matter that junction-capacity modelling does not answer.

The access also runs over an esker — a feature the assessment acknowledges but does not engineer. The applicant's own Soils and Geology chapter records "a graded ridge of esker sands and gravels which underlie part of the local road (L8763)" routing north-west from the proposed operational entrance, and the biodiversity chapter notes that the eastern boundary of the site "runs along an esker," with "a steep bank dropping to the fields." An esker is a glaciofluvial ridge of sands and gravels — a raised and comparatively unstable landform. Yet it is assessed only as a low-value roadside hedgerow and as "well-drained" and "homogenous" ground; there is no geotechnical assessment of constructing and using an access over it, of the earthworks and cut-and-fill required to take a haul route across a raised sand-and-gravel ridge, or of its stability under the development's heaviest abnormal loads. (The recognised Killimor Esker, a County Geological Site (GY078), lies about 2.1 km to the north, confirming these are established landforms of this locality.) Taking the heaviest plant across this esker is itself a significant engineering undertaking that the assessment does not address.

Changing the red line at this stage also triggers the Commission's own warning: a revised EIAR and a re-review of the AA Screening Report and NIS — yet the AA Screening filed addresses the access road only, not the whole development (see Part D).

The Council refused this frontage as a traffic hazard, on visibility grounds, more than once over twenty years; the conditions are unchanged, and the national-roads authority's 2024 objection required the access to be resolved "prior to any decision." The applicant must show both what has materially changed and that the heaviest indivisible loads can physically and safely be delivered over the route's bridges and bog crossings — neither of which a junction-capacity model provides.

Part C — Further Information item 3: fire safety and firewater

The Commission asked for a Fire Risk Management Plan and an Emergency Response Plan by a suitably qualified expert; implementation of the UK NFCC grid-scale BESS guidance; the specific battery design and chemistry; permanent firefighting water of no less than 1,900 litres per minute for at least two hours; a revised surface-water drainage strategy with firewater containment; and consultation with the Galway County Council Fire Service.

The applicant's response submits a Fire Risk Assessment and Emergency Response Plan and addresses the NFCC matters and firewater.

The deficiencies are these — and the Further Information question on fire is, in substance, not answered. A Fire Risk Assessment and Emergency Response Plan are provided (Appendix 17.3), but they fail the threshold the Commission's own Further Information request set: that they be "prepared by a suitably qualified technical expert/advisor" with "details and qualifications to be submitted." No fire-engineering

credentials are supplied, and the documents appear to have been prepared in-house by the applicant's own planning consultants, Halston Environmental & Planning Ltd (the authors of the EIAR), rather than by an independent fire-engineering specialist. The battery chemistry, specification and supplier are admitted not yet known. The containment of contaminated firewater run-off from the battery compound — by bunding or equivalent engineered containment to NFCC, NFPA 855 and FPA standards — is deferred to detailed design, which matters given the site's drainage toward the Lough Derg European Sites; firefighting water is not secured (the Uisce Éireann letter is feasibility-only, the relevant plant and main are at capacity pending a 2027 upgrade, and reliance shifts to a single on-site tank); and no Galway County Council Fire Service or Chief Fire Officer report appears on the file, the response instead deferring fire-safety provisions to being "agreed with the relevant fire authority" after permission.

The contrast with the Commission's own handling of the materially similar Arigna battery-storage development (ABP-321420-24) is stark, and it is the right benchmark. There, (i) the applicant's Fire Risk Assessment was prepared by a named specialist fire consultancy, Ryan & Associates; (ii) the local Chief Fire Officer provided a report setting out specific fire-safety requirements; and (iii) the Commission itself commissioned an independent chartered fire engineer — EDP Consultants, the report authored by a Member of the Institution of Fire Engineers — to scrutinise the Fire Risk Assessment against those Chief Fire Officer requirements. Even with that specialist input, the Commission's own expert still identified deficiencies: the absence of quantitative consequence and dispersion modelling, of a formal ATEX explosion-protection document and hazardous-area classification, and of confirmation of battery provenance (first- or second-life, with UL 1974 certification). The expert's view was that the missing dispersion modelling might be excused only by Arigna's rural, low-population location.

Coolpowra falls far short of that standard, and the rural-location excuse cannot apply here. The Fire Risk Assessment is in-house, with no fire-engineering expert and no stated credentials; there is no Chief Fire Officer report; and, unlike the rural, battery-only Arigna site, Coolpowra co-locates the battery system with a reserve gas generating station of the order of 1,155 MW, diesel storage and transformers, close to dwellings and Killimor and within the zone of the Lough Derg European Sites. The hazard is far greater and the location far more sensitive — yet no quantitative consequence or dispersion modelling is before the Commission (the DNV consequence study is cited for its conclusion, but its outputs are not in evidence), and the safeguards are deferred to detailed design and to post-consent agreement with the fire authority.

None of this can lawfully be cured by a condition leaving the fire case to be "agreed" later or "confirmed at detailed design." Under *Boland v An Bord Pleanála* [1996] 3 IR 435 a matter may be left to subsequent agreement only where it is one of detail; it may not be where it goes to the principle and acceptability of the development. Worst-case fire and explosion safety, the adequacy of the firewater supply, the separation between the gas installation and the battery system, and the protection of a European Site from contaminated firewater are matters of principle — they determine whether this development is acceptable at all. They are, moreover, the very matters the Commission's own Further Information request identified as necessary to its assessment: information the authority itself deemed

necessary to complete the environmental impact assessment cannot then be deferred to a post-consent condition, because the assessment must be complete before permission is granted, not after it.

That bar is at its highest for the Habitats matter, which cannot be deferred at all. The contaminated-firewater pathway runs to the Lough Derg European Sites, so the containment of firewater run-off is part of the Appropriate Assessment — not a point of detail for “detailed design.” An Appropriate Assessment must reach complete, precise and definitive findings that remove all reasonable scientific doubt before consent (Connelly [2018] IESC 31), and mitigation measures that are not yet designed cannot be relied upon to reach that conclusion (People Over Wind C-323/17). A condition that leaves the firewater containment “capacities” and “discharge controls” to be fixed at detailed design is precisely the deferral the Habitats regime forbids: the Commission cannot be satisfied beyond reasonable scientific doubt about a containment system that has not yet been designed.

The consequence of not dealing with these matters at the decision point is shown by the Dunnstown battery-storage development: the High Court quashed An Bord Pleanála’s permission in March 2024 because the Board had failed to engage adequately with the firefighting-water and fire-safety submissions before it — including the report of the fire-safety consultant Dr Paul Christensen. The same failure — to secure, and properly assess, an independently prepared and Fire-Service-tested fire case at the decision point — is present here.

On its materially identical Arigna project the Commission required a specialist fire risk assessment, a Chief Fire Officer’s report, and its own independent chartered fire engineer’s review. Here the fire assessment was written in-house by the applicant’s planning consultants, with no fire-engineering credentials, no Galway Fire Service report, and the fire strategy left to be “agreed” after permission — and the rural-location basis that might have excused the missing dispersion modelling at Arigna cannot apply to this far larger, co-located hazard.

Worst-case fire safety, firewater adequacy, gas-to-battery separation and the protection of the Lough Derg European Sites from contaminated firewater are matters of principle, not detail. On the Habitats matter especially, the assessment must be complete and beyond all reasonable scientific doubt before any grant — it cannot be left to “detailed design” or to be “agreed with the fire authority” after permission. Dunnstown shows a battery-storage permission quashed for exactly that failure to engage.

Part D — Further Information item 3: review of the Appropriate Assessment

The Commission asked for a review of the AA Screening Report and NIS to include the effects of the firewater-management strategy; all potential pathways to Barroughter Bog

SAC, including flooding of nearby watercourses and subsequent infiltration or interception of the bog; and pathways to the Lough Derg North-East Shore SAC and Lough Derg (Shannon) SPA.

The applicant's response filed an AA Screening Report and NIS, correctly screening in the Lough Derg sites and the Shannon Callows sites for Stage 2 on the basis that effects "cannot be excluded in the absence of mitigation."

The deficiencies are these. Barroughter Bog SAC was screened out purely on a "terrestrial habitats / no source-pathway-receptor link" basis, ignoring the firewater, flooding and infiltration pathways the Commission expressly named, and without acknowledging that the bog is under active restoration and is particularly delicate; the Kilcrow runs along the SAC edge and the site drains toward it. The AA Screening Report filed is scoped to the access road only, not the whole-development re-review the Commission required. The firewater pathway is not assessed at all. No in-combination assessment across the three co-located components has been carried out; it is deferred to Stage 2. The Council has already found that it could not rule out adverse effects on the Lough Derg sites, and nothing in the response supplies the complete, precise and definitive findings, removing all reasonable scientific doubt, that the Appropriate Assessment standard requires (People Over Wind C-323/17, which prohibits reliance on mitigation at the screening stage; Sweetman C-258/11; Connelly [2018] IESC 31).

The Commission expressly named the firewater, flooding and infiltration pathways to Barroughter Bog SAC — a site under active restoration — and the applicant screened the bog out without assessing any of them. The AA Screening filed covers only the access road, not the whole development. The complete and definitive findings the law requires are absent.

Additional grounds

AG-1 — The assessment rests on a project purpose the applicant has contradicted

The EIAR (Volume 1, Section 1.1) describes the project's purpose as increasing security of supply and supporting the integration of renewables. The applicant's own contemporaneous submission to the Commission for Regulation of Utilities (CRU/202504) states that the purpose is to support the data-centre industry through proximate generation. These are not complementary statements; they describe different projects with different demand drivers, operating logics and environmental consequences. An environmental impact assessment cannot lawfully be completed on a project description the applicant has itself contradicted on the record of another statutory body. The applicant's conduct confirms the point: in *Kilshane Energy Ltd v EirGrid* [2025] IEHC 174 — which names Coolpowra Flex Gen Limited and Coolpowra BESS Limited — those entities sought to qualify generating units for capacity payments, a market-revenue asset, not the limited-hours reserve plant the assessment assumes.

The assessment says security of supply and renewables; the applicant's CRU filing says data centres. The Commission cannot assess a project whose stated purpose changes between the regulators it addresses.

AG-2 — The baseline is calibrated to an operating profile the applicant's own purpose contradicts

The assessment is built on a peaking-plant assumption of approximately 1,500 operating hours per year. A commercial purpose of supporting continuous data-centre demand implies an operating profile closer to an 85% capacity factor, at which combustion emissions scale roughly fivefold. Emissions, water demand, noise, traffic and the risk modelling are all functions of how often and how hard the plant runs, and the assessment is calibrated to the lower of two irreconcilable profiles. Absent an enforceable condition fixing a worst-case profile and an assessment run against it, the environmental impact assessment is inadequate as submitted.

AG-3 — The Commission cannot make a lawful climate / section 15 finding on this assessment

The climate assessment measures the project against the wrong yardstick, contradicts itself, and omits its own worst case.

- **The wrong yardstick.** Table 15.3 tests the project against the economy-wide carbon budget (200 MtCO₂e for 2026–2030), returning 0.93%. This is a power-generation project; its significance falls to be measured against the binding electricity Sectoral Emissions Ceiling of 20 MtCO₂e for the same period — a denominator ten times smaller. On the report's own figure the project's share is therefore of the order of 9.3% of the electricity sector's entire five-year carbon budget, not under 1%.
- **The hidden worst case.** The report's own text states a gas-oil (secondary-fuel) figure of 42,994,300 tCO₂e for full-time operation — approximately 43 MtCO₂e per year, which on its own exceeds the entire five-year electricity ceiling of 20 MtCO₂e. That worst case is excluded from the comparison.
- **The internal contradiction.** Table 15.2 gives approximately 0.616 MtCO₂e per year; Table 15.3 carries 1.85 in a column headed "per year" — a threefold discrepancy with no derivation.
- **No displacement calculation.** The "supports renewables / displaces dirtier plant" case is asserted but never calculated.

After *Coolglass Wind Farm Ltd v An Coimisiún Pleanála* [2026] IESC 5 — in which a seven-judge Supreme Court held the section 15 obligation to be real, binding and enforceable, though not a simple "go/stop" rule — the duty operates through the sectoral ceilings, and a decision cannot be located anywhere in the permissible range on inputs that are measured against the wrong budget, internally contradictory threefold, and silent on the worst case. The contrast with *Shannon LNG* (*Friends of the Irish Environment v An Coimisiún Pleanála* [2026] IEHC 205) is exact: there the displacement analysis was in the report and was accepted, and the permission was upheld; here no displacement is calculated at all.

On the report's own figure the plant takes roughly 9.3% of the electricity sector's entire five-year carbon budget — and its secondary-fuel worst case alone (approximately 43 MtCO₂e per year) exceeds the whole 20 MtCO₂e ceiling.

AG-4 — Proper planning and sustainable development: disproportionate local burden, distributional inequity, and human health

Beyond the specific assessment defects, the development fails the overarching statutory test: whether granting permission is consistent with the proper planning and sustainable development of the area (section 34(2)(a), Planning and Development Act 2000).

The local community bears the burden of this development — HGV traffic, hedgerow loss, water-table and groundwater risk to the Lough Derg European Sites and Barrougher Bog, air emissions from the gas plant, noise and amenity loss over a multi-year construction period and the operational life. The benefit — fossil-fuelled electricity — flows disproportionately away from the area: the applicant's own CRU submission reframes the purpose as supporting the data-centre industry, and data-centre demand is concentrated in the Dublin and Meath region. Hosting fossil infrastructure whose output supports distant data centres does not advance the proper planning and sustainable development of East Galway.

The distributional picture compounds this. Irish households pay the highest electricity price in the European Union — of the order of 40 cents per kWh — while large users in the highest-consumption band pay roughly half. Network charges are levied per unit of demand, so household consumers cross-subsidise grid expansion driven substantially by data-centre demand growth; and the regulator's new requirement that data centres meet 80% of their demand from additional renewable generation binds the data-centre load, not a gas generator such as this — so the plant can supply that load while standing outside the very discipline placed on the demand it serves. The result is fossil-fuelled generation supporting data-centre load on a structure that places the principal cost on the households also bearing the local environmental burden.

This is not merely rhetorical. It engages effects on population and human health under Article 3(1)(a) of the EIA Directive; the substantive participation and environmental-justice principles of the Aarhus Convention; and the National Planning Framework's commitments to balanced regional development and a just transition. Taken with the absence of any comparison against the demonstrably less-constrained Tynagh alternative (1a(iii)) and the un-assessed cluster of consented gas generation in the same locality (1a(i)), the conclusion is that a greenfield site beside a delicate European Site, in an area already carrying a cluster of consented gas generation, is not the proper planning and sustainable development of the area when a serviced industrial alternative exists nearby.

The local area carries the traffic, water, air and amenity burden; the electricity it produces is, on the applicant's own CRU filing, for data centres elsewhere — on a price and network-charge structure under which the

households bearing the burden also bear the cost. That is not the proper planning and sustainable development of East Galway.

Conclusion

Each ground above is advanced as an independently sufficient basis on which the application, on the present record, cannot lawfully be granted. Several — the determination of one component of a single project in isolation (1b(i)), the contradicted project purpose (AG-1), the in-house and deferred fire-safety case (1a(v) and Part C) — which, going to life-safety, major-accident separation and the protection of a European Site, cannot lawfully be left to condition or future agreement — the climate-evidence and Appropriate Assessment defects (AG-3 and Part D), and the national-road access (Part B) — are not curable by condition or by further information. The proper-planning, alternatives and cumulative grounds (AG-4, 1a(iii) and 1a(i)) reinforce that a greenfield site beside a delicate European Site, in an area already carrying a cluster of consented gas generation, is not the proper planning and sustainable development of the area when a serviced industrial alternative exists nearby.

The cumulative effect is that there is no lawful route to a grant of this component on the record now before the Commission. The Commission is respectfully requested to refuse permission; or, in the alternative — all three applications comprising the single project now being before it — to determine the project as a whole, on a complete assessment, in one consolidated decision.

Eamonn O'Hara

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