

Daniel O'Connor

From: Appeals2
Sent: Wednesday 22 October 2025 18:11
To: Daniel O'Connor
Subject: FW: Ref. 323018
Attachments: 20251022-ACP-323018.pdf

From: Phoebe Duvall <Phoebe.Duvall@antaisce.org>
Sent: Wednesday 22 October 2025 17:15
To: Appeals2 <appeals@pleanala.ie>
Subject: Ref. 323018

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A Chara,

Please find attached a submission from An Taisce in relation to Ref. 323018.

Best regards,

Phoebe Duvall

Senior Planning and Environmental Policy Officer
An Taisce - The National Trust for Ireland
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An Taisce

The National Trust for Ireland

5 Foster Place

Dublin 2, Ireland

D02 V0P9

20251022-ACP-323018

An Coimisiún Pleanála
64 Marlborough Street,
Dublin 1

Sent by email to: appeals@pleanala.ie

22nd October 2025

Ref: 323018
App: Gort Windfarms Limited
For: Development pursuant to Section 37L of the Planning and Development Act 2000 (as amended) The development consists of the Decommissioning of Derrybrien Wind Farm (Site 132 HA) including enabling works; the removal of the turbines and other structures on site; the removal of the Derrybrien-Agannygal overhead line; and all other works. A remedial Environmental Impact Assessment Report (rEIAR) and a remedial Natura Impact Statement (rNIS) was submitted with the application.
Site: Bohaboy, Boleyneendorrish, Coppanagh, Derrybrien East, Derrybrien North, Derrybrien South, Derrybrien West, Funshadaun, Kilbeg, Loughatorick North, Toormacnevin in Co. Galway & Slieveanore, Co. Clare

A Chara,

Thank you for your letter of 28th August 2025 referring the above s.37L application and the substitute consent application upon which it is predicated (Ref. 323014) to An Taisce for comment.

We attach our submission on Ref. 323014 to be read as part of this submission, as the observations and concerns therein are relevant and/or directly related to the s.37L application. All comments therein in relation to the process of bringing forward this application alongside Ref. 323014 as well as the process surrounding the previous substitute consent application (Ref. 308019) should be taken as read in relation to this s.37L application. We also make additional comments below and without prejudice to our comments in the attachment.

1. Impacts of Machinery Movements and Turbine Haulage

It needs to be ensured that existing access roads are sufficiently robust to accommodate cranes and increased Heavy Goods Vehicle (HGV) movements required to carry out decommissioning works. The potential risks and impacts of these increased movements and additional weight, including to peat stability in the immediate vicinity of these roads, should be fully assessed. The timing of the works

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Company Limited by Guarantee no. 12469 | Charity CHY4741 | Charity Regulator no. 20006358 | EU Transparency Register no. 275657497595-21

Directors: Terri Morrissey (Chair), Neil Whoriskey (Vice Chair), John Conroy (Treasurer), Laura Segura Gutierrez (Secretary),

Finbarr Murray, Helen Shaw, Tony Holohan

and the machinery movements also needs to be considered in light of rainfall, the risk of storms, etc. If granted, conditions should be applied accordingly to restrict movements before, during, and following rainfall events.

2. Circular Economy

Should permission be granted, it is submitted that plans should be included to reintroduce turbines into the circular economy to allow for recycling of the materials. This should adhere to the requirements of the Waste Framework Directive (2008/98/EC) which emphasises the need for increased recycling and waste management which does not endanger human health or harm the environment. The decommissioning proposal should also adhere to best practice industry guidance such as that provided by WindEurope (2020).¹

Please acknowledge our submission and advise us of any further consultation periods as well as of any decision made.

Is muidne le meas,

Seán O'Callaghan
Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland

Phoebe Duvall
Senior Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland

¹ <https://wind-europe.org/data/products/decommissioning-of-onshore-wind-turbines/>



An Taisce

The National Trust for Ireland

5 Foster Place

Dublin 2, Ireland

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20251022-ACP-323014

An Coimisiún Pleanála
64 Marlborough Street,
Dublin 1

Sent by email to: appeals@pleanala.ie

22nd October 2025

Ref: 323014
App: Gort Windfarms Limited
For: Substitute Consent pursuant of Section 177E of the Planning and Development Act 2000 (as amended) in relation to the Decommissioning of Derrybrien Wind Farm. The development consists of the proposed retention in situ of existing development associated with the Derrybrien Wind Farm Development (Site 458 Ha) including all at and below ground structures. A remedial Environmental Impact Assessment Report (rEIAR) and a Remedial Natura Impact Statement (rNIS) were submitted with the application
Site: Bohaboy, Boleyneendorrhish, Coppanagh, Derrybrien East. Derrybrien North, Derrybrien South, Derrybrien West, Funshadaun, Kilbeg, Loughatorick North, Toormacnevin in Co. Galway & Slieveanore, Co. Clare

A Chara,

Thank you for your letter of 28th August 2025 referring the above application for substitute consent and the accompanying application made under section s.37L of the Planning and Development Act 2000 (as amended) to An Taisce for comment. It should be noted that we make specific comments on the content of the subject application and s.37L application without prejudice to our comments on the problems with the process(es) through which this application has been brought forward.

1. Flawed Context and Process Regarding this Application

At the outset, it is important to consider the planning and legal context in which this application is being made, which An Taisce believes to be highly flawed. An Coimisiún will no doubt be familiar with the very problematic history and the profound significance of this development, which caused a devastating disaster for both the environment and the local communities in the Derrybrien area. The manner by which the case now proceeds has very serious implications for the local communities,

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public safety and public health, the environment, and the proper application of European law in Ireland.

An Taisce submits that the process and approach currently being pursued is not, in our view, properly prescribed for in law, is in fact at odds with European law, and is and has been trying to fit into the context of an inadequate legislative landscape. Further complications arise given the failure of the then An Bord Pleanála to properly deal with its obligations on the previous substitute consent application for the Derrybrien windfarm (Ref. 308019).

First, as An Taisce and others highlighted in submissions on that previous application for substitute consent, there was then no clear provision under Part XA of the Planning and Development Act (PDA) 2000 (as amended) on substitute consent to obligate the then Board, as the competent authority, to actually conduct the remedial Environmental Impact Assessment (EIA) and remedial Appropriate Assessment and therefore nothing to fully address the proper remedy as required by the European Court. We would highlight paragraph 57 of the original EU Court of Justice (CJEU) judgement in the Derrybrien case, C-215/06:

"While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception."

The definition of Environmental Impact Assessment per Article 1(2)(g) the 2014 Environmental Impact Assessment Directive (2014/52/EU) is as follows:

(g) 'environmental impact assessment' means a process consisting of:

- (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);*
- (ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;*
- (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;*
- (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and*
- (v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.*

Critically, the 2014 Directive's definition clearly establishes EIA as a process and one that does not rely solely on the written EIAR. Crucially, that process involves the carrying out of the assessment by the competent authority and the consequent reaching of their reasoned conclusion.

Article 3 of the 2014 Directive then requires the following:

- 1. The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:*

- (a) population and human health;*
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;*
- (c) land, soil, water, air and climate;*
- (d) material assets, cultural heritage and the landscape;*
- (e) the interaction between the factors referred to in points (a) to (d).*

2. The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

Yet, as stated above, Part XA of the PDA 2000 (as amended) did not then clearly obligate the Board, as the competent authority, to actually undertake the assessment as laid out in Article 3 of and under the definition of EIA, per Article 1(2)(g). We therefore submit that substitute consent provisions of the PDA 2000 (as amended) at the time of the previous substitute consent application did not ensure that EU law, including the EIA Directive, was applied. Similar issues existed in terms of remedial Appropriate Assessments. Notwithstanding, as a public authority, the Board had a clear duty to disapply provisions of national law in breach of EU law, as further clarified by the CJEU in case C-378/17, Minister for Justice and Equality and Commissioner of the Garda Síochána (ECLI:EU:C:2018:979). It should have undertaken a remedial assessment and the results of that should have been the starting point for what was necessary to do to remedy the damage caused by the development, irrespective of whether or not substitute consent to regularise the development was forthcoming or not. This flaw contaminates the current procedure and also presents a conflict of interest for An Coimisiún, all of which it needs to address both in this application and in the context of the parallel s.37L application. These comments should be taken as read in that context for the s.37L application, and are set out in more detail below.

In summary, the starting point for this substitute consent application and the s.37L application are flawed, as they have not been informed properly by a remedial assessment. Instead, Galway County Council simply determined that decommissioning was required, and an un-prescribed process was followed to determine options and a course of action for which a further substitute consent and s.37L application are being made. We submit that there is also no proper entry point for this substitute consent application under Irish law. We also consider that the concept of multiple applications for substitute consent makes no sense.

As stated above, in the case of that previously refused substitute consent application (Ref. 308019), the Board did not actually conduct a remedial assessment to determine what needed to be done to repair the damage caused by the 2003 peat slide. Only after such a remedial assessment should a determination be made on whether or not an attempt at regularisation should occur. However, the Board only focused on the regularisation aspect. The Board's decision was made on the basis of the determination that the application had not met the requirements regarding exceptional circumstances under s.177K(1A). The Board further stated, citing the rEiAR among other things, that the early construction works had unacceptable direct and indirect effects on the environment, that the works that took place following the peat slide and during the operational phase did not render those effects acceptable, and that the residual impacts of those significant effects cannot be fully mitigated, therefore precluding a grant of substitute consent. It is respectfully submitted that Board did not fully carry out its duty as a competent authority by carrying out a full remedial assessment and, critically, making a determination based on that assessment on what needed to be done to remediate the damage caused directly by the development, and indeed occasioned in a much wider area beyond the development site by the bogslide which arose consequent on the development.

It is also worth noting here that there were serious issues with the compliance of the public consultation and notification processes for this application with the requirements of the EIA Directive and corresponding Irish planning law provisions. This is well documented in the third party submissions made on Ref. 308019, to which we would refer An Coimisiún.

Following this refusal of the previous substitute consent application by the Board, Galway County Council issued an enforcement notice (Ref. EN23/235) to Gort Wind Farms Limited, which included the following requirement:

"the decommissioning and, where appropriate in terms of possible environmental impacts on the environment at this location, the removal of the unauthorised windfarm and associated ancillary structures, subject to the applicable consent(s) / permissions(s) from the appropriate authority or authorities."

However, to be consistent with the EIA Directive, any decision to decommission, or indeed to put forward *any* particular course of action, should have first been informed by a comprehensive remedial assessment that determined what needs to be done to repair the damage, what is the most environmentally appropriate course of action, and then prescribed for that accordingly in a decision. This was not done by the Board with regard to Ref. 308019, as explained above. An Taisce therefore considers that Galway County Council should have commissioned an independent assessment of what course of action would be appropriate.

The rEIAR states that, on foot of the enforcement notice from Galway County Council, four potential alternative courses of action were considered:

- 1. Do-Nothing: Leave all structures as they are.*
- 2. Remove All Development: Remove all structures, including those from emergency works during the 2003 peat slide.*
- 3. Partial Removal: Remove all structures except those from the 2003 emergency works.*
- 4. Practicable Restoration: Remove above-ground structures, leaving foundations and underground features in place.*

And then: *"For Work Areas A (Derrybrien Wind Farm) and B (Derrybrien to Agannygal OHL [overhead line]), Alternative 4 was chosen to minimise environmental impact and risks. For Work Area C (offsite works from the peat slide), Alternative 1 was selected to avoid environmental disturbance."*

In the first instance, while the assessment of alternatives is a standard requirement of EIA, we consider that the selection of the options in the first place as part of a remedial assessment (as discussed above) should have been informed by a full participatory process in order to be consistent with the EIA Directive. An Coimisiún should assess the process by which these options were arrived at as well as assess the options themselves as they are presented in the rEIAR assessment of alternatives. However that is suggested without prejudice to the view that it is far from clear that this would cure the fundamental failure where a remedial assessment should have informed what is being done now. It should be noted that the remediation of the damage caused by the development, including beyond the Work Areas specified, also must be included (see section 3 of this submission).

In light of the flawed process to date and what we believe to be the inadequacy of the Irish legislation to address the remedies required by the CJEU, An Taisce queries on what legal basis substitute consent under s.177E is being sought, and indeed the associated s.37L application. We also reemphasise the need for a full remedial assessment to be carried out as a preliminary requirement to determine the appropriate means of remediating the damage caused by the development and thereby guide the process from here on out, and potentially to inform the development of further

applications. It would seem that the appropriate course of action would be to refuse the substitute consent application and s.37L application, pending completion of that process as it is likely the requirements would need to be substantially altered and the legal framework for addressing the works required refined.

Without prejudice to the above, An Coimisiún will need to satisfy itself that it has fully complied with the obligations outstanding and necessary to comply with EU law, irrespective of any deficiencies still pertaining in Irish law, and in particular in respect of Part XA of the 2000 Act and s.37L thereof in arriving at any decision or decisions on this matter.

1.1 Definition of Exceptional Circumstances

Section 177K(1J) of the Planning and Development Act 2000 (as amended) states the following with regard to defining exceptional circumstances:

"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."*

An Taisce submits that the definition of exceptional circumstances per Section 177K(1J) requires consideration by the Irish Courts to determine its alignment with CJEU judgements regarding the standards for exceptionality in, for example, C-215/06. It is our view that s.177K(1J) is not consistent with the views of the European Court.

First, we would highlight paragraphs 57 and 58 of the CJEU judgment in c-215/06:

"57. While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

58. A system of regularisation, such as that in force in Ireland, may have the effect of encouraging developers to forgo ascertaining whether intended projects satisfy the criteria of Article 2(1) of Directive 85/337 as amended, and consequently, not to undertake the action required for identification of the effects of those projects on the environment and for their prior assessment. The first recital of the preamble to Directive 85/337 however states that it

is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects."

These two paragraphs set out what Mr Justice Garrett Simons described in *Suaimhneas Limited v Kerry County Council* (neutral citation [2021] IEHC 451) as "*the limits of a Member State's discretion to regularise the status of development projects carried out in breach of the requirement of the EIA Directive*" (para. 49). Essentially, these limits are:

- A regularisation system (such as substitute consent) should not allow for opportunities to circumvent EU laws and should not incentivise the circumvention of EU laws.
- Any regularisation still must adhere to and apply EU laws.
- Any regularisation should be permitted *only* in exceptional circumstances

It is our firm view that the current definition of exceptional circumstances in s.177K(1J) incorrectly amalgamates two separate issues: a) what actually constitutes an exceptional circumstance, and b) the other limits on regularisation as detailed above.

Second, the definition in s.177K(1J) gives the Board exceptionally broad discretion to consider any issue it so chooses when determining whether or not exceptional circumstances exist (per s.177K(1J)(g) "*such other matters as the Board considers relevant*").

We would highlight that neither *An Taisce v An Bord Pleanála* (neutral citation [2020] IESC 39) nor *Friends of the Irish Environment CLG v Minister for Communications, Climate Action and the Environment & Others* (neutral citation [2019] IEHC 646) actually examined the adequacy of the definition of exceptional circumstances in s.177K(1J) in comparison with the CJEU's judgements in C-215/06, etc. The Supreme Court judgement in [2020] IESC 39 only compared the checks in the leave application process against the requirements of exceptional circumstances in s.177K(1J). Similarly, in [2019] IEHC 646, the High Court was comparing new regulations with the existing definition in the Act at the time.

We therefore submit that An Coimisiún should seek a referral to the High Court on the proper definition of exceptional circumstances as laid out in s.177K(1J) of the Planning and Development Act 2000 (as amended) and its alignment with the standards of exceptionality set out by the CJEU in C-215/06 and others.

1 2 Conflict of Interest

It is respectfully submitted that as An Coimisiún/the Board have dealt with proposals in relation to this case previously, and in light of the issues raised by An Taisce above, any conflicts of interest should be dealt with by An Coimisiún, while still ensuring that the necessary expertise is brought to bear on the subject proposal.

We submit that Galway County Council is also conflicted in this matter given its earlier failures in respect of the development, and consequently in determining the approach to enforcement, we recommend that An Coimisiún also be mindful of this.

Similarly, in determining the very limited scope of the applications and remediation proposed, and indeed the limited area to be remediated, the ESB is also conflicted. Again, we consider that An Coimisiún should be mindful of this.

1.3 Onus on the Competent Authority

Ultimately, it is submitted that the requirement now is to ensure the proper remediation of the site. The appropriate approach to this may involve decommissioning and the removal of the turbines and the retention of other elements in-situ as proposed, or a full remedial assessment may indicate the need for a different approach, in whole or in part.

An Taisce respectfully submits that the onus of responsibility for assessing the implications of the proposal and the accompanying assessments, identifying deficiencies in the planned approach and in the assessments, and determining if there is adequate information provided to enable the making of a determination with regard to the subject application ultimately lies with An Coimisiún Pleanála as the competent authority. Given that complexity and highly technical nature of the subject proposal, it is submitted that An Coimisiún will need ensure it has access to, either in-house or externally, the full complement of highly specialised experts needed to address the many distinct aspects of the proposal. We also consider that it would not be reasonable in such a complex, highly specialised and technically challenging case to expect any prescribed body or members of the public operating under the constraints of relatively short public consultation timeframes to be able to comprehensively identify issues, deficiencies, etc. with the application and the associated assessments.

We would highlight the following Articles of the 2014 EIA Directive regarding the above comments: Article 1(2)(g) defines environmental impact assessment:

(g) "environmental impact assessment" means a process consisting of:

- (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);*
- (ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;*
- (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;***
- (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and***
- (v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.; [emphasis added]*

Article 5(3)(b) states: "*In order to ensure the completeness and quality of the environmental impact assessment report:... (b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report*".

2. Public Consultation

Per section 2.3.2 of the rEIAR and section 2.6.3 of the Planning Report, the extent of the public consultation carried out by the applicant in advance of submitting the subject application and accompanying s.37L application appears to be the appointment of a Community Liaison Officer, the establishment of the dedicated project website, and one singular public information event. We note,

however, that various third party submissions have raised serious concerns about the quality of the public consultations in advance of the applications being made.

In relation to the previously refused application for substitute consent, Ref. 308019, the European Commission commissioned a report (entitled "Technical Assessment of Derrybrien Windfarm and Ancillary Works") to evaluate the remedial impact assessment. That report raised serious concerns on the adequacy of the assessment and highlighted in multiple instances that stakeholder concerns should have been directly addressed in the remedial assessments. An Taisce does not consider that this was done in the remedial assessments for the subject application.

Based on the information provided in Chapter 2 of the rEIAR, it does not appear that consultation with members of the public impacted by the 2003 disaster occurred to inform the scoping of the rEIA. We consider this to be a serious deficiency.

We would also highlight the following statement from the European Commission report in relation to the previous substitute consent application:

"Section 1.5.5 of the NTS states 'Gort Wind Farms Limited has engaged with the general public in relation to the Derrybrien Wind Farm Project throughout the development and operation of the Project.' All of the complaints received by the EC [European Commission] contradict this claim."

It should also be noted that reports of inadequate public consultation in relation to these current applications follow on from the highly flawed statutory public consultation process that occurred for the refused substitute consent application, Ref. 308019, which is well documented in the third party submissions made with regard to that application.

3. Extent of Site Area and Area/Scope Covered by Remedial Assessments

The area covered by the subject application and accompanying 37L application requires detailed consideration. We note here that the submission made by Mr. Martin Collins in respect of the subject application details discrepancies in the site areas (in hectares) as stated in the previous substitute consent application and the two applications now before An Coimisiún.

In addition to the multiple previous planning applications in the history of this development which together give rise to an overall site, An Taisce would highlight that for the purposes of remedial assessment, the site area also needs to include the full extent of the damage caused by the 2003 peat slide, and any further damage occasioned by this development or which arose subsequently from the bogslide. We note that per the site location map in drawing QS-000280-01-D460-031-002-000, the red line-delineated site area does include the area of the peat slide, associated emergency works, etc. rEIAR Figure 4-1 showing the rEIAR Study Area appears to include at least some of the areas of the damage but these are not actually clearly marked. It must be ensured that *all* areas impacted by the slide are included in the official site area and in the assessments. This would include, for example, all impacted watercourses and the full spatial extent of the impact to them.

The impacts of 2003 peat slide to local communities were profound. In determining the area for and extent of the remedial assessments, the issue of how to account for and attempt to remediate these human impacts also needs to be a key consideration. In our view, Chapter 5 of the rEIAR on Population and Human Health does not adequately assess the human impact of the peat slide disaster. It relies on Electoral Divisions in setting the study area with no mention of the disaster or attempt to identify people, areas, and properties impacted. As stated above, including in our comment about the

scoping carried out for the rEIAR, we believe the local communities should have been properly consulted with prior to the preparation of the rEIAR and their contributions directly and explicitly reflected in the rEIAR in relation to the Population and Human Health assessment as well as the assessments under all other EIA categories.

4. Previous European Commission Report

There have been serious deficiencies in relation to quality of solutions that the applicant has previously proposed, which gives a reasonable basis for serious concern regarding the proposals now before An Coimisiún. In that respect, we would highlight that, in relation to the previously refused application for substitute consent, Ref. 308019, the European Commission commissioned a report (entitled "Technical Assessment of Derrybrien Windfarm and Ancillary Works") to evaluate the remedial impact assessment. That report raised serious concerns on the adequacy of the assessment. It is acknowledged that the previous application for substitute consent is materially different to the substitute consent application now before An Coimisiún, however, many of the European Commission's concerns remain relevant, especially as they relate to the remedial assessment of past works. We draw An Coimisiún's attention in particular to issues the report raises with regard to the following:

- Overall peat stability and the establishment of baseline information;
- Issues of future peat slide risk, including after decommissioning;
- Inadequate considerations of impacts to Natura 2000 sites;
- The establishment of a future monitoring regime;
- Quality of surveying methods and application of relevant assessment guidance;
- Format of the rEIAR for ease of understanding;
- Consideration of stakeholder concerns and adequacy of public consultations.

We submit that it is essential that An Coimisiún ensure that the abovementioned issues, as well as all others raised by the European Commission report that remain relevant to the subject application and remedial assessments, have been fully addressed in the remedial assessments for the subject application.

5. Drainage, Long-Term Site Stability, and Ongoing Evaluation and Monitoring Requirement

The consideration of the site's drainage regime, currently and into the future, is critical. The drains appear to be fundamental to keeping the site safe at present, therefore the approach to the drains going forward needs to be informed by thorough hydrological assessment.

The applicant is proposing to leave the existing drainage network in place but without any maintenance after the proposed decommissioning is complete. An Taisce has serious concerns about this approach.

The applicant states that the existing drainage network on site "*continues to have a sustained positive effect on peat stability that is Moderately Significant relative to the baseline conditions on the site prior to construction*". (rEIAR NTS, Section 8.1.2.2) However, it is unclear if this stability will persist in the absence of management post-decommissioning which embeds an undesirable risk factor into the proposal, with potentially serious consequences. The applicant also states:

*"The improved drainage network on the wind farm site will continue to have a sustained positive effect on peat stability post decommissioning that is Moderately Significant relative to the baseline conditions on the site prior to construction. No maintenance works will be carried out on the drainage after decommissioning. Therefore, **the efficiency and capacity of the drains could reduce over time if they become clogged due to vegetation growth.** In the long-term this could result in gradual partial restoration of groundwater levels on the site which would **reduce the positive effect on the stability of the peat to Slightly Significant.**"* (rEIAR NTS, Section 8.1.2.2, p. lxxvii) [An Taisce emphasis]

We would also highlight the following statement which requires scientific clarity:

"The improved drainage network will also be left in place without blocking any drains to avoid any sudden changes to the groundwater regime on the site, and to allow the site to adapt gradually to changing conditions over time if the efficiency of the system is reduced by vegetation growth. (Section 8.1.2, p. lxxx)."

It is submitted that this would appear to contain a great deal of uncertainty, requiring detailed scrutiny. This is exacerbated by the fact that the applicant seems to suggest that improved drainage at the site, along with an increase in the strength of the peat under sustained dead load surcharges, since the initial peat slide event in 2003, reduced the occurrence of another peat slide event. The improved drainage network has been characterised by the applicant as a *"permanent and sustained positive impact on the peat with respect to site stability"* (rEIAR, Ch. 8, p. 8-120). However, this raises the question of whether instability risk will increase upon cessation of continuous improved drainage management on the site. In particular, we submit that An Coimisiún should closely assess the following conclusion by the applicant:

"No further maintenance will be carried out on the drains after decommissioning. Therefore, in the long-term the efficiency of the drains could reduce if they become clogged by vegetation over time, which would result in a partial gradual restoration of groundwater levels on the site.

The site maintenance records indicate that maintenance on the drainage network has been at a residual level since 2011– with only minor works required to maintain the efficiency and capacity of the existing system. There has been no experience of drains clogging or getting blocked because of vegetation growth, blocking or collapse over that time. Therefore, any reduction in the efficiency of the drainage network after decommissioning is expected to be minor and to occur gradually over time so that the positive long-term post-decommissioning effect on the stability of the peat will still be Medium to Low and Slightly Significant relative to the baseline conditions prior to construction."

Even if maintenance works associated with the drainage system post-2011 have only been considered to be "minor", a level of oversight was still required, something we consider to be still required after decommissioning concludes.

We also note that the aforementioned European Commission report analysing the applicant's rEIAR for Ref. 308019 highlighted discrepancies between the applicant's emphasis on operational phase peat stability due to drainage improvement versus the intent to abandon drains which would then potentially deteriorate and elevate peat instability risk:

"It is incongruous to state on one hand that maintenance of a robust drainage system is vital for site stability but that following decommissioning maintenance will stop and permit the

drainage system to fail having undertaken no mitigating management to stabilise such a future scenario”.

Failure to specify and require a drainage monitoring regime may leave the site vulnerable to further peat slide events given the uncertainty surrounding the drainage network’s ability to maintain stability once decommissioning is complete. The source of this instability could arise from fractured peat which has dried out being overwhelmed by sudden surges of rainwater (this phenomenon was also previously noted by the European Commission in their aforementioned report). We submit that a post-decommissioning drainage monitoring and management regime needs to be requested. Additionally, given the complexity and unprecedented nature of the issues and particular site issues, there needs to be a wider programme of evaluation in respect of the safety of the site in addition to the adequacy of the remediation measures to be proposed. In summary, a key outcome from this will be to acknowledge that a line cannot be simply drawn on the Derrybrien Windfarm – this will need careful evaluation and potentially further works into the future, particularly given the further complexities consequent on climate change and periods of drought and intense rainfall. This is the legacy of obligation arising from the original failures, and the endless delays in properly addressing the outstanding legal and environmental obligations.

We also wish to express serious concerns in respect of the plant movements associated with the proposed removal of the turbines and on peat stability. There is a need for consideration of controls particularly around weather conditions prior to, during, and after such activities in the event this is ultimately determined to be appropriate.

6. Water Quality

The rNIS outlines the following:

‘With regards to the Retained Development, the main issue for water quality and the downstream aquatic environment (as demonstrated during the construction phase) is the level of peat stability and the degree to which retention of individual, at and below ground elements could cause peat failure into the future.’

This is a key point which we believe An Coimisiún should seek clarity on. These structures are scheduled to be left in situ in perpetuity. It would appear that their structural integrity is fundamental for the protection of water quality, as they are presumed to act as peat support structures. The Geotechnical Stability Report for On-Site Activities highlights that: *“Therefore, the concrete would not be expected to deteriorate significantly in strength or disintegrate over time.”*

We deal with this more fully in Section 8 below, but if these structures are such a fundamental element of future peat stability and the protection of water quality, then an ongoing monitoring and maintenance program should be required by the applicant, in perpetuity, in order to provide guarantees of ongoing structural integrity and by proxy water protection.

While the applicant seeks to rely on a lack of deterioration in water quality in rivers downstream as evidence of no water quality impact on foot of the operational phase of the project, it should be noted that the Owendalulleagh_010 complex of tributaries to the south of the subject site underwent a decline in their water quality status between EPA reporting periods, going from high status in the 2016-2021 period to good status during the latest 2019-2025 period. Consequently, the conclusion of no deterioration in EPA monitored rivers downstream no longer holds and cannot be used as a justification for the project’s lack of impact post-decommissioning:

"it is critical to note that the Project, during its operational phase, with these elements in-situ, has not caused deterioration in the EPA monitored rivers downstream and has, in the case of the two main receiving rivers (Owendalulleegh and Boleyneendoorish), maintained high ecological status (Q4-5/Q5)...There will be a neutral impact on the larger main channel receiving waters..with these continuing at maintain high ecological status (Q4-5/Q5) and thus meet their WFD objectives" (rEiAR, Section 7.2.4.1, p. lxvii)

We note the applicant did not consider the latest EPA water quality results given that the application files and associated analyses were conducted prior to their release. The implications of this recent deterioration on the robustness of their conclusion of no deterioration should be considered.

Additionally, we note that there is a stated negative impact on water quality on foot of the decommissioning works. Section 7.4.5.1 outlines:

"while there is predicted to initially be slightly negative, temporary to short term effects on water quality, mainly related to suspended solids leaving the areas proposed to be disturbed by the decommissioning works, this will gradually diminish to neutral to slightly positive effects on water quality and aquatic habitats into the future."

While the impact is predicted to be short term, what is unclear to us is whether it will impact on any quality element relied upon to determine WFD status. We would highlight that in Case C-461/13 (Weser), the CJEU held that:

"Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required

— unless a derogation is granted

— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."

The Weser case created a jurisdictional requirement and established that authorisation for a project has to be refused where there may be an adverse impact on the objectives of Article 4. To assess the proposal against Article 4, the EPA monitoring data on the water quality status indicators and Environmental Quality Standards must be used.

7 . Remedial A ppropri ate Assessment

It is now well established in law that approval can only be granted for plans and projects when it has been established beyond all reasonable scientific doubt that the subject proposal will not adversely impact any Natura 2000 sites.

In Case C-258/11, *Sweetman & Others v An Bord Pleanála & Others*, it was held that the provisions of Articles 6(2)–(4) of the Habitats Directive must be interpreted together *"as a coherent whole in the light of the conservation objectives pursued by the directive"* and that they impose a series of specific obligations necessary to achieve and maintain favourable conservation status. A plan or project will negatively impact upon a site if it prevented the *"lasting preservation of the constitutive*

characteristics" of the site for which it was designated, with reference to the site's conservation objectives. Significantly it was determined that:

*"authorisation for a plan or projectmay therefore be given only on condition that the competent authoritiesare certain that the plan or project will not have lasting adverse effects on the integrity of the site. That is so where **no reasonable scientific doubt remains** as to the absence of such effects"*[emphasis added].

The competent authority must therefore refuse authorisation for any plans or projects where there is uncertainty as to whether the plan or project will have adverse effects on the integrity of the site. It was also held in paragraph 44 that:

*"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it **cannot have lacunae** and **must contain complete, precise and definitive findings** and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned (see, to this effect, Case C 404/09 Commission v Spain, paragraph 100 and the case-law cited)..."* [emphasis added].

In Kelly v An Bord Pleanála & Others, [2013 No 802 J.R.] with reference to Commission v Spain C-404/09, the High Court held in paragraph 36 that the competent authority must carry out an Appropriate Assessment for a plan or project in light of the best scientific knowledge in the field. It was also held that the competent authority must lay out the rationale and reasoning which was used to arrive at the determination.

The Kelly Judgement has provided a very helpful clarification of the requirements of an Appropriate Assessment, and in particular in paragraph 40, a summary of what must be delivered by the process in order to be lawfully conducted:

"(i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.

(ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.

(iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects."

It is submitted that these same standards of assessment regarding the required level of scientific certainty apply equally to remedial Appropriate Assessments in order to achieve compliance with Articles 6(3) and 6(4) of the Habitats Directive.

We note in particular that several third party submissions made in relation to Ref. 308019 detailed extensive issues and deficiencies with the rNIS for that application, particularly the assessment of

impacts to Hen Harrier. We would refer An Coimisiún to those submissions and submit that it should ensure that any relevant issues raised therein have been addressed in the subject rNIS.

We also note that continued degradation of peat after decommissioning, a phenomenon which could be locked in given historic intensive drainage at the site, is likely to result in increased sedimentation which could enter the receiving aquatic environment of freshwater ecosystems historically impacted by the development. This was recognised in a report by Lindsay & Bragg (2005)¹ analysing the initial peat slide event. This would relate in particular to the high status 'Boleyneendorrish_010' waterbody and wider catchment, which are hydrologically linked with the Sonnagh Bog SAC (site code: 001913) and Carrowbaun, Newhall and Ballylee Turloughs SAC (site code: 002293), as well as the good status 'Owendalulleegh_010' water bodies which are hydrologically linked with the Gortacarnaun Wood SAC (site code: 002180) and Lough Cutra SAC (site code: 000299), among other wetland complexes further downstream which are SACs.

We wish to highlight in particular to pay attention to remedies in respect of Hen Harriers given the areas previously of importance for them and the significant decline in their population, compounded by the inadequacies of the Threat Response Plan for Hen Harriers.

There is a lack of clarity and focus on establishing the quality, nature, and status of the site prior to the development, and on the wider area as impacted by this development and the bogslide. That baseline is what the remediation works need to be targeted at, as a minimum.

There is also a need for site-specific conservation objectives.

8 Long-Term Integrity of Concrete Bases and Other Infrastructure to Remain In-Situ

It is submitted that An Coimisiún needs to determine if the retention in-situ of various ground level and below ground level elements of the development is the safest course of action environmentally, in terms of future peat stability risks, and in terms of overall public safety.

We submit that the following statement requires close consideration by An Coimisiún when determining the potential impacts arising from the long-term retention in-situ of the concrete turbine foundations, etc.:

"The reinforced concrete bases would have been designed for the chemical exposure classification relevant to the ground conditions on the site. Therefore, the concrete would not be expected to deteriorate significantly in strength or disintegrate over time." (Geotechnical Stability Report for On-Site Activities, Section 7.2, p. 188)

This statement requires assessment given the adverse implications for the peat environment, in terms of structural instability and chemical contamination, if concrete structures do in fact deteriorate and lose their structural integrity over time. This is important given that the retained turbine foundations are stated to *"provide some permanent support to the peat upslope from the turbines, which is a Slightly Significant positive effect on peat stability"*. (rEIAR, Section 8.1.3, p. lxxxii). However, this conclusion is entirely reliant on the non-deterioration of the turbine foundations and embeds a degree of risk into the proposal by suggesting that peat instability may ensue if the foundations were to become structurally unsound over time. This may alter the conclusion arrived at by the applicant of

¹ Lindsay, R.A., & Bragg, O. 2005. Wind Farms and Blanket Peat – a report on the Derrybrien bog slide. https://irishriverproject.com/wp-content/uploads/2023/06/Wind_Farms_and_Blanket_Peat_-_a_report_on_the_Derr.pdf

"low to negligible residual risk of peat failure associated with retained elements." (rEIAR, Section 7.2.4.1, p. lxvii) The applicant seeks to discount this interaction between turbine foundations and peat stability in Table 8-1 of the rEIAR by stating that *"the stability of the peat slopes does not rely on this effect"*, despite labelling the effect as a positive impact on peat slope support. This discrepancy requires scrutiny and clarification as a preliminary matter given its crucial implications for future peat slide risk if turbine foundations were to deteriorate, for example concrete cracks becoming colonised with vegetation or being subjected to water erosion.

Similar considerations apply to the roads and other infrastructure proposed to be left in-situ. We note the following statement in section 7.4.3.1 of rEIAR: *"In April and May 2014 wear and tear on many parts of the floating road system on the wind farm necessitated repair and upgrade"*. This indicates the potential vulnerability of the roads to deterioration over time. Potential effects of this in the future, including crucially on peat stability, require assessment.

9. Climate Change

The impacts of climate change, now and into the future, particularly the increasing risk of significant drought and rainfall events, need to be taken into account. This intensified cycle of drying and rewetting will have significant implications for both peat stability and for the peatland's contribution to climate change.

The effects of the proposal on climate change, including carbon losses from the peat, etc., also require assessment.

10. Ongoing Monitoring and Maintenance

An Taisce submits that a detailed programme of ongoing monitoring, assessment and maintenance of the site during and post-decommissioning is needed to ensure the ongoing safety of the site in light of the past peat slide and ongoing potential peat stability issues, to ensure the monitoring of the condition of all project elements proposed to be retained in-situ, and to ensure the environmental integrity and successful remediation of the site. We consider that the proposal, including the rEIAR and rNIS, are entirely deficient in providing for this.

We note the following comment in Section 7.6 of the Geotechnical Stability Report stating that following decommissioning, the applicant *"will not have any involvement in future land use or site activities"*, aside from handing over a safety file to landowners.

It is acknowledged that some limited monitoring is provided for, for example, in rEIAR section 7.5 on Biodiversity (Aquatic Ecology and Fisheries Including Water Quality), which states:

"During the Prospective Development and for a period of 2 years after its completion, Q-value monitoring will be undertaken annually during the May to September period at the following sites on the tributaries and rivers of Owendalulleagh and Boleyneendoorish catchments (as the principal drainage catchments for the Project): Sites O1, O3A, O5, O5A, O7C, O7, O10, B3, B4, B5, OHL1.

Electrofishing surveys will be conducted at Sites O5, O5A and O6 in the year that the Prospective Development commences and again on one occasion in the 2-year period following its completion."

However, we would highlight in particular our comments earlier in this submission on drainage, peat stability, the future condition of infrastructure left in-situ, water quality, and the protection of Natura 2000 sites and the need for a comprehensive plan for ongoing monitoring and maintenance for these and other elements of the development.

We would also highlight the following point from the aforementioned European Commission report in relation to Ref. 308019:

"Further evidence is required to demonstrate that following decommissioning the risk of a peat slide will not increase. Either a long term maintenance plan following decommissioning should also be implemented or works to restore the peat to a point where long term maintenance is not required should be considered."

It is submitted that a comprehensive plan for ongoing monitoring and maintenance should be requested by An Coimisiún and that, should permission be granted, compliance with that plan should be required by condition.

11. Conclusion

Ultimately, An Taisce submits that the key task at hand here is to ensure the remediation of the site to restore it to the environmental condition it was in prior to the 2003 disaster and to take a highly precautionary approach in doing so. This requires much more than just the decommissioning of pieces of infrastructure. Any course of action decided upon here will also require a comprehensive programme of ongoing monitoring and maintenance for years to come to ensure that remediation occurs and to ensure the ongoing safety of the site, particularly with regard to peat stability. However, ultimately, the approach needs to be informed by remedial EIAs and remedial AAs rather than simply deciding on a course of action and seeking substitute consent and planning permission to do what has been decided to do, outside of the proper remedial framework.

The importance of this decision to the local community, public safety, environmental integrity and remediation, and the overall importance of this case nationally and as it relates to EU law cannot be overstated. It therefore must be ensured that the decision making process and the decision itself are extremely robust.

Please acknowledge our submission and advise us of any further consultation periods as well as of any decision made.

Is muidne le meas,

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