

Macroon District Environmental Group

c/o Donal O' Leary

20 Glen Park

Macroon

Co. Cork

AN BORD PLEANÁLA	
LDG-	0307939-20
ABP-	
17 SEP 2020	
Fee: €	Type:
Time:	By: post

The Secretary

An Bord Pleanála

64 Marlborough Street

Dublin 1

D01 V902

Case reference: PL04.307939 Application for Substitute Consent

Applicant: Cleanrath Wind Farm Ltd.

Introduction

Macroon District Environmental Group (MDEG) is a community-based environmental advocacy organisation in existence since 1985. MDEG opposed the application for planning permission for Cleanrath Windfarm in 2015 (Cork County Council ref. 15/6966) and believes that this current application for Substitute Consent should be refused by An Bord Pleanála on the following grounds.

Legality of Substitute Consent Application

MDEG are sure the board is aware of the recent Supreme Court judgement *An Taisce v An Bord Pleanála, An Taisce v An Bord Pleanála & Ors, Sweetman v An Bord Pleanála & Ors*, 1 July 2020 [2020 IESC 39] which ruled that substitute consent applications are inconsistent with EU law and do not uphold the requirements of the Environmental Impact Assessment Directive (2014/52/EU).

In the light of this Supreme Court judgement, An Bord Pleanála surely cannot legally grant substitute consent for Cleanrath Windfarm and must reject this application.

It is grossly unfair that this developer should be rewarded for continuing with the construction of Cleanrath Windfarm when a supreme court case, which subsequently quashed the planning permission for the development, was pending *Balz and Heubach-v- An Bord Pleanála and Cork County Council, Cleanrath Windfarms Ltd.* [2019] IESC 90.

MDEG are strongly of the opinion that the nine turbines which were constructed at Cleanrath before the supreme court had ruled on the legality of their permission should be dismantled and removed and that the site should, as far as possible, be returned to its natural state.

Delay in the availability of the Application Documents to the Public

This application for substitute consent was lodged with An Bord Pleanála on the 14th August. Members of the public became aware of it by virtue of a planning notice which was erected on the 12th August. However, none of the planning documents were made available to the public by An Bord Pleanála until 24th August, one week after the application was lodged. This was only after local residents and their representatives had repeatedly phoned and emailed An Bord Pleanála and Cork County Council to request the documents. How long would it have taken if they had not done this?

Members of the public have only five weeks to lodge an observation on this application with An Bord Pleanála and in this case the application documents were only available for four of these five weeks. This delay has compromised the ability of members of the public to effectively respond to the application. It took the board four and a half months to decide whether to grant leave to the developer to apply for substitute consent and yet the public are expected to digest and be advised upon the thousands of pages of documentation associated with this application in just four weeks.

While it may not be possible for the Board to extend the five-week statutory period, it is open to the Board to use its discretion to allow members of the public to have a further say in this matter. MDEG therefore requests that, once it has received the developer's responses to public objections, the Board should allow a further period of time for the public concerned to make further submissions on the application.

In relation to the Supreme Court judgement on Cleanrath Wind Farm on the 12th December 2019 and on behalf of the unanimous court Mr Justice O'Donnell remarked that:

"57. [...] It is a basic element of any decision-making affecting the public that relevant submissions should be addressed and an explanation given why they are not accepted, if indeed that is the case. This is fundamental not just to the law, but also to the trust which members of the public are required to have in decision making institutions if the individuals concerned, and the public more generally, are to be expected to accept decisions with which, in some cases, they may profoundly disagree, and with whose consequences they may have to live. [...]"

It is surely very important therefore that members of the public who will have to live with the consequences of this decision, are given ample opportunities to make informed submissions on this application.

Renewable Energy Targets

In their Non-Technical Summary MKO are keen to highlight the 'need' for Cleanrath Windfarm, referring to government targets on renewable energy. How convenient for the developers that the country 'needs' their Wind Farm. This is something however that MDEG would vehemently dispute. The need for renewable energy has to be balanced with the appropriateness of any project for the location where it is proposed and indeed its potential to reduce Ireland's CO2 emissions.

We would argue that:

- Dealing with CO2 emissions requires difficult political decisions rather than the promotion of new means of energy generation e.g. curbing air travel, efficient insulation of buildings, the subjecting of energy consumption to higher levels of VAT.

- Windfarms are being promoted without critical appraisal of their efficiency and costs. Wind technology is too unpredictable, intermittent and inefficient to be supported through planning for its minimal contribution to clean energy supply.
- By failing to develop other measures the policy appears to promote the wind energy industry. The contribution from wind farms has been grossly exaggerated. At present 29 windfarms produce 161MW or 2.4% of Ireland's electricity generating capacity, although in practice this is more like 1.5%.

All projects, including renewable energy projects, have to satisfy the pillars of sustainable development as agreed at the Rio Earth Summit in 1992 and subsequent International Conferences on Climate Change – social, environmental and economic sustainability. Saying that renewable energy is automatically a good thing and therefore society must accept any renewable energy project is too simplistic.

The National Planning Framework (2018) states:

'In meeting the challenge of transitioning to a low carbon economy, the location of future national renewable energy generation will, for the most part, need to be accommodated on large tracts of land that are located in a rural setting, while also continuing to protect the integrity of the environment and respecting the needs of people who live in rural areas.'

It is the view of MDEG that the development of Cleanrath Wind Farm has neither protected the integrity of the environment nor respected the needs of people who live in the area.

MDEG believe that the large scale wind farm projects which have been allowed to go ahead in this part of West Cork, including Cleanrath, represent rampant profiteering on the part of a developer who has little or no regard for the local landscape, environment or communities. Previous inspector's reports have asked the question – how much of the national AER (Alternative Energy Requirement) programme should be located in a single nationally important scenic area such as West Cork?

We believe that planning authorities in their haste to meet government targets have given permission for developments which should never have been allowed to go ahead. The effect is the industrialisation of a precious landscape which should be protected. The Board can at least in part, rectify this by refusing substitute consent for Cleanrath Windfarm.

Landscape and Visual

The Cork County Development Plan highlights the 'significance of the County's landscape as a key green infrastructure asset due to its intrinsic value as places of natural beauty in addition to its importance with regard to recreation, tourism and other uses.' It is the view of MDEG that Cleanrath Wind farm and others in the vicinity are compromising the key green infrastructure asset of the Upper Lee Valley and the natural beauty of the area.

The county development plan includes the following objective:

ENV 2-9: It is a general objective to preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognised in the Landscape Strategy.

with those at Derragh and Shehy More create a sea of red lights in the previously dark night skies which can only be described as light pollution. It is a radical intrusion into the night-time ambience of the area and is wholly destructive of dark sky characteristics.

In Germany, from July 2021 onwards it will be mandatory for wind turbines with more than 100m hub height to be equipped with a need-based light system which is activated by a transponder inside the plane. Lanthan Safe Sky have developed the required system which has received certification for this specific issue in Germany.

Ornithology

The 'Ornithology' section in the developer's non-technical summary states that 'no significant effects as a result of the Cleanrath wind farm development are foreseen on key ornithological receptors of the study area at any stage of operation or decommissioning, either in isolation or cumulatively with other surrounding windfarms.' However, MDEG completely refutes this:

The Annex I species White-tailed Eagle (*Haliaeetus albicilla*) has been sighted several times in the vicinity of Cleanrath Wind Farm. For example, it has been sighted in the general Lough Allua area e.g. 10th February 2019 (Ref. IB115423; <http://www.irishbirding.com/birds/web>), and also at nearby Gougane Barra (26 July 2012; Ref. IB46763; <http://www.irishbirding.com/birds/web>). This species would also pass over the area where Cleanrath wind farm is located, in flying from the coast over the mountains as far inland as the Gearagh (most recently 2nd Nov. 2018; Ref. 113382; <http://www.irishbirding.com/birds/web>) and the Coachford area where it was very recently sighted (7. Feb 2020; Ref. IB125509; <http://www.irishbirding.com/birds/web>). A breeding pair of white-tailed sea eagles, nesting in the nearby Glengarriff Nature Reserve, have this year successfully hatched and fledged a chick.

The massive swept area of the blades of the 150m turbines at Cleanrath Wind Farm will surely pose a serious threat to the precious sea eagles and other birds of prey, known to be present in the area, such as buzzards and hen harriers. The White-tailed Sea Eagle Reintroduction Project have not been consulted about the potential impact of this development on eagles in the area particularly combined with the other nearby wind farms. There have been many previous incidents of sea eagles being caught in the blades of wind turbines and unsurprisingly research has shown that a higher density of wind turbines in high quality habitat areas (such as the mountains surrounding Lough Allua) increases the likelihood of collision mortality.

https://www.researchgate.net/publication/333395144_Wind_turbines_in_high_quality_habitat_cause_disproportionate_increases_in_collision_mortality_of_the_white-tailed_eagle

However, the 'Ornithology' section of the EIAR completely fails to acknowledge the potential impact such huge turbines could have on this rare and protected species and other birds of prey in the area.

Local Environment and Biodiversity

MDEG is of the opinion that Cleanrath wind farm and others in the area have already had a significantly adverse impact on environment and the biodiversity of the area

The Irish Peatland Conservation Council, dedicated to preserving bogs and peatland, expressed concern at a previous application for a windfarm development in the proposed location, due to:

- Its threat to the survival of protected peatland habitat.
- 2 kilometre proximity to Lough Allua pNHA 1065, with its associated habitats and diversity of species.
- The noted presence of protected plant species including *Asplenium obovatum* (Lanceolate Spleenwort), *Centaureum pulchellum* (Lesser Centaury), the very rare and vulnerable *Trichomanes speciosum* (Killarney Fern – a red-listed species), *Hammarbya paludosa* (Bog Orchid) and *Viola lactea* (Pale Dog Violet or Pale Heath Violet). These species are all protected under the Flora Protection Order 1987.

Cleanrath Wind Farm has a direct hydrological connection to the Gearagh SAC, Lough Allua pNHA and the Toon River valley pNHA. This is cumulative with the wind farms at Shehy More and Derragh. If the mitigation measures from one of these windfarms are inadequate there could be a serious impact on the river Lee, the Gearagh SAC and Lough Allua pNHA. But is important to consider the potentially devastating impact if the mitigation measures put in place at several or all of the windfarms in the River Lee catchment were to fail.

The presence of the endangered Fresh Water Pearl Mussel in the Toon River means that the developers must guarantee that no fine sediment from the site can enter local water courses under extreme weather conditions. It is our belief that the drainage mitigation measures at Cleanrath Windfarm cannot provide this guarantee. Mitigation measures described in the 2015 EIS were not specific to the site in question and did not take into account local conditions or rainfall figures or extreme weather events which have happened several times since the windfarm was constructed.

There is no consideration of the several hundred litres of lubricating oil and hydraulic fluid located in the nacelle of each wind turbine at Cleanrath and no containment is provided for any leakage or fracture that may occur to prevent contamination of water courses.

The fact that environmental damage is likely to already have occurred as a result of the Cleanrath development is not a reason to grant substitute consent. As we have previously stated the developer should not be rewarded for pushing ahead with construction when the legality of the planning permission for the Wind Farm was due to be examined by the supreme court.

Subjective EIAR

The EIAR for this application has been produced by MKO a company in the pay of Cleanrath Windfarm Ltd. who have also produced many more such documents for other subsidiary companies of Enerco Energy Ltd. and have a very lucrative contract with them. It is very unlikely to be impartial. MDEG would therefore question the integrity of this EIAR which we believe is neither objective nor reliable.

Donal O' Leary and others on behalf of

Macroon District Environmental Group



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AN BORD PLEANÁLA

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LTR DATED _____ FROM _____

LDG- _____

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c/o Donal O' Leary

20 Glen Park

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To An Bord Pleanála

Case reference: PL04.306272 Application for Substitute Consent

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The nine 150m turbines of Cleanrath Wind Farm dominate the view from far and wide and are highly visible from Loch Allua, from the Shehy Mountains to the South of the development, from the village of Inchigeela and from many of the scenic routes, cycle and walking routes in the area. They intrude on many 'important views and prospects'.

A ZTV (Zone of Theoretical Visibility) map is included in the EIAR (Figure 13-1) which claims that 'full theoretical visibility of the 9 turbines is available across a relatively small proportion of the overall LVIA study area'. It goes on to state that:

Visibility (in theory) is concentrated within a 5 km radius of the study area, where there is visibility in the immediate vicinity of the site but there are also small pockets which have no visibility. Within 5-10 kilometres, intermittent visibility occurs to the south, east and west mainly, with areas of no visibility occurring to the north-west and north. Between 10 km and 20 km theoretical visibility decreases significantly, with very little visibility to the south and west.

This is an interpretation of the ZTV map which is at best questionable. We would argue that the ZTV map indicates that 7 to 9 of the turbines at Cleanrath can be seen from a shockingly high proportion of the area within a 10km radius of the windfarm and from an unacceptable proportion of the area within a 20km radius. There is only a very small proportion of the area within a 5km radius of the windfarm from which the windfarm is not visible. We would also point out that the ZTV map is hard to interpret as it is impossible to read place names or see important landmarks on it.

Theoretical visibility is one thing but people living in the area and visitors to it will attest that in reality the wind farm is highly visible for miles around. It towers over the village of Inchigeela and dominates much of the view from Loch Allua and the surrounding area. It can be clearly seen from the Gearagh and is visible from several important scenic routes despite the developers claims to the contrary. We assert that the photomontages included in the EIAR have been carefully chosen to disguise the true impact of the windfarm on the landscape of the area.

In relation to scenic routes the NTS states that 'No significant visual effects were recorded for any designated Scenic Route as a result of the Cleanrath wind farm development.' Again, this is a highly dubious statement when table 13.2 and the ZTV map at figure 13.5 clearly shows that several important scenic routes will have full visibility of the Windfarm for long stretches. These include S32 which goes over Pipe Hill runs along the south bank of Lough Allua and is part of the 'Beara, Gougane Barra Cycle Route', S34 which runs along the North Bank of Lough Allua, from Inchigeela to Ballingeary and the Pass of Keimineigh and is the main tourist route to Gougane Barra, S27 which goes from Gougane Barra to the Mouth of the Glen and S26 which goes between Lissacresig and the Mouth of the Glen.

Cumulative Impact

The cumulative impact of Cleanrath Windfarm along with other wind farm developments in the area is a very important consideration. This area has been subjected to an onslaught of highly inappropriate, industrial wind farm developments and applications courtesy of various subsidiary companies of Enerco Energy of which Cleanrath Wind Farm Ltd. is one. The scenic Shehy mountains and the upper Lee Valley are now littered with large scale windfarms. The lake views from and of Loch Allua are dominated by the windfarms at Derragh (12/5270*) and Cleanrath to the north and those at Shehy More (13/551) and Carrigariark (15/730*) are currently being constructed on the mountains to the South. Permission for a Windfarm and substation at Barnadiviane (14/6760*; 14/557*) was quashed by the high court and an application for seven 178m turbines at the pass of Keimaneigh, just beyond Gougane Barra (20/350*) was recently refused permission by Cork County Council. All these developments, completed, under construction and proposed are courtesy of companies which have the same directors (Michael Murnane and David Murnane) and the same address (Lissarda, Macroom, Co Cork). Surely enough damage has already been done and this area already has to tolerate far more than its fair share of giant wind turbines. The removal of the nine turbines at Cleanrath which should never have been given planning permission would give the area some respite from the constant view of giant wind turbines.

* Cork County Council Planning Reference

It should also be noted with regard to cumulative impact that the Rivers Lee and Toon, which flow into the Gearagh, are carrying the runoff from the upland industrial development of Cleanrath Windfarm. To quote from our submission on the 2015 planning application Cork County Council ref. 15/6966:

"There have been slides of peat and debris on the uplands in question. The Geological Survey of Ireland has a record (name record Fuhiry 1997) of a large peat slide in the townland of Fuhiry, grid ref. Easting: 113730, Northing: 72070, in 1997. Another debris slide occurred in Gortacreenteen in 2004. These incidences indicate the unstable nature of the receiving geology, and the proposed development includes a huge amount of destabilising activities in its engineering – this will combine with the aforementioned frequency of heavy rainfall events to create real danger to human life, property, livestock, forestry, and terrestrial and aquatic natural life.

The Toon river is a candidate NHA, and is in the firing line for receipt of 2/3 of the runoff and slippage from the proposed development upland. The Lee, Lough Allua and the Gearagh will receive the other 1/3 of runoff and slippage. As the Toon empties into the Gearagh anyway, it can be said that any pollution from peat and debris slide will impact the Gearagh 100%."

During recent flooding on the 25th August 2020, the water of the Gearagh turned an unprecedented colour of muddy brown. The impacts of upriver upland development and peat disturbance must be taken seriously – the Toon river sustains the freshwater pearl mussel *Margaritifera margaritifera* and must be protected from siltation and pollution. The Gearagh has national, European, and United Nations conservation designation. These designations include:

- ✓ Priority Special Area of Conservation (priority SAC);
- ✓ Special Protection Area (SPA) under the EU Wild Birds Directive;
- ✓ Irish Natural Heritage Area (NHA) status, and
- ✓ Ramsar Wetland Site No. 472 under the international Ramsar Convention for conservation of wetlands of primary importance.

Red Aviation Lights

The Cleanrath Windfarm site and the surrounding area is exceptionally quiet and very dark during the night. The value of dark skies is recognised internationally and has recently been recognised in Ireland, for example with the Kerry International Dark-Sky Reserve. Very bright red lights have been installed on the top of each turbine tower at Cleanrath and nearby windfarms, to warn oncoming aircraft of their presence. There were no equivalent lights in the area previously. The lights by design are very bright and can be seen from very far away. The turbines at Cleanrath, especially combined with those at Derragh and Shehy More create a sea of red lights in the previously dark night skies which can only be described as light pollution. It is a radical intrusion into the night-time ambience of the area and is wholly destructive of dark sky characteristics.

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- Its threat to the survival of protected peatland habitat.
- 2 kilometre proximity to Lough Allua pNHA 1065, with its associated habitats and diversity of species.
- The noted presence of protected plant species including *Asplenium obovatum* (Lanceolate Spleenwort), *Centaureum pulchellum* (Lesser Centaury), the very rare and vulnerable *Trichomanes speciosum* (Killarney Fern – a red-listed species), *Hammarbya paludosa* (Bog Orchid) and *Viola lactea* (Pale Dog Violet or Pale Heath Violet). These species are all protected under the Flora Protection Order 1987.

Cleanrath Wind Farm has a direct hydrological connection to the Gearagh SAC, Lough Allua pNHA and the Toon River valley pNHA. This is cumulative with the wind farms at Shehy More and Derragh. If the mitigation measures from one of these windfarms are inadequate there could be a serious impact on the river Lee, the Gearagh SAC and Lough Allua pNHA. But is important to consider the potentially devastating impact if the mitigation measures put in place at several or all of the windfarms in the River Lee catchment were to fail.

The presence of the endangered Fresh Water Pearl Mussel in the Toon River means that the developers must guarantee that no fine sediment from the site can enter local water courses under extreme weather conditions. It is our belief that the drainage mitigation measures at Cleanrath Windfarm cannot provide this guarantee. Mitigation measures described in the 2015 EIS were not specific to the site in question and did not take into account local conditions or rainfall figures or extreme weather events which have happened several times since the windfarm was constructed.

There is no consideration of the several hundred litres of lubricating oil and hydraulic fluid located in the nacelle of each wind turbine at Cleanrath and no containment is provided for any leakage or fracture that may occur to prevent contamination of water courses.

The fact that environmental damage is likely to already have occurred as a result of the Cleanrath development is not a reason to grant substitute consent. As we have previously stated the developer should not be rewarded for pushing ahead with construction when the legality of the planning permission for the Wind Farm was due to be examined by the supreme court.

Subjective EIAR

The EIAR for this application has been produced by MKO a company in the pay of Cleanrath Windfarm Ltd. who have also produced many more such documents for other subsidiary companies of Enerco Energy Ltd. and have a very lucrative contract with them. It is very unlikely to be impartial. MDEG would therefore question the integrity of this EIAR which we believe is neither objective nor reliable.

Donal O' Leary and others on behalf of

Macroon District Environmental Group

AN BORD PLEANÁLA

LDG- _____

ABP- _____

16 SEP 2020

Fee: € _____ Type: _____

Time: _____ By: _____

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