

Friends of Derrybrien Environment
C/O Martin Collins
Derrybrien,
Loughrea,
Co Galway

An Bord Pleanála,
64 Marlborough Street,
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D01 V902

18th November 2021

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| AN BORD PLEANÁLA | |
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**Notice of objection to the Derrybrien Windfarm Substitute Consent
“Exceptional Circumstances” Application by the ESB / GWL PL07 308019-20
and in reply to An Bord Pleanála correspondence dated 05 November 2021**

A Chara,

We wish to restate my formal request An Bord Pleanála to refuse Substitute Consent to the windfarm development at Derrybrien (application No PL07 308019-20) on the basis that “exceptional circumstances” do not exist in this case.

As stated in our previous submission for almost 25 years this windfarm development at Derrybrien has being controversial, divisive for our community, destroyed our environment and is a failed monument to bad planning and decision making by Arms and Emanations of the Irish State.

This windfarm development continues to be a prime example of “KAFKAESQUE” planning and is a continuation of the failed actions of;

- An Bord Pleanála
- Coillte,
- the ESB and
- ESB subsidiaries (Hibernian Wind Power, ESBI, Gort Windfarms Ltd GWL)
- the Department of Environment,
- Galway County Council,
- The Department of Agriculture,
- The Forestry Service ,
- the High Court and
- the Supreme Court.

On every occasion since 1997 that this windfarm development encountered difficulties one or other of the above Irish State Arms and Emanations made decisions, changed laws and regulations and facilitated the continuation of wrong doing.

We wish to state that we are requesting An Bord Pleanala to accept and have regard to all previous submissions and attachments which we have made on this application.

Could An Bord Pleanala please explain in detail the legal basis for this latest round of correspondence and the fact that you issued correspondence on 27th September 2021 and accompanying submissions / observations to the ESB for their analyses and reply?

What do An Bord Pleanala mean when you say that ***"The Bord is of the opinion that, in the circumstances of this application, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed submission received on the 18th October, 2021 from ESB on behalf of Gort Windfarms Limited"***?

You also state that ***"The Bord cannot consider comments that are outside the scope of the matter in question"***.

Can you please explain what exactly is the scope of the matter in question?

In support of our objection please refer to previously enclosed appendix 16 in the submission on 07th September 2021 a copy of the ***Technical Assessment of Derrybrien Windfarm and Ancillary Works by Arcadis Design & Consultancy July 2021*** which identify very serious deficiencies with the rEIAR submitted with the substitute consent application.

Was the purpose of this latest round of consultation an effort by An Bord Pleanala to facilitate the ESB in their efforts to invalidate and attempt to discredit contentious points raised in the Arcadis report?

We are requesting that, An Bord Pleanala offer the authors of the Arcadis report the right to reply for completeness and in the interest of natural justice.

As local residents we are deeply concerned that the general thrust of the ESB reply and the AGL consultants response is totally focused on the windfarm site while the windfarm is in operation. They both seem to think that the windfarm is some sort

of red line site that they have full control of and is in complete isolation. The issue of climate change and the likelihood of extreme weather events will have a profound effect on the future of this windfarm site taking into account all of the drainage and destruction throughout the blanket bog site. Once decommissioning take place the ESB appear to think that they can simply walk away and will have nothing more to do with it is completely unacceptable and irresponsible. The assertion that once the windfarm is decommissioned and the windfarm activities stop the ESB's responsibilities also stops on that particular date is obscene in the extreme. The fact is with extreme weather events forecasted to escalate it is very likely that an area within or adjacent to the windfarm site will trigger a bog flow of some proportion in the future.

Right throughout the substitute consent application and in the replies by the ESB and their agents there is a obsession with the use of the word "**robust**". There appears to be a view by the ESB that if they repeat the word robust enough throughout the report it portrays a much more comprehensive set of actions than are in place in reality.

At the time of writing Ireland has accumulated a fine of circa €16 million in regard to this windfarm development.

We wish to state clearly that, as local residents in Derrybrien we support in full the report titled *Technical Assessment of Derrybrien Windfarm and Ancillary Works by Arcadis Design & Consultancy July 2021* which identify very serious deficiencies with the rEIAR submitted with the substitute consent application. An Bord Pleanala must rule that "Exceptional Circumstances" criteria do not exist in this application and the substitute consent application must be refused a grant of permission.

As stated previously, unfortunately, An Bord Pleanala is intrinsically implicated in this decision making as you granted permission to the three original planning applications associated with this development.

Therefore you are now the adjudicator on your own decision making.

This raises the critical point that; **Nemo judex in causa sua** "**No-one is a judge in their own cause**". It is a principle of natural justice that no person can judge a case that they have an interest in.

As local residents in Derrybrien we have no confidence that you are an independent adjudicator in this process due to your previous involvement in the

original granting of planning permissions on appeal. You are not impartial and without bias. Any decision you make in this case is contaminated by your previous involvement, therefore lacks authority and credibility. In addition your recent involvement in a decision to grant permission for a windfarm development on 25th June 2018 (Planning ref no ABP-300460-17) in Donegal which resulted in a most alarming and disturbing event. A landslide occurred at the site of a windfarm been constructed at Meenbog, Croaghonagh, Cashelnavenan Co Donegal on the 12 November 2020. After all that has been said and written about the landslide at Derrybrien it is beyond belief that you and the arms and emanations of the Irish state has allowed a landslide to occur in very similar circumstances to that which happened at Derrybrien. Also very serious errors and deficiencies have prevailed throughout this planning process in terms of compliance with the regulations and access to files and information.

Criteria for exceptional circumstances.

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

We would strongly and unequivocally submit that the ESB application and their supporting documentation do not comply or fulfil the criteria for “Exceptional Circumstances” in this case.

The regularisation of the development concerned would most defiantly circumvent the purpose and objectives of the Environmental Impact Assessment Directive and the Habitats Directive. In fact regularisation would make a complete nonsense of the EIA Directive.

Our objection is based on the fact that the fundamental principal of an Environmental Impact Assessment is that if you get it wrong as in this case you have to take down, remove the development and put the mountain back to the way it was before it was damaged.

Not alone should the Irish state be in compliance with Our EU Law but it must be seen to be in compliance with Our EU Law and Directives.

In ECJU Case C-215/06 it is made abundantly clear that the purpose and legal requirement of an EIA in conformity with the Directive was to carry out the assessment before planning permission was granted by the competent planning authority so that all risks associated with proceeding with a development could be identified and assessed. Extracts from C-215/06 clearly states that this preventive action was not undertaken in this case. Galway County Council and An Bord Pleanála as planning authorities failed in their duties and legal obligations to comply with the EIA or Habitats Directive.

We are not aware of any proper or detailed geotechnical or soil stability assessments carried out on this windfarm development before planning permission was granted in 1998 and 2001. As far as we are aware all soil investigations were carried out after the grant of planning permission by An Bord Pleanála. Therefore the original decision making was critically flawed, misleading and illegal.

The cohesive nature of the "GROUPTHINK" that has engrossed this windfarm development since the first planning application in late 1997 which is almost 25 years ago IRISH MEMBER State Arms and Emanations have at various levels actively supported this windfarm project by making critical decisions in its favour and omitting and failing to take Competent Authority Actions and other actions against the State Emanation violators including but not limited to against the Irish Member State itself to both uphold Our EU Law and secure and ensure not only Enforcement and Application of Our EU Law, and Citizens rights, but to ensure the direct/indirect safety of citizens to prevent at source before environmental disaster strikes.

The ESB's reliance in their argument that *"there has never been a finding of unauthorised development in relation to this development nor has an enforcement notice issued from Galway County Council in respect of it"* is to say the least weak and disingenuous.

Galway County Council have at all times throughout this saga sung from the same hymn sheet as the ESB. According to the planning application information Galway County Council received almost €393,613 in rates from the windfarm in 2020.

In addition the Report on Derrybrien Windfarm emailed from Galway County Council written by Kevin Kelly, Eileen Ruane and Valerie Loughnane – Moran GCC to An Bord Pleanála on 04th November 2020 is totally biased towards and in favour of the Granting of Substitute Consent to the ESB. The main focus of the report is concentrated on the production of electricity.

The report barely acknowledges that environmental damage and destruction was caused by this development that Galway County Council themselves granted permission for a number of the developments and did not act on correspondence that was sent to them by registered post, [see appendix 6 in the submission on the 07th September 2021](#) which contain a letter from Martin Collins to the enforcement officer in Galway County Council dated 29/07/2003. The letter was sent to Mr Burke about 10 weeks prior to the landslide on the 16th October 2003.

The letter raised legitimate questions in relation to unauthorised development on the windfarm site and lack of compliance to planning permissions. No action whatsoever was taken by Galway County Council on foot of the letter.

In the County Council report the authors failed to refer to or adhere to their own **Galway County Development Plan Wind Energy Strategy 2015 – 2021**

NP– Not Normally Permissible Areas.

Areas generally not suitable for wind farm development due to their overall sensitivity and constraints arising from landscape, ecological, recreational, settlement, infrastructural and/or cultural and built heritage resources, based on strategic level assessment. Wind farm developments in these areas will be discouraged, unless project level HDA and EIA can demonstrate to the satisfaction of the planning authority that environmental and other impacts can be successfully avoided, minimised and/or mitigated.

The Slieve Aughty/ Derrybrien area is currently under this designation of Not Normally Permissible Areas.

It is abundantly clear with 50,000 fish killed and 450,000 cubic meters of bog flowed from the windfarm development along with all that has happened since 2003, that environmental and other impacts were not successfully avoided.

Of significant importance is the fact that in that report the authors offered to An Bord Pleanála 11 *“Possible Conditions to be attached to any potential grant of permission”*.

This is an extraordinary biased position to adopt by a Local Authority who should have adherence to planning laws and regulations and the protection of the environment and the local community in Derrybrien as their priority. Instead they have contaminated the decision making process by offering planning conditions to the grant of permission at this point in time. This blatant favouritism towards the ESB may have to be questioned in more detail at a later date.

As stated previously, In THE SUPREME COURT appeal (Appeal No 51/2009) Denham C.J. O'Donnell J. McKechnie J. Clarke J. Laffoy J. In the matter of the Planning and Development Act 2000 as amended and in the matter of s. 160 of the Planning and Development Act 2000 Between/ Derrybrien Development Society Limited Applicant/Appellant and Saorgus Energy Limited, Coillte Teoranta, and Gort Windfarms Limited Respondents Judgment of the Court delivered on the 16th day of October, 2015, by Denham C.J. 1. This is an appeal by Derrybrien Development Society Limited, the applicant/appellant, referred to as “the appellant” from the judgment and order of the High Court (Dunne J.) dated the 3rd June, 2005 and the 10th June, 2005, respectively, wherein the learned High Court judge refused to restrain the respondents, their servants and agents, from deforesting lands owned by Coillte Teoranta. Motion 2. The appellant had brought a motion to the High Court seeking an order:- (i) Pursuant to inter alia s. 160(1)(a) of the Planning and Development Act, 2000, restraining the respondents their servants or agents from continuing the aforesaid unauthorised development. (ii) A final order pursuant to s. 160(1)(b) and s. 160(2) of the Planning and Development Act, 2000, directing restoration of the respondent's lands to their condition prior to the commencement of the unauthorised development inclusive of the re-planting of trees in the affected areas and the restoration of the pre-existing drainage channels. The motion was refused by the High Court but stayed for twenty one days in the event of a notice of appeal within that time, and it was stated that if there was an appeal that execution of the costs order be stayed pending the determination of an

appeal. 3. The first named respondent is referred to as “Saorgus”, the second named respondent is referred to as “Coillte”, and the third named respondent is referred to as “the wind farm”. The three respondents are referred to collectively as “the respondents”.

68. For clarity, it should be noted that the Court is prepared to approach this appeal on the assumption that the planning permissions did not cover or extend fully to the deforestation.

69. It also should be noted that, while the papers in this appeal are extensive, they do not provide a clear picture of the situation under appeal.

70. A decision is required on the appellant’s appeal, which has been brought by the appellant after the decision of the European Court of Justice in The Commission v. Ireland Case C- 215/06 E.C.R. 1-4911.

71. In the context of this appeal, in all the circumstances of the appeal, the Court is satisfied that it is appropriate to exercise its discretion under s. 160 and to refuse the remedy sought in the motion.

72. Consequently, for the reasons set out in this judgment, in all the circumstances, the Court exercises a discretion under s. 160 and would refuse the motion, and dismiss the appeal.

For some inexplicable reason the Supreme Court in 2015 refused the motion even though they did accept the fact that “the planning permission did not cover or extend fully to the deforestation”.

However four years later in 2019 the CJEU imposed a fine of €5 million euro and €15,000 per day until a proper Environmental Impact Assessment was carried out on this very same development. As of the date on this letter the fine stands at circa €16 million which is a colossal waste of public money and which nobody has taken any responsibility for.

The Supreme Court in Appeal No 51/2009 failed to apply either law or justice and instead decided to use its own discretion to dismiss our legitimate appeal. It was and is a shameful derelict violation of the Duties and Obligations and Power and Authority duty and responsibility by the Supreme Court not to uphold Our EU laws Directives and Treaties. (incl. Our CFREU) It is imperative that the polluter pays principle is invoked and that all damage done by the windfarm developers is **OBVIATED** and not MITIGATED. This inter alia must be considered an option

in any EIA and particular given Pt. 116 in Our CJEU Judgement Case C- 261/18 of November 2019.

The fact remain that No planning permission and No EIA were produced for deforestation of 263 ha in direct contravention of Irish and EU law.

Therefore An Bord Planala cannot legally grant Substitute Consent to a development that never applied for planning permission and is an unauthorised development.

Other Court cases and convictions

On the 14th March 2008 Mr Justice Declan Budd delivered a judgement in relation to this windfarm in which he Derrybrien Development Society took a High Court challenge to the manner in which Galway County Council extended planning permissions for the erection of a wind farm on a mountain in the area.

In a judgment strongly critical of the council's "plethora of mistakes" in handling the planning issues, Mr Justice Declan Budd found the council breached the planning acts and applied the wrong criteria when assessing applications by Gort Windfarms Ltd (GWL) for extensions of the duration of planning permissions.

Consequently, it had acted outside its powers in granting the extensions.

He said the council had failed to apply the crucial test - whether the development had not been completed within the terms of existing permissions due to circumstances - the bogslide of October 28th, 2003 - outside the control of GWL. GWL had failed to provide the necessary information on this issue to the council and, had it done so, the council's decision was likely to have been very different, he said. This was because there was "a substantial body of evidence" which "overwhelmingly suggested" that the peat slip and bog slide was caused by the actions and omissions of GWL, its servants or agents for whom it was responsible under the planning code, he said.

There was a strong consensus in expert reports that the operations of GWL disrupted the stability of the blanket bog on the top and side of Mount Cashlaundrumlahan in the Slieve Aughty mountains near Derrybrien, he noted.

The reports also found GWL had ignored the "eminently foreseeable" risk of destabilisation and bog slide and ensuing delay in completing the wind farm development. Galway County Council had acted on the wrong criteria and irrationally in extending the permissions for the development, he ruled.

A "plethora of mistakes" seemed to have occurred "to the point of embarrassment" in this case, including there being no managerial decisions as required by statute and no record of relevant entries in the planning register.

He added that it was "hard to credit" claims by GWL that it could not have anticipated the 2003 bogslide. This claim was contrary to a consensus in expert reports about effects of the deposit of 400 tonnes of material excavated from the wind turbines "on jelly-like blanket bog".

The leaving of material on unstable blanket bog was a "recipe for disaster" as it was a trigger for a bog flow down the mountain, through the fields and into rivers, with ensuing environmental damage.

One "could only wonder" why appropriate technical expertise was not obtained at an earlier stage by the developer and obvious safety measures and proper construction methods instituted.

The judge was giving his reserved judgment on proceedings brought last July by Derrybrien Development Society challenging the manner in which planning extensions were granted by the council in March 2005 relating to two wind farms of 23 wind turbines being developed by GWL.

The construction of the wind farm is complete and the judge yesterday adjourned the making of final orders in the case until next month, to allow the sides to consider his findings.

If he overturns the permissions, or makes declarations in accordance with his findings that the extensions of the permissions were not in accordance with the terms of the planning acts, retention permission may have to be sought.

(Mary Carolan © 2008 The Irish Times)

In October 2004, ESBI Engineering Ltd and Ascon were prosecuted by Galway County Council for allowing polluted materials to enter a river following the landslide in October 2003.

A number of court cases were successfully taken by local land owners against the windfarm developers in relation to damage to property resulting from the landslide

Removal of site notices

We wish to confirm as local people who travels many of the roads on a daily basis that the planning permission signs erected in August 2020 were all removed. This is a fact and we take grave exception by the ESB stating that *"the site notices were*

not removed and that additional notices (August 2021) it was confirmed that the original A4 notices were in place and a single A3 perspex frame was erected at each of the same locations, into which the original and additional notices were placed to ensure they continued to remain in place and legible for the duration of the application”.

We wish to confirm that in early October 2021 all the planning permission public notices were once again removed from their various locations on the public roads around the windfarm site. As of November 2021 no public site notices are on display at any of the 17 site notice locations. If the ESB can give false and misleading information in relation to such basic and verifiable details as to whether or not site notices are in place we have no hope of accepting or believing any of the information submitted by them in this substitute consent application.

No consultation with local Derrybrien residents

The ESB / GWL has not consulted the local community in relation to this application. What they have done is notified the community on the eve of the application being lodged with An Bord Pleanála in 2020. There is a considerable difference between notification and consultation. It appears that the ESB / GWL did liaise with An Bord Pleanála, Galway County Council, the Environmental Protection Agency, Inland Fisheries Ireland (Shannon Region) and Coillte but not the local community.

As local residents the first and only communication that we received in relation to this application was an information sheet dropped in our letterbox by Door2door a leaflet distribution company on the morning of Thursday 06th August 2020. Also just for the record the fact that the ESB GWL erected 17 site notice signs on Sunday 23rd August 2020 suggests that rather than sitting down around the table in proper consultations with local residents they preferred to engage in a public relations exercise at a distance. All site notice signs were removed in early 2021 and on the 09th August 2021 new site notice signs were erected containing the original notice and a new notice referring to “additional information”. No reference whatsoever was made to “Exceptional Circumstances” in the new site notices.

A key part of the Environmental Impact Assessment should be consultation with local residents before finalising the Environmental Impact Statement. This did not take place. Why were the ESB / GWL afraid to involve the local community in this important process, what were they afraid of?

The lack of consultation shows up a fundamental problem with this application in that it exemplifies the issue that the ESB / GWL had no interest in what we had to say and what issues were of real and deep concern to us as local residents.

It is quite clear that the decommissioning date of 2040 has been invented by the ESB to justify the continuation of the windfarm development.

According to the Gort Windfarms Limited Annual Report and Financial Statements for the year ended 31 December 2018 (see appendix A)

"The company has an operating lease arrangement in respect of land with 10 years remaining"

According to the Gort Windfarms Limited Annual Report and Financial Statements for the year ended 31 December 2008 (see appendix B)

"The company has land lease commitments of €400,000 per annum, ending in 2028."

Also of significance is the fact that according to the Gort Windfarms Limited Annual Report and Financial Statements for the year ended 31 December 2008 under the heading of "Depreciation"

*"The estimated useful lives are as follows;
Generation Plant 20 years"*

According to the Gort Windfarms Limited Annual Report and Financial Statements for the year ended 31 December 2018 on page 12 and 13 it states that;

*"The major asset classification and its allocated lifespan is;
Plant and Machinery 20 years"*

The facts are either the information on the Gort Windfarms Limited Annual Report and Financial Statements for the year ended 31 December 2008 and the Gort Windfarms Limited Annual Report and Financial Statements for the year ended 31 December 2018 are false and misleading or the 2040 decommissioning date is false and misleading.

I would suggest that it is not mechanically possible for the current wind turbines to continue in operation until 2040.

If one was to assume that the end date for the lease is 2028, the windfarm is only producing approximately 24% of its capacity, the fact that it is built on a EU designated Special Protection Area, is reputed to be contributing to the flooding in

the Gort area and with the massive disturbance of bog through the landslide and construction works one could easily come to the logical conclusion that the windfarm should be taken down, removed and the environment repaired in so far as it is possible.

In our previous submission in August 2021 we requested the ESB to provide a document that previously referred to 2040 as a decommissioning date. The ESB has had a number of opportunities to provide such a document but have failed to do so.

1998 is the “baseline date”

In the documentation attached to this substitute consent application the ESB has identified 1998 as the “baseline date” environment.

*Remedial Environmental Impact Assessment Report Chapter 1-Introduction
Document No.: QS-000280-01-R460-001-000 Date: July 2020*

1.3.1 Baseline Environment for rEIAR

For the purpose of assessments undertaken for the remedial EIAR the baseline environment against which impacts have been assessed has been taken as that which existed prior to the planning process. The baseline date for assessment of environmental effects in the rEIAR is the date when the environmental impact assessment should originally have been carried out and taken into account by the decision-maker.⁵ As noted earlier, the planning consents were issued in the period 1998-2001. Therefore, for the purposes of this rEIAR, the baseline environment against which assessment of environmental effects is made is that which existed in 1998, referred hereafter as the “baseline date”. Where there are information gaps related to the baseline environment these are highlighted in the “Difficulties Encountered” section within individual topic chapters.

The critical issue here is on what basis was permission granted in 1998 and 2001. Will An Bord Pleanála put themselves back to 1998 and 2001 and say that this area of blanket bog with some as deep as 6 meters mainly covered in forestry can be further damaged and destroyed by a massive industrial development? There is the real live issue of cumulative effect. This blanket bog area was acting as a sponge retaining water and reducing the run off of water from the Slieve Aughty mountains down to the Gort lowlands. We would suggest that rather than granting permission Galway County Council and An Bord Pleanála should have

refused permission on the basis that foisting another damaging and destructive development on top of an already damaged area was irresponsible and reckless in the extreme. The entire development decisions smack of the worst type of **“corporate group think”**.

When is the start date for assessing the environmental impact assessment for this substitute consent application? Is the start date 1997 or 2003 at the commencement of construction?

On the Gort Windfarms Limited 2019 annual report and financial statement on page 24 under point 17;

Contingent liabilities and guarantees

“Following a ruling of the Court of Justice of the European Union, the Irish State is arranging for an environmental impact assessment of the current and future operations of the windfarm from the start of construction to decommissioning phase in its own right and in combination with other relevant development/activities. This environmental impact assessment is being carried out under the Planning and Development Acts under the Substitute consent provisions to An Bord Pleanála. The directors of Gort Windfarms Ltd have being advised that a refusal by An Bord Pleanála will lead to a notice being served on Gort Windfarms Limited ordering the cessation of all activities or to carry out remedial measures.

In the latest correspondence the ESB states that *“In relation to project splitting, the Applicant confirms that the application before the Board covers the entire lifecycle of the project – from construction to decommissioning phases as set out in rEIAR, Chapter 1”*.

We require urgent and unequivocal clarity in regard to when exactly the environmental impact assessment starts. If according to the statement on the 2019 accounts it is an assessment “of the current and future operations of the windfarm from the start of construction to decommissioning” we as local residents have a major difficulty with this selective and self serving timeframe. If the remedial Environmental Impact Assessment is to have any credibility and legal status it must assess the windfarm site as it was in 1997 and 2001 and as assessed under Planning Reference No 97/3652, 97/3470 and 00/4581 at the date of decision. Otherwise all that is being done in this substitute consent application is leaping forward and justifying the construction and the continuation of the development. There is a serious risk that An Bord Pleanála will join with the ESB / GWL in

commencing the assessment of the application from 2003 onwards. This would make a mockery and fly in the face of the EIA and Habitats Directives and all that they stand for. There is a major risk that what is taking place in this substitute consent application is a new version of light touch **“RETENTION PLANNING PERMISSION”**.

See extract from Case C-261/18;

96 It must further be noted that while it is not precluded that an assessment carried out after the plant concerned has been constructed and has entered into operation, in order to remedy the failure to carry out an environmental impact assessment of that plant before the consents were granted, may result in those consents being withdrawn or amended, this is without prejudice to any right of an economic operator, which has acted in accordance with a Member State's legislation that has proven contrary to EU law, to bring against that State, pursuant to national rules, a claim for compensation for the damage sustained as a result of the State's actions or omissions.

97 In the light of the foregoing, it must be held that, by failing to take all measures necessary to comply with the second indent of point 1 of the operative part of the judgment of 3 July 2008, Commission v Ireland (C-215/06, EU:C:2008:380), Ireland has failed to fulfil its obligations under Article 260(1) TFEU.

115 In the first place, as regards the seriousness of the infringement, it must be borne in mind that the objective of protecting the environment constitutes one of the essential objectives of the European Union and is both fundamental and interdisciplinary in nature (see, to that effect, judgment of 28 February 2012, InterEnvironnement Wallonie and Terre wallonne, C-41/11, EU:C:2012:103, paragraph 57 and the case-law cited).

116 An environmental impact assessment, such as that provided for by Directive 85/337, is one of the fundamental environmental protection mechanisms in that it enables, as recalled in paragraph 73 above, the creation of pollution or nuisances to be prevented at source rather than subsequently trying to deal with their effects.

117 In accordance with the case-law recalled in paragraph 75 above, in the event of a breach of the obligation to assess the environmental impact, Member States are nevertheless required by EU law to eliminate at least the unlawful consequences of that breach (see, to that effect, judgment of 26 July 2017, Comune

di Corridonia and Others, C-196/16 and C-197/16, EU:C:2017:589, paragraph 35).

118 As is apparent from paragraphs 23 to 36 above, from the time it was held in the judgment of 3 July 2008, *Commission v Ireland* (C-215/06, EU:C:2008:380) that there was a failure to fulfil obligations, consisting in the breach of the obligation to carry out an environmental impact assessment before consent for, and construction of, the wind farm, more than 11 years have elapsed without Ireland adopting the measures necessary in order to comply with the second indent of point 1 of the operative part of that judgment.

119 Admittedly, in July 2010 Ireland enacted the PDAA, Part XA of which provides for a procedure for regularising the projects authorised in breach of the obligation to carry out an environmental impact assessment. However, a little over 2 years later, Ireland informed the Commission that it was not going to apply the regularisation procedure, whereas, from April 2009 it had been stating the contrary. On the other hand, Ireland proposed to carry out an unofficial, nonstatutory assessment. By letter of 29 March 2019, and thus 2 days before the hearing before the Court in the present case, Ireland changed its position again and now contends that the wind farm operator will request that the regularisation procedure provided for in Part XA of the PDAA be applied. At the hearing, Ireland was, however, unable to state whether that procedure would be commenced, on their own initiative, by the competent authorities, pursuant to Section 177 B of Part XA of the PDAA, or on the application of the operator, pursuant to Section 177 C of Part XA of the PDAA. Nor was it in a position to state the start date for the procedure. To date, the Court has received no other information in that regard.

120 It must be found that, in those circumstances, Ireland's conduct shows that it has not acted in accordance with its duty of sincere cooperation to put an end to the failure to fulfil obligations established in the second indent of point 1 of the **COMMISSION V IRELAND (DERRYBRIEN WIND FARM)** 25 operative part of the judgment of 3 July 2008, *Commission v Ireland* (C-215/06, EU:C:2008:380), which constitutes an aggravating circumstance.

121 Since that judgment has not yet been complied with, the Court cannot, therefore, but confirm the particularly lengthy character of an infringement which, in the light of the environmental protection aim pursued by Directive 85/337, is a matter of indisputable seriousness (see, by analogy, judgment of 22 February 2018, *Commission v Greece*, C-328/16, EU:C:2018:98, paragraph 94).

As local people who have already made a submission to the substitute consent application in August 2020, we are of the view that An Bord Pleanála set a bad and dangerous precedent by accepting that application. You were in the full knowledge that a Supreme Court case had determined that a case for “exceptional circumstances” must be established before a case proceed. An Bord Pleanála elevated the application by the ESB to a position contrary to the law and displayed favouritism to the ESB application. See attached a copy of correspondence and circulars issued following the 2008 ECJ Judgment C-215/06. See Circular PD 5/08 and 6/08.

It is our view that An Bord Pleanála should have taken the same course of action as they did in 2008 and declared the substitute consent application as invalid and returned it to the ESB / GWL.

There is no doubt whatsoever that this is an exceptional case however in the context of this planning application for substitute consent the ESB application fails on all points to pass the “Exceptional Circumstances” criteria.

In evidence to support the argument that the ESB / GWL application should be refused we wish to refer to the full Judgment in Case C-215/06 and C-261/18 as incontrovertible evidence that under all points the ESB /GWL failed to comply with the spirit and law in relation to EIA Directive 85/337 as amended.

In early March 2021, the ESB erected a sign along the entrance roadway to Derrybrien bog warning turbary owners of peat instability.

Approximately 30 local people usually cut turf for their own domestic use in this bog annually. There is no commercial turf cutting taking place at this bog.

It is our understanding that the ESB did not demand that the contractor stop cutting turf but it did clearly state that they would be held liable and responsible in the event that any future peat slippage. The contractor is of the firm opinion that a person in his position cannot risk entering the bog for turf cutting with such a threat hanging over his head.

In any event, the de facto result is that people who usually exercise their right and require turf to heat their home are left without turf from Derrybrien bog.

The local community will not accept the stopping of turf cutting on Derrybrien bog.

Has all the construction activity of machinery, drainage and the blasting from the quarry which is relatively near the plots in question destabilized the mountain?

Is there a possibility that the wind turbines as situated in three parallel lines north, south and middle of the bog is creating some sort of vibration effect on the bog?

When rotating at full speed there is huge turbulence in the area. Even though the turbines are built on rock/ glacial till there has to be some vibration carrying down and into the surrounding soil.

We would also pose the question, are the ESB / GWL aware of serious instability and deflecting attention onto turf cutting??

For the record, we reject and refute the claims by the ESB that turbary owners are the cause of the instability. A number of important points in the relevant report are misleading and factually incorrect.

The planning application states that there were repairs and replacement of parts carried out to almost all the turbines over the last 13 years. Some required multiple replacements of parts.

This indicates to us that there is a significant amount of stress and vibration on the structure of the turbines and taking into account that the windfarm was only producing approximately 24% of its capacity.

We are not aware of any reference to " TURBINE VIBRATION" being an issue that has was looked at and analyzed in the rEIA.

We would strongly submit to An Bord Pleanala that "Exceptional Circumstances" do not exist and you cannot grant permission to the application for substitute consent taking into account that the integrity of the entire mountainside, the SPA and the environment has been severely damaged and according to the ESB / GWL there is a continuation of this damage with instability at Derrybrien bog.

The ESB states that :

"There has not been any unlawful interference by the Applicant with any rights which may be asserted by turbary rights holders, in respect of their entitlement to engage in the harvesting of peat. Further, it is respectfully submitted that this is

a matter of private law and is not something relevant to the determination by the Bord of the application for substitute consent”.

An Bord Planala must now clearly and unequivocally establish the facts in relation to the instability at Derrybrien bog.

What is the level of instability?

Who or what is responsible for this instability?

While the ESB are conveniently and in their own self interest sidelining the issue of instability and turf cutting as a matter of private law it is intrinsically linked to the very heart and centre of this substitute consent application in that as a planning authority you cannot grant substitute consent to the ESB /GWL with such instability highlighted by the ESB / GWL who are themselves the applicants in this case.

The erection of the sign and the direct contact by ESB employees with the designated turf cutting contractor have resulted in the contractor not to enter Derrybrien bog to cut turf and therefore as a result no turf was cut there in 2021.

The fact is, if there was no windfarm development on Derrybrien bog local people would not be stopped cutting their supply of turf to heat their homes in 2021.

See the photo of the sign attached below.

The central and critical question is, would any responsible and independent planning authority grant planning permission in 2021 to this windfarm development on this very site if there was no windfarm in existence?

The truthful answer is that permission would be refused.



WARNING!
RISK OF PEAT
INSTABILITY FROM
PEAT HARVESTING ON SITE.

Please contact Gort Windfarms Ltd.
for more information on 087 6984231
or visit www.derrybrienwindfarm.ie

We would submit that the developers were well aware that the deforestation of some 263 ha of forestry was unauthorised. The developers were also aware that the some of the quarries in operation were unauthorised and the locations of turbines were unauthorised, they were also aware that the robust drainage plan implemented following the 2003 landslide was unauthorised.

The Department of Agriculture, Forestry Service, granted in May of 2003 a felling licence for the clear felling of 263 ha of coniferous trees at a blanket bog hill side without planning permission and carrying out an EIA, despite the fact that the EIA Directive had been long before that date amended to include the clear felling of forestry (97/11 EC) of the 3rd March, 1997 and the Irish interpretation of that amendment is that when more than 70 ha of coniferous plantation are intended to be clear felled, an EIA is mandatory! By not carrying out an EIA prior to granting the felling licence, the Forestry Service violated European Law in force, here the EIA Directive as amended.

The European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 came into force on the 1st May, 1999.

These regulations added the following as subject to an Environmental Impact Assessment:-

1. Agriculture, silviculture and aquaculture.

(b)(iii) deforestation for the purpose of conversion to another type of land use, where the area to be de-forested would be greater than 10 HA of natural woodland or 70 HA of conifer forest.

These regulations came into force on the 1st May, 1999.

In CJEU Case C-215/06 the court ruled that;

*107 It is not disputed, first, that the competent authorities gave their approval to the change in the type of wind turbines originally planned without requiring an environmental impact assessment in conformity with Directive 85/337 as amended and, secondly, that the consent given for the third phase of construction was also not accompanied by such an assessment. **In addition, such an assessment did not precede the deforestation authorised in May 2003, contrary to the requirements of the Irish legislation.***

108 However, point 3(i) of Annex II to Directive 85/337 as amended refers to installations for the harnessing of wind power for energy production (wind farms) and point 13 of that annex refers to any change or extension of projects listed in

Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.

109 *In addition, the relevant selection criteria in Annex III to Directive 85/337 as amended, which are applicable to the projects listed in Annex II and are referred to in Article 4(3) of that directive, include the risk of accidents having regard inter alia to the technologies used. Noteworthy among those criteria is the environmental sensitivity of the geographical area, which must be considered having regard, inter alia, to 'the absorption capacity of the natural environment', paying particular attention to mountain and forest areas.*

110 *Since the installation of 25 new turbines, the construction of new service roadways and the change in the type of wind turbines initially authorised, which was intended to increase the production of electricity, are projects which are referred to in Annex II to Directive 85/337 as amended and which were likely, having regard to the specific features of the site noted in paragraph 102 of this judgment and the criteria referred to in the preceding paragraph of this judgment, to have significant effects on the environment, they should, before being authorised, have been subject to a requirement for development consent and to an assessment of their effects on the environment, in conformity with the conditions laid down in Articles 5 to 10 of Directive 85/337 as amended.*

111 *Consequently, by failing to take all measures necessary to ensure that the grant of the amending consents and the consent relating to the third phase of construction of the wind farm was preceded by such an assessment, and by merely attaching to the applications for consent environmental impact statements which did not satisfy those requirements, Ireland has failed to fulfil its obligations under Directive 85/337 as amended.*

Application under Section 177B is legally flawed

This planning application was initiated under Section 177B and it refers in particular to the notice been served by the planning authority in relation to developments in its administrative area "for which permission was granted".

Application to apply for substitute consent where notice served by planning authority.

177B.—(1) *Where a planning authority becomes aware in relation to a development in its administrative area for which permission was granted by the planning authority or the Board, and for which—*

(a) an environmental impact assessment,
(b) a determination in relation to whether an environmental impact assessment is required, or
(c) an appropriate assessment, was or is required, that a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union has been made that the permission was in breach of law, invalid or otherwise defective in a material respect because of— (i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or (ii) any error of fact or law or procedural error, it shall give a notice in writing to the person who carried out the development or the owner or occupier of the land as appropriate.

The issue here is that there was no grant of permission for the deforestation therefore it cannot be legally assessed or adjudicated on under Section 177B.

In particular see point 68 of the Supreme Court Judgement (Appeal No 51/2009)

68. For clarity, it should be noted that the Court is prepared to approach this appeal on the assumption that the planning permissions did not cover or extend fully to the deforestation.

.The facts are that the Department of Agriculture, Forestry Service, granted in May of 2003 a felling licence for the clear felling of 263 ha of coniferous trees at a blanket bog hill side without planning permission and carrying out an EIA, despite the fact that the EIA Directive had been long before that date amended to include the clear felling of forestry (97/11 EC) of the 3rd March, 1997 and the Irish interpretation of that amendment is that when more than 70 ha of coniferous plantation are intended to be clear felled, an EIA is mandatory! By not carrying out an EIA prior to granting the felling licence, the Forestry Service violated European Law in force, here the EIA Directive as amended.

Unfortunately for our environment and our community this substitute consent application appears to be assessing damage and mitigation measures. No reasonable or independent planning authority could grant permission to this development with scale of destruction and non compliance with EU Law and Directives.

The fact that it is almost 25 years ago since a planning application was first lodged for part of this windfarm development is incontrovertible evidence that any assessment at this point in time is largely an academic exercise and flies in the face of the need and requirement of a proper EIA prior to any works commencing. In Case C-216/18 delivered on 12 November 2019 European Commission V Ireland point 116 states that; (See appendix 1)

116 “An environmental impact assessment, such as that provided for by Directive 85/337, is one of the fundamental environmental protection mechanisms in that it enables, as recalled in paragraph 73 above, the creation of pollution or nuisances to be prevented at source rather than subsequently trying to deal with their effects.”

All the reports produced and paid for by the ESB amazingly reach the consensus that some things happened during the construction of the development but that the granting of permission is fully justified.

In the 16 areas of assessment in the Remedial Environmental Impact Assessment Report attached to the application, areas such as population, biodiversity, hydrology etc the ESB has overwhelmingly concluded that there **are no significant adverse impacts.**

However the 2015 National Survey of Hen Harrier in Ireland by the National Parks and Wildlife Service the Hen Harrier population in the Slieve Aughtie Special Protection Area has shown a dramatic loss of almost 50% since 2005. According to the 2016 census the people population of Derrybrien has fallen from 144 people in 1996 down to 105 in 2016. We now have a community and an environment on the knife edge of survival.

The site notice on the face of it is not factually correct and is misleading.

The site notice states that;

“Item(3)- ancillary works carried out includes :tree felling”

It is factually wrong to describe tree felling in the context of this substitute consent application as “ancillary”. What took place was “**Deforestation of 263 hectares**” of trees which required a felling licence from the Department of Agriculture and The Forest Service along with planning permission and an Environmental Impact Assessment.

The fact is that the windfarm could not have been built without first removing the trees on the site.

An Bord Pleanála must declare this substitute consent application as invalid on this point as there is an attempt by the ESB / GWL to circumvent EU law and Directives by minimising the significance and scale of the deforestation.

Also Galway County Council neglected to include any reference to deforestation in their details when instructing the ESB / GWL under Section 177B to apply for substitute consent.

On page 13 of the;

Planning Report to Accompany Application to An Bord Pleanála for Substitute Consent Document No.: QS-000280-01-R460-003-000

It states that;

“The scope of the application pack, the content of the notices and the number and format of the documents submitted has been pre-agreed with An Bord Pleanála in advance of this submission being made – see email confirmation attached to the Application Form”.

Also on page 16 it states that;

“Separately – Gort Windfarms Ltd. liaised with officials in An Bord Pleanála in respect of content of notices, drawing schedules and document formats.”

On page 21 it states that;

“Tree felling - c.220 Ha of forestry were felled to facilitate the construction of the wind farm. Operational requirements necessitated the licensed felling of an additional c.47 Ha of forestry between 2016 and 2018.”

On the site notice it states that;

“The application relates to development which comprises or is for the purpose of an activity requiring a waste licence”.

Again the site notice is deficient as it does not explain what exactly the type of waste that is been referred to on the notice.

In the;

Planning Report to Accompany Application to An Bord Pleanála for Substitute Consent Document No.: QS-000280-01-R460-003-000

On page 11 it is stated that;

“It is the intention of the Applicant to secure, in due course, all other consents to regularise the status of this development, including Waste Licences if and where applicable.”

This is totally unacceptable. The ESB are making a substitute consent application and at the same time withholding an application for a Waste Licence and other unknown “consents”.

What type of “Waste” are they referring to and what are “all other consents”.

In the latest correspondence the ESB has still not explained in any detail what type of Waste licence they will apply for and this lack of information is unacceptable.

We are deeply concerned that the ESB / GWL are not been open and transparent in this application and are slipping in other consents without proper and clear information.

This application must be rejected by An Bord Pleanála on the basis of lack of proper and clear information on the face of the site notice or indeed in the application reports themselves.

The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out the development is self evident.

Without going into great details some of the headline figures that give you a scale of the project on this Special Protection Area and a blanket bog site of 1,200 acres are;

- 70 windturbines
- Development built on a European designated Special Protection Area
- 450,000 cubic meters of bog slipped in the landslide
- 50,000 fish killed as a result of the landslide
- 185,000 cubic meters excavated from compound, turbine bases etc
- Deforestation of 263Ha without planning permission or EIA
- 17.5 Km of roadways
- 39Km of drains
- 3 quarries (The main quarry is outside the windfarm site and never assessed during the planning application).
- 7,880 cubic meters of concrete used
- 232,000 cubic meters blasted and excavated from the quarries
- 22.5 Km of underground cable
- 7.8 Km of overhead power lines

- 4 barrages consisting of approximately 3,500 cubic metres of rocks & stone

The scale of this destruction is something that cannot be ignored.

A 75% drop in numbers of Hen Harriers over the last 15 years on the Slieve Aughty SPA.

In the 16 areas of assessment in the Remedial Environmental Impact Assessment Report attached to the application, areas such as population, biodiversity, hydrology etc the ESB / GWL has overwhelmingly concluded that there **are no significant adverse impacts.**

However the 2015 National Survey of Hen Harrier in Ireland by the National Parks and Wildlife Service the Hen Harrier population in the Slieve Aughty Special Protection Area has shown a dramatic loss of almost 50% since 2005.

Of major significance is the fact that Duchas officials under the National Parks and Wildlife service wrote to Galway County Council in March 1998 and to An Bord Pleanála in September 2001 clearly highlighting the fact that the EIS were seriously deficient in its providing information regarding the impacts on flora, fauna, soil and water. Both correspondence referred in particular to the impact on the Hen Harrier and Merlin population in the area. The planning authorities cannot say that they were not aware of their obligations and legal duty to protect the habitat for the Hen Harriers and Merlin. Their legal duty were enshrined in law under the Wildlife Act 1996 and under Annex 5 of the EU Habitats Directive and Annex 1 of the Birds Directive (Council Directive 79/409/EEC on the conservation of wild birds).

Also of significance is the fact that Galway County Council refused planning permission for 00/4581 which was overturned in an appeal to An Bord Pleanála. In her report the An Bord Pleanála inspector clearly identified the importance of the Hen Harriers and the fact that the Slieve Aughties were a stronghold at that time. She states that;

“In view of the importance of this general area for the Hen Harrier and the paucity of information available regarding the impact of windfarms on this species, I would concur with Duchas in relation to the value of surveys. However, in I also agreed with the applicant (Saorgus Energy Ltd) who states that surveys undertaken during periods of disturbance may be considered invalid” and “The applicant intends to commence development as soon as possible. I am of the opinion that the Board could require that a series of surveys

to be undertaken, possibly commencing in Spring / Summer 2002. I would submit that the attachment of such a condition would also be reasonable for the following reasons; (i) the Slieve Aughty Mountains have been identified as a stronghold for the Hen Harriers following a survey undertaken in 1998/1999 (ii) the inter-relationship between Hen Harriers and windfarms is not well understood and it may be that the relationship is not one of conflict (iii) it is desirable that further research be undertaken of operational windfarms in the area where Hen Harriers are known to exist. I consider that such information would add to decision making in future years and that it is not unreasonable that windfarm operators be required to support this research."

The grant of planning permission for this site by An Bord Pleanála under PL. 07 122803 attaches 13 conditions. Condition no 8 states that;

The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate surveys of this site for the Hen Harriers. Details of the surveys to be undertaken shall be agreed in writing with the planning authority prior to commencement of the development.

Reason: To ensure that the developer contributes towards knowledge of the local Hen Harrier population and of the impact of the windfarms on the species".

The decision and approach above raises a number of fundamental difficulties. First of all it appears that the grant of permission by An Bord Pleanála and the subsequent surveys of the Hen Harriers were an experiment that has gone horribly wrong.

Second of all, the inspector "*agreed with the applicant (Saorgus Energy Ltd) who states that surveys undertaken during periods of disturbance may be considered invalid*" and yet recommends granting permission for a development to start and then carry out surveys after saying earlier that "*surveys undertaken during periods of disturbance may be considered invalid*"

What was the point and purpose of conducting surveys after granting permission other than for experimental and novelty value?????

Thirdly of grave concern is the fact that as of July 2003 when construction commenced no survey had been received by Galway County Council regarding Hen Harrier population or habitat.

Fourth is the fact that the 2015 National Survey of Hen Harrier in Ireland by the National Parks and Wildlife Service the population in the Slieve Aughties has shown a dramatic loss of almost 50% since 2005.

Even more alarming is the fact that recently the Hen Harrier Project Annual Report Year 3; May 2019 – April 2020 stated that:

“The Slieve Aughty Mountains straddles the Galway and Clare border and is the 2nd largest SPA in the network. This SPA supported 27 territorial pairs of breeding Hen Harrier in 2005, however since then the population has undergone catastrophic decline. There were just six confirmed territories recorded during surveys in 2019 and one possible territorial pair, which marks a 75% drop in numbers over the last 15 years. Four of the six confirmed pairs were successful in fledging a total of seven young. In spite of the continued decline in the number of breeding pairs the number of young birds fledged shows an increase over previous years.”

In their decision An Bord Planala failed to adhere to;

Directive 85/337/EEC before amendment by Directive 97/11

2 Article 2(1),(2) and (3), first subparagraph, of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) provided:

‘1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects.

In 2007, as a requirement under the EU Birds Directive, Ireland designated six sites as SPAs based on their national importance for breeding hen harriers (see www.npws.ie/protected-sites); (i) the Slieve Bloom Mountains SPA (Site code: 4160); (ii) the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site code: 4161); (iii) the Mullaghanish to Musheramore Mountains SPA (Site code: 4162); (iv) the Slievefelim to Silvermines Mountains SPA (Site code: 4165); (v) Slieve Beagh SPA (Site code: 4167); and (vi) the Slieve Aughty Mountains SPA (Site code: 4168). Between 2005 and 2010, the numbers of hen harriers within these SPAs varied regionally, with three SPAs declining and three increasing over this period, although overall numbers declined by 18.1% since the 2005 survey

(Ruddock et al., 2012). Ruddock et al., (2012) suggested that limited breeding resources may be impacting hen harrier populations in Ireland. The proximate or distal causes of the regional declines include potentially contributing factors such as over-winter survival rates (O'Donoghue, 2011), habitat suitability/change particularly of afforested areas (Wilson et al., 2012), predation, persecution, reduction in food supply, development (e.g. windfarms, O'Donoghue et al., 2011) and various disturbance factors e.g. peatcutting, burning etc (Ruddock et al., 2012).

Despite continued good coverage, an acute decline was recorded in the Slieve Aughty range, where the population was also observed to decline since 2005. In 2015 the recorded population was less than half of that recorded in 2005, and further substantial declines were observed since 2010. Some squares to the south of the Aughties did however show an increase in 2015 (Figure 10) which may be explained by redistribution.

In terms of population losses, the most significant reduction within the SPA network since 2010 was recorded in the Slieve Aughty SPA with an overall reduction of nine breeding pairs since the 2010 survey.

The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA complex and the Slieve Aughty Mountains SPA, similar to 2010 surveys (Ruddock et al., 2012), have both declined since 2005. There are also a relatively large number of wind turbines recorded in these two SPA s ($n = 153$ & 77 respectively; Appendices 4 - 9) and further analysis of any spatial associations and/or avoidance of windfarms by hen harriers would be desirable. The pairs found in both these SPAs largely nest in afforested or scrub sites and the Stack's complex has the lowest proportional usable forest age structure of all SPAs (Appendices 4 – 9) indicating that forest demographics may be a driver in this area.

Following the ad hoc recording of pressures and directly recorded threats in 2010 (Ruddock et al., 2012), it was desirable to collect data more systematically during the 2015 survey. In particular Ruddock et al., (2012) identified several factors considered as direct 'disturbance' at known hen harrier sites which included turf cutting, windfarms, power-lines, roads, vehicles, burning, human disturbance, agricultural activity, cattle (i.e. trampling), forestry operations, forest maturation, predation, scrub clearance, shooting and recreational activity.

In a National Survey of breeding Hen Harriers *Circus cyaneus* in Ireland 1998 – 2000 the population of Hen Harriers were stated to be 15 – 23 pairs.

In the 2015 report it is stated that the Hen Harrier population in 2005 as 24 – 27 pairs, population in 2010 as 15 – 23, population in 2015 as 8 – 14 pairs which is a 48.1% decrease from 2005 to 2015.

It has been reported locally that people are employed to travel within the windfarm site accompanied with specially trained dog/s searching for birds and bats that may be killed or injured by the windturbines. If this is true a report should be published by the windfarm owners giving details of who is carrying out the survey and the results of what they found.

This application must be rejected by An Bord Pleanála on the basis of lack of proper and clear information on the face of the site notice or indeed in the application reports themselves.

Annex 1, Special Protection Area Designations

Issues such as flora, fauna, SPA, forestry, water, bog, landslide risk, quarries, drainage and the implications on the flooding in the Gort area must be assessed properly and independently.

In the:

Derrybrien Wind Farm Project Remedial Natura Impact Statement (rNIS)
Electricity Supply Board (ESB)

5.9 Consideration of findings The rNIS has considered the likely significant effects of the Derrybrien Wind Farm Project, if any; that have occurred, that are occurring or can reasonably be expected to occur in the future; that would adversely affect the integrity of any European site(s). Two European sites were identified at screening stage as having the potential to have been or to be significantly affected as a result of the Project. The assessment undertaken in the rNIS has been informed by project-specific field surveys and specialist reporting with reference to the ecological communities and habitats potentially affected by the Project, in order to provide a scientific basis for evaluations. The removal of conifer plantation as part of the project construction has created approximately 255 ha of suitable open upland foraging habitat for hen harrier in the Slieve Aughty Mountains SPA. As plantation forest maturation has been quoted as


being partly responsible for the regional decreases in breeding hen harriers, the alteration of mature forestry to open habitat has the potential to have significant positive effects on the hen harrier population within the Slieve Aughty Mountains SPA. The assessment has shown that there is no evidence that the construction phase of the Project and the operational phase to date, have adversely affected the integrity of the SPA. With the implementation of mitigation measures it is anticipated that the Project will not result in any future direct, indirect or cumulative adverse effects on the Slieve Aughty Mountains SPA during the continued operation and decommissioning of the wind farm and associated infrastructure. The effects of the Project, in particular the peat slide, on Lough Cutra SPA were assessed and the findings were that the Project did not adversely affect the integrity of the site. The continued operation and decommissioning of the Project will also not affect the integrity of the SPA. It is therefore concluded, that the Project with the implementation of the prescribed mitigation measures will not give rise to significant impacts, either individually or in combination with other plans and projects, in a manner which adversely affects the integrity of any European site(s).

The extract above is quite incredible in that we are told by the ESB that there is no significant impact on the SPA. 450,000 cubic meters of bog flowed down the local river killing 50,000 fish and ended up in the Lough Cutra SPA. The Hen Harrier population in the Slieve Aughties is down approximately 75% since 2005. 39km of drains dug into blanket bog. Is this alone not enough evidence that enormous damage has been done to the SPA?

The extract below is from European Commission's website ;

https://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

In practice

Often migratory, wild bird species can only be protected by cooperating across borders. Urban sprawl and transport networks have fragmented and reduced their habitats, intensive agriculture, forestry, fisheries and the use of pesticides have diminished their food supplies, and hunting needed to be regulated in order not to damage populations. Concerned with their decline, Member States unanimously adopted the Directive 79/409/EEC in April 1979. It is the oldest piece of EU legislation on the environment and one of its cornerstones. Amended in 2009, it became the [Directive 2009/147/EC](#) .

Habitat loss and degradation are the most serious threats to the conservation of wild birds. The Directive therefore places great emphasis on the protection of habitats for endangered and migratory species. It establishes a network of Special Protection Areas (SPAs) including all the most suitable territories for these

species. Since 1994, all SPAs are included in the Natura 2000 ecological network, set up under the Habitats Directive 92/43/EEC.

As local residents we are not aware of any instance of persecution or poisoning of Hen Harriers in the Slieve Aughty SPA area. In fact a Hen Harrier Project was launched in 2017. The Project is an EIP (European Innovation Partnership) Locally Led Scheme and is funded by the Department of Agriculture, Food and the Marine as part of Ireland's Rural Development Programme 2014-2020. As far as I am aware the majority of farmers in the area have willingly and enthusiastically joined the scheme. Many see the conservation of the habitat suitable for the Hen Harriers as part and parcel of their farming practices. In fact if the Hen Harrier population in this area were to reduce more or be wiped out it would be an unforgivable indictment on our society. It would be quite obscene that on the one hand local people have joined with the state in conserving the Hen Harriers while other entities are engaged in the destruction of the Hen Harriers habitat.

Unfortunately at this point in time it is impossible put the site and the environment back to its condition that it was in prior to development commencing.

A 75% drop in numbers of Hen Harriers over the last 15 years on the Slieve Aughty SPA.

An Bord Pleanála must issue a clear decision stating that the ESB GWL application do not comply with the “Exceptional Circumstances” criteria, you are legally obliged to apply the precautionary principle and requires to be applied to this Derrybrien windfarm project. This is what happened in CJEU Case C – 258/11. See extract below.

46 Consequently, if, after an appropriate assessment of a plan or project's implications for a site, carried out on the basis of the first sentence of Article 6(3) of the Habitats Directive, the competent national authority concludes that that plan or project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site concerned as an SCI, the view should be taken that such a plan or project will adversely affect the integrity of that site.

47 In those circumstances, that plan or project cannot be authorised on the basis of Article 6(3) of the Habitats Directive. Nevertheless, in such a situation, the competent national authority could, where appropriate, grant authorisation under

Article 6(4) of the directive, provided that the conditions set out therein are satisfied (see, to this Waddenvereniging and Vogelbeschermingsvereniging, paragraph 60). effect,

48 It follows from the foregoing considerations that the answer to the questions referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

The precautionary principle should be applied for the purposes of this appraisal.

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

This point raises a number of important issues. In the strict reference to the “applicant” and its identity is Gort Windfarms Limited the only development that I am aware of that this legal identity has been involved in is this windfarm development at Derrybrien as that is the purpose of its existence. Therefore that legal identity only applies to this windfarm development.

Otherwise we need to look at all previous developments that the ESB were involved in and assess their planning history.

This Windfarm Project subject of two CJEU judgements

Few if any developments has been the subject of two Court of Justice of the European Union cases. This windfarm has the unique distinction of this record. In 2008 the Court of Justice of the European Union delivered a judgement in Case C-215/06 which found that Ireland failed to implement the Environmental Impact Directive 85/337 properly.

In the second case which Judgement delivered on 12th November 2019 Case C - 261/18 Ireland was once again before the CJEU in relation to this windfarm.

Non Compliance with planning conditions

Description of how pre-disaster 2003 construction work breached conditions of planning permissions. Note that deforestation started in June 2003 and construction work started in July 2003.

Planning consent 97/3470 and 97/3652 are similar. Planning consent relate to 00/4581 which was later superseded by 02/3560.

The following outline lack of compliance with planning conditions relating to; **97/3470 and 97/3652.**

Please refer to attached letter from Mr Liam Gavin, Senior Engineer, Planning & Economic Development, Galway County Council sent to Ms. Mary Nolan, Hibernian Wind Power, 27 Lower Fitzwilliam Street, Dublin 2, dated 11th September 2003.

- **Condition No 3** Details of disposal of excavated rock and soil to be submitted and agreed with the planning authority prior to commencement of work on the site. **Agreement reached between developer and Galway County Council on 11th September 2003 provided burrow pits are rehabilitated on completion of excavations.**
- **Condition No 5** Details of facilities to be installed at the developer's expense to ensure that radio or television transmission in the area are not interfered with by the development. **Noted and agreed with on 11th September 2003 provided protocol from RTE is submitted later. Agreement reached on 24th November 2003**
- **Condition No 6** Before development commences details of aeronautical requirements shall be agreed in writing with the planning authority. **Agreed with the planning authority on 11th September 2003.**
- **Condition No 7** Cash deposit or bond or other security to secure the satisfactory reinstatement of the site upon cessation of the project to be lodged with Galway County Council prior to commencement of work. **Agreement reached on 24th November 2003.**

- **Condition No 8** Details of road network to be used by construction and by long term traffic shall be submitted and agreed with the planning authority prior to commencement of development. **Agreement reached on 24th November 2003.**
- **Condition No 9** Before development commences on the site the developer shall submit to the planning authority for written agreement detailed proposals for the control of silt-laden discharges from the site arising from construction activities. **Agreement reached on 24th November 2003.**
- **Condition 10 (b)** Employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works. **Agreement reached on 11th September 2003.**
- **Condition No 12** Prior to the commencement of the development the developer shall lodge a cash deposit or a bond or other security to secure the reinstatement of public roads which may be damaged by the transport of materials to the site. **Agreement reached on 24th November 2003.**
- **Condition No 13** Turbines other than the two types specified in the planning application documentation (tubular tower design) shall not be used, except with the prior written agreement with the planning authority. **Agreement reached on 11th September 2003.**

The following outline lack of compliance with planning conditions relating to;
02/3560

- **Condition No 4(b)** Prior to commencement of development, the developer shall submit and have written agreement from the planning authority in respect of the site layout plan to scale 1: 5000 showing the location of structures referred to in (a) above and access roads/tracks **Agreed on 11th September 2003**
- **Condition No 4(c)** Prior to commencement of development, the developer shall submit and have written agreement from the planning authority in respect of, scaled drawings of proposed turbines. **Agreed on 11th September 2003.**

- **Condition No 4(d)** Prior to commencement of development, the developer shall submit and have written agreement from the planning authority in respect of details of site boundary, if any. **Agreed on 24th November 2003.**
- **Condition No 5** Details of disposal of excavated rock and soil to be submitted and agreed with the planning authority prior to commencement of work on the site. **Agreed on 11th September 2003.**
- **Condition No 7** Details of facilities to be installed at the developer's expense to ensure that radio or television transmission in the area are not interfered with by the development. **Noted and agreed with on 11th September 2003 provided protocol from RTE is submitted later.**
Agreement reached on 24th November 2003
- **Condition No 9** The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate surveys of this site for the Hen Harrier. Details of the surveys to be undertaken shall be agreed in writing with the planning authority prior to commencement of development. **Proposals to retain the services of B.E.S. to undertake the Hen Harrier survey is noted and accepted on 11th September 2003. The Planning Authority awaits a copy of the findings.**
- **Condition No 10** Cash deposit or bond or other security to secure the satisfactory reinstatement of the site upon cessation of the project to be lodged with Galway County Council prior to commencement of work. **Agreement reached on 24th November 2003.**
- **Condition No 11** Details of road network to be used by construction and by long term traffic shall be submitted and agreed with the planning authority prior to commencement of development. **Agreement reached on 24th November 2003.**
- **Condition No 12** Before development commences on the site the developer shall submit to the planning authority for written agreement detailed

proposals for the control of silt-laden discharges from the site arising from construction activities. **Agreement reached on 24th November 2003.**

- **Condition No 13** Employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works. **Agreement reached on 11th September 2003.**
- **Condition No 14** Prior to the commencement of the development the developer shall lodge a cash deposit or a bond or other security to secure the reinstatement of public roads which may be damaged by the transport of materials to the site. **Agreement reached on 24th November 2003.**

Please note that the main quarry in operation was not identified at any time through the planning process.

The Environmental Impact Statement provided for Phase 1 and 2 were very similar in layout and content to the Environmental Assessment which accompanied the planning application for Phase 3. A clear similarity can be observed on page 8 of EIS for phase 1 and 2 and page 14 of ES for phase 3.

Both read as follows;

Structure of this Environmental Assessment/Impact Statement

This EA /EIS have been structured according to guidelines published by the Environmental Protection Agency (1995). This document outlines both the subjects to be covered and the approach to be taken in dealing with them. These procedures have been followed in the preparation of this EA / EIS. All likely effects are considered in terms of:

- 1. Existing conditions*
- 2. Potential or likely effects*
- 3. Proposals for mitigation of these effects*

The developers were aware of the necessity for an Environmental Impact Statement for this huge industrial development from the outset. It should be also pointed out that contrary to what the developer's state on pages 13 and 14 of EA (phase 3) an Environmental Assessment was required. This became a legal requirement on 1st May 1999 under S.I. No. 93/1999.

The enormous scale of the development as proposed in 1997/98 could most certainly be subject of an Environmental Impact Assessment under Directive

85/337/EEC. In Annex II of the Directive which became a legal requirement on 1st of October 1996 under S.I. No. 101 of 1996

“land reclamation for purposes of conversion to another type of land use” the “extraction of peat” the “extraction of minerals other than metalliferous and energy-producing minerals, such as marble, sand, gravel, shale, salt, phosphates and potash and “Industrial installations for carrying gas, steam and hot water, transmit ion of electrical energy by overhead cables..

As stated in the EA for phase 1 and 2 under the heading of;

Effects on rocks and soil

The predicted impacts of the proposed project

*The only impacts on the soil and bedrock of the site will be in the construction stage. The foundations for each turbine will entail the excavation of approximately 175 cubic metres of material comprising bedrock and overlying peat. For 23 turbines this will total approximately 23,000 cubic metres of material. Rock material will all be used in road construction and peat will be made available to local operators for turf production. Any further material needed for road construction will be extracted from the north east corner of the site by opening a small quarry (Figure 17). It is envisaged that most of the material needed for road making will be sourced from the excavation of turbine bases and that only a small proportion will need to be sourced from the quarry. **The shale bedrock and peat** are abundant rock and soil types and the impacts on the resource are minimal.*

The construction of turbine foundations and access roads is a necessity for this project. The use of the spoil in turf production and road construction will ensure that unsightly heaps of rubble does not have an adverse impact on the appearance of the site.

Please note that the comments above are for phase 1 and 2 a total of 46 turbines. Approximately 10 km of new roads was required to be constructed for phase 1 and 2. Most if not all of this material was quarried from three quarries on the windfarm site. One from the location as identified in figure 17 and another much larger quarry adjacent to Turbine 65 which is on the phase 3 site and which was never identified at and stage throughout the planning process. Absolutely none of the peat excavated was used for turf production. In fact local people and visitors were discouraged from entering the turbary area by Security Guards. Names and registration details of vehicles were recorded at check points. Such actions were in stark contrast to those stated in the EA.

Such other matters as the Board considers relevant.

The points made by the ESB / Gort Windfarms Ltd in this section are egregious and misleading.

If they had participated in the CJEU cases it would be interesting to see what influence the ESB / Gort Windfarms Ltd could have on the outcome or direction of both cases apart from carrying out a proper EIA and complying with all regulations, laws and EU Directives.

The ESB / Gort Windfarms Ltd had a significant number of opportunities to comply with the law and EU Directives but failed to do so.

In the Opinion of the Advocate General Pitruzzella delivered on the 13th June 2019 in Case C- 261/18 European Commission v Ireland in which he states in point 60 that;

60. Contrary to what that Member State maintains, I do not consider that the length of time that elapsed between 22 December 2016 and 2 October 2017 — the dates on which the concept paper referred to in point 15 of this Opinion was submitted — can be blamed on the Commission. First, as Ireland itself admits, the letter accompanying the first submission of that document does not state that the Irish authorities would await formal approval from the Commission before proceeding to the next stage. Second, the version of that document sent in December 2016 was not signed by the operator of the Derrybrien wind farm, which justified doubts as to the seriousness of the undertaking given by the operator. Lastly, without being contradicted by Ireland, the Commission argues that the content of the document sent in December 2016 was substantially the same as that of a previous document on which it had made various observations which would appear not to have been taken into account by the Irish authorities.

According to correspondence and tender documents which ESBI and Ascon the Civil Works Contractor for the windfarm project discussed and agreed clearly showed that ESB / GWL were fully aware that there were major issues in relation to forestry, quarries and the mountainous bog land which was waterlogged and very difficult to traverse on foot. In fact the boggy and waterlogged nature of the site was referenced a number of times on the tender documents. In fact it was considered so dangerous that the advice on the tender documents was that;

“The site is isolated and the terrain is difficult and exposed and access must not be undertaken by single individuals, but in groups of two or more.”

ESBI state that;

“Winning road making material from borrow pits discovered within the site boundary excluding the turbary area, we confirm that the civil contractor can develop these borrow pits subject to notifying ESBI Engineering’s site management and forwarding location details of these in advance.”

The ESB / GWL made changes and modifications themselves to the layout and the turbine locations. This seems to be based on some ground investigations after the grant of planning permission. In section 8 of the tender document they state that;
“It should be noted that this site investigation report was undertaken January 2002, the turbine arrangements have since been modified with some turbines being relocated, such that the information contained within this report may not reflect the prevailing ground conditions for these specific turbines,

The information provided for on the tender drawings with regard to these modified turbine locations and the associated ground conditions are to take precedence,”

Under General items it is stated that;

“Ascon raised issues of borrow pits outside those shown on existing drawings, ESBI have responded post meeting as per fax 11-06-03.”

“Planning permission for Phase I and II (T1-T46) will lapse on 10th October 2003, 50% of Civil Works for Phase I and II must be completed by this date (i.e 24 bases)”

“Ascon had envisaged 30 m wide corridor of trees to be felled, subsequent felling when roads constructed, more detailed site investigation was also envisaged.”

“ESBI outlined that bog burst had occurred at nearby Sonnagh Old, Ascon to investigate if this is a potential problem at Derrybrien.”

See **appendix 10** in the submission on 07th September 2021 which contains this revealing and alarming statement above has a fax date of 29/07/03.

We are now aware that ESBI themselves alerted the Civil Contractors, Ascon that a bog burst had occurred on another adjacent windfarm development before construction work started on the Derrybrien windfarm site

Please see appendix 11 which is a copy of an archaeological report produced by Michael Punch & Partners dated 07th June 2002 as part of planning conditions and copies of letters from Duachas dated 11th March 1998 and 20th September 2001 highlighting the fact that there were serious deficiencies in the EIA submitted for the windfarm development. .

As far as we are aware this is the only reliable evidence providing details of soil excavations prior to construction starting at the windfarm in 2003.

The raw truth and honesty of the report stands out and in particular, the following paragraph sticks in the memory;

"Excavation in the eastern half of the site was discontinued as the jelly-like movement of the ground under the weight of the machine rendered further digging unsafe. Excavation in the western half of the site was attempted but the area was covered in dense ranks of fir trees which made it impossible for the machine to reach the testing sites and work was abandoned altogether."

Also on the 2nd October 2003 a small landslide occurred at the base of turbine 17. As referenced in the Budd Judgement on page 12 *"Apparently no heed was paid to this warning"*.

The assertion in the ESB / GWL submission under point (g) dated 20th May 2021 stating that;

"The current application for substitute consent made under ABP-308019-20, is the first opportunity afforded to Gort Windfarms Limited to address the status of the Derrybrien Wind Farm Project and its compliance with the Environmental Impact Assessment Directive and the Habitats Directive."

Is false and misleading.

First of all in correspondence dated 25th January 2005 from Mr Harry Harbison, Hibernian Wind Power states that;

"it is intended that an application for planning permission in connection with the proposal be lodged with Galway County Council in the near future and that an application for a waste licence be lodged with the Environmental Protection Agency at the same time."

An Environmental Impact Assessment (EIA) will be undertaken in connection with the proposal and the Environmental Impact Statement (EIS) will accompany the applications."

See a copy of the correspondence and EIA Consultation report at appendix 12.

Hibernian Wind Power Limited the ESB or Gort Windfarms Limited did not proceed with this proposal. Therefore the ESB / GWL did have an opportunity in the past to address the status of the windfarm but failed to do so.

A substitute consent application was lodged on 27th October 2011 for this very same development and was withdrawn on 25th November 2011.

SJ0001: Co. Galway (05316)

Galway County Council

Windfarm Derrybrien West and Boleynedorrish and Derrybrien North and East

Case reference: PL07 .SJ0001

Case type: Substitute Consent Notice Direction

Decision: Application withdrawn (planning authority)

Date Signed: 25/11/2011

EIS: Yes

Parties

- Hibernian Wind Power Ltd. (Prospective Appl)

History

- 25/11/2011: Application withdrawn (planning authority)
- 27/10/2011: Lodged

See attached a copy of an Access to Information on the Environment (Galway Co Co Ref No AIE, 1402) appendix 13.

By an amazing set of coincidence Galway County Council withdrew the application on 25th November 2011 for "substitute consent" one day after the Statutory Instrument allowing them to do so was signed into law by Minister Phil Hogan TD, which was the 24th November 2011.
In addition the assertion in the correspondence from;

Mr Liam Murphy, ESB Wind Developments Limited, ESB Head Office, 27 Lower Fitzwilliam Street, Dublin 2 in letter sent to Mr Kevin Kelly, Director of Planning Services, Planning & Sustainable Development Unit, Galway County Council, Prospect Hill, Galway dated Monday 7th November 2011 stated that;

"In view of the extraordinary powers granted to Galway County Council by Section 177B et seq of the Planning & Development Acts 2000 – 2010, it was incumbent upon the planning authority to serve a valid notice with meaningful content on the proper person. The Notice in question fails in each of these respects. The person to whom it is apparently addressed is a stranger to the permissions and the execution of the works or the occupation/ownership of the lands. It is not possible to discern from the content of the purported Notice what development Galway County Council requires a substitute consent for, and the need for clarity is acute in view of the complexity of the works and structures at Derrybrien, Co Galway. In view of the highly disadvantageous consequences which flow from a failure to comply with the Notice, the planning authority is required to deliver a valid and comprehensive Notice to the proper person. All of this it has failed to do. In this regard, we request that the Council immediately withdraw the notice for the reasons set out above."

See attached in appendix 14 which contain a comprehensive range of documents which proves beyond doubt that Hibernian Wind Power Limited were no strangers to the permissions, the execution of the works, or the occupation/ ownership of the lands. All documents attached are compelling but in particular note letter dated 20th May 2003 in which Mr Pierce J. Kirby, Construction Manager, Aertech Projects, Stephen Court, 18/21 St Stephen's Green, Dublin 2 advises Ms McConnell, Planning Department, Galway County Council, Galway that;

"the Derrybrien Wind Farm is been acquired by ESB's subsidiary company, Hibernian Wind Power Limited, from Saorgus Energy Limited and that ESB International has been appointed as project managers for the Works. Aertec is a division of ESB International and they will undertake the project management function."

Further on in point (g) the ESB / GWL goes on to state that;

"As described in detail in the rEIAR and rNIS, the peat slide was an exceptional event in itself, and the investigation of it and the measures to address it have dramatically increased the understanding regarding construction of wind farms on peat and inform best practice guidelines and the assessments contained in the application documentation."

There is an element of condescending arrogance in this statement in that there is an insinuation that what happened in Derrybrien was good as it expanded the knowledge and understanding of constructing windfarms on peat.

We would submit to the Board that you take into account other important factors of relevance in your decision.

Following the High Court Case between Derrybrien Development Society Ltd and Gort Windfarms Limited in the High Court in Dublin on 18th April 2008 a number of points were agreed among them was that a “liaison mechanism” would be established between both parties, **See appendix 15**. As you will see a letter was sent to Mr Brian Ryan, Gort Windfarms Limited, Hibernian Wind Power, Clifton Mews, Lower Fitzwilliam Street, Dublin 2 requesting his views on how the “liaison mechanism” would proceed. The reply that came back to that letter from Mr David Finn, Commercial Manager Renewables, Independent Generation, ESB International can only be described as dismissive and hostile.

This was another example of the most prescient comments from the Opinion of the Advocate General Pitruzzella delivered on the 13th June 2019 in Case C-261/18 European Commission v Ireland in which he states in point 63 that;

63. Ireland announced, prior to the hearing in this case, **that as in a game of snakes and ladders, it was going ‘back to square one’**, informing the Commission that it had once again changed its mind about the possibility of using the substitute consent procedure. *In those circumstances, and on the basis of all the foregoing considerations, it can only be concluded, in my view, that there was a genuine failure to fulfil obligations by Ireland and that the justifications put forward by it must be rejected.*

The very nature, origin and reason for this substitute consent planning application is based on the fact that unlawful actions were undertaken by the ESB / GWL and this application is an attempt to retrospectively cover-up and nullify the substantial damage to the environment which has already occurred. In the event of a Judicial Review I will be relying on EU Law and in particular EC 430/10 for Lawfully applicable as per Our EU Law.

Once again the ESB has attempted to create the narrative that the drainage of some 1200 acres of blanked bog is insignificant and volume would be imperceptible.

The entire catchment area of the Slieve Aughties receive a very high level of rainfall annually and this flows into a unique limestone area with fragile underground systems. It is not logical to put forward the argument that the massive drainage programme in this area had little or no impact. The cumulative effect of this windfarm development and other large scale drainage has most definitely increased the volume and speed of the water flowing from the Slieve Aughties into the Gort lowlands.

The ESB / GWL has not provided any reference or evidence in any of the 5500 plus pages in their substitute consent application that they carried out "Due Diligence" checks on the windfarm development before purchasing the project in 2003. Surely for an organisation with the enormous resources of the ESB and with employees with the technical and engineering skills along with years of experience a proper and detailed "Due Diligence" check should have been prerequisites. However it appears that this was never done.

The following have taken difficult and correct decisions in questioning this windfarm project; DG Environment and its officials, Ms Amanda Maguire NPWS, the Courts of Justice of the European Union CJEU and one conscientious planner in Galway County Council (Ms Niamh Kennedy). Her foresight in refusing planning for planning application No 00/4581 was based on fact and intuition.

While the windfarm is in existence it will be a monument to bad planning decisions, inappropriate construction, state indifference to EU Law and a complete disregard for environmental protection.

An Bord Pleanála must issue a clear decision stating that the ESB / GWL application do not comply with the "Exceptional Circumstances" criteria and in particular point (e) above you are legally obliged to apply the precautionary principle and requires to be applied to this Derrybrien windfarm project. This is what happened in CJEU Case C – 258/11. See extract below.

46 Consequently, if, after an appropriate assessment of a plan or project's implications for a site, carried out on the basis of the first sentence of Article 6(3) of the Habitats Directive, the competent national authority concludes that that plan or project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site concerned as an SCI, the view should be taken that such a plan or project will adversely affect the integrity of that site.

47 In those circumstances, that plan or project cannot be authorised on the basis of Article 6(3) of the Habitats Directive. Nevertheless, in such a situation, the competent national authority could, where appropriate, grant authorisation under Article 6(4) of the directive, provided that the conditions set out therein are satisfied (see, to this Waddenvereniging and Vogelbeschermingsvereniging, paragraph 60). effect,

48 It follows from the foregoing considerations that the answer to the questions referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

The precautionary principle should be applied for the purposes of this appraisal.

If this substitute consent process is to have any integrity and credibility in the circumstances of this application you must rule that “Exceptional Circumstances” criteria do not exist and the substitute consent application must be refused a grant of permission.

As part of this submission we are formally requesting an Oral Hearing on this Substitute Consent application

We look forward to a favourable response from you in due course.

Yours sincerely,



Martin Collins

Contact mjgcollins67@gmail.com

Phone 0872924313

Appendix A

Appendix A

Registered number: 367625

Gort Windfarms Limited
Annual Report and Financial Statements
For the Year Ended 31 December 2018

Gort Windfarms Limited

Company Information

| | |
|----------------------------|--|
| Directors | C. Kinsman (appointed 14 January 2019) M. Sinnott (appointed 1 August 2019) A. Kelly (resigned 14 January 2019) J. Redmond (resigned 1 August 2019) J. Healy - Alternate Director (resigned 1 August 2019) J. Healy (appointed 1 August 2019) |
| Company secretary | J. Healy |
| Registered number | 367625 |
| Registered office | Two Gateway East Wall Road Dublin 3 Ireland D03 A995 |
| Independent auditor | PricewaterhouseCoopers Chartered Accountants and Statutory Audit Firm One Spencer Dock North Wall Quay Dublin 1 Ireland |

Gort Windfarms Limited

Contents

| | Page |
|---|----------------|
| Directors' Report | 1 - 2 |
| Statement of Directors' Responsibilities | 3 |
| Independent Auditors' Report | 4 - 6 |
| Profit and Loss Account | 7 |
| Statement of Comprehensive Income | 8 |
| Balance Sheet | 9 |
| Statement of Changes in Equity | 10 |
| Notes to the Financial Statements | 11 - 22 |

Gort Windfarms Limited

Directors' Report For the Year Ended 31 December 2018

The directors present their annual report and the audited financial statements for the year ended 31 December 2018.

Principal activities

The company is engaged in the operation of a wind farm at Derrybrien, Co. Galway, Ireland.

Going concern

The directors have adopted the going concern basis in preparing the financial statements. Further details are set out in note 1.4 to the financial statements.

Results and dividends

The profit for the year, after taxation, amounted to €795 thousand (2017 - loss €10,136 thousand).

No dividend was declared by the directors (2017 - €Nil).

Directors, secretary and their interests

The directors who served during the year were:

A. Kelly (resigned 14 January 2019)
J. Redmond (resigned 1 August 2019)
J. Healy - Alternate Director (resigned 1 August 2019)

The directors and secretary had no disclosable interests in the shares of the company, or any other group company, as defined in section 329 of the Companies Act 2014, at 31 December 2018 or 31 December 2017.

Key performance indicators

The board has determined the following key performance indicators which cover operational performance:

1. Safety

There were 2 reportable incidents reported to the Health and Safety Authority in 2018 (2017- Nil). Both were addressed at the time.

2. Environment

There were no reportable environmental incidents in 2018 (2017 - Nil).

3. Availability

Availability is the amount of time that a generator is able to produce electricity over a certain period, divided by the amount of time in the period. The wind farm availability for Gort Windfarms Limited was 97.3% (2017 - 97.1%).

4. Load factor

Full site capacity is the total possible electricity that a wind farm could produce if each turbine was producing electricity at full output. Load factor is a percentage of the full site capacity that was produced in a particular interval. The load factor for Gort Windfarms Limited for 2018 was 24.3% (2017 - 24%).

Gort Windfarms Limited

Directors' Report (continued) For the Year Ended 31 December 2018

Small companies note

The company's financial statements have been prepared in accordance with the provisions applicable to entities subject to the small companies regime.

Political and charitable contributions

The company made no political or charitable contributions during the year (2017 - €Nil) and has complied with the Electoral Act 1997.

Events since the end of the financial year

There have been no significant events since the Balance Sheet date that the directors believe require adjustment to, or disclosure in the financial statements.

Accounting records

The measures taken by the directors to ensure compliance with the requirements of Sections 281 to 285 of the Companies Act 2014 with regard to the keeping of adequate accounting records, are the employment of appropriately qualified accounting personnel and the maintenance of computerised accounting systems. The company's accounting records are maintained at the company's registered office at Two Gateway, East Wall Road, Dublin 3, Ireland D03 A995.

Research and development

The company did not engage in any research and development activities in the current or preceding year.

Statement on relevant audit information

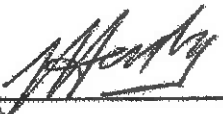
Each of the persons who are directors at the time when this Directors' Report is approved has confirmed that:

- so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- the director has taken all the steps that ought to have been taken as a director in order to be aware of any relevant audit information and to establish that the company's auditors are aware of that information (within the meaning of section 330 of the Companies Act 2014).

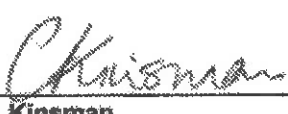
Auditors

The auditors, PricewaterhouseCoopers, have indicated their willingness to continue in office in accordance with section 383(2) of the Companies Act 2014.

This report was approved by the board and signed on its behalf.



J. Healy
Director
Date: 15 October 2019



C. Kinsman
Director
Date: 15 October 2019

Gort Windfarms Limited

**Statement of directors' responsibilities
For the Year Ended 31 December 2018**

The directors are responsible for preparing the annual report and the financial statements in accordance with Irish law.

Irish law requires the directors to prepare financial statements for each financial year giving a true and fair view of the company's assets, liabilities and financial position at the end of the financial year and the profit or loss of the company for the financial year. Under that law the directors have prepared the financial statements in accordance with Irish Generally Accepted Accounting Practice (accounting standards issued by the UK Financial Reporting Council, including Financial Reporting Standard 101 'Reduced Disclosure Framework' and Irish law).

Under Irish law, the directors shall not approve the financial statements unless they are satisfied that they give a true and fair view of the company's assets, liabilities and financial position as at the end of the financial year and the profit or loss of the company for the financial year.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether the financial statements have been prepared in accordance with applicable accounting standards and identify the standards in question, subject to any material departures from those standards being disclosed and explained in the notes to the financial statements; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping adequate accounting records that are sufficient to:

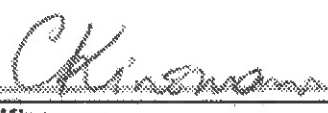
- correctly record and explain the transactions of the company;
- enable, at any time, the assets, liabilities, financial position and profit or loss of the company to be determined with reasonable accuracy; and
- enable the directors to ensure that the financial statements comply with the Companies Act 2014 and enable those financial statements to be audited.

The directors are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

On behalf of the board



J. Healy
Director
Date: 15 October 2019



C. Kinsman
Director
Date: 15 October 2019

Gort Windfarms Limited

Independent Auditors' Report to the Members of Gort Windfarms Limited

Report on the audit of the financial statements

Opinion

In our opinion, Gort Windfarms Limited's financial statements:

- give a true and fair view of the company's assets, liabilities and financial position as at 31 December 2018 and of its profit for the year then ended;
- have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland (accounting standards issued by the Financial Reporting Council of the UK, including Financial Reporting Standard 101 "Reduced Disclosure Framework" and Irish law); and
- have been properly prepared in accordance with the requirements of the Companies Act 2014.

We have audited the financial statements, included within the Annual Report and Financial Statements, which comprise:

- the Balance Sheet as at 31 December 2018;
- the Profit and Loss Account for the year then ended;
- the Statement of Comprehensive Income for the year then ended;
- the Statement of Changes in Equity for the year then ended; and
- the notes to the financial statements, which include a description of the significant accounting policies.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (Ireland) ("ISAs (Ireland)") and applicable law.

Our responsibilities under ISAs (Ireland) are further described in the Auditors' responsibilities for the audit of the financial statements section of our report. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Independence

We remained independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in Ireland, which includes IAASA's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements.

Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which ISAs (Ireland) require us to report to you where:

- the directors' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

However, because not all future events or conditions can be predicted, this statement is not a guarantee as to the company's ability to continue as a going concern.

Reporting on other information

The other information comprises all of the information in the Annual Report and Financial Statements other than the financial statements and our auditors' report thereon. The directors are responsible for the other information. Our opinion on the financial statements does not cover the other information and, accordingly, we do not express an audit opinion or, except to the extent otherwise explicitly stated in this report, any form of assurance thereon.

Independent Auditors' Report to the Members of Gort Windfarms Limited

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If we identify an apparent material inconsistency or material misstatement, we are required to perform procedures to conclude whether there is a material misstatement of the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report based on these responsibilities.

With respect to the Directors' Report, we also considered whether the disclosures required by the Companies Act 2014 have been included.

Based on the responsibilities described above and our work undertaken in the course of the audit, ISAs (Ireland) and the Companies Act 2014 require us to also report certain opinions and matters as described below:

- In our opinion, based on the work undertaken in the course of the audit, the information given in the Directors' Report for the year ended 31 December 2018 is consistent with the financial statements and has been prepared in accordance with applicable legal requirements.
- Based on our knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the Directors' Report.

Responsibilities for the financial statements and the audit

Responsibilities of the directors for the financial statements

As explained more fully in the Statement of directors' responsibilities set out on page 3, the directors are responsible for the preparation of the financial statements in accordance with the applicable framework and for being satisfied that they give a true and fair view.

The directors are also responsible for such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditors' responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (Ireland) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the IAASA website at:

https://www.iaasa.ie/getmedia/b2389013-1cf6-458b-9b8f-a98202dc9c3a/Description_of_auditors_responsibilities_for_audit.pdf

This description forms part of our auditors' report.

Use of this report

This report, including the opinions, has been prepared for and only for the company's members as a body in accordance with section 391 of the Companies Act 2014 and for no other purpose. We do not, in giving these opinions, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

Gort Windfarms Limited

Independent Auditors' Report to the Members of Gort Windfarms Limited

Other required reporting

Companies Act 2014 opinions on other matters

- We have obtained all the information and explanations which we consider necessary for the purposes of our audit.
- In our opinion the accounting records of the company were sufficient to permit the financial statements to be readily and properly audited.
- The financial statements are in agreement with the accounting records.

Companies Act 2014 exception reporting

Directors' remuneration and transactions

Under the Companies Act 2014 we are required to report to you if, in our opinion, the disclosures of directors' remuneration and transactions specified by sections 305 to 312 of that Act have not been made. We have no exceptions to report arising from this responsibility.

Mary Cleary

Mary Cleary (Senior Statutory Auditor)

for and on behalf of

PricewaterhouseCoopers

Chartered Accountants and Statutory Audit Firm

One Spencer Dock

North Wall Quay

Dublin 1

Ireland

Date: *15 October 2019*

Gort Windfarms Limited

**Profit and Loss Account
For the Year Ended 31 December 2018**

| | Note | 2018 €000 | 2017 €000 |
|---|------|--------------|-----------------|
| Turnover | 3 | 7,292 | 5,506 |
| Cost of sales | | (5,418) | (5,863) |
| Gross profit/(loss) | | 1,874 | (357) |
| Administrative expenses | | (809) | (883) |
| Impairment charge | 9 | - | (10,172) |
| Operating profit/(loss) | 4 | 1,065 | (11,412) |
| Interest payable and similar charges | 6 | (70) | (112) |
| Profit/(Loss) on ordinary activities before taxation | | 995 | (11,524) |
| Taxation on profit/(loss) on ordinary activities | 7 | (200) | 1,388 |
| Profit/(Loss) for the financial year | | 795 | (10,136) |

The notes on pages 11 to 22 form part of these financial statements.

Gort Windfarms Limited

**Statement of Comprehensive Income
For the Year Ended 31 December 2018**

| | 2018 | 2017 |
|---|-------------|-----------------|
| | €000 | €000 |
| Profit/(loss) for the financial year | 795 | (10,136) |
| Total comprehensive income/(loss) for the year | 795 | (10,136) |

The notes on pages 11 to 22 form part of these financial statements.

Gort Windfarms Limited

**Balance Sheet
As at 31 December 2018**

| | Note | 2018 €000 | 2017 €000 |
|---|------|----------------|-----------------|
| Non-current assets | | | |
| Property, plant and equipment | 8 | 20,141 | 19,641 |
| | | <u>20,141</u> | <u>19,641</u> |
| Current assets | | | |
| Trade and other receivables | 10 | 2,280 | 1,239 |
| Cash at bank and in hand | 11 | 9,649 | 9,135 |
| | | <u>11,929</u> | <u>10,374</u> |
| Trade and other payables falling due within one year | 12 | (21,013) | (21,591) |
| Net current liabilities | | <u>(9,084)</u> | <u>(11,217)</u> |
| Total assets less current liabilities | | <u>11,057</u> | <u>8,424</u> |
| Trade and other payables falling due after more than one year | 13 | - | (1,158) |
| | | <u>11,057</u> | <u>7,266</u> |
| Provisions for liabilities | | | |
| Deferred taxation | 14 | (1,655) | (1,925) |
| Other provisions | 15 | (6,998) | (3,732) |
| | | <u>(8,653)</u> | <u>(5,657)</u> |
| Net assets | | <u>2,404</u> | <u>1,609</u> |
| Capital and reserves | | | |
| Called up share capital | 16 | - | - |
| Profit and loss account | | <u>2,404</u> | <u>1,609</u> |
| Shareholders' funds | | <u>2,404</u> | <u>1,609</u> |

The financial statements were approved and authorised for issue by the board:


J. Healy
Director

Date: 15 October 2019


C. Kinsman
Director

Date: 15 October 2019

The notes on pages 11 to 22 form part of these financial statements.

Gort Windfarms Limited

**Statement of Changes in Equity
For the Year Ended 31 December 2018**

| | Share capital €000 | Profit and loss account €000 | Total equity €000 |
|--|--------------------------|------------------------------------|----------------------|
| At 1 January 2018 | - | 1,609 | 1,609 |
| Comprehensive income for the year | | | |
| Profit for the financial year | - | 795 | 795 |
| At 31 December 2018 | - | 2,404 | 2,404 |

**Statement of Changes in Equity
For the Year Ended 31 December 2017**

| | Share capital €000 | Profit and loss account €000 | Total equity €000 |
|--|--------------------------|------------------------------------|----------------------|
| At 1 January 2017 | - | 11,745 | 11,745 |
| Comprehensive loss for the year | | | |
| Loss for the financial year | - | (10,136) | (10,136) |
| At 31 December 2017 | - | 1,609 | 1,609 |

The notes on pages 11 to 22 form part of these financial statements.

Gort Windfarms Limited

Notes to the Financial Statements For the Year Ended 31 December 2018

1. Accounting policies

Gort Windfarms Limited is a limited company incorporated and operating in Ireland. The principal activity of the company is the operation of a wind farm at Derrybrien, Co. Galway, Ireland. The accounting policies set out below have, unless otherwise stated, been applied consistently to all periods presented in these financial statements.

The financial statements are presented in Euro, which is the functional currency of the company, rounded to the nearest thousand.

1.1 Basis of preparation of financial statements

The financial statements of Gort Windfarms Limited have been prepared in accordance with Irish GAAP (accounting standards issued by the Financial Reporting Council of the UK and the Companies Act 2014). The financial statements comply with Financial Reporting Standard 101, 'Reduced Disclosure Framework' (FRS 101), and the Companies Act 2014.

The financial statements have been prepared under the historical cost convention, except for derivative financial instruments which are valued at fair value.

1.2 Financial Reporting Standard 101 - reduced disclosure exemptions

In these financial statements, the company has applied the exemptions available under FRS 101 in respect of the following disclosures:

- IAS 1: Presentation of Financial Statements: Certain disclosures including comparative information
- IAS 7: Statement of Cash Flows: A Cash Flow Statement and related notes
- IAS 8: Accounting Policies, Changes in Accounting Estimates and Errors
- IAS 24: Related Party Disclosures: Disclosures in respect of transactions entered into between two or more members of the ESB Group, provided that any subsidiary which is a party to the transaction is a wholly owned subsidiary
- IAS 24: Related Party Disclosures: Disclosures in respect of the compensation of key management personnel
- IFRS 15: Revenue from Contracts with Customers: Disclosure requirements of paragraphs 110, 113(a), 114, 115, 118, 119(a) to (c), 120 to 127 and 129

As the consolidated financial statements of Electricity Supply Board (ESB), the company's parent undertaking, include the equivalent disclosures, the company has also taken the exemptions under FRS 101 available in respect of the following disclosures:

- IFRS 7: Financial Instrument Disclosures: Disclosures relating to financial instruments
- IFRS 13: Fair Value Measurement
- IAS 36: Impairment of Assets

1.3 New standards, amendments and IFRIC interpretations

IFRS 9 Financial Instruments

IFRS 9 replaces the provisions of IAS 39 that relate to the recognition, classification and measurement of financial assets and financial liabilities, derecognition of financial instruments, impairment of financial assets and hedge accounting. IFRS 9 replaces the incurred loss model in IAS 39 with an expected credit loss (ECL) model. The application of IFRS 9 from 1 January 2018 has had no impact on the amounts recognised in the company's Balance Sheet as at 1 January 2018 or its Statement of Comprehensive Income.

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

1. Accounting policies (continued)

IFRS 15 Revenue from Contracts with Customers

IFRS 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognised. It replaced IAS 18 Revenue, IAS 11 Construction Contracts, IFRIC 18 Transfer of Assets from Customers, IFRIC 13 Customer Loyalty Programmes and related interpretations. The application of IFRS 15 from 1 January 2018 has had no impact on revenue recognised in the company's Profit and Loss Account.

1.4 Going concern

The financial statements have been prepared on a going concern basis, which assumes that the company has adequate financial resources to continue in operational existence for at least 12 months from the date of approval of these financial statements.

At 31 December 2018 the company had net current liabilities of €9.1m (31 December 2017: €11.2m).

The directors, having regard to the continued support of its shareholder, ESB, have a reasonable expectation that the company will have adequate financial resources to continue in operational existence for at least 12 months from the date of approval of these financial statements and consider that it is appropriate to adopt the going concern basis in preparing the financial statements.

1.5 Turnover

Turnover comprises income, exclusive of value added tax, derived from the sale of electricity generated by the company and is recognised in the Profit and Loss Account once the volume of energy sold under the terms of a power purchase agreement has been verified by both parties to the agreement. No turnover is recognised if there are significant uncertainties regarding the recovery of the consideration due, associated costs or the possible rejection of services by the client.

1.6 Interest payable and similar charges

Interest payable and similar charges comprises interest expense on borrowings.

1.7 Foreign currency translation

Transactions in foreign currencies are recorded at the rate ruling at the date of transactions. The resulting monetary assets and liabilities are translated at the rate ruling at the Balance Sheet date and the exchange differences are dealt with in the Profit and Loss Account. Non-monetary assets and liabilities measured at historical cost are translated using the exchange rate at the date of the transaction and non-monetary items measured at fair value are measured using the exchange rate when fair value was determined.

1.8 Property, plant and equipment

Property, plant and equipment is stated at cost less accumulated depreciation and provisions for impairment in value, except for land which is shown at cost less impairment. Property, plant and equipment includes capitalised employee, interest and other costs that are directly attributable to the asset.

The charge for depreciation is calculated to write down the cost of property, plant and equipment to its estimated residual value over its expected useful life using methods appropriate to the nature of the company's business and to the character and extent of its property, plant and equipment. The major asset classification and its allocated life span is:

Gort Windfarms Limited

Notes to the Financial Statements For the Year Ended 31 December 2018

1. Accounting policies (continued)

Plant and machinery - 20 years

Depreciation is provided on a straight-line basis for all depreciable assets from the date of commissioning (date available for use).

Reviews of depreciation rates and residual values are conducted annually.

Subsequent expenditure on property, plant and equipment is included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the company and the cost of the item can be measured reliably. All other repairs and maintenance are charged in the Profit and Loss Account during the financial period in which they are incurred.

1.9 Impairment

Assets that have an indefinite useful life are not subject to amortisation and are tested annually for impairment. Assets that are subject to depreciation and amortisation are tested for impairment whenever events or changes in circumstance indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which an asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and its value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash flows (CGU).

For power generation assets, value in use is based on the estimated cash flows expected to be generated by the asset and is based on estimates of forecast power generation, forecast power prices and the timing and extent of operating costs and capital expenditure. These cash flows are discounted to their present value using a pre-tax discount rate that reflects the current markets assessment of the time value of money and the risks specific to the asset.

1.10 Cash at bank and in hand

Cash at bank and in hand includes cash in hand, deposits repayable on demand and other short-term highly liquid investments with original maturities of three months or less.

1.11 Trade and other receivables

Trade and other receivables are initially recognised at fair value, which is usually the original invoiced amount and subsequently carried at amortised cost using the effective interest method less provision made for impairment.

1.12 Trade and other payables

Trade and other payables are initially recorded at fair value, which is usually the original invoiced amount, and subsequently carried at amortised cost using the effective interest rate method.

1.13 Amounts payable to and receivable from group companies

Intercompany receivables and payables, including loans, are non-derivative financial assets and liabilities which are not quoted in an active market. Those with maturities less than twelve months after the Balance Sheet date are included in current assets and current liabilities respectively. Those with maturities greater than twelve months after the Balance Sheet date are included in non-current assets or liabilities, as appropriate. The balances are initially recorded at fair value and thereafter at amortised cost.

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

1. Accounting policies (continued)

1.14 Impairment of financial assets

The loss allowances for financial assets are based on assumptions about risk of default and expected loss rates. The company uses judgement in making these assumptions and selecting the inputs to the expected credit loss calculations, based on the company's past history, existing market conditions and forward looking estimates at the end of each reporting period. For loans and balances with Group companies, the general approach permitted by IFRS 9 is applied, which requires 12 month expected credit losses to be recognised on initial recognition of these receivables. If a significant increase in credit risk occurs, this requires expected lifetime credit losses to be recognised on these receivables. The company applies the IFRS 9 simplified approach to measuring expected credit losses which uses a life time expected loss allowance for all trade and other receivables.

While cash and cash equivalents are also subject to the impairment requirements of IFRS 9, there is no impairment loss identified.

1.15 Current and deferred tax

Income tax on the profit or loss for the year comprises current and deferred tax. Income tax is recognised in the Profit and Loss Account, except to the extent that it relates to items recognised directly in other comprehensive income or equity.

Current tax

Current tax is provided at current rates and is calculated on the basis of results for the year.

Deferred tax

Deferred tax is provided using the Balance Sheet liability method, providing for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes.

Deferred tax assets are recognised only to the extent that it is more likely than not that there will be suitable taxable profits from which the future reversal of the underlying temporary differences can be deducted.

Deferred tax is measured at the tax rates that are expected to apply in the periods in which temporary differences reverse, based on tax rates and laws enacted or substantively enacted at the Balance Sheet date.

1.16 Provisions

A provision is recognised if, as a result of a past event, the company has a present legal or constructive obligation that can be estimated reliably, and it is probable that an outflow of economic benefits will be required to settle the obligation. Provisions are determined by discounting the expected future cash flows at a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability. The unwinding of the discount is recognised in interest payable and similar charges.

Provision for asset retirement obligations

The provision for retirement and decommissioning of the wind farm represents the present value of the current estimate of the costs of closure of the wind farm at the end of its useful life. The estimated costs of retirement obligations are recognised in full at the outset of the asset life, but discounted to present values using a risk free rate. The costs are capitalised in property, plant and equipment and are depreciated over the useful economic life of the wind farm to which they relate.

Gort Windfarms Limited

Notes to the Financial Statements For the Year Ended 31 December 2018

1. Accounting policies (continued)

The costs are reviewed each year and amended as appropriate. Amendments to the discounted estimated costs are capitalised into the relevant assets and depreciated over the remaining life of those assets.

1.17 Share capital

Financial instruments that have been issued are classified as equity where they meet the definition of equity and confer on the holder a residual interest in the assets of the company. Ordinary shares are classified as equity.

1.18 Operating leases: Lessee

Rentals paid under operating leases are charged to the Profit and Loss Account on a straight line basis over the period of the lease.

2. Judgements in applying accounting policies and key sources of estimation uncertainty

The preparation of financial statements in conformity with FRS 101 requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. These estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances.

The estimates and underlying assumptions are reviewed on an ongoing basis. Judgements made by management in the application of FRS 101 that have a significant effect on the financial statements and estimates with a significant risk of material adjustment are:

1. Carrying value of wind farm

The directors consider the appropriateness of the carrying value of the wind farm on an annual basis. Further details are set out in note 9.

2. Determining whether the company's turnover arrangements contain a lease

The directors have considered the company's turnover arrangements, having regard to IFRIC 4 "Determining whether an arrangement contains a lease" and have determined that the arrangement does not contain a lease.

3. Turnover

An analysis of turnover by class of business is as follows:

| | 2018 €000 | 2017 €000 |
|-------------------|--------------|--------------|
| Electricity sales | 7,226 | 5,447 |
| Other income | 66 | 59 |
| | <u>7,292</u> | <u>5,506</u> |

Gort Windfarms Limited

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

3. Turnover (continued)

Analysis of turnover geographically:

| | 2018 €000 | 2017 €000 |
|-------------------|--------------|--------------|
| Island of Ireland | 7,292 | 5,506 |
| | <u>7,292</u> | <u>5,506</u> |

4. Operating profit/(loss)

The operating profit/(loss) is stated after charging:

| | 2018 €000 | 2017 €000 |
|---|--------------|--------------|
| Depreciation of property, plant and equipment | 2,766 | 3,227 |
| Impairment of property, plant and equipment | - | 10,172 |
| Operating lease payments | 210 | 220 |
| | <u>210</u> | <u>220</u> |

5. Employees and directors' remuneration

The company has no employees (2017 - Nil).

Directors of the company are employees of ESB and are remunerated by ESB for their services. During the year, no directors received any emoluments (2017 – Nil) in respect of acting as directors of the company.

6. Interest payable and similar charges

| | 2018 €000 | 2017 €000 |
|--|--------------|--------------|
| Interest payable to group undertakings | 70 | 112 |
| | <u>70</u> | <u>112</u> |

Gort Windfarms Limited

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

7. Taxation

| | 2018 €000 | 2017 €000 |
|---|----------------------------|----------------------------|
| Corporation tax | | |
| Current tax on profit/(loss) for the year | 471 | 234 |
| Total current tax | <u>471</u> | <u>234</u> |
| Deferred tax | | |
| Origination and reversal of timing differences | (271) | (1,622) |
| Total deferred tax | <u>(271)</u> | <u>(1,622)</u> |
| Taxation on profit/(loss) on ordinary activities | <u>200</u> | <u>(1,388)</u> |

Factors affecting tax charge for the year

The tax credit for the year is lower than (2017 - lower than) the standard rate of corporation tax in Ireland of 12.5% (2017 - 12.5%). The differences are explained below:

| | 2018 €000 | 2017 €000 |
|--|----------------------------|----------------------------|
| Profit/(loss) on ordinary activities before tax | 995 | (11,524) |
| Profit/(loss) on ordinary activities multiplied by standard rate of corporation tax in Ireland of 12.5% (2017 - 12.5%) | 124 | (1,441) |
| Effects of: | | |
| Fixed assets ineligible for depreciation | 76 | 53 |
| Total tax credit for the year | <u>200</u> | <u>(1,388)</u> |

Gort Windfarms Limited

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

8. Property, plant and equipment

| | Plant and machinery €000 |
|--------------------------|---|
| Cost or valuation | |
| At 1 January 2018 | 68,154 |
| Additions | 3,266 |
| At 31 December 2018 | <u>71,420</u> |
| Depreciation | |
| At 1 January 2018 | 48,513 |
| Charge for the year | 2,766 |
| At 31 December 2018 | <u>51,279</u> |
| Net book value | |
| At 31 December 2018 | <u>20,141</u> |
| At 31 December 2017 | <u>19,641</u> |

Included within additions in 2018 is the capitalisation of an increase in the asset retirement provision. Please see note 15 for more details.

9. Impairment

| | 2018 €000 | 2017 €000 |
|-------------------|----------------------|----------------------|
| Impairment charge | - | (10,172) |
| | <u>-</u> | <u>(10,172)</u> |

An impairment review of property, plant and equipment was performed which resulted in no impairment charge being recognised in the Profit and Loss Account (2017 - €10.2 million).

Gort Windfarms Limited

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

10. Trade and other receivables

| | 2018 €000 | 2017 €000 |
|------------------------------------|----------------------------|----------------------------|
| Amounts owed by group undertakings | 1,824 | 766 |
| Other receivables | 437 | 458 |
| VAT recoverable | 19 | 15 |
| | <u>2,280</u> | <u>1,239</u> |

11. Cash at bank and in hand

| | 2018 €000 | 2017 €000 |
|--------------------------|----------------------------|----------------------------|
| Cash at bank and in hand | 9,649 | 9,135 |
| | <u>9,649</u> | <u>9,135</u> |

12. Trade and other payables falling due within one year

| | 2018 €000 | 2017 €000 |
|------------------------------------|----------------------------|----------------------------|
| Trade payables | - | 4 |
| Amounts owed to group undertakings | 20,824 | 21,308 |
| Accruals | 189 | 279 |
| | <u>21,013</u> | <u>21,591</u> |

All amounts fall due within one year. Included in amounts owed to group undertakings within one year at 31 December 2018 is an interest bearing loan repayable within one year of €1.2 million (2017 - €1.3 million). See note 13 for further details.

Gort Windfarms Limited

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

13. Trade and other payables falling due after more than one year

| | 2018 €000 | 2017 €000 |
|------------------------------------|--------------|--------------|
| Amounts owed to group undertakings | - | 1,158 |
| | <u>-</u> | <u>1,158</u> |

Amounts owed to group undertakings greater than one year are in relation to a loan provided by ESB on an arm's length basis. At 31 December 2018, the total loan balance repayable after more than one year is €Nil (2017 - €1.2 million). Interest on the interest bearing portion of the loan is charged at a fixed rate of 3.28% and is paid semi-annually in arrears up to 31 December 2019.

14. Deferred taxation

| | 2018 €000 | 2017 €000 |
|----------------------------|----------------|----------------|
| At beginning of year | (1,926) | (3,548) |
| Credited to profit or loss | 271 | 1,622 |
| At end of year | <u>(1,655)</u> | <u>(1,926)</u> |

The provision for deferred taxation is made up as follows:

| | 2018 €000 | 2017 €000 |
|--------------------------------|----------------|----------------|
| Accelerated capital allowances | (1,655) | (1,926) |
| | <u>(1,655)</u> | <u>(1,926)</u> |

Gort Windfarms Limited

Notes to the Financial Statements For the Year Ended 31 December 2018

15. Other provisions

| | Asset retirement provision €000 |
|----------------------------|--|
| At 1 January 2018 | 3,732 |
| Additions during the year | 3,266 |
| At 31 December 2018 | 6,998 |
| Analysed as follows | |
| Non-current liabilities | 6,998 |
| At 31 December 2018 | 6,998 |

The company has estimated environmental and decommissioning costs during the year ended 31 December 2018. The estimated value of future retirement costs at the Balance Sheet date include physical dismantling, site remediation and associated costs. Additions during the year relate to a revision of the estimated environmental and decommissioning costs.

16. Share capital

| | 2018 €000 | 2017 €000 |
|--|--------------|--------------|
| Authorised | | |
| 1,000,000 (2017 - 1,000,000) Ordinary shares of €1.00 each | 1,000 | 1,000 |
| Allotted, called up and fully paid | | |
| 100 (2017 - 100) Ordinary shares of €1.00 each | - | - |

The holders of ordinary shares are entitled to receive dividends as declared from time to time and are entitled to one vote per share at meetings of the company.

17. Contingent liabilities and guarantees

The company has, in the normal course of business, provided decommissioning and reinstatement cash bonds. The bonds may be drawn against in the event that the company fails to properly restore the site of any project on termination of the project's useful life. The total value of these bonds at 31 December 2018 is €386 thousand (2017 - €386 thousand).

The company is party to a bank guarantee facility for €40 million along with a number of its fellow Group companies.

Gort Windfarms Limited

**Notes to the Financial Statements
For the Year Ended 31 December 2018**

18. Commitments under operating leases

At 31 December 2018 the company had future minimum lease payments under non-cancellable operating leases as follows:

| | 2018 €000 | 2017 €000 |
|--|--------------|--------------|
| Not later than 1 year | 270 | 200 |
| Later than 1 year and not later than 5 years | 1,080 | 1,100 |
| Later than 5 years | 1,215 | 2,717 |
| | <u>2,565</u> | <u>4,017</u> |

The company has an operating lease arrangement in respect of land with 10 years remaining.

19. Events after the end of the reporting period

There are no events after the reporting period that the directors believe require adjustment to or disclosure in the financial statements.

20. Capital commitments

The company has no capital commitments at the Balance Sheet date (2017 - Nil).

21. Controlling party

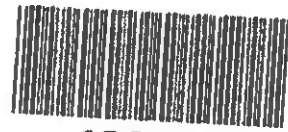
The company is 100% owned by Hibernian Wind Power Limited, a company incorporated in Ireland. Hibernian Wind Power Limited is a wholly owned subsidiary of the Electricity Supply Board (ESB), established and operating in Ireland, which is the ultimate parent. The largest and smallest group into which the results of the company are consolidated is that headed by ESB and the consolidated financial statements of ESB are available to the public and may be obtained from Two Gateway, East Wall Road, Dublin 3, Ireland D03 A995.

22. Approval of financial statements

The board of directors approved these financial statements for issue on 15 October 2019

Appendix B

Appendix B



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Gort Windfarms Limited

**Directors' report and
financial statements**

Year ended 31 December 2008

Registered no. 367625



Gort Windfarms Limited

Directors' report

The directors present their annual report and audited financial statements for the year ended 31 December 2008.

Principal activities, business review and financial management risks

Principal activities

The company is exclusively engaged in operation of a wind farm at Derrybrien in Co. Galway. The directors have no plans to change the activities and operations of the company in the foreseeable future.

Business review

In the year ended 31 December 2008, the company recorded turnover of €9.2m (2007: €7.4m) and a profit before tax of €2.3m (2007: loss €0.4m).

Business risks

The company's risk profile reflects the principal activities of the business and this is summarised below. Management have put in place a series of processes to mitigate major risk. The main risks facing the business are:

1 Safety

Given the nature of the company's activities in operating a wind farm the health and safety of contractors and the general public is of paramount importance to the company. Our policy is to adopt a systematic approach to health and safety management in order to create and maintain a safe working environment, and to comply with all relevant legal and regulatory requirements.

2 Financial

The main financial risk facing the company is ensuring that energy generated can be sold in the market. This risk is mitigated through the use of long term power purchase agreements placed with electricity supply companies. Other financial risks include credit, liquidity, commodity and interest rate risks. These issues are dealt with in detail below.

3 Contractual

In the course of its normal trading activities the company enters into contracts to provide energy to electricity supply companies operating in the Republic of Ireland energy market. These contracts are reviewed and approved from a legal, insurance and financial perspective to ensure that no undue contractual risk exposure is created for the company. Adequate and appropriate insurance cover is maintained at all times in respect of all activities undertaken by the company.

Gort Windfarms Limited

Statement of accounting policies *(continued)* *for the year ended 31 December 2008*

Foreign currency transactions

Transactions in foreign currencies are recorded at the rate ruling at the date of the transactions.

Monetary assets and liabilities

Monetary assets and liabilities denominated in foreign currencies at the balance sheet are translated to Euro at the foreign exchange rate ruling at that date. Foreign exchange differences arising on translation are recognized in the income statement.

Non-monetary assets and liabilities

Non-monetary assets and liabilities that are measured in terms of historical cost in a foreign currency are translated using the exchange rate at the date of the transaction. Non-monetary assets and liabilities denominated in foreign currencies that are stated at fair value are translated to Euro at foreign exchange rates ruling at the dates the fair value was determined.

Property, plant and equipment

Owned assets

Items of property, plant and equipment are stated at cost less accumulated depreciation (see below) and impairment losses.

Depreciation

Depreciation is charged to the income statement on a straight-line basis over the estimated useful lives of each part of an item of property, plant and equipment. The residual value is reassessed annually. The estimated useful lives are as follows:

| | |
|------------------|----------|
| Generation plant | 20 years |
|------------------|----------|

Trade and other receivables

Trade and other receivables are recognised at amortised cost less impairment losses, which also equates to fair value owing to the short term nature of these assets.

Cash and equivalents

Cash and cash equivalents comprise cash balances and call deposits with maturities of less than three months. Bank overdrafts that are repayable on demand and form an integral part of the company's cash management are included as a component of cash and cash equivalents for the purpose of the statement of cash flows.

Impairment

The carrying amounts of the company's assets, other than deferred tax assets (see income tax accounting policy), are reviewed at each balance sheet date to determine whether there is any indication of impairment. If any such indication exists, the asset's recoverable amount is estimated.

An impairment loss is recognised whenever the carrying amount of an asset or its cash-generating unit exceeds its recoverable amount. Impairment losses are recognised in the income statement.

Gort Windfarms Limited

Statement of accounting policies *(continued)* *for the year ended 31 December 2008*

Income tax *(continued)*

Deferred tax is provided using the balance sheet liability method, providing for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. The following temporary differences are not provided for: goodwill not deductible for tax purposes, the initial recognition of assets or liabilities that affect neither accounting nor taxable profit, and differences relating to investments in subsidiaries to the extent that they are not likely to reverse in the foreseeable future. The amount of deferred tax provided is based on the expected manner of realisation or settlement of the carrying amount of assets and liabilities, using tax rates enacted or substantively enacted at the balance sheet date.

A deferred tax asset is recognised only to the extent that it is probable that future taxable profits will be available against which the asset can be utilised. Deferred tax assets are reduced to the extent that it is no longer probable that the related tax benefit will be realised.

Lease arrangements

Where an arrangement conveys the right to control an asset, such that the lessee has the right to obtain or control more than an insignificant amount of that assets' output, or where the lessee has the right to control physical access to the asset, and where the price obtained for the assets' output is neither contractually fixed per unit of output or equal to a market price, then that arrangement is accounted for either as a finance or operating lease, depending on its specific terms.

Guarantees

In the normal course of business the company is required to provide performance bonds and other guarantees, particularly to Eirgrid, as a condition of its grid connection. These are accounted for as insurance contracts and are provided for at the present value of any likely payment there under.

Gort Windfarms Limited

Income statement for the year ended 31 December 2008

| | <i>Note</i> | 2008 €'000 | 2007 €'000 |
|--|-------------|-----------------------------|-----------------------------|
| Revenue – continuing operations | <i>1</i> | 9,170 | 7,417 |
| Cost of sales | | (4,800) | (4,035) |
| | | <hr/> | <hr/> |
| Gross profit | | 4,370 | 3,382 |
| Administration expenses | <i>2</i> | (1,238) | (1,385) |
| | | <hr/> | <hr/> |
| Profit before financing costs | | 3,132 | 1,997 |
| Finance income | <i>3</i> | 1,169 | 86 |
| Finance expense | <i>3</i> | (2,011) | (2,457) |
| | | <hr/> | <hr/> |
| Profit/(loss) before income tax | <i>4</i> | 2,290 | (374) |
| Income tax expense | <i>5</i> | (826) | (138) |
| | | <hr/> | <hr/> |
| Profit/(loss) for the year | | 1,464 | (512) |
| | | <hr/> | <hr/> |

On behalf of the board

P. Hayes
Director




J. Dollard
Director

17 June 2009

Gort Windfarms Limited

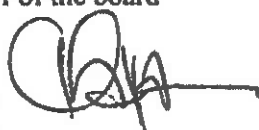
Balance sheet

as at 31 December 2008

| | <i>Note</i> | 2008 €'000 | 2007 €'000 |
|---------------------------------------|-------------|-----------------------------|-----------------------------|
| Assets | | | |
| Non-current assets | | | |
| Property, plant and equipment | 6 | 55,074 | 58,179 |
| Derivative financial instruments | 14 | - | 946 |
| Deferred tax asset | 13 | 4,634 | - |
| Total non-current assets | | 59,708 | 59,125 |
| Current assets | | | |
| Trade and other receivables | 7 | 2,804 | 2,999 |
| Cash and cash equivalents | 8 | 5,320 | 3,044 |
| Derivative financial instruments | 14 | 913 | - |
| Total current assets | | 9,037 | 6,043 |
| Total assets | | 68,745 | 65,168 |
| Equity | | | |
| Share capital | 13 | - | - |
| Retained earnings | 13 | 1,182 | (282) |
| Cash flow hedging reserve | 13 | (42,442) | (52,911) |
| Other reserves | 13 | 13,879 | 13,879 |
| Shareholders' deficit | 13 | (27,381) | (39,314) |
| Liabilities | | | |
| Non-current liabilities | | | |
| Interest bearing loans and borrowings | 9 | 27,717 | 41,887 |
| Derivative financial instruments | 14 | 49,512 | 53,817 |
| Non current trade and other payables | 10 | 4,197 | 2,280 |
| Deferred tax liabilities | 12 | - | 1,009 |
| Total non-current liabilities | | 81,426 | 98,993 |
| Current liabilities | | | |
| Interest bearing loans and borrowings | 9 | 13,318 | 4,432 |
| Trade and other payables | 11 | 1,382 | 1,057 |
| Total current liabilities | | 14,700 | 5,489 |
| Total liabilities | | 96,126 | 104,482 |
| Total equity and liabilities | | 68,745 | 65,168 |

On behalf of the board

P. Hayes
Director



J. Dollard
Director



17 June 2009

Gort Windfarms Limited

Notes

forming part of the financial statements

1 Revenue

The analysis of revenue by activity and geographical area are as follows:

| | 2008 €'000 | 2007 €'000 |
|--|---------------|---------------|
| <u>Activity</u> | | |
| Electricity sales – all in republic of Ireland | 9,170 | 7,417 |
| | <hr/> | <hr/> |

2 Administration costs

| | 2008 €'000 | 2007 €'000 |
|-----------------------------|---------------|---------------|
| Phones, fax & postage costs | 7 | 12 |
| Insurance | 275 | 231 |
| Rent | 798 | 837 |
| Professional fees | 158 | 305 |
| | <hr/> | <hr/> |
| | 1,238 | 1,385 |
| | <hr/> | <hr/> |

3 Finance income and expense

| | 2008 €'000 | 2007 €'000 |
|--------------------------------------|---------------|---------------|
| <u>Finance income</u> | | |
| Interest earned on monies on deposit | 304 | 86 |
| Other | 865 | - |
| | <hr/> | <hr/> |
| <u>Finance expense</u> | | |
| Interest on borrowings | (2,011) | (2,014) |
| Other | - | (443) |
| | <hr/> | <hr/> |
| Net finance expense | (842) | (2,371) |
| | <hr/> | <hr/> |

Gort Windfarms Limited

Notes (continued)

9 Interest bearing loans and borrowings (continued)

Borrowings principally relate to a bank loan used to fund the construction of the wind farm. The loan is repayable, in half yearly instalments, up to 31 December 2019. Interest is charged at EURIBOR plus a margin, and is payable semi-annually in arrears. At 31 December 2008, €32.5m is outstanding, of which €4.8m is repayable in the next 12 months. The company also borrowed a further €8.5 million from a related entity, which is due on demand. Further details are set out in Note 16.

| | Non Recourse Borrowings €'000 | 2008 Total €'000 | 2007 Total €'000 |
|---------------------------------------|-------------------------------------|------------------------|------------------------|
| Current borrowings | | | |
| - Repayable by instalments | 4,794 | 4,794 | 4,432 |
| - Repayable other than by instalments | 8,524 | 8,524 | - |
| | <hr/> | <hr/> | <hr/> |
| Total current borrowings | 13,318 | 13,318 | 4,432 |
| | <hr/> | <hr/> | <hr/> |
| - Repayable by instalments | | | |
| Between one and two years | 4,807 | 4,807 | 4,787 |
| Between two and five years | 15,109 | 15,109 | 16,263 |
| After five years | 7,801 | 7,801 | 11,448 |
| | <hr/> | <hr/> | <hr/> |
| | 27,717 | 27,717 | 32,498 |
| | <hr/> | <hr/> | <hr/> |
| - Repayable other than by instalments | | | |
| After five years | - | - | 9,389 |
| | <hr/> | <hr/> | <hr/> |
| | - | - | 9,389 |
| | <hr/> | <hr/> | <hr/> |
| Total non-current borrowings | 27,717 | 27,717 | 41,887 |
| | <hr/> | <hr/> | <hr/> |
| Total borrowings outstanding | 41,035 | 41,035 | 46,319 |
| | <hr/> | <hr/> | <hr/> |
| Comprised of: | | | |
| Borrowings from related entity | 8,524 | 8,524 | - |
| Other borrowings | 32,511 | 32,511 | 46,319 |
| | <hr/> | <hr/> | <hr/> |
| | 41,035 | 41,035 | 46,319 |
| | <hr/> | <hr/> | <hr/> |

Gort Windfarms Limited

Notes (continued)

10 Non current trade and other payables

| | 2008 €'000 | 2007 €'000 |
|-----------------|---------------|---------------|
| Deferred income | 4,197 | 2,280 |

11 Trade and other payables: amounts falling due within one year

| | 2008 €'000 | 2007 €'000 |
|--------------------------------|---------------|---------------|
| Amounts due to group companies | 606 | 688 |
| Trade and other payables | 776 | 369 |
| | <u>1,382</u> | <u>1,057</u> |

Taxation included in other payables:

| | | |
|-----|------|---|
| VAT | (56) | - |
|-----|------|---|

12 Deferred tax asset and liabilities

Deferred tax assets/(liabilities) are attributable to the following:

| | 2008 €'000 | 2007 €'000 |
|--|---------------|----------------|
| Derivative financial instruments and other items | 6,223 | 186 |
| Property, plant & equipment | (1,589) | (1,195) |
| | <u>4,634</u> | <u>(1,009)</u> |

Movement in timing difference during the year:

| | Balance at beginning of year €'000 | Recognised in equity €'000 | Recognised in income €'000 | Balance at end of year €'000 |
|------|--|----------------------------------|----------------------------------|------------------------------------|
| 2008 | (1,009) | 6,199 | (556) | 4,634 |
| 2007 | (93) | - | (916) | (1,009) |

Gort Windfarms Limited

Notes (continued)

13 Capital and reserves (continued)

Cashflow hedging reserve

Cash flow hedging reserves represent the fair value of derivatives which are part of effective cashflow hedging relationships at year end. As the derivatives are held for hedging purposes as defined by IAS 39, their fair value movements are retained in equity instead of being released to retained earnings at year end.

The amounts held within the cashflow hedge reserve are expected to impact on the income statement in the following periods: 2009: (€581,259); 2010: €144,530; 2011 to 2013: €7,509,590; 2014 to 2023: €35,369,139.

14 Financial risk management

(a) Overview of financial risk management

The company's financial instruments comprise cash and cash equivalents, loans and borrowings, trade debtors and creditors and certain power supply arrangements. Because the company's power output is above a threshold, it is deemed to sell all power directly to the Single Electricity Market (or "SEM") in Ireland, at the prevailing market price for electricity. It mitigates associated commodity risk by entering into fixed price supply arrangements with its customers. These fixed price arrangements generally meet the definition of a financial instrument under IAS 39 and accordingly are required to be accounted for at fair value. The company designates these arrangements as hedges of its forecast electricity sales and because they settle at the exact time and for the exact quantity of electricity supplied, these are considered to be highly effective cashflow hedge arrangements. The company is financed through a combination of equity funding and shareholder and external debt, which is repayable from the ongoing operating cashflows of the business.

The company expects to be in a position to meet its debt obligations for the foreseeable future on the basis of its projected cashflows. It is, and has been throughout the year under review, the company's policy that no trading in financial instruments shall be undertaken. The main risks arising from the company's financial instruments and associated risk management policies are outlined in the directors' report.

Gort Windfarms Limited

Notes (continued)

14 Financial risk management (continued)

(c) Interest rate risk management (continued)

The company's surplus cash balances are deposited with the Electricity Supply Board where interest is earned at variable interest rates reflecting movements in the European Central Bank rates. Cash on deposit at 31 December 2008 amounted to €2.3m at an effective interest rate of 3.94% (2007: €Nil).

The company's interest bearing financial liabilities comprise of a floating rate loan (2008 € 32.5m, 2007 €46.3m) and an interest on demand loan (2008 €8.5m, 2007 €Nil).

The implicit interest rate during the year was:

| | Interest | | Interest | |
|------------------------|---------------|-------|---------------|-------|
| | Dec '08 | Rate | Dec '07 | Rate |
| | € '000 | | € '000 | |
| Secured floating loans | 32,511 | 4.67% | 46,319 | 4.67% |
| Secured demand loans | 8,524 | - | - | - |
| | <u>41,035</u> | | <u>46,319</u> | |

Sensitivity analysis

A 100bp increase/(decrease) in interest rates would have €0.2m (€8m) effect on equity and profit..

(d) Fair value

The fair values together with the carrying amounts shown in the balance sheet are as follows:

| | 2008 | | 2007 | |
|--|-----------------|-----------------|-----------------|-----------------|
| | Carrying Value | Fair value | Carrying value | Fair value |
| | €'000 | €'000 | €'000 | €'000 |
| Interest rate swaps | (344) | (344) | 946 | 946 |
| SEM related derivative financial Instruments | | | | |
| - LT liabilities | (49,168) | (49,168) | (50,753) | (50,753) |
| - ST asset/(liabilities) | 913 | 913 | (3,064) | (3,064) |
| Trade and other payables | (5,579) | (5,579) | (3,337) | (3,337) |
| Trade and other receivables | 2,804 | 2,804 | 2,999 | 2,999 |
| Cash and cash equivalents | 5,320 | 5,320 | 3,044 | 3,044 |
| Loans and borrowings | (41,035) | (42,384) | (46,319) | (46,319) |
| | <u>(87,089)</u> | <u>(88,438)</u> | <u>(96,484)</u> | <u>(96,484)</u> |

SEM related derivative financial instruments relate to fixed price power supply arrangements which are deemed to be financial instruments as explained elsewhere in the this note.

Gort Windfarms Limited

Notes (continued)

14 Financial risk management (continued)

(d) Fair Value (continued)

The carrying value of trade debtors, creditors and cash are assumed to approximate to fair value because of the short term nature of these instruments.

The fair value of borrowings has been derived by discounting the associated contracted cash flows to present value using an appropriate market rate of interest at the year end, as adjusted for any associated credit spread.

The fair value of SEM related financial instruments has been derived by projecting cash flows due under those arrangements, by projecting expected electricity volumes and forward electricity prices, and by discounting these to present value using an appropriate discount rate. Expected electricity volumes are derived by analysing average wind output for the wind farms. The forward price of electricity is derived by estimating forward prices of the average inputs used to generate electricity and other industry standard adjustment factors which are typically used when deriving the market price of electricity for SMP "System Marginal Price", applicable to wind farms.

The interest rates used to discount future estimated cash flows, where applicable, are based on the EURIBOR yield curve at the reporting date plus an adequate constant credit spread, and were as follows:

| | 2008 | 2007 |
|----------------------------------|------|------|
| | % | % |
| Derivative financial instruments | 3.67 | 4.6 |

(e) Credit risk

The company has entered into various contractual agreements with clients to provide electricity that it generates. It is company policy to investigate the credit worthiness of all customers prior to entering any contracts. In order to mitigate the credit risk, the directors of the company satisfy themselves of the customer's ability to fulfil their financial obligations under the contract on a regular basis and act swiftly in the event of any problems.

Credit risk arises from credit exposures to wholesale customers including outstanding receivables and committed transactions.

Trade and other receivables can be divided into electricity receivables and other (non-electricity) receivables.

| | 2008 | 2007 |
|---|-------|-------|
| | €'000 | €'000 |
| Electricity receivables – billed | 796 | 444 |
| Total trade and other receivables | 796 | 444 |
| Other receivables | 2,008 | 2,555 |
| Cash and cash equivalents | 5,320 | 3,044 |
| Maximum credit risk exposures | | |
| - Excluding performance bonds (note 18) | 8,124 | 6,043 |

Gort Windfarms Limited

Notes (continued)

14 Financial risk management (continued)

(e) Credit risk (continued)

Unbilled electricity receivables represent estimates of consumption not yet invoiced. Controls around electricity receivables are focused on the full recovery of amounts invoiced. The electricity receivables arise in the Republic of Ireland.

The maximum credit exposure from trade receivables of the company at 31 December is set out below:

| | 2008 | | | 2007 | | |
|--------------|---------------------------------------|--------------------|-------------------------------------|---------------------------------------|--------------------|-------------------------------------|
| | Gross Amount Receivable €000 | Impairment €000 | Net amount receivable €000 | Gross amount receivable €000 | Impairment €000 | Net amount receivable €000 |
| Not past due | 796 | - | 796 | 444 | - | 444 |

(f) Capital management

The company is financed by a combination of shareholder equity and parent entity borrowings. These will be repaid from the company's expected operating cashflows. Further capital is raised from time to time from the company's principal shareholders, as required.

15 Related-party transactions

All related party transactions are conducted at arm's length.

The company has no employees and hence no key management disclosures have been made.

(i) Parent company and ultimate parent company

During the year ended 31 December 2008, the company made sales to its ultimate parent company of on normal trading terms of €9.2m (2007: €7.4m) from its ultimate parent company.

At 31 December 2008, the company is owed €2.0m (2007: €2.3m) from its ultimate parent company. This amount comprises receivables for electricity sales.

During the year ended 31 December 2008, the company purchased goods and services worth €0.38m (2007: €0.14m) from subsidiaries of its parent company. This expenditure relates to the re-charge of management costs and operationg and maintenance spend.

At 31 December 2008 the company owed €0.1m (2007: €0.1m) to fellow subsidiaries of its ultimate parent company in respect of the re-charge of management cost and operationg and maintenance spend.

Gort Windfarms Limited

Notes (continued)

17 Contingencies

The company has, in the normal course of business, provided commitment bonds, decommissioning and reinstatement bonds, and capacity bonds as required by the Transmission System Operator. These bonds have been provided in cash and are being held in trust by ESB National Grid. The commitment and capacity bonds may be drawn against should the company not proceed with projects which have secured grid connection agreements. The decommissioning and reinstatement bonds may be drawn against in the event that the company fails to properly restore the site of any project on termination of the projects useful life. The total value of these bonds is €823,000.

Legal cases affecting the company in the normal course of business are outstanding at year end, but none are expected to be material.

18 Commitments

The company has land lease commitments of €400,000 per annum, ending in 2028.

19 Group membership

The company is a wholly owned subsidiary of ESB Power Generations Holding Company Limited, a company incorporated and operating in Ireland, of which Electricity Supply Board (ESB), established and operating in Ireland, is the ultimate parent.

The consolidated financial statements of ESB are available to the public and may be obtained from 27 Lower Fitzwilliam Street, Dublin 2.

20 Approval of financial statements

The board of directors approved these financial statements on 17 June 2009.

