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Derek Kelly

From: communications
Sent: Friday 21 June 2024 08:21
To: Appeals2
Subject: FW: Substitute consent application (ABP-319466-24) for 25 no. deviations from the permitted Meenbog Windfarm development (granted under ABP PA05E.300460) at Meenbog & Croaghonagh in Co. Donegal
Attachments: Ud20254 Substitute Consent 177I Report to An BP Jun 20.06.2024.pdf

From: MARTIN JOSEPH MC DERMOTT (PLANNING) <martin.mcdermott@donegalcoco.ie>
Sent: Thursday, June 20, 2024 10:26 PM
To: Bord <bord@pleanala.ie>; Laura Grady Lawlor <laura.gradylawlor@pleanala.ie>; communications <communications@pleanala.ie>
Subject: RE: Substitute consent application (ABP-319466-24) for 25 no. deviations from the permitted Meenbog Windfarm development (granted under ABP PA05E.300460) at Meenbog & Croaghonagh in Co. Donegal

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A Chara,

Please find attached s.177I report further to correspondence of 10/04/2024 received by the Planning Authority on 12/04/2024.

Regards,
Martin



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COMHAIRLE CHONTAE

Dhún na nGall

DONEGAL COUNTY COUNCIL

SECTION 177I REPORT TO AN BORD PLEANALA

Application for Substitute Consent on behalf of Planree Ltd, in respect of part of a windfarm at Meenbog, Croaghonagh and Cashelnavean in Co. Donegal

Donegal County Council Reference: UD20254

An Bord Pleanala Reference: ABP-319466-2024

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Preliminary / Introduction.

This report has been prepared by the Planning Authority, Donegal County Council (“the Council”) as required under Section 177I of the Planning and Development Act, 2000 (as amended) (“the Act”). Account has also been taken of guidance in Circular Letter PL 8/2013 issued by the Department of Environment, Community and Local Government.

The Report is in respect of an application for substitute consent (“the application”) made to An Bord Pleanála (“the Board”) and submitted by MKO, on behalf of Planree Ltd (“Planree”). It is in respect of a development described as 25 no. “deviations from the Windfarm permitted under ABP-300460 17 (amended by ABP-303729 –19). The deviations relate to Windfarm roads and hard stand areas, peat management measures, borrow pits, site drainage measures, and all ancillary works”.

The Windfarm is only partly constructed with additional groundworks to be done before any turbines can be brought to the site. Further work on development of the Windfarm is currently enjoined on foot of High Court Order made on the 22nd April 2024 in Section 160 Planning Injunction proceedings (“the proceedings”) brought by the Council as Applicant against Planree and another as Respondents (“the Order”). The Order was made on foot of a detailed written Judgement (“the Judgement”) delivered in the case on the 10th April 2024. The application was lodged with the Board on the 2nd April 2024 subsequent to the hearing of the case (between the 19th and 21st March last) and before delivery of the Judgement. The application is made pursuant to leave granted by the Board in accordance with Section 177D(1)(b) of the Act, which leave issued on the 16th October 2023. The application is made relying on said leave pursuant to the transitional provision in Section 41(12) of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (“the 2022 Act”). Hence the application as it stands falls to be dealt with under the pre December 2023 Part XA provisions of the Act - although it would have been open to Planree to have made their application pursuant to the amended provisions of Part XA introduced by the 2022 Act as the requirement for leave to apply for substitute consent is no longer part of the those amended provisions.

This report follows on from and should be read in conjunction with the Council’s earlier submission/observation (“the submission”) made on the application in accordance with Section 177H of the Act – the text thereof is included in the Appendix to this Report below.

I refer to the submission and the quotation from the Judgement therein¹ to the effect that the unauthorised development at issue consisted of the entire Windfarm – per paragraph 93 thereof. I also refer to the following further paragraphs therein which give further details of the Court’s Judgement on the issue – paragraph nos. 86, 88, 89, 90, 91 and 92. The Council remains firmly of the view that in light of the Judgement, Planree should have withdrawn the current application and submitted a new application in respect of the entire development incorporating (as they would be entitled to do under the post December 2023 Part XA provisions) both the works already carried out and those yet to be carried out to complete the Windfarm¹. The Council does not believe that an application for substitute consent seeking to regularise a part only of this overall unauthorised Windfarm development is either appropriate or possible - as was already detailed in the submission. The Judgement is under Appeal by Planree to the Court of Appeal. In all the circumstances here, if as appears Planree are not withdrawing the application or seeking a deferral of same pending the outcome of their Appeal, the Council’s view continues to be that the Board should determine the application in the light of the Judgement and should be a refusal for all the reasons set out in the submission and this Report. The Report is therefore written in unusual circumstances as above where Planree have elected to retain before the Board for consideration an application for Substitute Consent seeking to regularise part only of a very large unauthorised Windfarm development meaning that if it were to be granted, it could not regularise the whole unauthorised development and could deal only with the material deviations the subject matter of the application.

¹ Per current iteration of Section 177E (2A) and (2B) of the Act.

Turning now to the information to be included in the Report per Section 177I (2) of the Act -

(a) Information relating to development (including development other than the development which is the subject of the application for consent) carried out on the site where the development the subject of the application for consent is situated, and any application for permission made in relation to the site and the outcome of the application.

ABP-300460-17 – relates to a Strategic Infrastructure Development application to An Bord Pleanála lodged on 15/12/2017 by Planree Limited for permission for Construction of wind farm comprising 19 no. wind turbines, grid connection and all associated site works at Meenbog, Croaghonagh and Cashelnavean, County Donegal.

On 19/06/2018 An Bord Pleanála permitted a Strategic Infrastructure Development to Planree Limited for permission for Construction of wind farm comprising 19 no. wind turbines, grid connection and all associated site works at Meenbog, Croaghonagh and Cashelnavean, County Donegal, subject to 20 no. conditions. Note: Condition no. 2 afforded a 10-year construction period, while condition no. 3 provides a 25-year duration of permission.

ABP-PM05E.303729 – relates to an application to An Bord Pleanála lodged on 14/02/2019 by Planree Limited for permission for Proposed alteration to utilise a larger rotor diameter which remains within the consented design envelopes and parameters of the previously approved Meenbog Wind Farm (ABP-300460-17) at Meenbog, Croaghonagh and Cashelnavean, County Donegal – application to alter the terms of the parent permission was granted by Order dated 05/06/2019.

The permitted development commenced in late 2019 and was almost 1 year into the construction process when in mid-November 2020 a significant bog slide occurred within the windfarm and impacted the adjoining lands / watercourses including into Northern Ireland. The windfarm development ceased, emergency containment works commenced, as provided for in the submitted environmental reports and a cross border multi agency group investigation immediately commenced, with each individual agency carrying out their own consecutive investigations. As part of this investigation a concurrent planning enforcement investigation identified that a total of 45 no. deviations (47 no. when sub divided) were carried out to the permitted windfarm. A series of comprehensive Action / Remediation Plans were compiled by Planree, agreed with the Council, and implemented on site. After the site remediation works concluded Planree was advised that they would need to seek Substitute Consent to regularise the deviations carried out to the permitted windfarm. The developer subsequently applied to An Bord Pleanála for leave to apply for Substitute Consent to regularise the deviations (which was subsequently granted in October 2023). In late September 2022, the Council was notified that Planree was back on site and intended to carry out a blast to win material to re-commence works on site. It was necessary to proceed with formal enforcement action and an Enforcement Notice was served on the developer on 16/11/2022 requiring that all works cease on site. This Enforcement Notice was subsequently quashed on consent as part of a Judicial Review of same and the proceedings were subsequently taken in early 2023 to ensure Planree did not recommence works on site. The proceedings were issued and later heard in Court leading on to the Judgement and Order made on the 15th April 2024.

Plan.Reg.No. 24/60495 relates to a recent application by Mid Cork Electrical Ltd² for permission for construction of 3 no. new culverts to replace existing culverts and all associated site works along the N15 (A Natura Impact Statement accompanied the application). Application was submitted electronically on 10/04/2024 and on 30/05/2024 was the subject of a further information request. No further applications for planning permission in respect of this windfarm or associated operations/works have been received by the Council.

² A connected company to Planree and the Second Respondent in the proceedings.

(b) Information relating to any warning letter, enforcement notice or proceedings relating to offences under this Act that relate to the applicant for substitute consent.

Ud20254 refers to an enforcement investigation at the subject site in respect of non-compliance with conditions of SID planning permission for a windfarm at Meenbog, Croaghonagh and Cashelnavean, Co. Donegal granted by An Bord Pleanála under ABP-300460-17 and may be summarised as follows:

Initial complaint received	15/11/2020
Report & Recommendation to issue Warning Letters	18/11/2020
Warning Letters issued to Coillte, Planree Limited and Mid Cork Electrical	23/11/2020
Response to WL and report from MKO	18/12/2020
DCC review of case recommending no further formal action	26/04/2022
Corr from DCC to Planree & Oths – no formal action under S.153	27/04/2022
Report & Recommendation to serve Enforcement Notices	07/11/2022
Enforcement Notices A&B Served	16/11/2022
JR Proceedings	07/12/2022
JR Decision – Enforcement Notice Quashed	12/12/2022
Section 160 proceedings	10/02/2023
High Court s. 160 Judgement	10/04/2024
High Court s.160 Order Perfected on 22/04/2024	22/04/2024

I refer also to the content of the Judgement which was part of the documentation previously furnished to the Board. As advised at the time, there is a considerable volume of additional documentation that was generated by or on behalf of the parties for the purpose of the proceedings and was before the Court. That further documentation is available when and if required.

(c) Information regarding the relevant provisions of the development plan and any local area plan as they affect the area of the site and the type of development concerned.

Draft County Donegal Development Plan 2024-2030.

At a Special Council Meeting held on the 16th of May 2024 the Elected Members of Donegal County Council adopted the Donegal County Development Plan 2024-2030. The Plan will come into effect on 26th June 2024 (i.e. 6 weeks after it is made) except for any parts of the plan which may subsequently be subject to a Draft Ministerial Direction. Therefore, the current statutory Plan is the County Donegal Development Plan 2018-2024 (as varied). As this new plan is due to come into force in the ordinary course in less than a week's time, the Council can update the information contained in this Section of the report by reference to the new plan if and when required by the Board.

County Donegal Development Plan 2018-2024 (as varied)

The relevant development plan policy framework is contained within the Council's County Donegal Development Plan 2018-2024 (as varied).

The lands are currently zoned as a Stronger Rural Area in the Donegal County Development Plan 2018-2024 (as varied) and traverse two scenic amenity designations, comprising High Scenic Amenity and Especially High Scenic Amenity

The following designated sites are in proximity to the Windfarm Development site: (i) Croaghonagh Bog SAC (000129) and pNHA (000129), (ii) River Finn SAC (002301), (iii) River Foyle and Tributaries SAC (UK0030320) and ASSI (ASSI229), (iv) Lough Eske and Ardnamona Wood SAC (000163) and pNHA (000163), (v) Cashelnavean Bog NHA (000122), (vi) Barnesmore Bog Complex NHA (002375), (vii) Killeter Forest and Bogs and Lakes ASSI (ASSI357), and (viii) Croagh Bog ASSI (ASSI378).

The relevant provisions, including relevant objectives, and policies, which affect the subject development, have been set out below in the order in which they occur within the CDP 2018 – 2024 (as varied) and which have been summarised below, with a comment in italics below, as follows:

Chapter 5 - Infrastructure

5.1 - Transportation

The relevant policies in relation to Transportation as set out in section 5.1.3 as follows:

Policies T-P-3 - T-P-20, cumulatively seek to control development which would be prejudicial to the implementation of a transport scheme, ensure new developments comply with Development and Technical Standards set out in Appendix 3, control new access points / intensification onto National Road / Strategic Roads network.

Comment:

This application for substitute consent seeks only to regularise 25 no. deviations to the permitted windfarm development, out of the original 45 no. identified deviations (47 no. when sub-divided), and does not seek to regularise the entire as constructed unauthorised wind farm (as per the Judgement) nor the remedial works carried out post bog slides, and does not seek consent to complete out the windfarm. Accordingly it is the Council's contention that the present application is inadequate/inappropriate.

5.2 - Water and Environmental Services

The relevant policies in relation to water, environment services and protection are set out in section 5.2.3 as follows:

Policies WES-P-1, WES-P-3, WES-P-8 & WES-P-12 cumulatively seek to protect the environment, groundwater, quality of water, manage development proposals from risk of major accidents through controlling development.

Comment:

See same comment as at 5.1 above.

5.4 - Flooding

The relevant policies in relation to flooding are set out in section 5.4.3 of chapter 4 as follows:

Policies F-P-1 - F-P-7 cumulatively seek to ensure that development proposals comply with 'The Planning System and Flood Risk Management - Guidelines for Planning Authorities', November 2009, DoEHLG and to assess / manage and control developments within flood plains or flood risk areas utilising the precautionary principal and or sequential test.

Comment:

See same comment as at 5.1 above.

Chapter 7 - The Natural and Built Environment

7.1 - Natural Heritage

The relevant policies in relation to Natural Heritage are set out in section 7.1.3 as follows:

Policies NH-P-1 & NH-P-2 seek to protect sites of international or national importance, Natura 2000 sites and landscapes of Especially High Scenic Amenity (EHSA) and views and prospects.

Policies NH-P-3 & NH-P-4 both seek to protect Designated Shellfish Waters and Freshwater Pearl Mussel.

Policies NH-P-5 - NH-P-11 cumulatively seek to require consideration of safeguarding / protection of habitats of natural value, the scenic context, cultural landscape significance, recreational and environmental amenities of the County's coastline, significant stands of existing trees/hedgerows/woodlands and of stone wall boundaries where they are shown to play a significant heritage role.

Policies NH-P-12 - NH-P-15 cumulatively seek to safeguard, protect, and preserve prominent skylines and ridgelines, landscape character and heritage of the Islands and the views and prospects of special amenity value and interest, in particular, views between public roads and the sea, lakes and rivers.

Comment:

See same comment as at 5.1 above.

7.2 - Built Heritage

The relevant policies in relation to Built Heritage are set out in section 7.2.3 as follows:

Policy BH-P-1 seeks to conserve and protect all structures and sites contained in the Record of Protected Structures that are of special architectural, historic, archaeological, artistic, cultural, scientific, social or technical interest.

Comment:

See same comment as at 5.1 above.

7.3 - Archaeological Heritage

The relevant policies in relation to Archaeological Heritage are set out in section 7.3.3 as follows:

Policy AH-P-1 – AH-P4 seeks to protect and conserve the integrity of Archaeological Monuments, Zones of Archaeological Potential, character, settings of and views from National Monuments/ Recorded Monuments and the character and setting of any unrecorded archaeological object or site.

Comment:

See same comment as at 5.1 above.

Chapter 8 - Natural Resource Development

8.1 – Extractive Industry and Geology

The relevant policies in relation to Extractive Industry and Geology are set out in section 8.1.3 as follows:

Policy EX-P-1 – EX-P-3 seeks to ensure that development for extractive industry are in accordance with DEHLG Quarries and Ancillary Activities Guidelines for Planning Authorities 2004 and the EPA Environmental Management Guidelines, not to permit new extractive industry proposals in areas of Especially High Scenic Amenity or in areas of High Scenic Amenity to ensure, that the development shall not result in a significant threat of pollution to the environment including, siltation and sedimentation of receiving downstream surface waters.

Comment:

See same comment as at 5.1 above.

8.2 – Energy

The relevant policies in relation to Energy are set out in section 8.2.3 as follows:

Policy EX-P-5, EX-P-10, EX-P-12, EX-P-13, EX-P-14, EX-P-16, EX-P-17, EX-P-20 & EX-P-21 seek to ensure Donegal becomes a centre of excellence for renewable energy technologies including wind, that: proposals for wind energy shall be in accordance with the requirements of the Wind Energy Development Guidelines: Guidelines for Planning Authorities, 2006, to Consider the development of appropriate new wind energy developments within the areas identified as 'Open To Consideration' on the Wind Energy Map 8.2.1, subject to compliance with all other relevant objectives and policies contained within this Plan (including to encourage the development of community windfarms/co-operatives to enable communities to generate their own electricity, income and to sell surplus back to the grid & support voluntary initiatives from developers/renewable energy operators for local community benefits), to support the strengthening and enhancement of the capacity of existing wind farms, to ensure that all roads associated with the development of wind farms are maintained or repaired at the developer's expense, that potential impacts on natural, built and cultural heritage are assessed as part of renewable development proposals, that all proposals for renewable energy development will have regard to the cumulative effect of the development on the environment when considered in conjunction with other existing and permitted developments in the area & that all applications for renewable energy projects will ensure that details of the proposed grid connection and all associated infrastructure are considered in the Environmental Impact Statement (EIS) and Natura Impact Statement as may be required.

Comment:

See same comment as at 5.1 above.

Chapter 9 Tourism

9.0 - Tourism

The relevant policies in relation to Tourism are set out in section 9.3 as follows:

Policy TOU-P-5 & TOU-P-6 seek to safeguard the natural landscape qualities and environmental habitats of the County and not to permit development proposals, which would materially detract from visual and scenic amenities along the route of the Wild Atlantic Way, the visual/scenic amenities on the approach roads to, the visual setting of, or the views to be had from, significant tourism attractions.

Comment:

See same comment as at 5.1 above.

Chapter 10 The Marine Resource and Coastal Zone Management

10.0 - Marine Resource and Coastal Zone Management

The relevant policies in relation to Marine Resource and Coastal Zone Management are set out in section 10.3 as follows:

Policy MCZM-P-10 seeks to manage development proposals, to ensure they do not adversely compromise the recreational and environmental amenity of inter-alia - Special Protection Areas, Special Areas of Conservation, Natural Heritage Areas and areas of Especially High Scenic Amenity.

Comment:

See same comment as at 5.1 above.

Part B, Appendix 3: - Development Guidelines and Technical Standards

Part 6 thereof deals with Wind Energy. It is the stated aim of the Council: *"To ensure the orderly and sustainable development of the County through the setting out of objectives and standards for the management of development"*.

6.0 - Wind Energy

Part 6.1 states that: wind energy proposals shall be screened for Environmental Impact Assessment and Appropriate Assessment of the potential impacts of the proposal on the host environment. Where a development does not require an EIA then an Environmental Report should be prepared.

Part 6.2 states that: Geological assessment of the locality, Geotechnical assessment of the overburden and bedrock, Assessment of local and migratory flora and fauna, A Peat Stability Assessment to determine the possibility of a bog burst or landslide, Assessment of potential visual impacts should also be considered in the preparation of wind energy proposals.

Part 6.3 states that: no fencing should occur on any part of the site except for around ancillary developments such as substations. 6.4 All grid cable connections within the site should be undergrounded.

Part 6.4 states that: All grid cable connections within the site should be undergrounded.

Part 6.5 states that: Wind turbines must meet the requirements and standards set out in the DEHLG Wind Energy Development Guidelines 2006, or any subsequent related Guidelines and in addition must not be located within:

Section 177I Report on application for Substitute Consent – ABP-319466-2024

- (a) The zone of visual influence (ZVI) of the Glenveagh National Park.
- (b) The zone of influence/flight path at Donegal Airport.
- (c) Areas identified as locations where wind farm development would not be acceptable as identified on map 8.2.1, chapter 8 of the County Development Plan 2018-2024.
- (d) Special Areas of Conservation (SACs) nor Special Protection Areas (SPAs)
- (e) The 6 Fresh Water Pearl Mussel (S.I. 296 of 2009) catchments contained in the Freshwater Pearl Mussel Sub-Basin Management Plans for Clady, Eske, Glaskeelin, Leannan, Owencarrow and Owenea.
- (f) A setback distance of ten times the tip height of proposed turbines from residential properties and other centres of human habitation

Comment:

See same comment as at 5.1 above.

(d)(i) Any information that the authority may have concerning — (i) current, anticipated or previous significant effects on the environment, or on a European site associated with the development or the site where the development took place or, where section 177E(2A)(b) applies, is proposed to take place and, if relevant, the area surrounding or near the development or site, or (ii) any remedial measures recommended or undertaken.

The Windfarm is located in southwest Donegal within lands currently in commercial forestry planted with conifer trees on blanked bog, spanning the townlands of Meenbog, Croaghonagh and Cashelnavean, bordering County Tyrone in Northern Ireland and the following designated sites are in proximity to the Windfarm Development site: (i) Croaghonagh Bog SAC (000129) and pNHA (000129), (ii) River Finn SAC (002301), (iii) River Foyle and Tributaries SAC (UK0030320) and ASSI (ASSI229), (iv) Lough Eske and Ardnamona Wood SAC (000163) and pNHA (000163), (v) Cashelnavean Bog NHA (000122), (vi) Barnesmore Bog Complex NHA (002375), (vii) Killeter Forest and Bogs and Lakes ASSI (ASSI357), and (viii) Croagh Bog ASSI (ASSI378).

Geographically, the Windfarm Development site includes parts of five valleys draining to five separate streams/rivers, including the hills of Barnesmore (451m), Croaghonagh (433m), Cross Hill (350m) and Carrickaduff Hill (329m). Three of the valleys radiate north-eastwards, the fourth eastwards and the fifth lies to the west, with each drained by one of five streams/rivers as follows:

- (i) The first valley is drained to Mary Breen's Burn, onto the Mourne Beg River, River Derg, Mourne River which meets the River Finn SAC and the Foyle and its tributaries to the SAC (NI).
- (ii) The second valley, to the east of the first, is drained by the Bunadaowen River, several tributaries, and a network of small forest drains (the Bunadaowen River also flows northwards to join the Mourne Beg River).
- (iii) The third valley, to the east of the second, is drained by the Shruhingarve Stream and a tributary (the Shruhingarve Stream also flows northwards to meet with the Mourne Beg River and River Finn/Foyle SACs beyond).
- (iv) The fourth valley lies to the east of the hills and is drained by the Glendergan River and its tributaries, then onto the River Derg and the Foyle and its tributaries SAC (NI).
- (v) The fifth valley is the Barnesmore Gap, to the west of the hills, which carries a tributary the Lowerymore River onto the Lough Eske and Ardnamona Wood SAC.

The designated sites in proximity to the windfarm site are identified in section 4.1 of the SLR report as follows:

- (i) Croaghonagh Bog SAC (000129) and pNHA (000129), adjoins the windfarm site, with its western boundary coinciding with the access track to the windfarm for 0.75km and connected directly to the windfarm site by Mary Breen's Burn, which flows northwards from the wind farm site through the centre of the SAC before joining the Mourne Beg River which, further downstream, is included in the River Finn SAC and, on the NI side of the border, the River Foyle and Tributaries SAC.
- (ii) River Finn SAC (002301), 1km North-east of windfarm site and connected by streams, including Mary Breen's Burn (crossed by the access track), Bunadaowen River and the Shruhingarve Stream, all of which flow northwards through the windfarm site to join the Mourne Beg River which, as described above, becomes part of the River Finn/Foyle SAC downstream. Included in this SAC is an area of blanket bog on the west side of the Shruhingarve Stream (see Croagh Bog ASSI).

- (iii) River Foyle and Tributaries SAC (UK0030320) and ASSI (ASSI229), adjoins windfarm site and is connected to it by the Glendergan River and its tributaries, which flow directly from the southern part of the wind farm site towards the SAC; the Glendergan River is included in the SAC and ASSI further downstream and the wind farm site is also connected to the River Foyle and Tributaries SAC in the same way as described above for the Croaghonagh Bog SAC and River Finn SAC.
- (iv) Lough Eske and Ardnamona Wood SAC (000163) and pNHA (000163), c.4.6km from the windfarm site and connected by surface water flows from the land around the site entrance off the N15 and the first c. 1km of the access track via a tributary of the Lowerymore River and then the Lowerymore River itself, which is included in the Lough Eske and Ardnamona Wood SAC further downstream.
- (v) Cashelnavean Bog NHA (000122), adjacent to the wind farm site on the opposite side of a tributary of the Lowerymore River and mostly on the opposite side of the N15, however there is a small area of the NHA which is immediately adjacent to the windfarm site entrance on the same side of the N15 as the wind farm site.
- (vi) Barnesmore Bog Complex NHA (002375), adjoins the windfarm to the south and is effectively part of the same peat mass as the windfarm site, with the NHA and the wind farm site having been a continuous area of blanket bog in the past, before the wind farm site was planted with conifer trees.
- (vii) Killeter Forest and Bogs and Lakes ASSI (ASSI357) 550m south, includes part of the same peat bog as the Barnesmore Bog on the Northern Ireland site of the border, with the same connections to the wind farm site as described for the Barnesmore Bog Complex NHA and
- (viii) Croagh Bog ASSI (ASSI378) lies 550m east of the windfarm at the base of the valley drained by the Shruhangerve Stream, on the east side of the stream, and adjoins an area of blanket bog to the west side of the Shruhangerve Stream which is included in the River Finn SAC.; these areas of blanket bog lie directly downslope from the wind farm site.

The original SID permission reference ABP-300460-17 was the subject of Environmental Impact Assessment and Appropriate Assessment undertaken by An Bord Pleanála as part of the processing of that application. However, the as-constructed unauthorised development (as per the Judgement), inclusive of the 25 no. deviations the subject of the current application (out of original 45 no. deviations or 47 no. deviations when sub-divided in total), coupled with the completion of the windfarm (for which permission has not been sought) presents a threat of significant environmental damage.

The Board's EIA and AA on foot of that application reference ABP-300460-17 was of the development as originally proposed and not of the development with the significant elements of unauthorised development contained within same nor indeed the changed receiving environment as a result of the main bog slide itself and numerous preceding peat failures.

The Council's position is that the deviations and unauthorised works, located both within and outside of / adjoining the footprint of the original permitted development were material and thus rendered the entire partially constructed Windfarm unauthorised. This was without the environmental/ecological impacts of same having been appropriately assessed and were not exempted from the requirement to obtain planning permission.

The Council's further position is that the environmental impacts of same, taking into account the proximity and vulnerability of European Sites downstream of the development site, are potentially significant and such that further works on the site will require assessment in respect of the likely significant impacts arising from same, including cumulative and/or in-combination impacts on European Sites as part of the substitute consent process.

There are significant potential threats/risks arising from the development given the complex and sensitive geographical, topographical and hydrological context within which this development is located and given the complex hydrological connections of designated sites, all of which are potentially at risk from indirect effects arising from the Windfarm Development, principally through the release of suspended solids and organic material (peat) into watercourses and/or the movement of peat downslope (as demonstrated by the bog slide event and numerous earlier bog slides / failures themselves).

Finally, it should be noted that the subject application has omitted any sectional details of deviation no. 1, detailing the full extent of site development works including under-build to facilitate the c. 60m. of unauthorised access road in lieu of use of the permitted hairpin at this location.

(d)(ii) Any remedial measures recommended or undertaken.

The Council is not recommending any remedial measures in this report, as it considers that either Planree should withdraw the current application and apply for substitute consent for the entire unauthorised development including the further works to complete the Windfarm or otherwise that the Board should as above and as per the submission determine the application in the light of the Judgement by reason of the material deviations made by Planree to the development as constructed.

(e)(i) The opinion, including reasons therefor, of the chief executive as to whether not substitute consent should be granted for the development,

As already stated, this application for substitute consent seeks to regularise 25 no. deviations to the permitted windfarm development, out of the original 45 no. identified deviations (47 no. when sub-divided), but does not seek to regularise the entire as constructed unauthorised wind farm (as per the Judgement) nor the remedial works carried out post bog slides, and does not seek consent to complete out the windfarm. Accordingly it is the Council's contention that the present application is inadequate/inappropriate to the circumstances of this case and if not withdrawn should be refused as having regard to the content and form of the application, Planree does not even seek the consents that would be necessary to regularise the entire development and authorise the further works required to complete the Windfarm nor does it provide for the submission of the necessary documentation to enable the Board carry out the proper assessments (EIA and AA) required.

Therefore, it is submitted that the present application is inadequate/inappropriate, on the basis that even if the application was determined in Planree's favour any substitute consent could not extend to a larger development than that applied for and so could not regularise the entire as-constructed unauthorised development at issue here nor provide for the completion of the as-constructed unauthorised windfarm (to date) otherwise.

The Judgement delivered by the High Court in the recent Section 160 Planning Injunction proceedings identified the unauthorised development as being the entire Windfarm by reason of material deviations to the permitted windfarm.

Accordingly, it is the Council's opinion that the present application for Substitute Consent should be refused (if not withdrawn by Planree or a deferral sought by them of the decision pending the outcome of their Appeal before the Court of Appeal). It is submitted that Planree's approach to seeking regularisation of this unauthorised Windfarm development (which is the subject to EIA and AA) is incoherent in that consent can only issue in exceptional circumstances and at a minimum full regularisation of the whole development is required if it is to be allowed to proceed to completion and with the terms/conditions for that incorporated in the any consents that may issue.

(e)(ii) The opinion, including reasons therefor, of the chief executive as to the conditions, if any, that should be attached to any grant of substitute consent.

Not applicable in light of the Opinion at (e) (i) above



Signed: _____

Martin Mc Dermott
Executive Planner/Enforcement Officer

DATED THIS 20TH DAY OF June 2024

APPENDIX

An Bord Pleanála
64 Marlborough Street
Dublin 1
DO1 V902

“Submission to An Bord Pleanála by Donegal County Council

Re: Application for Substitute Consent – Reference ABP-319466-2024 - Planree Limited, Meenbog Windfarm – Townlands of Croaghonagh and Meenbog, Co. Donegal

A Chara,

I refer to the Application for Substitute Consent – bearing An Bord Pleanála (“the Board”) Reference ABP-319466-2024 - Planree Limited, Meenbog Windfarm – Townlands of Croaghonagh and Meenbog, Co. Donegal (hereinafter referred to as “the Application”) as well as the documentation relating to same provided by Donegal County Council (“the Council”) to the Board on the 15th of May, 2024 as requested by the Board. The documentation provided included a copy of the Judgement delivered by the High Court on the 10th April 2024 in Section 160 Planning Injunction proceedings brought by this Council against Planree Limited (“Planree”) and another. The proceedings and application concern the same Windfarm Development and as it so happened, the Judgement was delivered a short number of days after the application was lodged. The Judgement identified the unauthorised development at issue as consisting:-

*“by reason of the material deviations, **of the entire Windfarm** and not, discretely considered, of each or all of the material deviations’.” (emphasis added)*

I refer to the totality of the Judgement which further details the decision in that regard. Arising in particular from the Court’s decision, the Council, as planning authority for the area within which the development is situate, makes the following Submission on the application in accordance with Section 177H of the Planning and Development Act 2000 as amended (“the PDA”).

The application seeks substitute consent confined to 25 no. deviations only to the permitted Meenbog Windfarm Development (granted previously under Board reference ABP-PA-05-E.300460). As the unauthorised development at issue has now been found by Order of the High Court to be the entire Windfarm, it is submitted that the present application is inadequate, on the basis that even if the application was determined in Planree’s favour any substitute consent could not extend to a larger development than that applied for and so could not regularise the entire unauthorised development at issue here. While a Notice of Appeal has been filed by Planree to the Court of Appeal in relation to the said Judgement, the judgement of the High Court remains in full force and effect unless and until any Order might be made by the Court of Appeal varying same.

In the circumstances it is submitted that, either Planree should apply for substitute consent for the entire unauthorised development as found by the High Court (leave to apply for same being no longer necessary) or the Board should, if Planree wishes to proceed with the application as currently lodged with the Board, determine the application in light of the judgement of the High Court referred to herein.

In the absence of any confirmation that the application herein has been withdrawn, the Council will proceed to submit a report to the Board in accordance with Section 177I of the PDA for the Council within the period of ten weeks from the date of the Council having received a copy of the documentation referred to in Section 177I of the PDA.

Yours faithfully”