

Date: 7 October 2016

Subject: Sliabh Bawn Attenuation Ponds – Screening for Appropriate Assessment – Recommendations

Sliabh Bawn Power DAC, a joint venture between Coillte and Bord na Móna, propose to rely on the exemption contained in Class 3, Part 3, Schedule 2 of the Planning and Development Regulations 2001 – 2015 to construct four attenuation ponds in the townland of Trila (Martin), Doughill Forest, Sliabh Bawn Mountain, County Roscommon.

Coillte and Bord na Móna are each designated as a ‘Public Authorities’ under Article 2(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011, as amended (the “2011 Regulations”). Therefore, under Article 42(1) of the 2011 Regulations, Coillte and Bord na Móna are obliged to carry out a Screening for Appropriate Assessment in respect of the construction of the proposed attenuation ponds in order to determine whether or not an Appropriate Assessment is required.

In carrying out a Screening for Appropriate Assessment, Coillte and Bord na Móna must assess whether the construction of the proposed attenuation ponds, either on their own, or in combination with other plans or projects, are likely to have a significant effect on each of the relevant European sites. In undertaking this assessment, Coillte and Bord na Móna must:

- (a) consider the “best scientific knowledge”;
- (b) consider the conservation objectives of the relevant European site/s concerned; and
- (c) assess the effects of the construction of the proposed attenuation ponds individually and in combination with *other* plans and projects on the relevant European site/s in view of the best scientific knowledge and the conservation objectives of the European Sites.

Under Article 42(6) of the 2011 Regulations, Coillte and Bord na Móna are obliged to determine that an Appropriate Assessment of construction of the proposed attenuation ponds is required where the ponds are not directly connected with or necessary to the management of the relevant European site/s and if it cannot be excluded, on the basis of objective scientific information following Screening for Appropriate Assessment, that construction of the proposed attenuation ponds, individually or in combination with other plans or projects, will have a significant effect on a European site.

Under Article 42(7) of the 2011 Regulations, Coillte and Bord na Móna are obliged to determine that an Appropriate Assessment is not required if, following a Screening for Appropriate Assessment, it can be excluded on the basis of objective scientific information, that construction of the proposed attenuation ponds, individually or in combination with other plans or projects, will have a significant effect on a European site.

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Expert Report

In order to ensure that the potential significant effects on European sites are lawfully and adequately assessed, Sliabh Bawn Power DAC has engaged Elaine Dromey MCIEEM, Ecological Consultant, to prepare an Appropriate Assessment Screening Report which will assist Coillte and Bord na Mona, as Public Authorities, in complying with their obligations under the 2011 Regulations. Elaine Dromey was appointed by both Public Authorities, as Sliabh Bawn Power DAC, for her expertise in this area.

An Appropriate Assessment Screening Report, dated October 2016, has been prepared which identifies the relevant European Sites for the purpose of the construction of the attenuation ponds as the Corbo Bog SAC, Lough Ree SAC, Lough Ree SPA, Annaghmore Lough (Roscommon) SAC, Ballykenny Fisher bog SPA, Lough Forbes Complex SAC. The Appropriate Assessment Screening Report, at Section 5.8, confirms that:

"This screening report for Appropriate Assessment, based on the best available scientific information, shows that construction and operation of four proposed attenuation ponds poses no likely risk of significant effects to Natura 2000 sites within the identified potential zone of influence of 10km.

It is considered that the proposed construction and operation of four attenuation ponds within the townland of Trila (Martin), Doughill Forest, Sliabh Bawn Mountain, Co. Roscommon does not require progression to second stage Appropriate Assessment.

Based on this conclusion, we submit that the planning authority can determine that an appropriate assessment is not required, as it can be excluded, on the basis of objective scientific information, that the proposed works, individually or in combination with other plans or projects, will not have a significant effect on any European sites in light of their conservation objectives."

Having regard to, and having carefully considered in its entirety, the Appropriate Assessment Screening Report and in particular the conclusions reached therein and the reasons for which the conclusions were reached, in accordance with Regulation 42(7) of the 2011 Regulations, and having regard to the fact that the proposed construction of the attenuation ponds does not constitute a project which is directly connected with or necessary to the management of any of the respective European Sites mentioned above, I recommend that Coillte and Bord na M6na can be satisfied that they may adopt the Appropriate Assessment Screening Report in whole or in part as their Screening for Appropriate Assessment should they wish to do so, or not adopt it at all.

Requirement to Give Reasons

There is an increased obligation on public authorities, including Coillte and Bord na M6na, to carry out a Screening for Appropriate Assessment in a comprehensive way and to support decisions by giving the reasoning for them. It is important that reasons and reasoning are provided in the record to justify all conclusions reached by Coillte and Bord na M6na.

If Coillte and Bord na Móna determine at the screening stage that there are no significant effects, then it is necessary to record and report the information relied upon to draw this conclusion to stand as a record of the information gathered and the judgments reached in the assessment process. Regulation 42(18) (a) of the Habitats Regulations provides that:

"A public authority shall make available for inspection any determination that it makes in relation to a plan or project and provide reasons for that determination, as soon as may be after the making of the determination or giving the notice, as appropriate, by members of the public during office hours of the offices of the authority and shall also make the determination or notice available in electronic form including by placing the documents on the authority's website."

In respect of the expert Appropriate Assessment Screening Report, in proper exercise of their statutory roles and functions, Coillte and Bord na Móna, in determining whether to adopt all, some or none of the Appropriate Assessment Screening Report and / or this submission, should consider carefully the Appropriate Assessment Screening Report and this submission and their respective conclusions and recommendations. Coillte and Bord na Móna are not obliged to adopt either of these documents, and need not slavishly follow their recommendations, but they are also entitled to adopt them and follow their recommendations if they so decide. Coillte and Bord na Móna should record their decisions to adopt, not adopt or partially adopt these documents, and give reasons for their decisions. If Coillte and Bord na Móna reach a different conclusion to that reached in the Appropriate Assessment Screening Report, they must clearly and comprehensively provide their main reasons and considerations for so doing (*Kelly v. An Bord Pleanála* [2014] IEHC 400).

Reasoned Recommendation

As set out in detail in the Appropriate Assessment Screening Report, on the basis of the findings of that Report and in light of the best scientific knowledge, the construction and operation of the proposed attenuation ponds will not have a significant effect on the relevant European sites, in light of the conservation objectives of the European sites, alone or in combination with the Sliabh Bawn wind farm and other plans or projects, and an Appropriate Assessment is not required. This conclusion was reached on the basis of the protective measures that have been built into the works design of the project and the distance between the proposed attenuation ponds and the European Sites.

On that basis, I recommend that Coillte and Bord na Móna reach a conclusion under Article 42(7) of the 2011 Regulations that an Appropriate Assessment is not required.

Signed: _____



Mary Lynch
Project Director
Sliabh Bawn Power DAC

Dated: _____

