# DETI Consultation:

# Closure of the NIRO to new onshore wind in 2016

# Consultation response on behalf of Michael and Brian Quinn and Creagh Concrete Products Limited, developers of Mullaghturk Wind Farm

**Introduction**

This consultation response is made by TLT NI LLP Solicitors on behalf of Michael and Brian Quinn, the applicants in wind farm planning application reference H/2004/1395/F for a "proposed wind farm development comprising the erection of 7 x 1.5MW turbines (maximum height 100.25m above finished ground level to blade tip – maximum hub height of 65m above finished ground level), associated transformers, new & upgraded tracks, substation building, electrical cabling, permanent anemometer mast 57m above finished ground level, site signage, all associated ancillary works and car parking at Mullaghturk Mountain – Approximately 11km south west of Draperstown and 16km north , west of Cookstown". Creagh Concrete Products Limited also has substantial financial interest in the project.

**Objections to DETI's proposals**

In general terms it is considered that the DETI proposals to end the NIRO for onshore wind one year early are discriminatory. This will lead to substantial wasted costs for numerous developers in relation to the ongoing planning applications for wind farms currently in the planning system where investment decisions had been made on the basis of a 2017 end date for the NIRO.

Further, a two-week consultation period is exceptionally short and the legality of the process must be brought into question. It is also considered that the proposed eligibility cut-off dates for the grace period of 30 September (for dedicated grid connections) and 30 October (for cluster connections) are discriminatory and potentially unlawful. Developers not meeting those dates had no warning given that no announcement was made prior to the issuing of the consultation on 30 September. Developers, whilst possibly aware of the likelihood of a 31 March 2016 closure given the proposals announced in June in England, would have had no warning of these cut-off dates and substantial investment in applying for grid connections will have been wasted (notwithstanding planning application and other costs). It is questionable whether a consultation can lawfully propose what is in effect a retrospective change to the NIRO, particularly in circumstances where the consultation period is so short and further consideration of the lawfulness of this process is being undertaken.

It is also noted that on 18 June 2015, the DETI Minster stated "*I want to make it clear now however that I do not intend to follow the Westminster government's policy to close the existing scheme early. Onshore wind has made a valuable contribution to our renewable energy aspirations in Northern*

*Ireland.*" Developer's were therefore given a clear signal to push ahead with projects and are now suffering prejudice as a result.

Planning applications that are currently undergoing appeal are a special case as any subsequent approval by the Planning Appeals Commission demonstrates that the original planning authority was wrong in issuing a refusal. Most appeals for wind farms take at least one year from submission of appeal to issuing of a decision by the Commission. Had the planning authority (in most cases now in appeal, the Department of the Environment) approved the applications, it is highly likely that such proposals would have been in a position to accredit under the NIRO by the original cut-off date of 31 March 2017 had they been approved in the first instance by the Department of the Environment.

Given the above, we consider the DETI should amend the eligibility criteria to include onshore wind projects currently in the appeal system and awaiting a hearing and/or decision. Such projects, if approved by the Planning Appeals Commission should be able to accredit by 31 March 2017 and also benefit from the grace period extending to 31 March 2018 where unavoidable grid or radar delays arise (as per the criteria in Annex A to the consultation document).

The above proposal would be in line with the amended proposals put forward by DECC on 8 October 2015 in relation to the Renewables Obligation in GB. DECC has proposed that planning applications subject to appeal prior to the GB eligibility date of 18 June 2015 will still be able to accredit under the Renewables Obligation up to 31 March 2017 and avail of the grace period to 31 March 2018 for unavoidable grid/radar delays.

Given that DECC has made this significant concession on its original proposals, DETI cannot reasonably justify not making a similar concession on the basis that costs will be socialised across the UK. This is important as it will provide a significant opportunity for projects currently in the appeal system to avail of the NIRO.

To summarise the position:

- The closure of the NIRO to onshore wind in NI should not be brought forward to 1 April 2016 and should remain as 1 April 2017.
- Notwithstanding the above, if early closure is implemented, planning applications that are currently in appeal should be able to accredit by 31 March 2017 and also avail of the grace period to 31 March 2018 due to unavoidable grid/radar delays.

**Illustration – Impact on Mullaghturk Wind Farm**

By way of specific example to illustrate the substantial prejudice arising from DECC's proposals, the Mullaghturk Wind Farm planning application was originally submitted in December 2004 and refused by the Department of the Environment in 2007. A subsequent appeal to the Planning Appeals Commission (reference 2007/A1313) was refused in 2010. This decision was quashed by the High Court in 2013 and the appeal returned to the PAC. The appeal is currently awaiting a hearing date, expected late 2015. A grid application has been submitted to NIE and the proposal, if approved is likely to be connected to the proposed Tremogue cluster. During the course of the application, substantial investment in the application has also been made by Creagh Concrete Products Limited,

a successful Northern Ireland manufacturing business that is investing in the project in order to assist in reducing its own carbon footprint and invest in the local economy.

The above background is important with regard to this consultation response as it sets the scene on a long (if not the longest) planning process for a wind farm that, had subsidies under the NIRO remained in place until 2017, was likely to be accredited and benefit from the NIRO, assuming that it is ultimately approved by the Planning Appeals Commission. Under the current proposals set out by DETI, the project is inevitably excluded from the NIRO as it will not accredit before 1 April 2016 and the proposed grace period eligibility dates (i.e. 30 September 2015/30 October 2015) have not been met. In such circumstances there is a substantial risk that the project will not be developed.

If the Mullaghturk proposal is approved by the Planning Appeals Commission, there remains a reasonable prospect that it will be constructed and gain accreditation by April 2017, or be in a position to avail of the grace period to 31 March 2018 (for grid delays – radar is not an issue). Under the current proposals, there is no prospect of accreditation and substantial costs over a long period of time will have been entirely wasted. Given the circumstances of Mullaghturk Wind Farm planning application's long gestation in the planning (and court) system, it is unreasonable and inequitable for it to be excluded from the potential to benefit under the NIRO.

We are grateful for the opportunity to make submissions to the consultation proposals and look forward to swift publication of DETI's final proposals. If nothing else, it is crucial that certainty is brought to the onshore wind sector in NI as soon as possible.

**TLT NI LLP**

**14 October 2015**