



An  
Bord  
Pleanála

**Board Direction**  
**02.RL.3540**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 5<sup>th</sup> January 2018.

The Board decided, as set out in the following Order, that the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area is or is not development or is or is not exempted development at Dunancory, Virginia, Co. Cavan:

**AND WHEREAS** Cavan County Council requested a declaration on this question on the 24<sup>th</sup> January 2017:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1)(l) and 4(4) of the Planning and Development Act, 2000, as amended,

- (c) Articles 5, 6 and 8 of the Planning and Development Regulations, 2001, as amended and Class 11 of Part 3 of Schedule 2 of the Regulations, as amended,
- (d) The restrictions on exempted development under article 9(1)(a)(iii) and article 9(1)(a)viiB) of the Regulations, as amended,
- (e) Waste Management (Facility Permit and Registration) Regulations 2007 (as amended by SI No. 86 of 2008).
- (f) The submission on file by the applicant to the planning authority,

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The importation of soil for the purpose of infilling a low lying area of land constitutes 'works' and alteration of that land, and therefore 'development' as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended;
- (b) The development does not come within the scope of the exemption set out under section 4(1)(l) of the Planning and Development Act 2000, as amended by the Environment (Miscellaneous Provisions) Act 2011;
- (c) The development does not come within the scope of the exemption set out in Article 8C of the Planning and Development Regulations, 2001, in respect of Land Reclamation, because it is proposed to import material from outside the landholding in order to carry out the development, and furthermore the material proposed to be imported is a waste material (noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended));
- (d) The development does not come within the scope of Class 11 of Part 3 of Schedule 2 to the of the Planning and Development Regulations, 2001, as amended, (Land Reclamation - infilling of

wetlands) because of non-compliance with the conditions and limitations no. 1 of that Class, as the area in question exceeds the 0.1 hectares.

(e) As no exemptions are available for the development in question it is not necessary for the Board to examine whether appropriate assessment issues or traffic hazard issues arise.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area is development and is not exempted development.

**Board Member**

**Date:** 12<sup>th</sup> January 2018

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Conall Boland