



## Board Direction

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**Ref: 04.RP2121**

The submissions on this file and the Senior Planning Inspector's report were considered at a Board meeting held on March 11<sup>th</sup> 2016.

The Board generally concurred with the views expressed by the Senior Planning Inspector in relation to the facts of the case, but did not consider that the Board had no jurisdiction to consider the point of detail put forward by the referrer. The Board therefore determined, pursuant to Section 34(5) of the Act, that the road improvement works along the proposed haul route to the subject windfarm development were not within the scope of condition 12 of planning permission register reference 06/4439, An Bord Pleanála reference number PL04.217191, for the reasons and considerations set out below.

Board Order to be as follows:-

**WHEREAS** by order dated the 18<sup>th</sup> day of December, 2006, An Bord Pleanála, under appeal reference number PL04.217191, granted subject to conditions a permission to Kemar Ltd, of 3 Woods Place York Street Cork for development comprising the construction of a windfarm comprising six number wind turbines (hub height 80 metres, blade diameter 82 metres); electrical control building; construction of new, and extension of existing internal site tracks, storage compound; and associated works at Foiladaun, Rockchapel, County Cork in the townlands of Foiladaun and Glennaknockane, County Cork.

**AND WHEREAS** condition number 12 attached to this permission required the developer to submit to and agree in writing with the planning authority proposals in relation to vehicle types and the use of public roads in the area during the construction phase.

**AND WHEREAS** the developer and the planning authority failed to agree on the above details in compliance with the terms of this condition and the matter was referred by the developer to An Bord Pleanála on the 6<sup>th</sup> day of November 2015 for determination.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 34 (5) of the Planning and Development Act, 2000, as amended, hereby determines that the road improvement works along the proposed haul route are not within the scope of condition 12 of An Bord Pleanála reference number PL04.217191, for the Reasons and Considerations set out below.

### **REASONS AND CONSIDERATIONS**

The Board considered that the proposed road improvement works come within the parameters of the mitigation works as specified in Section 4.28 of the Environmental Impact Statement that accompanied the application. Regard is had to the fact that Condition number 1 of the permission granted under appeal reference number PL04.217191 requires that the development is be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on the 21<sup>st</sup> day of February, 2006 and 14<sup>th</sup> day of March, 2006, except as may otherwise be required in order to comply with the conditions attached to the order. It is considered that condition 12 of this permission required agreement between the planning authority and developer only in relation to vehicle types and the use of the public roads during the construction phase of the windfarm and did not require agreement in respect of road improvement works, as these works were the mitigation works that had been approved as part of the consent for the overall development.

Note: in reaching its decision on this matter, the Board had regard to the Appropriate Assessment Screening Report dated April 2015, as submitted by the referrer to the Board on the 6<sup>th</sup> day of November 2015. The Board also noted the Appropriate Assessment screening carried out by the Inspector, and concurred with her conclusions in this regard. The Board adopted the Inspector's recommendations and was satisfied that the subject road improvement works, individually and in combination with other plans or projects would not be likely to have a significant effect on any European Site and in particular on the Stack's to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA (site code 004161) and on the Lower River Shannon Special Area of Conservation (site code 002165) in view of the sites' Conservation Objectives and that therefore, a Stage 2 Appropriate Assessment (and submission of a NIS) is not required.

*[Please issue a copy of this Direction with the Board Order]*

Board Member: \_\_\_\_\_ Date: 11<sup>th</sup> March 2016  
Philip Jones