

An
Bord
Pleanála

Board Order
ABP-301852-18
(PL08.244066)

Planning and Development Acts 2000 to 2021

Planning Authority: Kerry County Council

Planning Register Reference Number: 14/13

Appeal by Stacks Mountain Windfarm Limited care of McCarthy Keville O'Sullivan Limited of Block 1, GFSC, Moneenageisha Road, Galway against the decision made on the 8th day of October 2014 by Kerry County Council to refuse permission for the proposed development.

Proposed Development: Construction of a windfarm and associated site works (10-year planning permission sought). The proposed development will consist of the provision of a total of 10 number wind turbines, having a maximum ground to blade tip height of up to 156.5 metres, upgrading of existing and provision of new internal access roads, provision of an anemometry mast (height up to 100 metres), one number borrow pit, underground electricity connection cabling, upgrading of one number site access junction, provision of four number new site access junctions, an electricity sub-station with associated equipment, wind farm control building, temporary construction compound, peat disposal areas, and all ancillary site and ground works at Ballyhorgan South, Lixnaw, Ballyhorgan East, Lixnaw, Irramore, Listowel, Lissahane, Listowel, Muckenagh, Lixnaw, County Kerry. Further public notices in relation to the proposed development were received

by the planning authority on the 14th day of August 2014, and by An Bord Pleanála in the 8th day of December 2015 and the 6th day of June, 2020.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

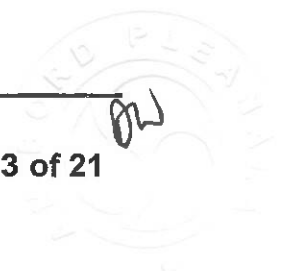
In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

The Board had regard to:

- (a) National policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions from greenhouses gases,
- (b) the provisions of the Wind Energy Development Guidelines – Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in June 2006,

- (c) the policies of the planning authority as set out in the Kerry County Development Plan 2015-2021, including the Wind Energy Strategy for County Kerry, 2012,
- (d) the location of the wind farm site in an area which is identified in the development plan as an area 'Open for Consideration' where it is the policy of the planning authority to facilitate the development of appropriate wind energy proposals,
- (e) the character of the landscape in the area and the absence of any ecological designation on or in the immediate environs of the wind farm site,
- (f) the characteristics of the site and of the general vicinity,
- (g) the pattern of existing and permitted development in the area, including other windfarms,
- (h) the distance to dwellings and other sensitive receptors from the proposed development,
- (i) the Environmental Impact Statement submitted with the application, the Environmental Impact Statement Addendum submitted to An Bord Pleanála on the 27th day of October 2015 and the updated Environmental Impact Assessment Report submitted to An Bord Pleanála on the 20th day of June 2020,
- (j) the Natura Impact Statement submitted with the application, and the updated Natura Impact Statement submitted to the planning authority on the 28th day of July 2014, and the Natura Impact Statement submitted to An Bord Pleanála on the 20th day of June 2020,



- (k) the submissions made in connection with the planning application and appeal, and
- (l) the memorandum and report of the Inspector.

Appropriate Assessment Screening

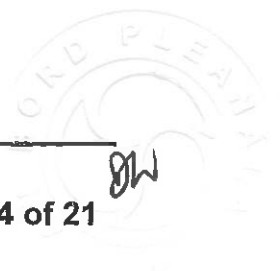
The Board considered the Screening Report for Appropriate Assessment, the Natura Impact Assessment and all the other relevant submissions and carried out both an Appropriate Assessment screening exercise and an Appropriate Assessment in relation to the potential effects of the proposed development on designated European Sites.

Appropriate Assessment

The Board considered the Natura impact statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for European Sites, namely the Lower River Shannon Special Area of Conservation (site code number: 002165), and Stack's to Mullaghareirk Mountains, West Limerick Hills, and Mount Eagle Special Protection Area (site code: 004161) in view of the sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (i) the likely direct and indirect impacts arising from the proposed development, both individually or in combination with other plans or projects,



- (ii) the mitigation measures which are included as part of the current proposal, and
- (iii) the conservation objectives for the European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' Conservation Objectives.

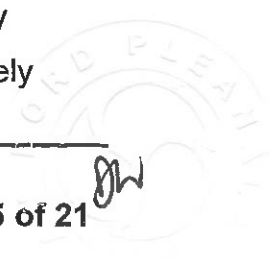
In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' Conservation Objectives.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (i) the nature, scale and extent of the proposed development,
- (ii) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the planning application and appeal,
- (iii) the submissions from the planning authority, the appellants, the observers, and the prescribed bodies in the course of the application and appeal, and
- (iv) the Inspector's report.

The Board considered that the Environmental Impact Statement and Addendum and the updated Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development, and also adequately



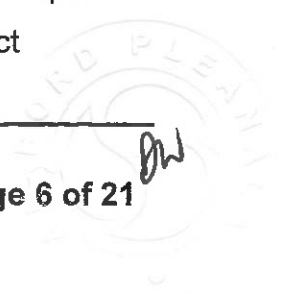
identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the planning application and appeal.

Reasoned Conclusions on the Significant Effects

The Board considered and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

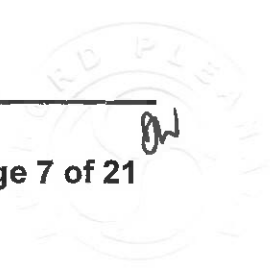
- (i) Shadow Flicker: Potential for significant adverse impacts on population and human health arising from shadow flicker at residences and other sensitive receptors (schools). The potential impacts will be controlled to an acceptable level by control measures that will curtail wind turbine operations in environmental conditions that give rise to shadow flicker.
- (ii) Landscape and Visual: Potential for significant adverse impacts on population and human health due to visual impacts arising from the proximity of the windfarm development to residential and community receptors (coupled with the elevated position of the receptors and limited vegetative screening). The potential impacts will be mitigated to an acceptable level by the omission of the most proximate turbines (numbers 6, 8 and 9) and infrastructure associated with these turbines, and to the determination by condition of a precise hub height and blade diameter, within the overall turbine height which has been fully examined in the application documentation.
- (iii) Biodiversity: Potential for significant direct and indirect adverse impacts on biodiversity (flora and fauna) due to loss of habitat and direct



interface with or displacement/disturbance of species. The potential impacts will be mitigated through design and mitigation measures detailed in the Environmental Impact Assessment Report and in the appended Construction and Environmental Management Plan, pre-construction mammal surveys and implementation of the invasive species management plans.

- (iv) Lands, Soil and Geology: Potential for significant direct and indirect impacts on lands, soil and geology, as a result of the increased risk of peat slide and failure. The potential impacts will be mitigated by measures to address peat stability detailed in the Environmental Impact Assessment Report and appended Peat Stability Report.
- (v) Hydrology and Hydrogeology: Potential for significant direct and indirect impacts on hydrology and hydrogeology arising from the potential indirect effects caused by increased run-off, such as soil erosion and sediment release into the receiving watercourses, during construction and operational phases. The potential impacts would be suitably mitigated by project design features, and the measures outlined in the Environmental Impact Assessment Report and the appended Construction and Environmental Management Plan, which includes watercourse crossing methodologies and site drainage management plan.
- (vi) Climate and Air Quality: Potential for significant long term net positive impact on climate and air from provision of a clean energy source that will replace current energy supplied from fossil fuel sources with limited loss of bog terrain.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in



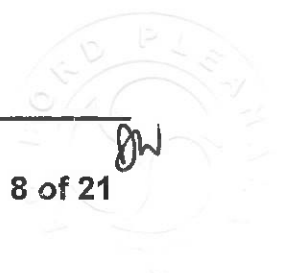
combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Conclusions on Proper Planning and Sustainable Development

The Board considered that the proposed development is broadly compliant with the current Kerry County Development Plan 2015-2021 and would, therefore, be in accordance with the proper planning and sustainable development of the area. The Board considers that a grant of permission for the proposed development would materially contravene the development plan with respect to Objective EP-12.

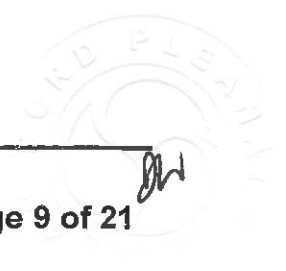
The Board considered that, having regard to the provisions of section 37(2)(b)(ii) and (iii) of the Planning and Development Act 2000, as amended, a grant of permission in material contravention of the development plan would be justified under subsections (ii) and (iii) of section 37(2)(b) of that Act on the basis of the following reasons and considerations:

- Having regard to the conflicting policies contained within the development plan for the area in relation to wind energy developments. Objective EP-12 conflicts with other policies in the Wind Energy Strategy for the County and in the development plan that are supportive of the deployment of greater levels of wind farms, including Objective EP-11 which is to “Implement the Renewable Energy Strategy for County Kerry”. The Renewable Energy Strategy identifies this area as an area where wind farm development is ‘open for consideration’. It is considered that Objective EP-12 is impractical in terms of implementation and would create an unacceptable level of uncertainty in relation to when any future developments might be permitted.



- Permission for the proposed development should be granted having regard to the National Planning Framework (NPF), the Regional Spatial and Economic Strategy (RSES) for the South Regional Assembly Area and Ministerial guidelines under Section 28 of the Planning and Development Act 2000, as amended. The National Planning Framework contains 10 number National Strategic Outcomes including NSO 8 which seeks a transition to a low carbon and climate resilient society. The RSES contains supporting Regional Policy Objectives including RPO 99 to support the sustainable development of renewable wind energy and RPO 87 to reduce greenhouse gas emissions. The Wind Energy Development Guidelines 2006 issued under Section 28 of the 2000 Act state that the development of renewable energy sources, together with measures aimed at a reduction and more efficient use of energy, are priorities, nationally and at European level, on both environmental and energy policy grounds. The guidelines are also intended to ensure a consistency of approach throughout the country in the identification of suitable locations for wind energy development and the treatment of planning applications for wind energy developments.

Furthermore, the Board considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with European energy policy, the National Planning Framework, and the Kerry County Development Plan 2015–2021. The proposed development would make a positive contribution to Ireland’s national strategic policy on renewable energy and its move to a low energy carbon future, would have an acceptable impact on the landscape, both individually and in terms of the cumulative impact with other existing and permitted windfarms in the wider area, would not seriously injure the residential or visual amenities of the area, would not adversely affect the archaeological or natural heritage, and would be acceptable in terms of pedestrian and traffic safety. The proposed



development would, therefore, be in accordance with the proper planning and sustainable development of the area.

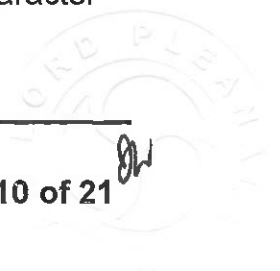
Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 28th day of July 2014, and by the further plans and particulars received by An Bord Pleanála on the 27th day of October 2015 and the 16th day of June 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the proposed development shall be carried out and completed in accordance with agreed particulars.

Reason: In the interest of clarity.

2. The permission hereby granted relates to the seven-turbine layout submitted to An Bord Pleanála on the 16th day of June 2020. Turbines numbers 6, 8 and 9 and all associated infrastructure shall be omitted in full from the development. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a revised site layout plan that is based on the seven number turbine layout submitted to An Bord Pleanála.

Reason: In the interest of visual amenities and to protect the character of the area.



3. The turbines shall be 156.5 metres in height with a hub height of 88.5 metres and a blade diameter of 135 metres in accordance with the turbine height option assessed within the Environmental Impact Assessment Report and/ or the Natura Impact Statement and application documents in respect of noise, shadow flicker and bird collision risk.

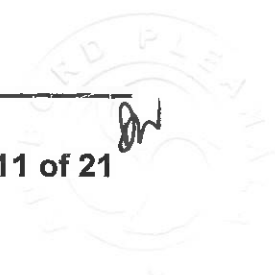
Reason: In the interest of clarity and the proper planning and sustainable development of the area.

4. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report received by An Bord Pleanála on the 16th day of June 2020, and in other plans and particulars submitted with the application, shall be implemented in full.

Reason: In the interests of clarity and the protection of the environment during the construction and operational phases of the proposed development.

5. The mitigation measures detailed in the Natura Impact Statement received by An Bord Pleanála on the 16th day of June 2020 shall be implemented in full.

Reason: In the interest of clarity and to ensure the protection of European sites.



6. The developer shall ensure that all peat related mitigation measures set out in the Peat Stability Assessment Appended to the Environmental Impact Assessment Report received by An Bord Pleanála on the 16th day of June 2020 are implemented in full and monitored throughout the lifecycle of the construction works and monitored throughout the operational phase.

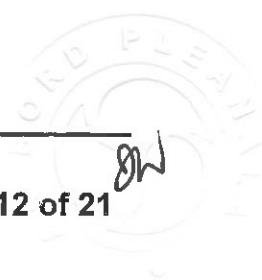
Reason: In the interest of protection of the environment.

7. The appropriate period of this permission during which the authorised development may be carried out shall be 10 years from the date of this Order.

Reason: The Board considered that 10 years was reasonable given the nature and complexity of the development proposed.

8. This authorised windfarm shall operate for no more than 30 years from the date on which electricity is first exported from it or from the date of the expiry of the appropriate period, whichever is the sooner.

Reason: To enable the planning authority to review the operation of the wind farm in the light of the circumstances then prevailing.



9. Prior to any development taking place on the site, the developer shall submit to and agree in writing with the planning authority, the final detail and specification of the proposed grid connection route.

Reason: In the interests of clarity and proper planning and sustainable development.

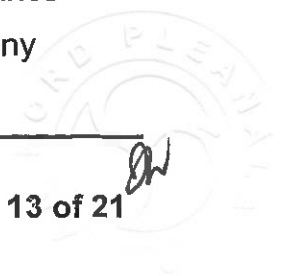
10. Decommissioning and construction works shall be limited to between 0800 and 1800 hours Monday to Saturday, and shall not be permitted on Sundays or public holidays.

Reason: To protect the amenities of nearby residential properties.

11. The operation of the proposed development, by itself or in combination with other permitted wind energy development, shall not result in noise levels when measured externally at nearby noise sensitive locations, which exceed:

- (a) between the hours of 0700 and 2300:
- (i) the greater of 5 dB(A) $L_{90,10\text{mins}}$ above background noise levels, or 45 dB(A) $L_{90,10\text{mins}}$, at standardised 10 metre height above ground level wind speed of 7m/s or greater.
 - (ii) 40 dB(A) $L_{90,10\text{ mins}}$ at all other standardised 10 metre height above ground level wind speeds.
- (b) 43 dB(A) $L_{90,10\text{ mins}}$, at all other times.

Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority, a noise compliance monitoring programme for the subject development, including any

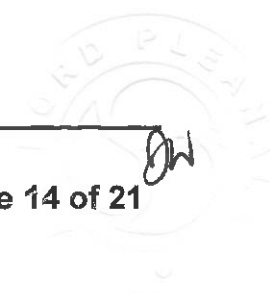


mitigation measures such as the de-rating of particular turbines. The results of the initial noise compliance monitoring shall be submitted to and agreed in writing with the planning authority within six months of the commissioning of the windfarm.

Reason: In the interest of residential amenity.

12. The developer shall comply with the following shadow flicker requirements:
- (a) Cumulative shadow flicker arising from the proposed development shall not exceed 30 minutes in any day or 30 hours in any year at any dwelling.
 - (b) The proposed turbines shall be fitted with appropriate equipment and software to control shadow flicker at dwellings.
 - (c) Prior to commencement of development, a windfarm shadow flicker monitoring programme shall be prepared by a consultant with experience of similar monitoring work, in accordance with details to be submitted to the planning authority for written agreement. Details of the monitoring programme shall include the proposed monitoring equipment methodology to be used, and the reporting schedule.

Reason: In the interest of residential amenity.

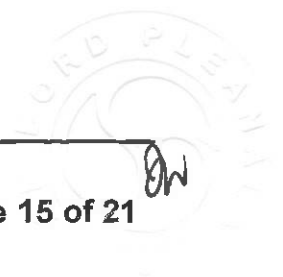


13. The developer shall comply with the following design requirements:
- (a) The wind turbines, including masts and blades, and the wind monitoring masts shall be finished externally in a light-grey colour.
 - (b) Cables within the proposed development site shall be placed underground.
 - (c) The wind turbines shall be geared to ensure that the blades rotate in the same direction.
 - (d) No advertising material shall be placed on or otherwise affixed to any structure on the site without a prior grant of permission.

Reason: In the interest of visual amenity.

14. Details of the materials, colours and textures of all the external finishes of the proposed substation building and enclosing fencing shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

Reason: In the interest of the visual amenities of the area.



15. Prior to commencement of any works on site, details of a post construction monitoring and reporting programme for bats shall be submitted to and agreed in writing with the planning authority. Monitoring shall be undertaken by a suitably qualified and experienced bat specialist and identify any measures required to mitigate any identified effects. The surveys shall be completed annually for a period of three years following commissioning of the windfarm and copies of the report submitted to the planning authority.

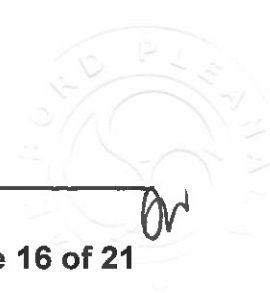
Reason: To ensure the appropriate monitoring of the use of the site by bat species.

16. In the event that the proposed development causes interference with telecommunications signals, effective measures shall be introduced to minimise interference with telecommunications signals in the area. Details of these measures, which shall be at the developer's expense, shall be submitted to, and agreed in writing, with the planning authority prior to commissioning of the turbines and following consultation with the relevant authorities.

Reason: In the interest of the protection of telecommunications signals and of residential amenity.

17. Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Prior to the commissioning of the turbines, the developer shall inform the planning authority and the Irish Aviation Authority of the as-constructed tip heights and co-ordinates of the turbines in WGS-84 format and the wind monitoring masts.

Reason: In the interest of air traffic safety.

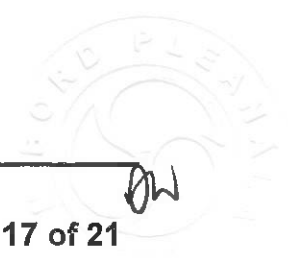


18. The construction of the proposed development shall be carried out in accordance with a finalised Construction and Environmental Management Plan which shall set out a construction method statement and timetable for all works and measures that are integral to the proposed development. The plan shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

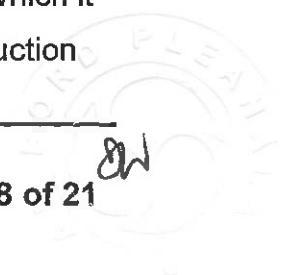
Reason: In the interest of environmental protection and orderly development.

19. Prior to any development taking place on the site, the developer shall submit to and agree in writing with the planning authority the following details
- (a) Road Safety Audit(s) relating to junction works proposed on the national road network,
 - (b) Technical Acceptance for crossings of national roads, in accordance with the detailed requirements of Transport Infrastructure Ireland.

Reason: In the interest of traffic safety.



20. (a) Prior to commencement of development, a traffic management plan for the construction phase shall be submitted to, and agreed in writing with, the planning authority. The traffic plan shall incorporate the following:
- (i) Details of the road network/haulage routes and the vehicle types to be used to transport materials to and from the site, and a schedule of control measures for exceptionally wide and heavy delivery loads.
 - (ii) A condition survey of the roads and bridges along the haul routes shall be carried out at the developer's expense by a suitably qualified person both before and after the construction of the proposed development. This survey shall include a schedule of required works to enable the haul routes to cater for construction related traffic. The extent and scope of the survey and the schedule of works shall be agreed with the planning authority/authorities/Transport Infrastructure Ireland prior to commencement of development.
 - (iii) Arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority.
 - (iv) Detailed arrangements for the protection of bridges to be crossed.
 - (v) Detailed arrangements for temporary traffic arrangements/control on roads and protocols to keep residents informed of upcoming traffic related matters, temporary lane/road closures and delivery of turbines.
 - (vi) A phasing programme indicating the timescale within which it is intended to use each public route to facilitate construction



of the proposed development. In the event that the proposed development is being developed concurrently with any other windfarm in the area, the developer shall consult with and arrange suitable traffic phasing arrangements with the planning authority,

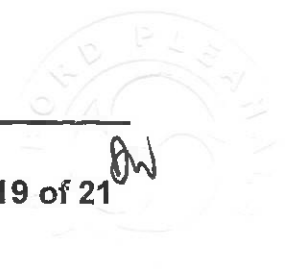
(vii) Within three months of the cessation of the use of each public road and haul route to transport material to and from the site, a road survey and scheme of works detailing works to repair any damage to these routes shall be submitted to, and agreed in writing with, the planning authority.

(b) All works arising from the aforementioned arrangements shall be completed at the developer's expense within 12 months of the cessation of each road's use as a haul route for the proposed development.

Reason: To protect the public road network and the amenity of local residents, and to clarify the extent of the permission in the interest of traffic safety and orderly development.

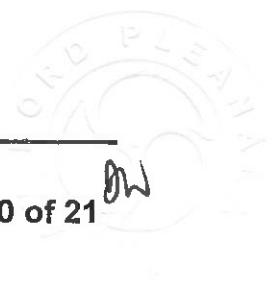
21. On full or partial decommissioning of the windfarm, or if the windfarm ceases operation for a period of more than one year, the turbines and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation. These reinstatement works shall be completed to the written satisfaction of the planning authority within three months of decommissioning or cessation of operation.

Reason: To ensure satisfactory reinstatement of the site upon cessation of the project.



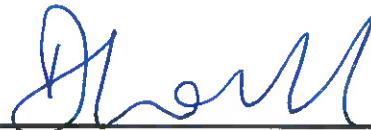
22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other such security as may be acceptable to the relevant planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the relevant planning authority to apply such security or part thereof to the satisfactory reinstatement of the public roads. The form and amount of the security shall be agreed between the planning authority and the developer or, in default of agreement shall be referred to An Bord Pleanála.

Reason: To ensure the satisfactory reinstatement of the delivery routes.



23. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act, 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.

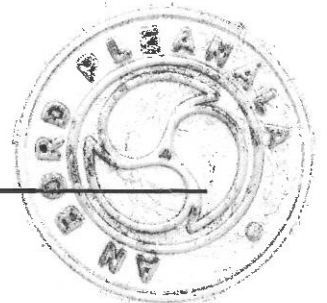


Dave Walsh

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.



Dated this *23rd* day of *December* 2021.