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# An Bord Pleanála



## Inspector's Report

Ref.: PL08.245983

Development: Construct 51m of 5m wide access road from the consented Dromadda Beg Wind Farm site boundary to link to the access road on the neighbouring Cloghboola Wind Farm site. There will also be upgrade works to 101m of access road from 4m to 5m of existing road at the Cloghboola Wind Farm. The works will also include the laying of a 1.4km long cable along the road verges from the Dromadda Beg Wind Farm Substation to the Cloghboola Wind Farm substation to enable connection to the national grid.

Dromadda Beg, Cloghboola and Glantaunyalkeen,  
Listowel, Co. Kerry.

### **PLANNING APPLICATION**

Planning Authority: Kerry County Council

Planning Authority Ref.: 15/874

Applicant: Dromadda Beg Windfarm Ltd.

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

### **APPEAL**

Type of Appeal: Third Party v. Decision

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Appellant: Deirdre Cremmins

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 30<sup>th</sup> April, 2016

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## **1.0 INTRODUCTION**

1.1 The Board is advised to determine this appeal in conjunction with ABP Ref. No. PL08. 246205 on the basis that they are located on immediately contiguous sites.

## **2.0 SITE LOCATION AND DESCRIPTION**

2.1 The proposed development site is located in the rural townlands of Dromadda Beg, Cloghboola and Glantaunyalkeen, Co. Kerry, approximately 11km southwest of Abbeyfeale and 13km south-southeast of Listowel, in an elevated upland area of the Glanaruddery Mountains where the surrounding landscape is predominantly characterised by blanket bog, degraded / cutover bog and conifer plantations interspersed with intermittent instances of one-off rural housing. The site itself has a stated site area of 4.6 hectares, is irregularly shaped, and forms part of a wider landholding held in multiple ownerships which encompasses the recently constructed Cloghboola Wind Farm in addition to those lands approved for the future development of the Dromadda Beg Wind Farm. The lands in question incorporate a gradual downward slope from north to south although the wider area is primarily drained in a westwards direction by a large number of small streams and drainage channels discharging to Smearlagh River. Access to the site is presently obtained via a series of hardcore tracks which extend from the local road network to provide access to the existing wind farm development and surrounding lands.

## **3.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1 The proposed development consists of the following:

- The construction of a 51m length of 5m wide access road extending north-eastwards from the site boundary of the approved Dromadda Beg Wind Farm to link with the access road on the neighbouring Cloghboola Wind Farm site.
- The upgrading of a 101m length of access road from a carriageway width of 4m to 5m within the Cloghboola Wind Farm.
- The laying of a 1.4km long cable along the road verges from the Dromadda Beg Wind Farm substation to the Cloghboola Wind Farm substation in order to enable connection to the national grid.

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## **4.0 RELEVANT PLANNING HISTORY**

### **4.1 On Site:**

PA Ref. No. 004099. Was granted on 10<sup>th</sup> June, 2002 permitting Saorgus Energy Ltd. permission to construct a wind farm comprising 24 no. wind turbines, service roadways, switchgear / transformer compound, borrow pit, control house and meteorological mast.

PA Ref. No. 012719. Was granted on 19<sup>th</sup> June, 2002 permitting Peter O'Brien and Helen Brosnan permission to erect 3 No. 1MW wind turbines, services roadways and a control house.

- PA Ref. No. 0192719. Was granted on 9<sup>th</sup> September, 2007 permitting Peter O'Brien and Helen Brosnan an 'Extension of Duration' of PA Ref. No. 012719.
- PA Ref. No. 01992719. Was granted on 20<sup>th</sup> July, 2012 permitting Peter O'Brien and Helen Brosnan an 'Extension of Duration' of PA Ref. No. 012719 until 18<sup>th</sup> June, 2017.

PA Ref. No. 081454. Was refused on 1<sup>st</sup> July, 2009 refusing Knocknagoshel Windfarm Ltd. permission to erect 20 No. wind turbine generators of 125m overall height, extension of existing site roads and construction of a wind farm control buildings as an amendment to PA Ref. No. 00/4099.

PA Ref. No. 10616. Was granted on 30<sup>th</sup> May, 2011 permitting Knocknagashel Windfarm Ltd. permission to erect 20 No. wind turbines of 125m overall height, 110kV substation / compound and control buildings, extension of existing site roads, associated drainage and site works as an amendment to PA Ref. No. 00/4099.

PA Ref. No. 13544 / ABP Ref. No. PL08.243573. Was granted on appeal on 8<sup>th</sup> December, 2014 permitting Dromadda Beg Wind Farm Limited permission for the erection of 3 No. electricity generating wind turbines of hub height up to 94.5 metres and rotor diameter up to 101 metres, hardstandings, a control building, associated site roads, drainage and site works as an amendment to planning register reference number 01/2719. The development is located in the townlands of Dromadda Beg, Glantaunyalkeen and Cloghboola, Lyracrumpane, Listowel, Co. Kerry, as amended by the revised public notice received by the planning authority on the 17<sup>th</sup> day of April, 2014.

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PA Ref. No. 15/318. Was granted on 16<sup>th</sup> July, 2015 permitting Peter O'Brien permission to construct an underground grid connection for the Cloghaneleskirt Windfarm consented under approved Planning Ref. 2003/1264. The underground connection is required for the construction and operational phases of the aforementioned planning reference. All at Cloghaneleskirt, Lyracrumpane, Glantaunyalkeen, Dromadda Beg & Cloghboola, Co. Kerry.

4.2 On Adjacent Sites:

PA Ref. No. 13234. Was granted on 16<sup>th</sup> July, 2013 permitting Knocknagoshel Windfarm Ltd. permission to develop a 110kV substation / compound and associated single control building and ancillary works as an amendment to the 110kV substation / compound and two control buildings which were granted planning permission under PA Ref. No. 10616. All at Cloghboola, Knocknagoshel, Co. Kerry.

PA Ref. No. 151044 / ABP Ref. No. PL08.246205. Was granted by the Planning Authority on 27<sup>th</sup> January, 2016 permitting Peter O'Brien permission to construct an underground grid connection and a short section of access track for the Cloghaneleskirt Wind Farm. The application is intended to amend a short section of the route of the underground grid connection consented under approved Planning Reference 2015/318. The underground connection is required for the construction and operational phases of the aforementioned planning reference. All at Cloghboola, Glanaunyalokeen, Co. Kerry. This decision has since been appealed and a final decision is pending with the Board.

4.3 On Sites in the Immediate Vicinity:

PA Ref. No. 03/1264. Was granted on 15<sup>th</sup> December, 2003 permitting Peter O'Brien permission to construct 5 No. 2MW wind turbines, 1 No. 60m wind monitoring mast (temporary), services roadways and control house at Cloghaneleskirt, Tralee, Co. Kerry.

PA Ref. No. 11671. Was granted on 1<sup>st</sup> November, 2011 permitting Knocknagashel Windfarm Ltd. permission to upgrade and extend existing farm track, consisting of the widening of existing section of farm track to 4.5m width and the construction of a new section of track of 4.5m width, between the existing track end point and the wind farm internal site road network, to serve as an alternative entrance for emergency vehicles to the Cloghboola Wind Farm during the construction and operational periods of the wind farm. The track may also be used by the existing landowners for servicing their respective farms. All at Muingwee, Knocknagoshel, Co. Kerry.

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## **5.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION**

### **5.1 Decision:**

On 1<sup>st</sup> December, 2015 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 4 No. conditions which can be summarised as follows:

- Condition No. 1 – Refers to the submitted plans and particulars.
- Condition No. 2 – Requires the archaeological monitoring of all ground works.
- Condition No. 3 – Requires the implementation of all the mitigation measures set out in the Natura Impact Statement and the appointment of an on-site environmental manager / ecological clerk of works to supervise compliance with the said mitigation measures, particularly in relation to water quality control and management.
- Condition No. 4 - Specifies certain measures to be put in place during the construction and subsequent maintenance of the proposed development with regard to the management of invasive species and the protection of ground / surface waters from pollution / contamination.

### **5.2 Objections / Observations:**

A single submission was received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- The likely loss of ecological habitats
- The proposal will be contrary to the proper planning and sustainable development of the area
- The proposal is in conflict with the aims and objectives of the County Development Plan.

### **5.3 Internal Reports:**

*Biodiversity Officer:* States that a Stage 2 Appropriate Assessment was required as significant effects on two Natura 2000 sites could not be ruled out and that, subject to the mitigation measures proposed in the NIS, adverse effects on the integrity of Natura 2000 sites are considered unlikely. The report proceeds to state that, in the event of a grant of permission, consideration should be given to the imposition of a condition which will require the engagement of the services of an on-site environmental manager / ecological clerk of works in order to

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supervise compliance with the mitigation measures set out in the Natura Impact Statement. This clerk of works should be empowered to ensure compliance with the mitigation measures and / or to halt construction works if a pollution event is deemed to be likely.

*County Archaeologist:* States that whilst there are no recorded monuments in the immediate area of the proposed development, given the scale of the proposal, all ground works should be subjected to archaeological monitoring with a report on same to be submitted to the Planning Authority.

#### **5.4 Prescribed Bodies / Other Consultees:**

*Health Service Executive (Senior Environmental Health Officer):* No objection provided the proposed development is carried out in accordance with best practice and that measures such as runoff and sediment control, fuel and oil management plans, and waste control etc. are strictly adhered to.

### **6.0 GROUNDS OF APPEAL**

The grounds of appeal are summarised as follows:

- Inadequate information has been submitted to allow the Planning Authority to effectively assess the potential impact of the proposed development on the surrounding area, particularly as the proposal will result in the linking of the permitted Dromadda Beg and Cloghboola wind farms which have yet to be constructed.
- No information has been provided as regards the cumulative environmental impact of the proposed development when taken in conjunction with other wind farms in the area.
- The Natura Impact Statement submitted with the application restricted its assessment to the proposed development and although it subsequently recommended the implementation of a series of mitigation measures, the specific details of these mitigation measures have not been provided nor are they required to be submitted as a condition of the grant of planning permission.
- The approved Dromadda Beg and Cloghboola wind farms are located in close proximity to one another and will effectively be linked by the subject proposal to form a single overall wind farm development. Although both of the aforementioned wind farms were previously the subject of individual environmental impact assessments, it is submitted that there is a significant intervening area located between same which has not been

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subject to any form of environmental impact assessment or appropriate assessment. This area is located within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161).

- An Environmental Impact Assessment pursuant to the requirements of the Planning and Development Regulations, 2001, as amended, will examine the detail, nature and extent of any mitigation required in order to adequately address the cumulative impacts associated with both the proposed development and the previously approved wind farms. This level of detailed assessment is considered critical in light of recent changes to environmental legislation and environmental impact assessment practices in addition to the need to implement EU Directives relevant to protected sites, which have all changed significantly since permission was granted for the two original wind farm developments.
- A requirement has been identified for a 'sub-threshold' environmental impact assessment.
- Whilst the Natura Impact Statement has detailed that the proposed cabling will be located underground, it is considered that the associated constructional impacts will extend beyond the excavation of a 0.6m wide trench.
- Insufficient detail has been provided of the excavation plant as well as the proposed 'stockpiling' of excavated material prior to the backfilling of same whilst there has been no assessment of the location for the proposed deposition and subsequent treatment (if required) of the excavated material. These construction works will have a significantly wider impact on the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area than the 0.6m wide trench referenced in the Natura Impact Statement.
- A detailed environmental impact assessment would have confirmed the detail, nature and extent of any mitigation required in terms of visual impact.
- The proposed construction of a new roadway and the associated upgrading works could have a significant visual impact on being viewed from within the surrounding landscape.
- In the case of *O'Grianna v. An Bord Pleanala and Others*, it was held that the construction of wind turbines was only the first stage in the development of a wind farm and that a connection to the national grid was a necessary second phase with any attempts to separate the two phases amounting to 'project-splitting' in contravention of the EIA Directive. In this respect the Courts have therefore rejected the previous practice employed



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by the developers of wind farms whereby planning applications for wind farm developments were submitted in advance of a planning application for the grid connection works. Accordingly, in order to comply with the EIA Directive, the developers of wind farms should not submit a planning application until such time as the environmental impact of the necessary grid connection works have also been fully assessed. Therefore, it is submitted that the subject proposal involves a scenario whereby project-splitting would appear to have occurred in the absence of any assessment of the cumulative impact of the overall wind farm developments planned at this location.

## **7.0 RESPONSE TO GROUNDS OF APPEAL**

### **7.1 Response of the Planning Authority:**

None received.

### **7.2 Response of the Applicant:**

- By way of background, the Board is advised that planning permission was previously granted for 3 No. wind turbines, service roadways and a control house on the lands at Glantaunyalkeen under PA Ref. No. 01/2719 and that an 'Extension of Duration' of that grant of permission was permitted up until 18<sup>th</sup> June, 2017. Subsequently, a further grant of permission was issued under PA Ref. No. 13/544 which amended the approved development by authorising the relocation of the turbine hardstandings and site roads, an increase in the height of the turbines from 85m to 145m, the relocation of the site control building and the use of an alternative access route through the Cloghboola Wind Farm (PA Ref. No. 10/616).
- The proposed works were not considered to require Environmental Impact Assessment as they did not come within the scope of Schedule 5 of the Planning and Development Regulations, 2001 and as they were also not considered likely to give rise to significant effects under Schedule 7 of the Regulations. However, as the works in question are located within a Special Protection Area, the subject application has been accompanied by a Natura Impact Statement.
- The proposed access track from the approved Dromadda Beg Wind Farm to the constructed Cloghboola Wind Farm was shown in the drawings and EIS submitted with PA Ref No. 13544 and was assessed therein. However, as these works were not included within the confines of the site

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boundary in that instance they required the submission of a further planning application.

- The in-combination and cumulative effects between Dromadda Beg Wind Farm and the Cloghboola Wind Farm were addressed as part of the Environmental Impact Statement which accompanied PA Ref. Nos. 01/2719 & 13544 / ABP Ref. No. PL08.243573 (as confirmed in Section 9 of the EIS which states that *'The cumulative impact of the consented twenty turbines Cloghboola wind farm is also assessed'*).
- In the assessment of the subject appeal, it should be noted that both the cable route and access track are exactly similar to those detailed in the EIS which accompanied PA Ref. No. 13/544 (i.e. the Dromadda Beg Wind Farm).
- Chapter 2 of the EIS which accompanied PA Ref. No. 13/544 outlined that access to the Dromadda Beg Wind Farm would be via the Cloghboola Wind Farm:

*'The Dromadda Beg Wind Farm Extension project is adjacent to the consented Cloghboola Wind Farm development area and infrastructure will be shared including the access roads and haulage route'.*

This was further affirmed in Chapter 3 of the EIS which stated the following:

*'It is reiterated that the development will share access with Cloghboola wind farm minimising impact on road users'.*

In addition, Chapter 5 of that EIS confirmed that available studies of the existing environment and from the adjacent Cloghboola Wind Farm were also considered in the assessment of the Dromadda Beg Wind Farm:

*'Any relevant reports which were available on the existing ecological environment were also reviewed in the preparation of this report, including all previous reports relating to the Dromadda Beg site and the adjacent consented wind farm site at Cloghboola'.*

- In-combination and cumulative effects are addressed in Section 4.3 of the submitted Natura Impact Statement which concluded that provided the mitigation measures and recommendations contained in same were adopted then the proposed development would not adversely affect the designated sites in the area.

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- Condition No. 3 as imposed by the Planning Authority requires all the mitigation measures set out in the NIS to be implemented with compliance to be supervised by an on-site environmental manager / ecological clerk of works.
  - The proposed development will have a negligible additional cumulative impact as the works in question are of a minor nature with 51m of new access track and the upgrading from 4m to 5m of 101m of existing access track on the Cloghboola Wind Farm site.
  - Section 4.4 of the NIS outlines the mitigation measures proposed specifically for the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and the Lower River Shannon Special Area of Conservation. Furthermore, the mitigation measures set out in the EIS for the Dromadda Beg Wind Farm were included to demonstrate mitigation of the potential effects, in particular, the area of habitat that is being managed for the benefit of hen harriers through the lifetime of the project. These mitigation measures were conceived through a comprehensive EIA process which included consultation with the NPWS (*N.B.* The applicant's submission proceeds to summarise the various mitigation measures contained in the NIS).
  - In relation to the appellant's assertions that the area between the two wind farms has not been subject to EIA despite its location within a SPA, it is reiterated that the works in question were not considered to require EIA on the basis that they did not come within the scope of Schedule 5 of the Regulations and as they were also not considered to be likely to give rise to significant effects pursuant to Schedule 7.
  - The Natura Impact Statement submitted with the subject application has assessed the potential effects of the proposed development on designated sites within 15km of the site. The purpose of this NIS was to determine the effects, if any, of the proposed works on Natura 2000 sites (i.e. the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area, and the Lower River Shannon Special Area of Conservation). It also aimed to further assess if any of the predicted impacts would have the potential to have significant negative effects on the qualifying interests or on the conservation objectives of the aforementioned designated sites.
  - The Dromadda Beg and Cloghboola Wind Farms are on adjacent sites and the entire area within each of those sites was assessed in the respective EIS documentation.
  - The proposed works with regard to the 0.6m cable trench will be of a temporary nature and the excavated material will be used in the backfilling

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of the trench. Accordingly, any impact arising from this element of the works will be of a temporary nature. Furthermore, the mitigation measures outlined in the NIS will be implemented whilst it will also be necessary to adhere to the relevant conditions of PA Ref. No. 13544 / ABP Ref. No. PL08.243573 (the Dromadda Beg Wind Farm) and PA Ref. No. 10/616 (the Cloghboola Wind Farm).

- A complete landscape and visual assessment was undertaken in respect of the Dromadda Beg Wind Farm which included a cumulative assessment of the impacts in conjunction with the Cloghboola Wind Farm. That assessment concluded that the two wind farms would visually appear as a single development.
- The Dromadda Beg & Cloghboola Wind Farms have been designed from a visual perspective to appear as a single development and thus will have less of an impact on the landscape than two separate schemes.
- It is considered that the landscape impact of the proposed works will be relatively minor when taken in context considering the extent of roadways already serving the Cloghboola Wind Farm and those permitted as part of the Dromadda Beg Wind Farm.
- In respect of the appellant's concerns with regard to possible 'project splitting' in contravention of the EIA Directive in reference to the judgement made in the case of *O'Grianna v. An Bord Pleanala and Others* in relation to grid connection, it is submitted that the Dromadda Beg & Cloghboola Wind Farms are two independent projects which have progressed as such over the last 13 No. years.

The issues of grid connection and access were assessed in Chapter 12 of the EIS submitted in respect of the Dromadda Beg Wind Farm and that development was ultimately permitted with an extension to the duration of same having also been granted before amended proposals were then approved on appeal under ABP Ref. No. PL08.243573.

The Dromadda Beg Wind Farm has consent to connect to the national grid via a Gate 2 agreement with the ESB. The connection from the Dromadda Beg Wind Farm substation to the 100kV Cloghboola substation was considered in Chapter 12 of the EIS submitted with that application as follows:

*'The Dromadda Beg Wind Farm will ultimately connect to the 110kV substation at Cloghboola. The method of connection will ultimately be dictated by ESB Networks, however, it is anticipated that it will be an*

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*underground connection from the Dromadda Beg on site substation along the proposed access tracks through the Cloghboola footprint and into the 110kV substation. The total length of this connection will be approximately 1.3km. Existing cable ducts throughout the consented Cloghboola Wind Farm will be used where possible’.*

Chapter 12 of that EIS further concluded that:

*‘The proposed Dromadda Beg Wind Farm will utilise the existing grid infrastructure associated with the operational Cloghboola Wind Farm’.*

Furthermore, Condition No. 16 of the notification of a grant of permission issued by the Planning Authority in respect of PA Ref. No. 13/544 states the following:

*‘Any works carried out as part of the development shall not preclude the means of laying power cables underground from the wind farm to the nearest electricity substation, where the power cable crosses the Special Protection Area’.*

This is the same wording as was used in Condition No. 22 of the grant of permission issued for the Cloghboola Wind Farm under PA Ref. No. 10/616.

Therefore, it is submitted that there has been no project-splitting as regards the Dromadda Wind Farm.

*(N.B. The Board is advised that its determination of ABP Ref. No. PL.08.243753 serves to supersede the decision of the Planning Authority in respect of PA Ref No. 13/544).*

- The subject application does not alter or deviate in any way from ABP Ref. No. PL08.243573 as permitted. It is merely a revision of the ‘red line’ boundary. The access road works and the cable route were assessed in the EIA that accompanied ABP Ref. No. PL08.243573 although they were not included within the ‘red line’ boundary.
- In its most recent decision to grant permission under ABP Ref. No. PL08.243573 for amendments to the Dromadda Beg Wind Farm, the Board adopted its Inspector’s Report which stated that *‘as the proposed development can ‘piggyback’ on infrastructure provided with the*

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*[Cloghboola] 20 turbine windfarm (in particular, maintenance access roads, electricity connection and construction access), many potential impacts are significantly less than for a stand-alone windfarm facility’.*

- The subject application has been lodged solely to include the access road and grid connection works which are already permitted under ABP Ref. No. PL08.243573 within a revised ‘red line’ planning boundary.
- The term ‘project-splitting’ refers to the splitting up of a single project that would require an environmental impact assessment into a number of smaller and separate projects in order to avoid any of those individual projects meeting the threshold for EIA as per the EIA Directive 2011/92EU. There has been no project splitting in respect of the Dromadda Beg Wind Farm. On the contrary, the cumulative impacts on the environment generally and also on Natura 2000 sites arising from the proposed access road and grid connection works were previously assessed as part of the permitted Dromadda Beg Wind Farm and were also considered ‘in-combination’ with any impacts associated with the adjacent Cloghboola Wind Farm and other relevant developments.
- The ‘O’Grianna’ case is entirely distinguishable from the subject application. In the case of ‘O’Grianna’, no details in respect of grid connection works were included in the planning application for the relevant wind farm development and thus no assessment of the cumulative impacts of those grid connection works could be undertaken in the context of the environmental impact assessment of the wind farm project as a whole. This is not the case with regard to the Dromadda Beg Wind Farm where, in this instance, the cumulative impacts of the grid connection and access road works were:
  - Included in the planning application and described in the environmental impact statement and the natura impact statement for the Dromadda Beg Wind Farm project.
  - Assessed as part of the environmental impact assessment (and appropriate assessment) undertaken in respect of the project; and
  - Subsequently approved and conditioned by the Planning Authority and An Bord Pleanala.
- The decision of the Board in respect of the Dromadda Beg Wind Farm (i.e. ABP Ref. No. PL08.243573) records the fact that it completed an EIA and concluded that the proposed development would not have significant effects on the environment. In carrying out its EIA, the Board adopted its Inspector’s Report which confirmed that:

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*'For most environmental variables, the most significant impacts are cumulative with the 20 turbines under construction to the east, and to a lesser extent with other developments in the area, including existing windfarms to the southwest and forestry and other operations in the area. I would conclude that the overall cumulative and indirect impacts are quite minor. The key issue in assessing this appeal is the cumulative impact on the hen harrier, and as outlined above, I consider that this has to be addressed with regard to the existing permission, and the impact is likely to be slightly positive'.*

- The proposed works do not amount to a change or extension of the Dromadda Wind Farm project which would trigger a requirement for a further environmental impact assessment under Paragraph 13 of Part 2 of Schedule 5 to the Planning and Development Regulations, 2001, as amended.
- The subject application has been accompanied by a Natura Impact Statement as the works will be carried out within a Special Protection Area and whilst complaints have been raised in the grounds of appeal that no appropriate assessment has been carried out, it is the Board which will carry out an appropriate assessment of the proposed works in its determination of the appeal. These complaints are particularly difficult to understand given that the Board's decision in respect of ABP Ref. No. PL08.243573 confirms that it had regard to both cumulative and in-combination effects as follows:

*'In carrying out the [appropriate] assessment, the Board considered the individual and the 'in-combination' effects arising from the proposed development of three wind turbines. The Board concluded that the 'in-combination' effects should reasonably recognise the extant planning permission for three turbines on this site, as well as other windfarm and forestry development in the area, and the likely significant evolution of the surrounding landscape over the lifetime of the proposed development'.*

The Board was therefore satisfied, having considered these impacts, that the proposed development would not adversely affect the integrity of European sites in view of the sites' conservation objectives.

- Having regard to the fact that:

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- The proposed works were described in the previous planning application, the environmental impact statement and the natura impact statement for the Dromadda Beg Wind Farm;
  - The Board carried out an environmental impact assessment and an appropriate assessment having regard *inter alia* to those statements and subsequently granted permission;
  - Both cumulative and in-combination effects were assessed by the Board as part of those assessments;
  - The current application does not require the submission of an environmental impact statement as the proposed works do not amount to a change to or an extension of the existing Dromadda Beg Wind Farm which would exceed the thresholds specified in Paragraph 13 of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended; and
  - A natura impact statement has been submitted with the application in order to enable an appropriate assessment to be carried out,

it is submitted that the compliant in relation to “project-splitting” is without substance, untenable and incorrect in law.

## **8.0 NATIONAL AND REGIONAL POLICY**

### *8.1 Wind Energy Development Guidelines, Guidelines for Planning Authorities:*

The guidelines pertaining to wind farm development in Ireland are set out in the publication "Wind Energy Development Guidelines, Guidelines for Planning Authorities" by the Department of the Environment, Heritage and Local Government in June 2006. The presumption is in favour of wind farm development in suitable circumstances.

The Guidelines indicate:

- The need for a plan led approach.
- In section 4.3 there is reference to access to the electricity grid and that best practice would suggest having in applications for windfarms information on grid connection including indicative or feasible options but this may not always be possible.
- Noise is another important consideration and is referred to in paragraph 5.6 and account should be taken of the nature and character of nearby surroundings and developments in assessing noise levels and guidance on levels for different locations are outlined.



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- Chapter 6 relates to aesthetic considerations in siting and design.
  - Regard should be had to profile, numbers, spacing and visual impact and the landscape character.
  - Account should be taken of intervisibility of sites and the cumulative impact of developments.

The Guidelines consider that the following influence visual impact:

- Form and characteristics of the landscape;
- Design and colour;
- The existing skyline;
- Layout of turbines, and
- The number and size of turbines and intervisibility of sites.

## **9.0 DEVELOPMENT PLAN**

### **Kerry County Development Plan, 2015-2021:-**

#### **Chapter 7: Transport & Infrastructure**

##### ***Section 7.6: Energy/Power Provision:***

**EP-1:** Support and facilitate the sustainable provision of a reliable energy supply in the County, with emphasis on increasing energy supplies derived from renewable resources whilst seeking to protect and maintain biodiversity, archaeological and built heritage, the landscape and residential amenity.

**EP-3:** Facilitate sustainable energy infrastructure provision, so as to provide for the further physical and economic development of the County.

**EP-7:** Facilitate the sustainable development of additional electricity generation capacity throughout the region/county and to support the sustainable expansion of the network. National grid expansion is important in terms of ensuring adequacy of regional connectivity as well as facilitating the development and connectivity of sustainable renewable energy resources.

**EP-8:** Ensure that the siting of electricity power lines is managed in terms of the physical and visual impact of these lines on both the natural and built environment, the conservation value of Natura 2000 sites and especially in sensitive landscape areas. When considering the

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siting of powerlines in these areas the main technical alternatives considered should be set out, with particular emphasis on the undergrounding of lines, and the identification of alternative routes at appropriate locations. It should be demonstrated that the development will not have significant, permanent, adverse effects on the environment including sensitive landscape areas and the ecological integrity of Natura 2000 sites.

Section 7.6.3: *Renewable Energy:*

EP-11: Implement the Renewable Energy Strategy for County Kerry (KCC 2012).

Chapter 10: Natural Environment & Flood Risk Management:

Section 10.2: *Environmental Designations:*

NE-11: Ensure that all projects likely to have a significant effect on a Natura 2000 / European site will be subject to Habitats Directive Assessment prior to approval.

NE-12: Ensure that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites having regard to their conservation objectives, shall be permitted on the basis of this Plan (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions.

NE-13: Maintain the nature conservation value and integrity of all Natural Heritage Areas (NHAs), proposed Natural Heritage Areas (pNHAs), Nature Reserves and Killarney National Park. This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies.

Section 10.14: *Environmental Impact Assessment*

Chapter 12: Zoning & Landscape:

*Landscape Protection:*

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

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Section 12.3.1: *Zoning Designations:*

*Rural General:*

Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.

*N.B.* From a review of Map 12.1(c) of the Development Plan it is apparent that the proposed development site is located within an area which has been designated as ‘*Rural General*’.

Chapter 13: Development Management – Standards & Guidelines:

Section 13.2: *Development Standards / General*

**Kerry County Council Renewable Energy Strategy 2012:-**

Section 7.4.5: *Wind Energy*

**10.0 ASSESSMENT**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Environmental Impact Assessment
- Appropriate Assessment
- Other issues

These are assessed as follows:

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### **10.1 The Principle of the Proposed Development:**

10.1.1. From a review of the available information, it is apparent that there has been a multiplicity of individual planning applications granted permission over the years both on site and in the immediate vicinity of same with regard to the development of wind energy and that the gradual and continued evolution / revision of these individual projects has effectively culminated in a scenario whereby what were originally envisaged as 2 No. separate 'wind farms' have since sought to combine in order to form a single overall wind energy development. In my opinion, the subject proposal, which is essentially limited to certain identified infrastructural and servicing works located within the confines of the approved wind farms, can be considered to represent a further revision / modification of the already approved developments and thus it would be entirely reasonable to have regard to those extant grants of permission in addition to those works already undertaken (i.e. the construction of several wind turbines and associated infrastructure) within the Cloghboola Wind Farm. In support of the foregoing, I would advise the Board that the section of roadway proposed to be widened would appear to comprise an older turbary track associated with historical peat-harvesting in the area and that this route, when taken in conjunction with the new section of roadway proposed, was intended to facilitate the construction of the wind energy developments permitted under PA Ref. Nos. 01/2719, 10/616 & 13/544 (ABP Ref No. PL08.243573). Indeed, it is evident from a review of the plans and particulars approved under PA Ref. No. 13/544 (ABP Ref No. PL08.243573) that the location of the access road under consideration was detailed as forming part of the proposed haul route for that development. It is of further relevance to note that the proposed routing of the 1.4km long cable between the Dromadda Beg Wind Farm substation and the Cloghboola Wind Farm substation would appear to follow (in part) the line of underground cabling previously approved under PA Ref. No. 13/544 (ABP Ref No. PL08.243573) in addition to that of an underground grid connection for the Cloghaneleskirt Wind Farm authorised under PA Ref. No. 15/318. Accordingly, I am satisfied that the subject proposal is intrinsically related to the extant grants of permission on site and beyond and that there is no need to revisit the wider merits or overall principle of the wind energy developments already permitted on site.

### **10.2 Environmental Impact Assessment:**

10.2.1 Concerns have been raised in the grounds of appeal that inadequate information has been submitted with the subject application to permit an effective assessment of the potential cumulative and in-combination impacts of the proposed works when taken in conjunction with other existing, permitted and planned wind energy developments in the area. In this respect particular

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reference has been made to the fact that the proposed development will result in the linking of the existing Cloghboola and the approved Dromadda Beg Wind Farms. Furthermore, it has been suggested that notwithstanding any individual environmental impact assessments which have previously been conducted in respect of the 2 No. wind farms, there is a requirement for an overall 'sub-threshold' environmental impact assessment of all the wind farm developments in the area. In response to the foregoing, the applicant has asserted that the proposed works do not necessitate the preparation of an Environmental Impact Statement (and the subsequent completion of an environmental impact assessment) as they do not come within the scope of Schedule 5 of the Planning and Development Regulations, 2001 whilst it is further stated that the works in question would also be unlikely to have significant effects on the environment having regard to the criteria set out under Schedule 7 of the Regulations. In addition, it has been submitted that the proposed access track from the Dromadda Beg Wind Farm to the constructed Cloghboola Wind Farm was shown in the drawings and EIS submitted with PA Ref. No. 13544 and was assessed therein whilst the in-combination and cumulative effects between the Dromadda Beg and the Cloghboola Wind Farms were addressed as part of the Environmental Impact Statement which accompanied PA Ref. Nos. 01/2719 & 13544 / ABP Ref. No. PL08.243573.

10.2.2. Having reviewed the available information, in my opinion, it is of particular relevance in the first instance to note that the subject proposal effectively involves the revision of certain relatively minor aspects of two development projects which were previously approved on site pursuant to a series of extant grants of permission and that the original consents for the two wind energy developments in question as issued under PA Ref. Nos. 01/2719, 10/616 & 13/544 / ABP PL08.243573 each concerned a class of development which was prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, and that said applications were accompanied by Environmental Impact Statements on the basis that the developments proposed exceeded the relevant threshold as set out in Class 3(i) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended i.e. the construction of an installation for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total output greater than 5 megawatts. Accordingly, given that the subject proposal is essentially limited to minor revisions of the aforementioned permitted developments and does not require the wider project to be assessed from first principles, in my opinion, the submission of an EIS pursuant to Class 3(i) is not mandatory in this instance (*N.B.* In this respect the Board may wish to consider if parallels may be

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drawn between the subject application and the judgement of the High Court with regard to 2015 No. 282JR *South-West Regional Shopping Centre Promotion Association Ltd. & Stapleyside Company v. An Bord Pleanala*). Furthermore, on the basis that the approved wind energy developments have already been subjected to environmental impact assessment pursuant to the requirements of the Regulations, it is of relevance to note that the proposed works do not involve a change or extension to the constructed / approved developments which would result in an increase in size greater than 25% or an amount equal to 50% of the relevant threshold (whichever is the greater) in reference to Class 3(i) of Part 2 of Schedule 5 of the Regulations and thus would not necessitate the preparation of an Environmental Impact Statement.

10.2.3 Notwithstanding the foregoing, it is clearly apparent in any event that given the nature and scale of the works proposed, the subject proposal does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and, therefore, it does not necessitate the preparation of an Environmental Impact Statement. Similarly, having regard to the site location, the context of the proposed development site, and the nature and scale of the works proposed, it is my opinion that the said works would be unlikely to have significant effects on the environment having regard to the criteria set out under Schedule 7 of Regulations and thus do not necessitate the submission of an EIS.

10.2.4 With regard to the specific suggestion in the grounds of appeal that inadequate information has been submitted with the subject application to permit an effective assessment of the potential cumulative and in-combination impacts of the proposed works when taken in conjunction with other existing, permitted and planned wind energy developments in the area, I would draw the Board's attention to PA Ref. No. 13/544 / ABP Ref. No. PL08.243573 and the assertion by the applicant that the in-combination and cumulative effects between Dromadda Beg Wind Farm and the Cloghboola Wind Farm were addressed as part of the Environmental Impact Statement which accompanied that application. More specifically, the applicant has referenced the fact that although the access road proposed as part of the subject proposal was not included within the site boundary of PA Ref. No. 13/544 / ABP Ref. No. PL08.243573, it was nevertheless shown in the plans and particulars which accompanied that application wherein it was expressly indicated that *'The Dromadda Beg Wind Farm Extension project is adjacent to the consented Cloghboola Wind Farm development area and infrastructure will be shared including the access roads*

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*and haulage route*'. Accordingly, the case has been put forward that the access road in question was considered as part of the previous assessment of ABP Ref. No. PL08.243573. In this respect the Board is referred to its determination of ABP Ref. No. PL08.243573 and, more particularly, to the contents of its order wherein it is stated that the Board adopted *'the Inspector's report on the Environmental Impact Statement and concurred with its conclusions'* and that it considered that *'the Environmental Impact Statement submitted with the planning application, and other submissions on file, was adequate in identifying and describing the direct and indirect effects of the proposed development'*. Notably, in his analysis of the Environmental Impact Statement in that instance the reporting inspector recorded that *'the overall cumulative and indirect impacts are quite minor'* and that *'as the proposed development can 'piggyback' on infrastructure provided with the 20 turbine windfarm [i.e. the Cloghboola Wind Farm] (in particular, maintenance access roads, electricity connection and construction access), many potential impacts are significantly less than for a stand-alone windfarm facility'*. Therefore, on the basis that the in-combination and cumulative impacts of the (amended) Dromadda Beg Wind Farm (as was then proposed) and the (existing) Cloghboola Wind Farm were clearly assessed in the Board's determination of ABP Ref. No. PL08.243573, and as that assessment would seem to have included consideration of the planned access arrangements which subsequently form part of the subject appeal, there would seem to be no clear rationale which would warrant the revisiting of the conclusions drawn as part of the environmental impact assessment of the earlier application.

10.2.5 Accordingly, having regard to the site location, the context of the proposed development site, the planning history of the application site and adjacent lands, and the nature and scale of the works proposed, in my opinion, the subject proposal does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and, therefore, it does not necessitate the preparation of an Environmental Impact Statement. Furthermore, it is my opinion that the works in question would be unlikely to have significant effects on the environment having regard to the criteria set out under Schedule 7 of the Regulations.

### **10.3 Appropriate Assessment:**

10.3.1 From a review of the available mapping, including Map Nos. 10.1(a) & 10.2(a) of the Kerry County Development Plan, 2015 and the data maps available from the website of the National Parks and Wildlife Service, it is

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apparent that the proposed development site is located within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161) and that it also drains towards the Lower River Shannon Special Area of Conservation (Site Code: 002165). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 10 of the Kerry County Development Plan, 2015, to conserve, manage and, where possible, enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County. Furthermore, Objective NE 12 of the Plan states that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites, having regard to their conservation objectives, will be permitted (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

10.3.2 Having reviewed the available information in light of the nature and scale of the proposed development, the specifics of the site location relative to certain Natura 2000 sites, and having regard to the prevailing site topography, in my opinion, by employing the source/pathway/receptor principle of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and the Lower River Shannon Special Area of Conservation. At this point it is of relevance to note that the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area has been designated as being of special conservation interest on the basis that it supports the Hen Harrier. Most notably, the site is considered to be a stronghold for the Hen Harrier and supports the largest concentration of the species in the country. With regard to the Lower River Shannon Special Area of Conservation, on the basis that the lands in question are upstream of this Natura 2000 site and thus drain towards same, it will be necessary to consider the potential for water-based / pollution / contamination impacts.



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10.3.3 In screening the subject proposal for the purposes of appropriate assessment, I would refer the Board to the screening exercise undertaken by the applicant wherein it is stated that the following elements of the proposed works would have the potential to give rise to significant effects:

- The installation of trenches in areas of semi-natural habitat which would give rise to temporary habitat disturbance.
- Habitat loss (cutover and blanket bog) from the construction of a new road for a length of approximately 50m and the upgrading of existing track for a length of c. 110m.
- The operation of machinery and personnel potentially disturbing sensitive fauna resident in the area by way of noise, vibration, light etc.
- The movement, management and storage of unconsolidated material that could potentially give rise to pollution events in surrounding aquatic receptors (this could occur in the event material were to become entrained by surface water runoff during the site works).
- Accidental spillages of cementitious material, fuels or other substances thereby impacting on sensitive aquatic ecosystems.

10.3.4 This report subsequently considers the qualifying interests and the conservation requirements of each of the identified Natura 2000 sites together with the characteristics of the proposed development and concludes that the following impacts will require further consideration:

- *Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area:*
  - Site avoidance (due to temporary habitat disturbance) by breeding or foraging Hen Harrier
  - Loss of suitable Hen Harrier habitat due to new road construction
  - Potential disturbance of breeding Hen Harrier during the construction phase.
- *Lower River Shannon Special Area of Conservation:*
  - Deterioration of water quality within the aquatic habitats of the cSAC.

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10.3.5 With regard to the Moanveanlagh Bog Special Area of Conservation which is located 12.5km from the proposed development site, the screening exercise has concluded that in view of the qualifying interests of the cSAC and the scale of the proposed works, there is no potential for the subject proposal to give rise to any adverse impacts on that particular European Site.

10.3.6 Having reviewed the available information, including the screening exercises conducted by the applicant and the Planning Authority in respect of the subject proposal, and following consideration of the 'source-pathway-receptor' model, it is my opinion that, in accordance with the precautionary principle, it is not possible to rule out the likelihood of the proposed development significantly impacting on Natura 2000 sites and that particular consideration needs to be given to the likelihood of the proposal to have a significant effect on the conservation objectives of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area given the potentially significant impacts on a protected bird species (i.e. the Hen Harrier) as a result of disturbance and a loss of foraging habitat thereby threatening the qualifying interests of the site and undermining the relevant conservation objectives which seek to:

- Maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:
  - Hen Harrier (*Circus cyaneus*)

10.3.7 Similarly, I would concur with the applicant's screening conclusions as regards the need to consider the likelihood of the proposal to have a significant effect on the conservation objectives of the Lower River Shannon Special Area of Conservation given the potentially significant impacts on water quality which could arise from any runoff of sediment and / or pollutants into the SAC during the construction of the proposed development.

10.3.8 Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the likelihood of the proposed development significantly and negatively affecting the aforementioned Natura 2000 sites cannot be objectively ruled out and therefore it is necessary to proceed to 'Appropriate Assessment (Stage 2)'.

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10.3.9 The subject application has been accompanied by a Natura Impact Statement and I would refer the Board to this document as a basis on which to assess the likely impact of the proposed development.

10.3.10 With regard to the Stage 2 Appropriate Assessment as set out in the submitted Natura Impact Statement, I am generally satisfied that it has adequately identified the key characteristics of the potential impacts arising as a result of the proposed development which would be likely to undermine the stated conservation objectives of the identified designated sites. These include the possibility that the proposed development could give rise to a loss of foraging habitat and the displacement of hen harrier in addition to the direct disturbance of breeding hen harrier during construction works within the SPA, and also the potential for contaminated ground and surface waters to impact on the integrity of the SAC and its qualifying interests. This NIS subsequently concludes that, subject to adherence to a series of specified mitigation measures (Section 4.4), there would be no significant adverse effects on the integrity of the identified sites as a result of the proposed development.

10.3.11 Therefore, I consider it reasonable to conclude, on the basis of the information available, including the conclusions of the appropriate assessment previously undertaken with regard to ABP Ref. No. PL08.243573, and noting the conclusions of the Local Authority Biodiversity Officer, that the proposed development, when taken individually and in combination with other plans or projects, will not adversely affect the integrity of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area or the Lower River Shannon Special Area of Conservation (or any other Natura 2000 site) in view of the respective sites' conservation objectives.

#### **10.4 Other Issues:**

##### **10.4.1 Visual Impact:**

Considering the nature and limited scale of the proposed works, particularly in the context of the wider wind energy developments already approved on site, in my opinion, the visual impact of the submitted proposal will be negligible.

##### **10.4.2 Constructional Impacts:**

Concerns with regard to the mitigation of constructional impacts can be satisfactorily addressed by way of an appropriate condition in the event of a grant of permission.

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## **11.0 RECOMMENDATION**

Having regard to the foregoing I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

### **Reasons and Considerations:**

Having regard to:

- a) the national policy with regard to the development of sustainable energy sources;
- b) 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;
- d) the general topography and landscape features of the site and the general area;
- e) the nature and limited scale of the proposed development;
- f) the planning history of the site, and
- g) the submissions made in connection with the planning application and the appeal.

The Board considered that the NIS submitted with the application and other submissions on file, was adequate in identifying and describing the direct and indirect effects of the proposed development. It is considered therefore, that notwithstanding the location of the proposed development within a Special Protection Area, with the mitigation measures set out in the NIS the proposed development would not have a significant impact on the conservation objectives of the SPA and would otherwise be in accordance with the proper planning and development of the area.

### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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

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authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The mitigation measures identified in the Natura impact statement, and other particulars submitted with the planning application, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

3. The construction of the development shall be managed in accordance with a comprehensive Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include:
  - a) the appointment of a suitably qualified person to act as Environmental Manager for the project on a full time basis. This person shall be responsible for ensuring that all environmental control measures, shall be fully implemented and maintained,
  - b) proposals for the protection of watercourses in the vicinity according to criteria to be set out in consultation with Fisheries Ireland,
  - c) full details of all measures for the control of drainage during and after construction, including the use of settlement ponds and silt traps,
  - d) full details for the control of run-off from temporary spoil storage areas,
  - e) details of the nature of all materials used in constructing all temporary and permanent access tracks, and
  - f) full details of storage proposals for hazardous materials, cement leachate, hydrocarbons and other materials to be used during construction.

For the avoidance of doubt, this management plan shall include all mitigation and management proposals contained in the Natura impact statement, submitted to the planning authority and An Bord Pleanála.

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**Reason:** In the interest of protecting watercourses and natural habitats and the prevention of environmental pollution.

4. Prior to any construction works being carried out between mid-March and mid-August, a survey for breeding hen harriers shall be carried out by a competent, experienced ornithologist. The survey shall cover the area within a boundary of 500 metres of the works to be carried out during the above period. It shall be the responsibility of the ornithologist, based on his/her experience and/or professional opinion, to ensure that the survey methodology (location of vantage points, length and timing of observations) is sufficient to ensure that a hen harrier breeding site will not be overlooked. Taking into account the results of this survey, no construction works shall be carried out during the above period within 500 metres of a pre-nesting breeding site and/or nest of a hen harrier, except with the written approval of the National Parks and Wildlife Service of the Department of Arts, Heritage and the Gaeltacht.

**Reason:** To avoid significant disturbance to protected species.

5. Mitigation measures recommended in the Natura Impact Statement for the protection of water quality shall be implemented in full and in accordance with best practice guidelines (CIRIA guidelines). Wherever possible, clean water shall be drained separately from water affected by construction works. Works with a potential to result in pollution or siltation of watercourses shall be supervised by an on-site-clerk-of-works who shall report on compliance with the relevant mitigation measures. The clerk-of-works shall be empowered to halt works where he/she considers that the continuation of works would be likely to result in a significant pollution or siltation incident. In the event of a water pollution incident, or damage to a river candidate Special Area of Conservation, these reports shall be made available to the planning authority and on-site works shall cease until authorised to continue by the planning authority.

**Reason:** To avoid deterioration of habitat in the Lower River Shannon candidate Special Area of Conservation.

6. Any excess peat excavated to create the access road and other infrastructure shall, where feasible without creating a significant risk of slippage, be formed into linear banks, but not side cast over existing heath, bog or rough grass within hen harrier foraging habitat. These linear

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banks shall be revegetated and/or replanted in such a manner and time to avoid excessive siltation of the drainage from the site and to provide areas of low scrub and heather cover in the medium term.

**Reason:** To avoid deterioration of habitat within the Special Protection Area.

7. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –
- a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
  - b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

Signed: \_\_\_\_\_

Robert Speer  
Inspectorate

Date: \_\_\_\_\_