

S.37
File With

FO' Regan

SECTION 131 FORM

Appeal No: PL

03.239378

Defer Re O/H

☐

To. SEO

Having considered the contents of the submission dated/received

20/3/14

from

observer

I recommend that section 131 of the Planning and Development Act, 2000

be/not be invoked at this stage for the following reason(s):

Not circulated pending
Boards Review

EO:

Rick O

Date:

To EO:

Section 131 not to be invoked at this stage

☐

Section 131 to be invoked - allow 2/4 weeks for reply

☐

SEO:

Date:

SAO:

Date:

M

Please prepare BP _____ Section 131 notice enclosing a copy of the attached submission
to: _____

Allow 2/3/4 weeks BP _____

EO:

Date:

AA:

Date:

CORRESPONDENCE FORM

Appeal No: PL 23 9378

M _____

Please treat correspondence received on 20/3/14 as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP 23

3. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP _____

2. Keep Envelope: ☐

3. Keep Copy of Board's letter ☐

Amendments/Comments

COOR and Shanavogh Residents ASSOC
Response to New Notices

4. Attach to file

(a) R/S ☐

(d) Screening ☐

(b) Mapping ☐

(e) Inspectorate ☐

(c) Processing ☐

RETURN TO EO ☒

Plans Date Stamped ☐

Date Stamp Filed in ☐

EO: Risa O

AA: 18

Date: 24/3/14

Date: 25/3/14

Lisa Quinn

From: procboardemail
Sent: 21 March 2014 09:33
To: Lisa Quinn
Subject: FW: Wind Farm at Coor West, Shanavogh East and Shanavogh West, County Clare; An Bord Pleanála Reference PL 03.239378.
Attachments: CSWF-079 Obs'ns on the applicant's NIS, 20-Mar-14.pdf

From: Bord
Sent: 20 March 2014 17:16
To: procboardemail
Subject: FW: Wind Farm at Coor West, Shanavogh East and Shanavogh West, County Clare; An Bord Pleanála Reference PL 03.239378.

From: Jack O'Sullivan [<mailto:jackosullivan2006@gmail.com>]
Sent: 20 March 2014 17:14
To: Bord
Subject: Wind Farm at Coor West, Shanavogh East and Shanavogh West, County Clare; An Bord Pleanála Reference PL 03.239378.

The Secretary,

An Bord Pleanála,

64 Marlborough Street,

Dublin 1.

Dear Sir,

Appeal against Decision by Clare County Council to Refuse Planning Permission to McMahon Finn Wind Acquisitions Ltd for a Wind Farm at Coor West, Shanavogh East and Shanavogh West, County Clare

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

OBSERVATIONS ON THE NATURA IMPACT STATEMENT RECEIVED BY AN BORD PLEANÁLA FROM MCCARTHY KEVILLE O'SULLIVAN LTD.

OBSERVATIONS SUBMITTED ON BEHALF OF THE OBJECTORS AND OTHER RESIDENTS OF THE COOR AND SHANAVOGH AREAS

We have been instructed by the objectors and other residents living in proximity to the planned wind farm at Coor West, Shanavogh East and Shanavogh West, County Clare, to submit on their behalf the attached observations on the Natura Impact Statement submitted to the Board by the applicant as part of the further information requested from the applicant by the Board.

Yours sincerely,

Jack O'Sullivan

Environmental Management Services

On behalf of the

Coor and Shanavogh Residents and Other Residents listed in Appendix I

Environmental Management Services
Aplinkos Apsaugos Konsultacijos
Comhairleoirí Comhshaoil
Environmental and Planning Consultants
Outer Courtyard,
Tullynally,
Castlepollard,
County Westmeath,
Ireland.

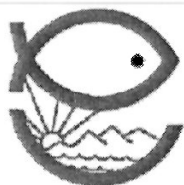
Loc8 Code: MJM-20-W96

Telephone +353 44 966 2222

Fax +353 44 966 2223

E-mail jackosullivan2006@gmail.com

and jack@ems-ireland.org



Environmental Management Services
Comhairleoirí Comhshaoil
Environmental and Planning Consultants

**OBSERVATIONS ON THE NATURA IMPACT STATEMENT
RECEIVED BY AN BORD PLEANÁLA AS PART OF THE
FURTHER INFORMATION RESPONSE FROM MCCARTHY
KEVILLE O'SULLIVAN LTD.**

**In Relation to the Decision by Clare County Council to Refuse Planning
Permission to McMahon Finn Wind Acquisitions Ltd for a Wind Farm at
Coor West, Shanavogh East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

**SUBMITTED ON BEHALF OF THE OBJECTORS AND
OTHER RESIDENTS OF THE COOR AND SHANAVOGH
AREAS LISTED IN APPENDIX I**

The names and addresses of the Objectors and Other Residents are given in Appendix I
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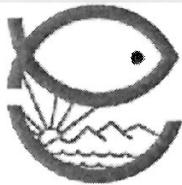
Environmental Management Services
Outer Courtyard, Tullynally,
Castlepollard,
County Westmeath, Ireland

Telephone 044-966 2222

Fax 044-966 2223

E-mail jackosullivan2006@gmail.com

20 March 2014



Environmental Management Services
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Clós Seachtrach, Tulaigh an Eallaigh, Baile na gCros, Co. an Iarmhí
Telephone 044 966 2222 Fax 044 966 2223 E-mail jackosullivan2006@gmail.com

20 March 2014

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

Dear Sir,

**Decision by Clare County Council to Refuse Planning Permission to
McMahon Finn Wind Acquisitions Ltd for a Wind Farm at Coor West,
Shanavogh East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

**OBSERVATIONS ON THE NATURA IMPACT STATEMENT RECEIVED BY AN BORD
PLEANÁLA FROM MCCARTHY KEVILLE O'SULLIVAN LTD**

**SUBMITTED ON BEHALF OF THE OBJECTORS AND OTHER RESIDENTS
OF THE COOR AND SHANAVOGH AREAS LISTED IN APPENDIX I**

We have been instructed by the objectors and other residents listed in **Appendix I** and living in proximity to the planned 6-turbine wind farm at Coor West, Shanavogh East and Shanavogh West, County Clare, to submit on their behalf the attached observations on the **Natura Impact Statement** submitted to the Board by the applicant.

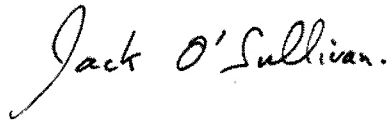
Having studied and considered the applicant's Natura Impact Statement, we urge An Bord Pleanála to refuse permission for this inappropriately located wind farm development which, if permitted, would be in conflict with the Clare County Development Plan 2011-2017, with the West Clare Local Area Plan 2009-2017, would have adverse consequences on the four designated Natural Heritage Areas (NHAs) located within 8 km of the site, on the catchments of the rivers Caheraran, Annageeragh and Annagh, as well as an important breeding ground and foraging area for the Hen Harrier, a protected species.

This wind turbine development, if permitted, would also seriously injure the visual and residential amenities of the area located on the western edge of the Sliabh Callan Uplands, close to the Atlantic coast of County Clare and to the towns of Miltown Malbay and Ennis, with the open landscape and long distance views as far as the Atlantic coast to the west and the Shannon Estuary to the

south. This development, if permitted, would depreciate the value of properties in the area surrounding the site.

Therefore we urge An Bord Pleanála to uphold the refusal of permission by Clare County Council for the reasons stated in the planning authority's notification of refusal and for the other reasons stated in our earlier observations and in these attached observations.

Yours sincerely,

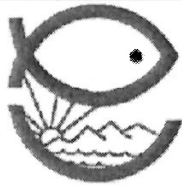
A handwritten signature in black ink that reads "Jack O'Sullivan." The signature is written in a cursive, flowing style.

Jack O'Sullivan

Environmental Management Services

On behalf of the

Coor and Shanavogh Residents and Other Residents listed in Appendix I



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**First Party Appeal against the Decision by Clare County
Council to Refuse Planning Permission to McMahon Finn Wind
Acquisitions Ltd for a Wind Farm at Coor West, Shanavogh
East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

**OBSERVATIONS ON THE APPLICANT'S NATURA IMPACT
STATEMENT RECEIVED BY AN BORD PLEANÁLA FROM
MC CARTHY KEVILLE O'SULLIVAN LTD.**

**SUBMITTED ON BEHALF OF THE OBJECTORS AND
OTHER RESIDENTS OF THE COOR AND SHANAVOGH
AREAS LISTED IN APPENDIX I**

1. INTRODUCTION

On 19 May 2011, McMahon Finn Wind Acquisitions Ltd applied to Clare County Council for planning permission for a 6-turbine wind farm, electricity sub-station and control building, internal road system, borrow pits, temporary construction compound, and other associated works, at Coor West, Shanavogh East and Shanavogh West, County Clare. The planning application was accompanied by an Environmental Impact Statement (EIS).

Four designated Natural Heritage Areas (NHAs) are located within 8 km of the site; and the general area of the site and its surroundings is an important breeding ground and foraging area for the Hen Harrier, a protected species. In addition, the Carrowmore Point to Spanish Point SAC and the Mid-Clare Coast SAC are located a relatively short distance to the west of the proposed wind farm site.

On 05 September 2011, we submitted to An Bord Pleanála substantial and detailed observations on the above First Party appeal; and these observations



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were submitted on behalf of the residents listed in **Appendix I**. Our submission was acknowledged by the Board, and we attach in **Appendix II** a copy of the statutory fee receipt dated 05 September 2011 and a copy of the Board's letter dated 07 September 2011.

On 13 February 2013, An Bord Pleanála issued a statutory notice to the applicant, noting that the Board had serious concerns about the application, and requesting further information on a number of issues. The further information was received by the Board in August 2013, and on 24 October 2013 we submitted observations on the further information.

In our submission, we pointed out that the initial planning application, received by Clare County Council on 19 May 2011, did not include either a Screening Report or a Stage 2 Natura Impact Statement. It was necessary for the Board to request the latter from the applicant, and this was provided as a component of the applicant's further information response. However, the fact that a Natura Impact Statement has been provided was not notified to members of the public, and we submitted that this lack of notification was in conflict with the requirement that submissions or observations may be made to the Board about the effects of the proposed development on a European site.

Our submission dated 24 October 2013 referred to Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations 2011 (S.I. No. 476 of 2011), which came into force on 21 September 2011, and which amended the Planning and Development Regulations 2001 to 2011, by the insertion of additional Parts 19, 20 and 21 into the Planning and Development Regulations. The newly inserted "Part 20" deals with Appropriate Assessment; and Chapter 2 of Part 20 has the effect of inserting a new Section 239 which requires that a newspaper notice must state that, if a planning application is accompanied by a Natura Impact Statement, the published notice must refer to that fact.

We submitted that the public notice text recommended by the Board and used by the applicant in the site notice erected on 27 September did not comply with the above Section 239 requirement, and was therefore legally inadequate. We therefore urged the Board to either refuse planning permission, or to inform the applicant that the further information (including the NIS) must be re-advertised by means of an appropriate site notice and newspaper notice in the correct format.

It was therefore with some interest that we received the Board's letter of 11 February 2014, in which the Board stated that having further assessed the appeal, the Board was of the opinion that the Natura Impact Statement submitted to the Board should be notified to the public, and an opportunity given to the public to make written submissions or observations on the Natura Impact Statement. The suggested texts for a site notice and a newspaper notice were



*Observations on behalf of the Coor and Shanavogh Residents, An Bord Pleanála
Reference PL 03.239378; Clare County Council Reference P11 / 360*

attached, and the applicant was instructed to provide fresh public notices in a newspaper and on the site of the proposed wind farm.

In response to the published newspaper notice and the site notice, we have been instructed by the residents listed in **Appendix I** to submit observations on the applicant's NIS to the Board on their behalf. We trust that the following observations will show that the information provided in the NIS confirms our concern that the proposed wind farm, if permitted, would be in an unsuitable location and should be refused by An Bord Pleanála on grounds which include potential adverse consequences to protected species of wildlife.

2. THE COOR AND SHANAVOGH RESIDENTS

The Coor and Shanavogh Residents include a significant number of people living in the vicinity of the proposed wind farm, and who consider that their residential amenities and the quality of their lives would be adversely affected by the proposed development.

On 05 September 2011, the Coor and Shanavogh Residents (names and addresses listed in **Appendix I**) submitted to An Bord Pleanála substantial and detailed observations on the First Party appeal made by the applicant; and on 24 October 2013 the residents submitted observations on the applicant's further information. Both of these submissions have been acknowledged by the Board.

The Coor and Shanavogh Residents urge An Bord Pleanála to uphold the refusal of permission by Clare County Council for the reasons stated in the planning authority's notification of refusal and for other reasons stated in these further observations.

3. SUMMARY OF THE NATURA IMPACT STATEMENT SUBMITTED BY THE APPLICANT

Some of the issues relating to the Natura Impact Statement which the applicant made in the Further Information Response include:

- ▶ The conservation and habitat management plan described in the Further Information Response will run concurrently with the commencement of construction of the proposed wind farm development (section 2.6.1, page 24);
- ▶ The wind farm development company, i.e., the planning permission applicant, will be responsible for the implementation of the conservation and habitat management plan (section 2.6.4, page 24);



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- ▶ When considering the cumulative impact of the proposed wind farm on the Hen Harrier population, the applicant's response notes that there is currently one operating wind farm in the area, while permission has been granted for a further seven wind farm developments (including an extension to the existing Booltiagh wind farm) (section 2.7, page 26);
- ▶ The habitat conservation and enhancement measures for the Coor West wind farm site would augment those in place for the adjacent Sliabh Callan site (which surrounds an area that holds two traditional Hen Harrier nest sites); and the response predicts that there would be a cumulative positive impact on Hen Harriers, given that a total of over 1,300 hectares of habitat in one area would be managed for the benefit of the species (section 2.7, page 28);
- ▶ The habitat conservation and management plan included a number of appendices giving advice on soil analysis, lime and plant nutrient applications, and hedgerow management;
- ▶ The Further Information response by the applicant included a Stage 2 Natura Impact Statement (pages 119 to 139) which concludes that no significant or indeterminate impacts on the conservation objectives or overall integrity of any Natura 2000 site in the vicinity of the development site are likely to result from the proposed project; and,
- ▶ The Natura Impact Statement lists the Designated Natura 2000 sites downstream of the site, i.e., the Mid-Clare Coast SPA (Site Code 004182) and the Carrowmore Point to Spanish Point and Islands cSAC (Site Code 001021), and points out that surface waters from the site and its environs enter the sea in the vicinity of Spanish Point, approximately nine kilometres downstream; but that with the mitigation measures prescribed, no significant negative impacts on designated sites, protected species, or water quality are predicted.

4. OBSERVATIONS ON THE NATURA IMPACT STATEMENT SUBMITTED BY THE APPLICANT

4.1 Some Preliminary Observations on the European Union Habitats Directive (Council Directive 92/43/EEC on the Conservation of Wild Habitats and of Wild Fauna and Flora)

The aim of the European Habitats Directive (Council Directive 92/43/EEC on the conservation of wild habitats and of wild fauna and flora) is to create a network of protected wildlife sites in Europe, maintained at a favourable conservation status. Each member state must designate its most important natural areas as Special Areas of Conservation. The Directive specifies the scientific criteria on the basis of which SACs must be selected and very strictly curtails the grounds



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that can be used as justification for damaging a site or reducing the area of a site. The network of sites is referred to as NATURA 2000 and includes SACs (Special Areas of Conservation) for protected habitats and species and SPAs (Special Protection Areas) for protected birds and their habitats.

The European Habitats Directive was transposed into Irish legislation by the European Communities (Natural Habitats) Regulations 1997 and amended in 1998, 2005 and 2011. The EC Birds and Natural Habitats Regulations, 2011, address transposition issues raised in recent judgements of the ECJ against Ireland, and along with provisions of the Planning and Development (Amendment) Act, 2010, clarify the obligations of planning authorities under the Birds and Habitats Directives.

An Bord Pleanála, Clare County Council and the National Parks and Wildlife Service (within the Department of Arts, Heritage and the Gaeltacht) have joint statutory responsibility under the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) to protect and maintain SACs, SPAs and other Natura 2000 sites, and to ensure that no development is permitted or allowed to continue which would significantly damage or disturb this designated site, its habitats or species of conservation interest.

These Regulations and the Planning and Development (Amendment) Act 2010 require planning authorities when considering plans or projects that are likely to have a significant effect on an SAC or SPA, to ensure that an **appropriate assessment screening** (and, where required, the production of a **Natura Impact Statement**, followed by a full **appropriate assessment**) of the implications of the plan or project for the conservation status of the site is undertaken.

Sites may contain priority or non-priority habitats and species. The only justifications for damaging a qualifying "priority" site are "*considerations relating to human health and public safety, to beneficial consequences of primary importance of the environment, or further to an opinion from the European Commission, to other imperative reasons of overriding public interest*" (IROPI), but this can be allowed only after an assessment is made in line with the Article 6 procedure, and there are no other alternatives and an agreement is reached with the European Commission.

Article 6 of the Habitats Directive provides a strict assessment procedure for any plan or project not directly connected with or necessary to the management of a designated European site, but which has the potential to have implications for any European site in view of the site's conservation objectives. The article has three main sets of provisions.

Article 6(1) makes provision for the establishment of the necessary conservation measures, and is focused on positive and proactive interventions.



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Article 6(2) requires Member States to avoid habitat deterioration and significant species disturbance; its emphasis is therefore preventive. Articles 6(3) and 6(4) set out a series of procedural and substantive safeguards governing plans and projects likely to have a significant effect on a Natura 2000 site. Within this structure, it can be seen that there is a distinction between Articles 6(1) and 6(2) which define a general regime, and Articles 6(3) and 6(4) which define a procedure applying to specific circumstances.¹

Article 6(2) of the Habitats Directive states that:

"Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbances of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this directive."

The article takes as a starting point the **prevention principle**, and it goes far beyond the simple management measures necessary to ensure conservation, since these are already covered by Article 6(1). The words 'avoid' and 'could be significant' stress the anticipatory nature of the measures to be taken. It is not acceptable to wait until deterioration or disturbances occur before taking the necessary measures. This article should be interpreted as requiring Member States to take all the appropriate actions which it may reasonably be expected to take, to ensure that no significant deterioration of habitats or disturbance of protected species occurs.

Article 6(3) of the Habitats Directive states that:

"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

The provisions of Articles 6(3) and 6(4), taken together, constitute a very precise form of development regime, setting out the circumstances within which plans and projects with negative effects may or may not be allowed. The provisions thus ensure that negative economic and other non-ecological

¹ European Commission. Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. Luxembourg: Office for Official Publications of the European Communities; 2000; 69 pp.



*Observations on behalf of the Coor and Shanavogh Residents, An Bord Pleanála
Reference PL 03.239378; Clare County Council Reference P11 / 360*

requirements can be balanced against conservation objectives. Articles 6(3) and 6(4) define a **step-wise procedure** for considering plans and projects:

- (a) The first part of this procedure consists of an assessment stage and is governed by Article 6(3), first sentence;
- (b) The second part of the procedure, governed by Article 6(3), second sentence, relates to the decision of the competent national authorities; and,
- (c) The third part of the procedure (governed by Article 6(4)) comes into play if, despite a negative assessment, it is proposed not to reject a plan or project, but to give it further consideration. The applicability of the procedure and the extent to which it applies depend on several factors; and, in the sequence of steps, each step is influenced by the previous step.

It is important to note that the safeguards set out in Articles 6(3) and 6(4) are triggered not by a certainty but by a **likelihood** of significant effects. Thus, in line with the **precautionary principle**, it is unacceptable not to undertake an appropriate assessment on the basis that significant effects are uncertain or may be unknown.

Other points to note are:

- a likelihood of significant effects may arise not only from plans or projects located within a protected site but also from plans or projects located outside a protected site;
- a series of individually modest impacts may in combination produce a significant impact; and Article 6(3) addresses this by taking into account the combination of effects from other projects;
- it is necessary to take into account the sensitivity of the location; and,
- the assessment is a step preceding and providing a basis for other steps — in particular, an approval or refusal of a plan or project.

4.2 A Note on Water Dependant Species

Given that the proposed wind farm would be located, if permitted, in an upland area, and that its construction would be likely to affect local streams draining the planned site, it is appropriate to consider the degree of risk to which water-dependant species might be exposed.

On 02 September 2008, the Development Applications Unit of the Department of the Environment, Heritage and Local Government issued Circular letter L8/08, on the protection of natural heritage and national monuments in



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***Observations on behalf of the Coor and Shanavogh Residents, An Bord Pleanála
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connection with projects funded under the water services investment and rural water programmes.

The Circular Letter L 8/08 points out that most conservation sites will contain water-dependent habitats or species, with the result that an SAC boundary cannot be taken as indicative of the location of the relevant habitat or species. A planning authority will therefore require the specific locations of the habitats and species in order to screen these projects. These data will need to be collected through surveys where the information is not available from NPWS or other sources. The NPWS do not generally have the locations of habitats and species on a single GIS, or other readily available formats.

It is therefore our observation that the applicant's NIS must include the results of surveys of streams and rivers draining the proposed site, or flowing from the proposed site towards downstream Natura 2000 sites, in order to determine the location, abundance and population structure of any water-dependant species of conservation significance, so as to determine the risk to such species.

4.3 Impacts on Natura 2000 Sites

In our submission dated 24 October 2013, we pointed out that nearby designated sites include Natural Heritage Areas (NHAs), Special Areas of Conservation (SACs), candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs).

As noted briefly in section 3 above, the applicant's Stage 2 Natura Impact Statement (NIS, pages 119 to 139 of the FI response) lists six designated Natura 2000 sites within 15 km of the proposed wind farm site, namely:

- Mid-Clare Coast SPA (Site Code: 004182) – the nearest SPA to the proposed wind farm site, encompassing a coastal area from Spanish Point south to Doonbeg and at its nearest point is only 6km from the wind farm site;
- Carrowmore Point to Spanish Point and Islands SAC (Site Code: 001021) – designated for a number of coastal habitats listed in Annex I of the Habitats Directive, and it is relevant to note that surface water flows generated on the site (as well as in the vicinity of the site) enter the sea near Spanish Point, some 6.3km downstream of the wind farm site;
- Carrowmore Dunes SAC (Site Code: 002250);
- Inagh River Estuary SAC (Site Code 000036);
- Lower River Shannon SAC (Site Code: 002165); and,
- The Cliffs of Moher SPA (Site Code 004005).



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Two of these Natura 2000 sites are downstream of the proposed wind farm location, i.e., the Mid-Clare Coast SPA and the Carrowmore Point to Spanish Point and Islands cSAC. The NIS pointed out that surface waters from the site and its environs enter the sea in the vicinity of Spanish Point; but the NIS then predicted that, because of the proposed mitigation measures prescribed, no significant negative impacts on designated sites, protected species, or water quality would occur.

The Natura Impact Statement then concluded that no significant or indeterminate impacts were likely to occur as a result of the proposed project on the conservation objectives or overall integrity of any Natura 2000 site in the vicinity of the site of the proposed development.

It is our submission that the potential impact of the proposed development on the above-mentioned SACs and SPAs may be much more significant than stated in the NIS. We stated in our submission dated 24 October 2013 that, although these protected areas are located at some distance from the subject site, the Aughaveema River directly connects the development site to these designated areas, and therefore any contamination or reduction in water quality caused by the development could have a direct impact on one or more of the Natura 2000 sites. Given this situation, we further submit that it is not possible to state with an apparent degree of certainty (as the applicant has done in the NIS) that there will be no significant effects on the either or both of the two Natura 2000 sites downstream of the proposed wind farm location.

In support of our earlier submission, we quoted from the Environmental Report produced by Clare County Council's Senior Executive Chemist, which pointed out that *"the separation distance is totally inadequate between the stream and the various elements of the proposed development"*, and *"there is simply no room to provide adequate retention for storm water settlement, prior to discharge"*.

We would also repeat our concern, by way of further observation, that any contaminants carried downstream on silt from the proposed wind farm site, especially during construction, would be likely to settle out where the Aughaveema River encounters higher salinity seawater. Deposition of fine silt at or near the mouth of a river is a well understood mechanism, caused by flocculation, and leading in many areas to the formation of mud banks in estuaries. Contaminants entering the river upstream are easily concentrated by this process, leading to elevated concentrations of heavy metals and non-biodegradable organics. This is a well-known ecological process, by which living organisms inhabiting areas of deposition can accumulate elevated levels of contaminants, despite their location at some distance from the source of the contamination.

It is therefore a major concern that silt and contaminants carried down from the construction site could be ingested by filter-feeding marine organisms, would



enter the marine food chain, and could therefore affect the . It is therefore inadequate to conclude that the proposed development would have no impact on the downstream coastal SAC and SPA.

4.4 Impacts on Protected Freshwater Aquatic Species in the Vicinity of the Proposed Wind Farm Site

Watercourses in the local area have been shown to contain freshwater pearl mussels (*Margaritifera margaritifera*), an endangered species listed in Annex II of the EU Habitats Directive. The pearl mussel is also listed as '*an extremely endangered species*' on the International Union for the Conservation of Nature and Natural Resources (IUCN) Red List of threatened animals.

The freshwater pearl mussel is legally protected in Ireland under Statutory Instruments No. 112 of 1990 and No. 94 of 1997. It was once widespread in mainland Europe, Britain and Ireland; but there has been a decline of more than 90% in European populations during the 20th century, and the situation for the mussel continues to deteriorate.

These mussels require extremely clean water and the type of habitat provided by the stream running through the site. It is our observation that no survey of the watercourses within and immediately downstream of the site has been carried out to determine whether freshwater pearl mussels are present, and to assess their population. In this connection we would note that the freshwater pearl mussel is known to occur abundantly in parts of the Cloon River, located in the Lower River Shannon SAC.

The northern section of the wind farm site (approximately 57% of the total site area) drains to the Annagh River which flows in a south-westerly direction and enters the sea 1.0 km south of Spanish Point. The southern section of the wind farm site drains to the Aughaveemagh River catchment.

One or both of these rivers may contain species listed in Annex I of the Habitats Directive, and we would draw the Board's attention to the recent refusal of planning permission (ABP Reference PL03.PA0025) for the proposed Shragh wind farm at nearby Doonbeg, based, inter alia, on the fact that the Doonbeg river was shown to harbour a thriving population of the freshwater pearl mussel *Margaritifera margaritifera*.

The defining features of the Doonbeg River are listed in the "*Shragh Wind Farm: Stage 2 Survey of Freshwater Pearl Mussel in the Lower Doonbeg River, County Clare*", carried out by EirEco in June 2012, as:

- A lowland river which flows east to west;
- The surrounding soils are mainly peats and peaty gley;



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- The river contains sea trout and brown trout;
- Thickets of willow and hawthorn overhang the river in places;
- The adjacent lands are primarily under open grassland;
- The river flows through peat bog and forested areas;
- The flow regime is primarily gentle to swift;
- The substrate is primarily cobble with scattered boulder along with varying amounts of gravel and sand; and,
- The riverbanks are primarily steep-sided.

The Aughaveema River shares many characteristics with the Doonbeg River, including the underlying soils, the gravel and sand riverbed, the water quality, the flow regime, the character of the surrounding land and the indicator species of sea trout and brown trout, even though the Aughaveema River is smaller in scale.

Despite the fact that the Doonbeg River does not meet defined water quality objectives for the Freshwater Pearl Mussel as determined in the European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (SI. No. 296 of 2009), and it is not designated for this freshwater bivalve, it was shown by the EirEco survey to be a major habitat for the species.

The Aughaveema River may not appear to provide perfect conditions for the Freshwater Pearl Mussel, but it does meet many of the known preferred aquatic conditions and it is located in close proximity to the Doonbeg River. Therefore, it is very likely that the Aughaveema River supports a viable population of the Pearl Mussel, and therefore a professional survey of the river should have been undertaken as part of the Natura Impact Statement.

Another protected species – the freshwater crayfish (*Austropotamobius pallipes*) – has been observed in the lower reaches of the Aughaveema River, and it appears that no survey of the river for the presence of this species has been carried out during the preparation of the NIS.

Since neither of these surveys appear to have been carried out, we would conclude that the findings of the NIS must be in doubt, and the Board should refuse planning permission for that reason.

4.3 Impact on Bats

In our observations dated 05 September 2011 on the applicant's appeal, and in our submission dated 24 October 2013, we drew the attention of the Board to a submission by An Taisce which referred to an increasing amount of research



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showing that bats are adversely impacted by wind farms. These adverse impacts arise as a result of changes in air pressure caused by the rotating turbine blades; and we quoted from one of the research papers.

We pointed out to the Board in our previous observations that power-generating wind turbines have long been recognized as a potentially life-threatening hazard for birds, but at most wind farm facilities, bats actually die in much greater numbers than birds. 90% of the bats examined after death showed signs of internal haemorrhaging consistent with trauma from the sudden drop in air pressure (a condition known as barotrauma) at turbine blades. Only about half of the bats showed any evidence of direct contact with the blades.

We recommended that a more complete and detailed study of bat populations should have been carried out, and we suggested to the Board that unless such a study of the local and migratory bat population has been undertaken and reported, and unless mitigation measures can be put in place to demonstrate that bat deaths can be avoided, planning permission should be refused. This is a matter which cannot be adequately addressed by conditions subsequent to a decision to grant planning permission.

By way of observation on the applicants Natura Impact Statement, we would again remind the Board that all bat species are protected in Ireland under the Wildlife Act (1976) and Wildlife Amendment Acts (2000 and 2010). All Irish bat species are listed in Annex IV of the Habitats Directive, and the lesser horseshoe bat *Rhinolophus hipposideros* is further listed under Annex II requiring designation of Special Area of Conservation for the species. Furthermore, Ireland has signed the *Agreement on the Conservation of Populations of European Bats* and is obliged to honour the fundamental obligations contained in Article III of that agreement.

In order to protect bats at the proposed development site, a thorough pre-planning survey at appropriate seasons should have been commissioned from an independent and competent bat ecologist. If this had been done, it would provide the necessary data to which reference could be made in any surveys subsequently carried out at pre-commencement and post-construction stages.

The Department of the Environment, Heritage and Local Government "*Bat Mitigation Guidelines for Ireland*" describes the process which should be followed, and the importance of early and specialist surveys is emphasised by the DEHLG:

When planning a development it is advisable to check for the presence of bats as early as possible so that any planning and licensing issues can be addressed before resources are committed. Bat surveys require specialist knowledge and equipment.



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The crucial role of the planning authorities for bat conservation is emphasised by the DEHLG: *"Planning authorities may refuse planning permission solely on grounds of the predicted impact on protected species like bats"*.

Wind energy developments present a special risk for bat populations, and the necessary guidelines are presented in the Bat Conservation Ireland (2012) *Wind Turbine/Wind Farm Development Bat Survey Guidelines*. Unfortunately, however, the only bat survey reported in the applicant's initial EIS was carried out in November when there is no likelihood of bat activity; and no additional information on bats has been presented in the applicant's Further Information Response.

It is our observation that several species of bats are abundant in the area of the proposed development and can be seen foraging near trees and hedgerows on most summer evenings (but not in November). Some bats were identified within 500m of the proposed development last year. They belonged to Brown Long-Eared Bat (*Plecotus auritus*) and Soprano Pipistrelle (*Pipistrellus pygmaeus*) species. These two species were also recorded in 2008 during a bat survey on nearby Sliabh Callan. As many bat species have a foraging range in excess of 2km, roosting sites and transects must be surveyed up to this distance from the proposed development.

We would therefore submit that the absence of a professional bat survey, and the lack of an assessment of the impacts of the proposed development on local bat populations, should be sufficient reasons for the Board to refuse planning permission. It is not as if the applicant was unaware of this potential problem; our earlier submission emphasised the vulnerability of bats to the proposed wind farm.

4.4 Decisions made by An Bord Pleanála to Refuse Planning Permission for Other Wind Farms on Grounds related to Potential Effects on Natura 2000 Sites

In considering the issues raised in the applicant's Natura Impact Statement, and the conclusions drawn from them, we consider that it is appropriate to draw the attention of the Board to some relevant decisions where planning permission was refused for wind farms on grounds related to their potential effects on Natura 2000 sites.

4.4.1 Booltiagh Townland, near Connolly, County Clare (An Bord Pleanála Reference PL 03.236950)

Planning permission was sought for the erection of a two wind turbines with tower heights up to 80 metres and total tip heights up to 115 metres with ancillary equipment for generation of electricity at Booltiagh Townland, near



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Connolly, County Clare. The decision was appealed to An Bord Pleanála, and the Board refused permission on the following grounds:

1. *It is policy, under CDP52 of the County Clare Development Plan 2005-2011 and ENV 3 of the West Clare Local Area Plan 2009-2015, that proposals for development will be considered where it can be clearly demonstrated that there will be no direct or indirect impact upon protected species and/or their habitats. These policies are considered to be reasonable. The appeal site consists primarily of blanket bog and is identified as an important foraging habitat for the hen harrier, which is afforded protection under Annex 1 of the EU Birds Directive. The Board is not satisfied, based on the details submitted with the application and appeal, that the proposed development, by itself and in conjunction with existing and permitted windfarm developments in the vicinity, will not have a significant adverse ecological impact on the habitat of the hen harriers. It is considered, therefore, that the proposed development would contravene the policies set out above and would be contrary to the proper planning and sustainable development of the area.*
2. *The Board is not satisfied that the Environmental Impact Statement and the supplementary information submitted by the applicant, provides adequate information on the potential impacts, and/or the significance of those impacts, of the proposed development on relevant aspects of the environment, to enable it to assess, in a full and complete manner, the impact on the environment in accordance with the legislative requirements as set out under Article 94 of the Planning and Development Regulations, 2001 to 2009, as amended.*
3. *Furthermore it is considered that:*
 - (a) *there is a failure to adequately describe the nature and extent of works to be carried out on the site, in particular, the impacts on habitats arising on the site due to construction activities associated with the development, including the proposed undergrounding of the 110kV overhead power lines, and*
 - (b) *there is a failure to either wholly or adequately address the inter-relationship between the topics identified in paragraph (2)(b) of Schedule 6 to the said Regulations.*



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Accordingly, the Board is not satisfied that the proposed development would not have significant adverse impacts on the environment and that the proposed development would not, therefore, be contrary to the proper planning and sustainable development of the area.

4.4.2 Letteragh and Boolynagleragh, Kilmaley, County Clare (An Bord Pleanála Reference PL 03.123268)

Planning permission was sought for the construction of a wind farm of 11.72 megawatt capacity comprising seventeen 660 kilowatt wind turbines, with ancillary facilities, to include the provision of a control building and electrical transformer sub-station in the townlands of Letteragh and Boolynagleragh, Kilmaley, County Clare. Permission was refused by Clare County Council, the decision was appealed to An Bord Pleanála. and the Board refused permission on the following grounds

1. *The site is located along the Ben Dash Ridge which is defined in the current Clare County Development Plan as "visually vulnerable" and where it is a requirement that developments should not impinge in any significant way upon the character, integrity or uniformity of the landscape. The proposed development would be prominently visible from a wide area which is defined in the Development Plan as "visually sensitive" where it is a requirement that developments demonstrate a very high standard of site selection, siting, layout and design.*
2. *Having regard to the location of the site along Ben Dash Ridge and the configuration and number of the turbines proposed, it is considered that the visual impacts on the skyline, particularly from the north and from Scenic Route number 17, would be dominant and the proposed development would seriously injure the landscape and the "visually vulnerable" and "visually sensitive" designated areas would be significantly degraded by the proposed windfarm. The proposed development would, therefore, contravene materially a development objective of the Development Plan, which is considered reasonable, and be contrary to the proper planning and development of the area.*

Even though the above reasons for refusals of permission did not refer to any potential adverse impacts on any European designated Nature 2000 site, we consider that this decision should be noted by An Bord Pleanála, as the proposed wind farm in this case was also intended to be located in a similar upland location in County Clare.



4.4.3 Shragh, Doonbeg, County Clare (An Bord Pleanála Reference PL 03.PA0025)

Planning permission was sought for a development comprising 45 electricity generating wind turbines with a hub height of up to 85 metres and a rotor diameter of up to 82 metres, giving an overall height of up to 126 metres, hard-standing, a 110 kilovolts substation containing two control buildings, an electrical compound and a waste water holding tank, a new free span concrete bridge over the Doonbeg River, a permanent meteorological mast, a viewing tower installed beneath the nacelle of one turbine, associated site roads, drainage and site works in the townlands of Carrowmore South, Einagh, Moanmore North, Doonbeg, Mountrivers, Sragh and Drumellihiy, approximately 1.5 kilometres south of the village of Doonbeg, Co. Clare.

As briefly mentioned in section 4.4 above, the Board refused planning permission for this wind farm development, on the following grounds which we submit are relevant to the current planning application for the proposed wind farm at Coor and Shanavogh:

1. *The application site is located in an area that is identified in the Wind Energy Strategy for County Clare (Volume 5 of the Clare County Development Plan 2011-2017) as being in a location where wind turbines are 'Acceptable in Principle'. The Wind Energy Strategy identifies the appropriate scale of development for such areas to be medium (6-10 number turbines) and the cumulative extent of development to be that a 'second wind farm may be acceptable only at a very great distance with minimal visual presence'. Having regard to the scale of the proposed development, to the proximity of the site to the developed Moanmore wind farm (7 number turbines) and to the site of the permitted Tullabrack wind farm (6 number turbines), it is considered that the proposed development would be contrary to the provisions of the Clare Wind Energy Strategy by virtue of excessive scale and proximity to existing turbines and would, if permitted, result in an excessive concentration of development in one part of the county and outside of the areas identified as 'Strategic' in the adopted strategy. The proposed development would be contrary to Objective CDP 10.3 of the Clare County Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.*



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*Observations on behalf of the Coor and Shanavogh Residents, An Bord Pleanála
Reference PL 03.239378; Clare County Council Reference P11 / 360*

5. CONCLUSIONS

It should be clear to the Board that the Natura Impact Statement provided by the applicant, while apparently very detailed with regard to the habitats and conservation of the Hen Harrier, is lacking in a number of very significant areas which we have outlined above. The applicant's NIS does not conclusively state, on the basis of scientifically verified evidence, that the proposed wind farm will not adversely affect any of the qualifying species or habitats listed in the Site Synopses and Conservation Objectives of the nearby SACs and SPAs which are most at risk.

Furthermore, the information provided by the applicant confirms the view expressed by the Coor and Shanavogh Residents, and by Clare County Council's planners, that the proposed wind farm site is unsuitable for the proposed location, and the planning application should therefore be refused.

Jack O'Sullivan

Environmental Management Services

On behalf of the

Coor and Shanavogh Residents and Other Residents listed in Appendix I

20 March 2014

ENVIRONMENTAL MANAGEMENT SERVICES

OBSERVATIONS ON THE NATURA IMPACT STATEMENT RECEIVED BY AN BORD PLEANÁLA AS PART OF THE FURTHER INFORMATION RESPONSE BY MCCARTHY KEVILLE O'SULLIVAN LTD.

**In Relation to the Decision by Clare County Council to Refuse Planning
Permission to McMahon Finn Wind Acquisitions Ltd for a Wind Farm at
Coor West, Shanavogh East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

Appendix I

LIST OF OBJECTORS AND OTHER RESIDENTS OF COOR, SHANAVOGH AND OTHER TOWNLANDS ON WHOSE BEHALF THESE FURTHER OBSERVATIONS ON THE APPLICANT'S NATURA IMPACT STATEMENT ARE BEING SUBMITTED

Environmental Management Services

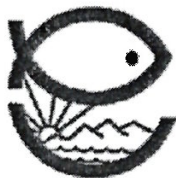
**Outer Courtyard, Tullynally,
Castlepollard,
County Westmeath, Ireland**

Telephone 044-966 2222

Fax 044-966 2223

E-mail jackosullivan2006@gmail.com

20 March 2014

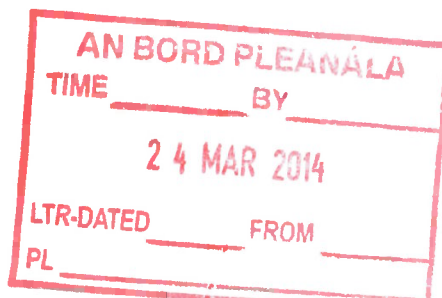


Environmental Management Services
Comhairleoirí Comhshaoil
Environmental and Planning Consultants

Outer Courtyard, Tullynally, Castlepollard, County Westmeath
Clós Seachtrach, Tulaigh an Eallaigh, Baile na gCros, Co. an Iarmhí
Telephone 044 966 2222 Fax 044 966 2223 E-mail jackosullivan2006@gmail.com

21 March 2014

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.



Dear Sir,

**First Party Appeal against the Decision by Clare County Council to Refuse
Planning Permission to McMahon Finn Wind Acquisitions Ltd for a Wind
Farm at Coor West, Shanavogh East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

**OBSERVATIONS ON THE APPLICANT'S NATURA IMPACT STATEMENT RECEIVED BY AN
BORD PLEANÁLA AS PART OF THE FURTHER INFORMATION FROM MCCARTHY
KEVILLE O'SULLIVAN LTD**

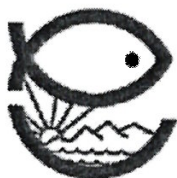
**SUBMITTED ON BEHALF OF THE OBJECTORS AND OTHER RESIDENTS
OF THE COOR AND SHANAVOGH AREAS LISTED IN APPENDIX I**

The enclosed document is a copy (print-out) of the observations sent electronically by email to the Board's office yesterday in order to meet the deadline for submission, and the hard copy is being sent by post today only as a confirmation of the previously emailed submission.

Yours sincerely,

Jack O'Sullivan

Environmental Management Services



Environmental Management Services
Comhairleoirí Comhshaoil
Environmental and Planning Consultants

**OBSERVATIONS ON THE NATURA IMPACT STATEMENT
RECEIVED BY AN BORD PLEANÁLA AS PART OF THE
FURTHER INFORMATION RESPONSE FROM MCCARTHY
KEVILLE O'SULLIVAN LTD.**

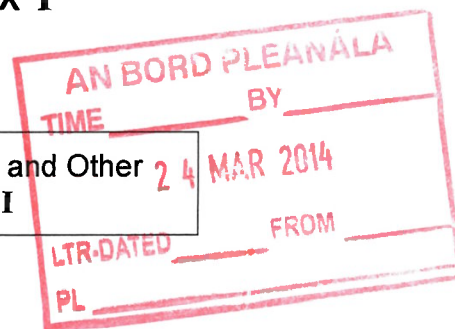
**In Relation to the Decision by Clare County Council to Refuse Planning
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An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

**SUBMITTED ON BEHALF OF THE OBJECTORS AND
OTHER RESIDENTS OF THE COOR AND SHANAVOGH
AREAS LISTED IN APPENDIX I**

The names and addresses of the Objectors and Other
Residents are given in **Appendix I**



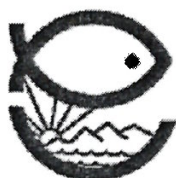
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20 March 2014



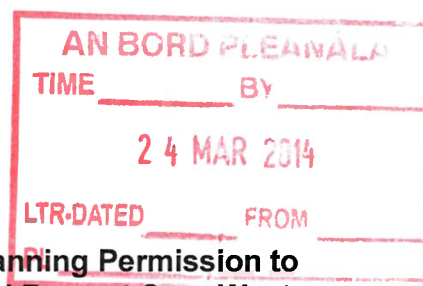
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Telephone 044 966 2222 Fax 044 966 2223 E-mail jackosullivan2006@gmail.com

20 March 2014

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

Dear Sir,



**Decision by Clare County Council to Refuse Planning Permission to
McMahon Finn Wind Acquisitions Ltd for a Wind Farm at Coor West,
Shanavogh East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

**OBSERVATIONS ON THE NATURA IMPACT STATEMENT RECEIVED BY AN BORD
PLEANÁLA FROM MCCARTHY KEVILLE O'SULLIVAN LTD**

**SUBMITTED ON BEHALF OF THE OBJECTORS AND OTHER RESIDENTS
OF THE COOR AND SHANAVOGH AREAS LISTED IN APPENDIX I**

We have been instructed by the objectors and other residents listed in **Appendix I** and living in proximity to the planned 6-turbine wind farm at Coor West, Shanavogh East and Shanavogh West, County Clare, to submit on their behalf the attached observations on the **Natura Impact Statement** submitted to the Board by the applicant.

Having studied and considered the applicant's Natura Impact Statement, we urge An Bord Pleanála to refuse permission for this inappropriately located wind farm development which, if permitted, would be in conflict with the Clare County Development Plan 2011-2017, with the West Clare Local Area Plan 2009-2017, would have adverse consequences on the four designated Natural Heritage Areas (NHAs) located within 8 km of the site, on the catchments of the rivers Caheraran, Annageeragh and Annagh, as well as an important breeding ground and foraging area for the Hen Harrier, a protected species.

This wind turbine development, if permitted, would also seriously injure the visual and residential amenities of the area located on the western edge of the Sliabh Callan Uplands, close to the Atlantic coast of County Clare and to the towns of Miltown Malbay and Ennis, with the open landscape and long distance views as far as the Atlantic coast to the west and the Shannon Estuary to the

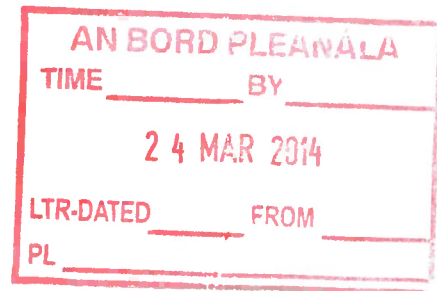
south. This development, if permitted, would depreciate the value of properties in the area surrounding the site.

Therefore we urge An Bord Pleanála to uphold the refusal of permission by Clare County Council for the reasons stated in the planning authority's notification of refusal and for the other reasons stated in our earlier observations and in these attached observations.

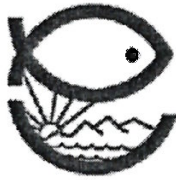
Yours sincerely,

Jack O'Sullivan.

Jack O'Sullivan
Environmental Management Services
On behalf of the



Coor and Shanavogh Residents and Other Residents listed in Appendix I



Environmental Management Services
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**First Party Appeal against the Decision by Clare County
Council to Refuse Planning Permission to McMahon Finn Wind
Acquisitions Ltd for a Wind Farm at Coor West, Shanavogh
East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

**OBSERVATIONS ON THE APPLICANT'S NATURA IMPACT
STATEMENT RECEIVED BY AN BORD PLEANÁLA FROM
MC CARTHY KEVILLE O'SULLIVAN LTD.**

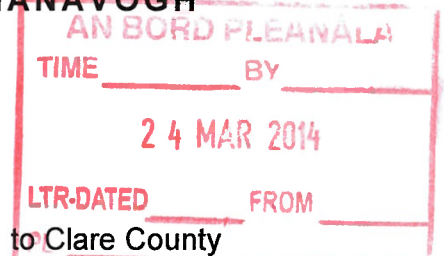
**SUBMITTED ON BEHALF OF THE OBJECTORS AND
OTHER RESIDENTS OF THE COOR AND SHANAVOGH
AREAS LISTED IN APPENDIX I**

1. INTRODUCTION

On 19 May 2011, McMahon Finn Wind Acquisitions Ltd applied to Clare County Council for planning permission for a 6-turbine wind farm, electricity sub-station and control building, internal road system, borrow pits, temporary construction compound, and other associated works, at Coor West, Shanavogh East and Shanavogh West, County Clare. The planning application was accompanied by an Environmental Impact Statement (EIS).

Four designated Natural Heritage Areas (NHAs) are located within 8 km of the site; and the general area of the site and its surroundings is an important breeding ground and foraging area for the Hen Harrier, a protected species. In addition, the Carrowmore Point to Spanish Point SAC and the Mid-Clare Coast SAC are located a relatively short distance to the west of the proposed wind farm site.

On 05 September 2011, we submitted to An Bord Pleanála substantial and detailed observations on the above First Party appeal; and these observations





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*Observations on behalf of the Coor and Shanavogh Residents, An Bord Pleanála
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were submitted on behalf of the residents listed in **Appendix I**. Our submission was acknowledged by the Board, and we attach in **Appendix II** a copy of the statutory fee receipt dated 05 September 2011 and a copy of the Board's letter dated 07 September 2011.

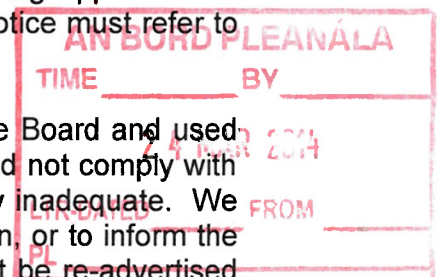
On 13 February 2013, An Bord Pleanála issued a statutory notice to the applicant, noting that the Board had serious concerns about the application, and requesting further information on a number of issues. The further information was received by the Board in August 2013, and on 24 October 2013 we submitted observations on the further information.

In our submission, we pointed out that the initial planning application, received by Clare County Council on 19 May 2011, did not include either a Screening Report or a Stage 2 Natura Impact Statement. It was necessary for the Board to request the latter from the applicant, and this was provided as a component of the applicant's further information response. However, the fact that a Natura Impact Statement has been provided was not notified to members of the public, and we submitted that this lack of notification was in conflict with the requirement that submissions or observations may be made to the Board about the effects of the proposed development on a European site.

Our submission dated 24 October 2013 referred to Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations 2011 (S.I. No. 476 of 2011), which came into force on 21 September 2011, and which amended the Planning and Development Regulations 2001 to 2011, by the insertion of additional Parts 19, 20 and 21 into the Planning and Development Regulations. The newly inserted "Part 20" deals with Appropriate Assessment; and Chapter 2 of Part 20 has the effect of inserting a new Section 239 which requires that a newspaper notice must state that, if a planning application is accompanied by a Natura Impact Statement, the published notice must refer to that fact.

We submitted that the public notice text recommended by the Board and used by the applicant in the site notice erected on 27 September did not comply with the above Section 239 requirement, and was therefore legally inadequate. We therefore urged the Board to either refuse planning permission, or to inform the applicant that the further information (including the NIS) must be re-advertised by means of an appropriate site notice and newspaper notice in the correct format.

It was therefore with some interest that we received the Board's letter of 11 February 2014, in which the Board stated that having further assessed the appeal, the Board was of the opinion that the Natura Impact Statement submitted to the Board should be notified to the public, and an opportunity given to the public to make written submissions or observations on the Natura Impact Statement. The suggested texts for a site notice and a newspaper notice were



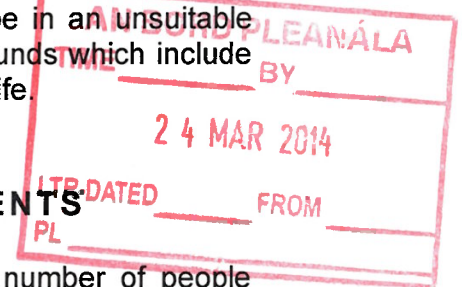


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attached, and the applicant was instructed to provide fresh public notices in a newspaper and on the site of the proposed wind farm.

In response to the published newspaper notice and the site notice, we have been instructed by the residents listed in **Appendix I** to submit observations on the applicant's NIS to the Board on their behalf. We trust that the following observations will show that the information provided in the NIS confirms our concern that the proposed wind farm, if permitted, would be in an unsuitable location and should be refused by An Bord Pleanála on grounds which include potential adverse consequences to protected species of wildlife.



2. THE COOR AND SHANAVOGH RESIDENTS

The Coor and Shanavogh Residents include a significant number of people living in the vicinity of the proposed wind farm, and who consider that their residential amenities and the quality of their lives would be adversely affected by the proposed development.

On 05 September 2011, the Coor and Shanavogh Residents (names and addresses listed in **Appendix I**) submitted to An Bord Pleanála substantial and detailed observations on the First Party appeal made by the applicant; and on 24 October 2013 the residents submitted observations on the applicant's further information. Both of these submissions have been acknowledged by the Board.

The Coor and Shanavogh Residents urge An Bord Pleanála to uphold the refusal of permission by Clare County Council for the reasons stated in the planning authority's notification of refusal and for other reasons stated in these further observations.

3. SUMMARY OF THE NATURA IMPACT STATEMENT SUBMITTED BY THE APPLICANT

Some of the issues relating to the Natura Impact Statement which the applicant made in the Further Information Response include:

- ▶ The conservation and habitat management plan described in the Further Information Response will run concurrently with the commencement of construction of the proposed wind farm development (section 2.6.1, page 24);
- ▶ The wind farm development company, i.e., the planning permission applicant, will be responsible for the implementation of the conservation and habitat management plan (section 2.6.4, page 24);



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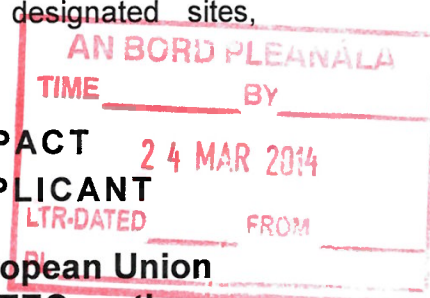
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- ▶ When considering the cumulative impact of the proposed wind farm on the Hen Harrier population, the applicant's response notes that there is currently one operating wind farm in the area, while permission has been granted for a further seven wind farm developments (including an extension to the existing Booltiagh wind farm) (section 2.7, page 26);
- ▶ The habitat conservation and enhancement measures for the Coor West wind farm site would augment those in place for the adjacent Sliabh Callan site (which surrounds an area that holds two traditional Hen Harrier nest sites); and the response predicts that there would be a cumulative positive impact on Hen Harriers, given that a total of over 1,300 hectares of habitat in one area would be managed for the benefit of the species (section 2.7, page 28);
- ▶ The habitat conservation and management plan included a number of appendices giving advice on soil analysis, lime and plant nutrient applications, and hedgerow management;
- ▶ The Further Information response by the applicant included a Stage 2 Natura Impact Statement (pages 119 to 139) which concludes that no significant or indeterminate impacts on the conservation objectives or overall integrity of any Natura 2000 site in the vicinity of the development site are likely to result from the proposed project; and,
- ▶ The Natura Impact Statement lists the Designated Natura 2000 sites downstream of the site, i.e., the Mid-Clare Coast SPA (Site Code 004182) and the Carrowmore Point to Spanish Point and Islands cSAC (Site Code 001021), and points out that surface waters from the site and its environs enter the sea in the vicinity of Spanish Point, approximately nine kilometres downstream; but that with the mitigation measures prescribed, no significant negative impacts on designated sites, protected species, or water quality are predicted.

**4. OBSERVATIONS ON THE NATURA IMPACT
STATEMENT SUBMITTED BY THE APPLICANT**

**4.1 Some Preliminary Observations on the European Union
Habitats Directive (Council Directive 92/43/EEC on the
Conservation of Wild Habitats and of Wild Fauna and
Flora)**

The aim of the European Habitats Directive (Council Directive 92/43/EEC on the conservation of wild habitats and of wild fauna and flora) is to create a network of protected wildlife sites in Europe, maintained at a favourable conservation status. Each member state must designate its most important natural areas as Special Areas of Conservation. The Directive specifies the scientific criteria on the basis of which SACs must be selected and very strictly curtails the grounds





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that can be used as justification for damaging a site or reducing the area of a site. The network of sites is referred to as NATURA 2000 and includes SACs (Special Areas of Conservation) for protected habitats and species and SPAs (Special Protection Areas) for protected birds and their habitats.

The European Habitats Directive was transposed into Irish legislation by the European Communities (Natural Habitats) Regulations 1997 and amended in 1998, 2005 and 2011. The EC Birds and Natural Habitats Regulations, 2011, address transposition issues raised in recent judgements of the ECJ against Ireland, and along with provisions of the Planning and Development (Amendment) Act, 2010, clarify the obligations of planning authorities under the Birds and Habitats Directives.

An Bord Pleanála, Clare County Council and the National Parks and Wildlife Service (within the Department of Arts, Heritage and the Gaeltacht) have joint statutory responsibility under the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) to protect and maintain SACs, SPAs and other Natura 2000 sites, and to ensure that no development is permitted or allowed to continue which would significantly damage or disturb this designated site, its habitats or species of conservation interest.

These Regulations and the Planning and Development (Amendment) Act 2010 require planning authorities when considering plans or projects that are likely to have a significant effect on an SAC or SPA, to ensure that an **appropriate assessment screening** (and, where required, the production of a **Natura Impact Statement**, followed by a full **appropriate assessment**) of the implications of the plan or project for the conservation status of the site is undertaken.

Sites may contain priority or non-priority habitats and species. The only justifications for damaging a qualifying "priority" site are "*considerations relating to human health and public safety, to beneficial consequences of primary importance of the environment, or further to an opinion from the European Commission, to other imperative reasons of overriding public interest*" (IROPI), but this can be allowed only after an assessment is made in line with the Article 6 procedure, and there are no other alternatives and an agreement is reached with the European Commission.

Article 6 of the Habitats Directive provides a strict assessment procedure for any plan or project not directly connected with or necessary to the management of a designated European site, but which has the potential to have implications for any European site in view of the site's conservation objectives. The article has three main sets of provisions.

Article 6(1) makes provision for the establishment of the necessary conservation measures, and is focused on positive and proactive interventions.



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Article 6(2) requires Member States to avoid habitat deterioration and significant species disturbance; its emphasis is therefore preventive. Articles 6(3) and 6(4) set out a series of procedural and substantive safeguards governing plans and projects likely to have a significant effect on a Natura 2000 site. Within this structure, it can be seen that there is a distinction between Articles 6(1) and 6(2) which define a general regime, and Articles 6(3) and 6(4) which define a procedure applying to specific circumstances.¹

Article 6(2) of the Habitats Directive states that:

"Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbances of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this directive."

The article takes as a starting point the **prevention principle**, and it goes far beyond the simple management measures necessary to ensure conservation, since these are already covered by Article 6(1). The words 'avoid' and 'could be significant' stress the anticipatory nature of the measures to be taken. It is not acceptable to wait until deterioration or disturbances occur before taking the necessary measures. This article should be interpreted as requiring Member States to take all the appropriate actions which it may reasonably be expected to take, to ensure that no significant deterioration of habitats or disturbance of protected species occurs.

Article 6(3) of the Habitats Directive states that:

"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

The provisions of Articles 6(3) and 6(4), taken together, constitute a very precise form of development regime, setting out the circumstances within which plans and projects with negative effects may or may not be allowed. The provisions thus ensure that negative economic and other non-ecological

¹ European Commission. Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. Luxembourg: Office for Official Publications of the European Communities; 2000; 69 pp.



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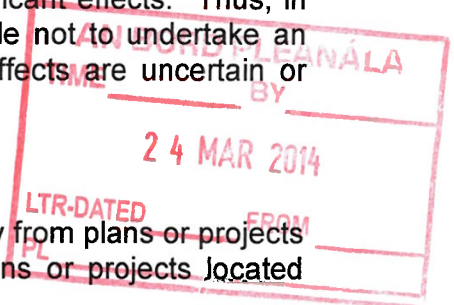
requirements can be balanced against conservation objectives. Articles 6(3) and 6(4) define a **step-wise procedure** for considering plans and projects:

- (a) The first part of this procedure consists of an assessment stage and is governed by Article 6(3), first sentence;
- (b) The second part of the procedure, governed by Article 6(3), second sentence, relates to the decision of the competent national authorities; and,
- (c) The third part of the procedure (governed by Article 6(4)) comes into play if, despite a negative assessment, it is proposed not to reject a plan or project, but to give it further consideration. The applicability of the procedure and the extent to which it applies depend on several factors; and, in the sequence of steps, each step is influenced by the previous step.

It is important to note that the safeguards set out in Articles 6(3) and 6(4) are triggered not by a certainty but by a **likelihood** of significant effects. Thus, in line with the **precautionary principle**, it is unacceptable not to undertake an appropriate assessment on the basis that significant effects are uncertain or may be unknown.

Other points to note are:

- a likelihood of significant effects may arise not only from plans or projects located within a protected site but also from plans or projects located outside a protected site;
- a series of individually modest impacts may in combination produce a significant impact; and Article 6(3) addresses this by taking into account the combination of effects from other projects;
- it is necessary to take into account the sensitivity of the location; and,
- the assessment is a step preceding and providing a basis for other steps — in particular, an approval or refusal of a plan or project.



4.2 A Note on Water Dependant Species

Given that the proposed wind farm would be located, if permitted, in an upland area, and that its construction would be likely to affect local streams draining the planned site, it is appropriate to consider the degree of risk to which water-dependant species might be exposed.

On 02 September 2008, the Development Applications Unit of the Department of the Environment, Heritage and Local Government issued Circular letter L8/08, on the protection of natural heritage and national monuments in



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connection with projects funded under the water services investment and rural water programmes.

The Circular Letter L 8/08 points out that most conservation sites will contain water-dependent habitats or species, with the result that an SAC boundary cannot be taken as indicative of the location of the relevant habitat or species. A planning authority will therefore require the specific locations of the habitats and species in order to screen these projects. These data will need to be collected through surveys where the information is not available from NPWS or other sources. The NPWS do not generally have the locations of habitats and species on a single GIS, or other readily available formats.

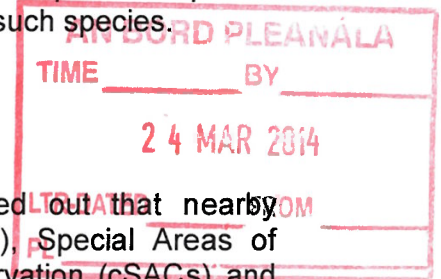
It is therefore our observation that the applicant's NIS must include the results of surveys of streams and rivers draining the proposed site, or flowing from the proposed site towards downstream Natura 2000 sites, in order to determine the location, abundance and population structure of any water-dependant species of conservation significance, so as to determine the risk to such species.

4.3 Impacts on Natura 2000 Sites

In our submission dated 24 October 2013, we pointed out that nearby designated sites include Natural Heritage Areas (NHAs), Special Areas of Conservation (SACs), candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs).

As noted briefly in section 3 above, the applicant's Stage 2 Natura Impact Statement (NIS, pages 119 to 139 of the FI response) lists six designated Natura 2000 sites within 15 km of the proposed wind farm site, namely:

- Mid-Clare Coast SPA (Site Code: 004182) – the nearest SPA to the proposed wind farm site, encompassing a coastal area from Spanish Point south to Doonbeg and at its nearest point is only 6km from the wind farm site;
- Carrowmore Point to Spanish Point and Islands SAC (Site Code: 001021) – designated for a number of coastal habitats listed in Annex I of the Habitats Directive, and it is relevant to note that surface water flows generated on the site (as well as in the vicinity of the site) enter the sea near Spanish Point, some 6.3km downstream of the wind farm site;
- Carrowmore Dunes SAC (Site Code: 002250);
- Inagh River Estuary SAC (Site Code 000036);
- Lower River Shannon SAC (Site Code: 002165); and,
- The Cliffs of Moher SPA (Site Code 004005).





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Two of these Natura 2000 sites are downstream of the proposed wind farm location, i.e., the Mid-Clare Coast SPA and the Carrowmore Point to Spanish Point and Islands cSAC. The NIS pointed out that surface waters from the site and its environs enter the sea in the vicinity of Spanish Point; but the NIS then predicted that, because of the proposed mitigation measures prescribed, no significant negative impacts on designated sites, protected species, or water quality would occur.

The Natura Impact Statement then concluded that no significant or indeterminate impacts were likely to occur as a result of the proposed project on the conservation objectives or overall integrity of any Natura 2000 site in the vicinity of the site of the proposed development.

It is our submission that the potential impact of the proposed development on the above-mentioned SACs and SPAs may be much more significant than stated in the NIS. We stated in our submission dated 24 October 2013 that, although these protected areas are located at some distance from the subject site, the Aughaveema River directly connects the development site to these designated areas, and therefore any contamination or reduction in water quality caused by the development could have a direct impact on one or more of the Natura 2000 sites. Given this situation, we further submit that it is not possible to state with an apparent degree of certainty (as the applicant has done in the NIS) that there will be no significant effects on the either or both of the two Natura 2000 sites downstream of the proposed wind farm location.

In support of our earlier submission, we quoted from the Environmental Report produced by Clare County Council's Senior Executive Chemist, which pointed out that "*the separation distance is totally inadequate between the stream and the various elements of the proposed development*", and "*there is simply no room to provide adequate retention for storm water settlement, prior to discharge*".

We would also repeat our concern, by way of further observation, that any contaminants carried downstream on silt from the proposed wind farm site, especially during construction, would be likely to settle out where the Aughaveema River encounters higher salinity seawater. Deposition of fine silt at or near the mouth of a river is a well understood mechanism, caused by flocculation, and leading in many areas to the formation of mud banks in estuaries. Contaminants entering the river upstream are easily concentrated by this process, leading to elevated concentrations of heavy metals and non-biodegradable organics. This is a well-known ecological process, by which living organisms inhabiting areas of deposition can accumulate elevated levels of contaminants, despite their location at some distance from the source of the contamination.

It is therefore a major concern that silt and contaminants carried down from the construction site could be ingested by filter-feeding marine organisms, would



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enter the marine food chain, and could therefore affect the . It is therefore inadequate to conclude that the proposed development would have no impact on the downstream coastal SAC and SPA.

4.4 Impacts on Protected Freshwater Aquatic Species in the Vicinity of the Proposed Wind Farm Site

Watercourses in the local area have been shown to contain freshwater pearl mussels (*Margaritifera margaritifera*), an endangered species listed in Annex II of the EU Habitats Directive. The pearl mussel is also listed as 'an extremely endangered species' on the International Union for the Conservation of Nature and Natural Resources (IUCN) Red List of threatened animals.

The freshwater pearl mussel is legally protected in Ireland under Statutory Instruments No. 112 of 1990 and No. 94 of 1997. It was once widespread in mainland Europe, Britain and Ireland; but there has been a decline of more than 90% in European populations during the 20th century, and the situation for the mussel continues to deteriorate.

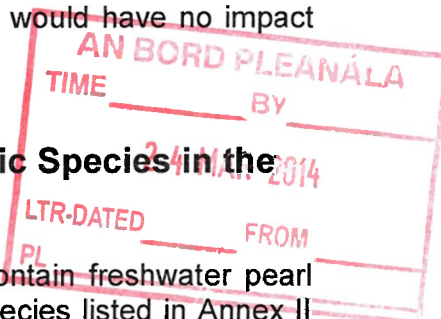
These mussels require extremely clean water and the type of habitat provided by the stream running through the site. It is our observation that no survey of the watercourses within and immediately downstream of the site has been carried out to determine whether freshwater pearl mussels are present, and to assess their population. In this connection we would note that the freshwater pearl mussel is known to occur abundantly in parts of the Cloon River, located in the Lower River Shannon SAC.

The northern section of the wind farm site (approximately 57% of the total site area) drains to the Annagh River which flows in a south-westerly direction and enters the sea 1.0 km south of Spanish Point. The southern section of the wind farm site drains to the Aughaveemagh River catchment.

One or both of these rivers may contain species listed in Annex I of the Habitats Directive, and we would draw the Board's attention to the recent refusal of planning permission (ABP Reference PL03.PA0025) for the proposed Shragh wind farm at nearby Doonbeg, based, inter alia, on the fact that the Doonbeg river was shown to harbour a thriving population of the freshwater pearl mussel *Margaritifera margaritifera*.

The defining features of the Doonbeg River are listed in the "Shragh Wind Farm: Stage 2 Survey of Freshwater Pearl Mussel in the Lower Doonbeg River, County Clare", carried out by EirEco in June 2012, as:

- A lowland river which flows east to west;
- The surrounding soils are mainly peats and peaty gley;

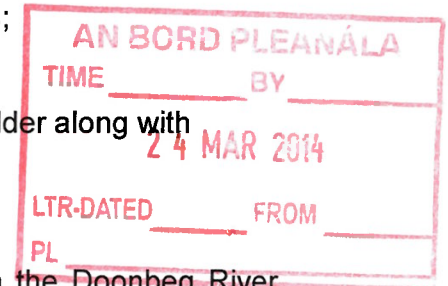




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- The river contains sea trout and brown trout;
- Thickets of willow and hawthorn overhang the river in places;
- The adjacent lands are primarily under open grassland;
- The river flows through peat bog and forested areas;
- The flow regime is primarily gentle to swift;
- The substrate is primarily cobble with scattered boulder along with varying amounts of gravel and sand; and,
- The riverbanks are primarily steep-sided.



The Aughaveema River shares many characteristics with the Doonbeg River, including the underlying soils, the gravel and sand riverbed, the water quality, the flow regime, the character of the surrounding land and the indicator species of sea trout and brown trout, even though the Aughaveema River is smaller in scale.

Despite the fact that the Doonbeg River does not meet defined water quality objectives for the Freshwater Pearl Mussel as determined in the European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (SI. No. 296 of 2009), and it is not designated for this freshwater bivalve, it was shown by the EirEco survey to be a major habitat for the species.

The Aughaveema River may not appear to provide perfect conditions for the Freshwater Pearl Mussel, but it does meet many of the known preferred aquatic conditions and it is located in close proximity to the Doonbeg River. Therefore, it is very likely that the Aughaveema River supports a viable population of the Pearl Mussel, and therefore a professional survey of the river should have been undertaken as part of the Natura Impact Statement.

Another protected species – the freshwater crayfish (*Austropotamobius pallipes*) – has been observed in the lower reaches of the Aughaveema River, and it appears that no survey of the river for the presence of this species has been carried out during the preparation of the NIS.

Since neither of these surveys appear to have been carried out, we would conclude that the findings of the NIS must be in doubt, and the Board should refuse planning permission for that reason.

4.3 Impact on Bats

In our observations dated 05 September 2011 on the applicant's appeal, and in our submission dated 24 October 2013, we drew the attention of the Board to a submission by An Taisce which referred to an increasing amount of research



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showing that bats are adversely impacted by wind farms. These adverse impacts arise as a result of changes in air pressure caused by the rotating turbine blades; and we quoted from one of the research papers.

We pointed out to the Board in our previous observations that power-generating wind turbines have long been recognized as a potentially life-threatening hazard for birds, but at most wind farm facilities, bats actually die in much greater numbers than birds. 90% of the bats examined after death showed signs of internal haemorrhaging consistent with trauma from the sudden drop in air pressure (a condition known as barotrauma) at turbine blades. Only about half of the bats showed any evidence of direct contact with the blades.

We recommended that a more complete and detailed study of bat populations should have been carried out, and we suggested to the Board that unless such a study of the local and migratory bat population has been undertaken and reported, and unless mitigation measures can be put in place to demonstrate that bat deaths can be avoided, planning permission should be refused. This is a matter which cannot be adequately addressed by conditions subsequent to a decision to grant planning permission.

By way of observation on the applicants Natura Impact Statement, we would again remind the Board that all bat species are protected in Ireland under the Wildlife Act (1976) and Wildlife Amendment Acts (2000 and 2010). All Irish bat species are listed in Annex IV of the Habitats Directive, and the lesser horseshoe bat *Rhinolophus hipposideros* is further listed under Annex II requiring designation of Special Area of Conservation for the species. Furthermore, Ireland has signed the *Agreement on the Conservation of Populations of European Bats* and is obliged to honour the fundamental obligations contained in Article III of that agreement.

In order to protect bats at the proposed development site, a thorough pre-planning survey at appropriate seasons should have been commissioned from an independent and competent bat ecologist. If this had been done, it would provide the necessary data to which reference could be made in any surveys subsequently carried out at pre-commencement and post-construction stages.

The Department of the Environment, Heritage and Local Government "*Bat Mitigation Guidelines for Ireland*" describes the process which should be followed, and the importance of early and specialist surveys is emphasised by the DEHLG:

*When planning a development it is advisable to check for the presence of bats as early as possible so that any planning and licensing issues can be addressed before resources are committed.
Bat surveys require specialist knowledge and equipment.*



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The crucial role of the planning authorities for bat conservation is emphasised by the DEHLG: "Planning authorities may refuse planning permission solely on grounds of the predicted impact on protected species like bats".

Wind energy developments present a special risk for bat populations, and the necessary guidelines are presented in the Bat Conservation Ireland (2012) *Wind Turbine/Wind Farm Development Bat Survey Guidelines*. Unfortunately, however, the only bat survey reported in the applicant's initial EIS was carried out in November when there is no likelihood of bat activity; and no additional information on bats has been presented in the applicant's Further Information Response.

It is our observation that several species of bats are abundant in the area of the proposed development and can be seen foraging near trees and hedgerows on most summer evenings (but not in November). Some bats were identified within 500m of the proposed development last year. They belonged to Brown Long-Eared Bat (*Plecotus auritus*) and Soprano Pipistrelle (*Pipistrellus pygmaeus*) species. These two species were also recorded in 2008 during a bat survey on nearby Sliabh Callan. As many bat species have a foraging range in excess of 2km, roosting sites and transects must be surveyed up to this distance from the proposed development.

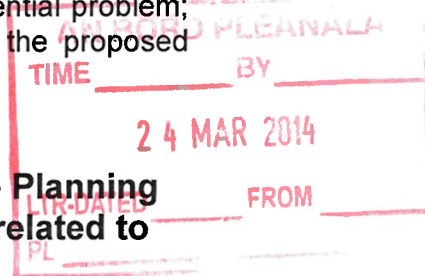
We would therefore submit that the absence of a professional bat survey, and the lack of an assessment of the impacts of the proposed development on local bat populations, should be sufficient reasons for the Board to refuse planning permission. It is not as if the applicant was unaware of this potential problem; our earlier submission emphasised the vulnerability of bats to the proposed wind farm.

4.4 Decisions made by An Bord Pleanála to Refuse Planning Permission for Other Wind Farms on Grounds related to Potential Effects on Natura 2000 Sites

In considering the issues raised in the applicant's Natura Impact Statement, and the conclusions drawn from them, we consider that it is appropriate to draw the attention of the Board to some relevant decisions where planning permission was refused for wind farms on grounds related to their potential effects on Natura 2000 sites.

4.4.1 Booltiagh Townland, near Connolly, County Clare (An Bord Pleanála Reference PL 03.236950)

Planning permission was sought for the erection of a two wind turbines with tower heights up to 80 metres and total tip heights up to 115 metres with ancillary equipment for generation of electricity at Booltiagh Townland, near



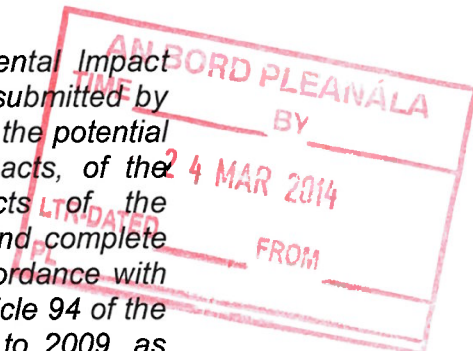


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Connolly, County Clare. The decision was appealed to An Bord Pleanála, and the Board refused permission on the following grounds:

1. *It is policy, under CDP52 of the County Clare Development Plan 2005-2011 and ENV 3 of the West Clare Local Area Plan 2009-2015, that proposals for development will be considered where it can be clearly demonstrated that there will be no direct or indirect impact upon protected species and/or their habitats. These policies are considered to be reasonable. The appeal site consists primarily of blanket bog and is identified as an important foraging habitat for the hen harrier, which is afforded protection under Annex 1 of the EU Birds Directive. The Board is not satisfied, based on the details submitted with the application and appeal, that the proposed development, by itself and in conjunction with existing and permitted windfarm developments in the vicinity, will not have a significant adverse ecological impact on the habitat of the hen harriers. It is considered, therefore, that the proposed development would contravene the policies set out above and would be contrary to the proper planning and sustainable development of the area.*
2. *The Board is not satisfied that the Environmental Impact Statement and the supplementary information submitted by the applicant, provides adequate information on the potential impacts, and/or the significance of those impacts, of the proposed development on relevant aspects of the environment, to enable it to assess, in a full and complete manner, the impact on the environment in accordance with the legislative requirements as set out under Article 94 of the Planning and Development Regulations, 2001 to 2009, as amended.*
3. *Furthermore it is considered that:*
 - (a) *there is a failure to adequately describe the nature and extent of works to be carried out on the site, in particular, the impacts on habitats arising on the site due to construction activities associated with the development, including the proposed undergrounding of the 110kV overhead power lines, and*
 - (b) *there is a failure to either wholly or adequately address the inter-relationship between the topics identified in paragraph (2)(b) of Schedule 6 to the said Regulations.*





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Accordingly, the Board is not satisfied that the proposed development would not have significant adverse impacts on the environment and that the proposed development would not, therefore, be contrary to the proper planning and sustainable development of the area.

4.4.2 Letteragh and Boolynagleragh, Kilmaley, County Clare (An Bord Pleanála Reference PL 03.123268)

Planning permission was sought for the construction of a wind farm of 11.72 megawatt capacity comprising seventeen 660 kilowatt wind turbines, with ancillary facilities, to include the provision of a control building and electrical transformer sub-station in the townlands of Letteragh and Boolynagleragh, Kilmaley, County Clare. Permission was refused by Clare County Council, the decision was appealed to An Bord Pleanála. and the Board refused permission on the following grounds

- 1. The site is located along the Ben Dash Ridge which is defined in the current Clare County Development Plan as "visually vulnerable" and where it is a requirement that developments should not impinge in any significant way upon the character, integrity or uniformity of the landscape. The proposed development would be prominently visible from a wide area which is defined in the Development Plan as "visually sensitive" where it is a requirement that developments demonstrate a very high standard of site selection, siting, layout and design.*
- 2. Having regard to the location of the site along Ben Dash Ridge and the configuration and number of the turbines proposed, it is considered that the visual impacts on the skyline, particularly from the north and from Scenic Route number 17, would be dominant and the proposed development would seriously injure the landscape and the "visually vulnerable" and "visually sensitive" designated areas would be significantly degraded by the proposed windfarm. The proposed development would, therefore, contravene materially a development objective of the Development Plan, which is considered reasonable, and be contrary to the proper planning and development of the area.*

Even though the above reasons for refusals of permission did not refer to any potential adverse impacts on any European designated Nature 2000 site, we consider that this decision should be noted by An Bord Pleanála, as the proposed wind farm in this case was also intended to be located in a similar upland location in County Clare.



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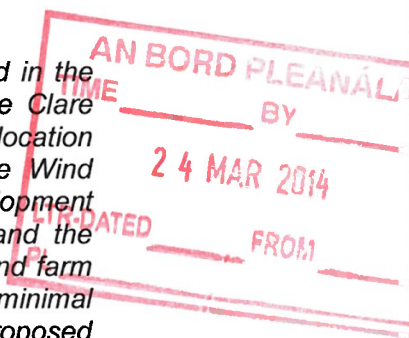
*Observations on behalf of the Coor and Shanavogh Residents, An Bord Pleanála
Reference PL 03.239378; Clare County Council Reference P11 / 360*

4.4.3 Shragh, Doonbeg, County Clare (An Bord Pleanála Reference PL 03.PA0025)

Planning permission was sought for a development comprising 45 electricity generating wind turbines with a hub height of up to 85 metres and a rotor diameter of up to 82 metres, giving an overall height of up to 126 metres, hard-standing, a 110 kilovolts substation containing two control buildings, an electrical compound and a waste water holding tank, a new free span concrete bridge over the Doonbeg River, a permanent meteorological mast, a viewing tower installed beneath the nacelle of one turbine, associated site roads, drainage and site works in the townlands of Carrowmore South, Einagh, Moanmore North, Doonbeg, Mountrivers, Sragh and Drumellihiy, approximately 1.5 kilometres south of the village of Doonbeg, Co. Clare.

As briefly mentioned in section 4.4 above, the Board refused planning permission for this wind farm development, on the following grounds which we submit are relevant to the current planning application for the proposed wind farm at Coor and Shanavogh:

1. *The application site is located in an area that is identified in the Wind Energy Strategy for County Clare (Volume 5 of the Clare County Development Plan 2011-2017) as being in a location where wind turbines are 'Acceptable in Principle'. The Wind Energy Strategy identifies the appropriate scale of development for such areas to be medium (6-10 number turbines) and the cumulative extent of development to be that a 'second wind farm may be acceptable only at a very great distance with minimal visual presence'. Having regard to the scale of the proposed development, to the proximity of the site to the developed Moanmore wind farm (7 number turbines) and to the site of the permitted Tullabrack wind farm (6 number turbines), it is considered that the proposed development would be contrary to the provisions of the Clare Wind Energy Strategy by virtue of excessive scale and proximity to existing turbines and would, if permitted, result in an excessive concentration of development in one part of the county and outside of the areas identified as 'Strategic' in the adopted strategy. The proposed development would be contrary to Objective CDP 10.3 of the Clare County Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.*





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*Observations on behalf of the Coor and Shanavogh Residents, An Bord Pleanála
Reference PL 03.239378; Clare County Council Reference P11 / 360*

5. CONCLUSIONS

It should be clear to the Board that the Natura Impact Statement provided by the applicant, while apparently very detailed with regard to the habitats and conservation of the Hen Harrier, is lacking in a number of very significant areas which we have outlined above. The applicant's NIS does not conclusively state, on the basis of scientifically verified evidence, that the proposed wind farm will not adversely affect any of the qualifying species or habitats listed in the Site Synopses and Conservation Objectives of the nearby SACs and SPAs which are most at risk.

Furthermore, the information provided by the applicant confirms the view expressed by the Coor and Shanavogh Residents, and by Clare County Council's planners, that the proposed wind farm site is unsuitable for the proposed location, and the planning application should therefore be refused.

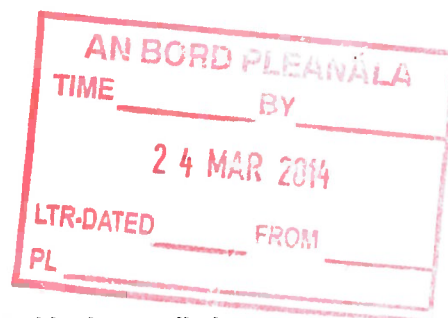
Jack O'Sullivan

Environmental Management Services

On behalf of the

Coor and Shanavogh Residents and Other Residents listed in Appendix I

20 March 2014



ENVIRONMENTAL MANAGEMENT SERVICES

OBSERVATIONS ON THE NATURA IMPACT STATEMENT RECEIVED BY AN BORD PLEANÁLA AS PART OF THE FURTHER INFORMATION RESPONSE BY MCCARTHY KEVILLE O'SULLIVAN LTD.

**In Relation to the Decision by Clare County Council to Refuse Planning
Permission to McMahon Finn Wind Acquisitions Ltd for a Wind Farm at
Coor West, Shanavogh East and Shanavogh West, County Clare**

An Bord Pleanála Reference PL 03.239378

Clare County Council Planning Reference No. P11 / 360

Appendix I

**LIST OF OBJECTORS AND OTHER RESIDENTS OF
COOR, SHANAVOGH AND OTHER TOWNLANDS ON
WHOSE BEHALF THESE FURTHER OBSERVATIONS ON
THE APPLICANT'S NATURA IMPACT STATEMENT ARE
BEING SUBMITTED**



Environmental Management Services

**Outer Courtyard, Tullynally,
Castlepollard,
County Westmeath, Ireland**

Telephone 044-966 2222

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E-mail jackosullivan2006@gmail.com

20 March 2014

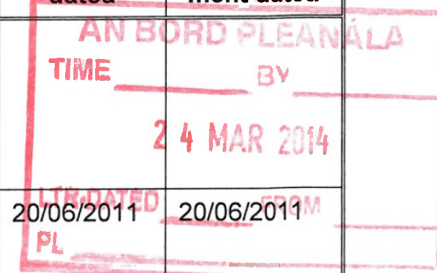
List of Objectors and Other Residents of Coor, Shanavogh and nearby Townlands

1. Home Owners marked on the applicant's EIS Map, as submitted with the original planning application:

	Name(s)	Address	Letter of objection dated	Letter of acknowledgment dated
1.	Sean Tubridy and Kathleen Connolly , Residential property owners	Coore, Miltown Malbay, Co. Clare (House No. 8)	22/06/2011	22/06/2011
2.	Maura (Mary) Corry	Coore, Mullagh, Ennis, Co. Clare (Site with planning permission, located between houses No. 7 and 8)	21/06/2011	22/06/2011
3.	Martina Corry	Coore, Mullagh, Ennis, Co. Clare (Site with planning permission, located between house No. 7 and 8)	21/06/2011	22/06/2011
4.	Mike and Gretchen Roghan , Residential property owners	Coore, Co. Clare (House No. 9)		
5.	John Paul and Yvonne O'Brien , Residential property owners	Coore, Mullagh, Co. Clare (House No. 10)	22/06/2011	22/06/2011
6.	Sylvester and Mary Nugent , Residential property owners and farmers	Coore, Mullagh, Co. Clare (House No. 12)	22/06/2011	22/06/2011
7.	Maura Nugent , Residential property owner and former farmer	Coore, Mullagh, Co. Clare (House No. 11)	22/06/2011	22/06/2011
8.	Gertie Donnellan (sister of Maura Nugent), Part-time resident	21 Cahercalla Heights, Ennis, Co. Clare (House No. 11)	22/06/2011	22/06/2011
9.	Thomas and Catherine Corry , Residential property owners and farmers	Coore, Mullagh, Ennis, Co. Clare (House No. 14)	21/06/2011	22/06/2011
10.	Maurice and Sylvie Coyle , Residential property owners	Coore, Mullagh, Ennis, Co. Clare (House No. 15)	22/06/2011	22/06/2011
11.	Sara Foust and Steve Haigh , Former residential property owners	Shanaway, Miltown Malbay, Co. Clare (House No. 25) (unclear if number refers to cluster of houses or one)	22/06/2011	22/06/2011

Appendix I to Observations on the NIS on behalf of Coor & Shanavogh Residents & Others

	Name(s)	Address	Letter of objection dated	Letter of acknowledgment dated
12.	Eamon McCarthy , Residential property owner	Shanaway, Miltown Malbay, Co. Clare (No. 25) (unclear if number refers to cluster of houses or one particular house)	20/06/2011	20/06/2011
13.	Jutta Kruse , Residential property owner	Shanaway, Miltown Malbay, Co. Clare	20/06/2011	20/06/2011



2. Home Owners within 1 mile of the Proposed Wind Farm Development

	Name(s)	Address	Letter of objection dated	Letter of acknowledgment dated
14.	Michele Savage , Residential property owner	Coore, Co. Clare And also at 2 Glendale Park, Off Whitehall Road, Terenure, Dublin 12	20 and 22 June 2011	20 and 22 June 2011
15.	Michael and Philomena Sexton , Property Owner	Coore, Co. Clare	22/06/2011	22/06/2011
16.	Josephine Corry , Property owner	Coore, Mullagh, Ennis, Co. Clare	21/06/2011	22/06/2011
17.	Brian and Lorraine Gleeson , Residential property owners and farmers	Coore, Mullagh, Ennis, Co. Clare	22/06/2011	22/06/2011
18.	James and Nell Gleeson , Residential property owners and former farmers/publicans/shopkeepers	Coore, Mullagh, Co. Clare	22/06/2011	22/06/2011
19.	Derrick Gleeson and Cathy Blake , Residential property owners	Coore, Mullagh, Ennis, Co. Clare	22/06/2011	22/06/2011
20.	Michael Gleeson , Property Owner and Rural Development Consultant, based at Knockanoulort, Ballyhar, Killarney, Co. Kerry	Coore, Co. Clare	22/06/2011	22/06/2011
21.	Carol Gleeson , Residential property owner	Shanaway, Miltown Malbay, Co. Clare	22/06/2011	22/06/2011
22.	Michael and Carmel Hayes , Residential property owners	Shanaway West, Miltown Malbay, Co. Clare	20/06/2011	21/06/2011

Appendix I to Observations on the NIS on behalf of Coor & Shanavogh Residents & Others

	Name(s)	Address	Letter of objection dated	Letter of acknowledgment dated
23.	Martin-John, Gerard and Eileen McGuane , Residential property owners and farmers	Shanaway, Co. Clare		
24.	Pat and Teresa Murray , Residential property owners and farmers	Clounlaheen, Mullagh, Ennis, Co. Clare	21/06/2011	21/06/2011
25.	Eamon and Joanne McGivney , Residential property owners	Cloonlaheen West, Doonogan, Mullagh, Co. Clare	20/06/2011	20/06/2011
26.	Martin and Mary Sexton , Residential property owners and farmers	Clounlaheen, Mullagh, Ennis, Co. Clare	21/06/2011	21/06/2011
27.	Paul Sexton , Property owner	Clounlaheen, Mullagh, Co. Clare	22/06/2011	22/06/2011
28.	Anne and Toby Tovey , Residential property owners	Cloonlaheen West, Doonogan, Mullagh, Co. Clare	21/06/2011	21/06/2011
29.	Josephine Marsh and Mick Kinsella , Residential property owners	Cloonlaheen, Doonogan, Mullagh West, Co. Clare	22/06/2011	22/06/2011

3. The Following persons are not residing within 1 mile of the development but are concerned about the cumulative impact of wind farm developments in the area, and have expressed a wish to support the observations on the First Party Appeal and on the Applicant's Further Information and Natura Impact Statement

	Name(s)	Address	Letter of objection dated	Letter of acknowledgment dated
30.	Pat and Aine Henderson , Residential property owners	Letterkelly, Miltown Malbay, Co. Clare	21/06/2011	21/06/2011
31.	Patrick Lafferty , Property owner	Letterkelly, Miltown Malbay, Co. Clare	21/06/2011	21/06/2011
	David Dillon , Residential property owner. David Dillon did not make a submission to the Planning Authority	Glaun, Connolly, Co. Clare		

CSWF-076 App1 of Obs'ns on the applicant's NIS, 20-Mar-14.doc

Environmental Management Services

20 March 2014

