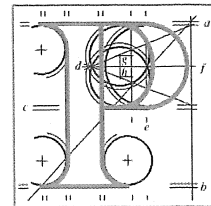


**Our Case Number:** ABP-311198-21



**An  
Bord  
Pleanála**

Cummeennabuddoge Wind Designated Activity Company  
c/o Atmos Consulting  
CBC House  
24 Canning Street  
Edinburgh  
EH3 8EG  
Scotland

**Date:** 29 August 2023

**Re:** Windfarm of up to 19 no. wind turbines with a generation capacity of up to 114MW and all associated infrastructure.  
Clydaghroe and Cummeennabuddoge, Clonkeen, Co. Kerry and Ballyvourney and Millstreet, Co. Cork.

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer further to our letter to you dated 14<sup>th</sup> August 2023 and in particular the omission of the details relating to the refund owing to you.

Please be advised that following consultations under section 37B of the Planning and Development Act, 2000 as amended, the Board hereby serves notice under section 37B(4)(a) that it is of the opinion that the proposed development falls within the scope of paragraphs 37A(2)(a), (b) and (c) of the Act. Accordingly, the Board has decided that the proposed development would be strategic infrastructure within the meaning of section 37A of the Planning and Development Act 2000, as amended. Any application for permission for the proposed development must therefore be made directly to An Bord Pleanála under section 37E of the Act.

Please also be informed that the Board considers that the pre-application consultation process in respect of this proposed development is now closed. A copy of the Board Direction is enclosed

The following is a list of prescribed bodies to be notified of the application for the proposed development.

1. Minister for Housing, Local Government and Heritage
2. Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (Development Applications Unit)
3. Minister for Agriculture, Food and the Marine
4. Minister for the Environment, Climate and Communications
5. Mayo County Council
6. North and West Regional Assembly
7. Transport Infrastructure Ireland
8. An Taisce

|                           |                |                  |
|---------------------------|----------------|------------------|
| <b>Teil</b>               | <b>Tel</b>     | (01) 858 8100    |
| <b>Glaao Áitiúil</b>      | <b>LoCall</b>  | 1800 275 175     |
| <b>Facs</b>               | <b>Fax</b>     | (01) 872 2684    |
| <b>Láithreán Gréasáin</b> | <b>Website</b> | www.pleanala.ie  |
| <b>Ríomhphost</b>         | <b>Email</b>   | bord@pleanala.ie |

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9. An Chomhairle Ealaíon
10. Fáilte Ireland
11. The Heritage Council
12. National Parks and Wildlife Service
13. Inland Fisheries Ireland
14. Uisce Éireann
15. Irish Aviation Authority
16. Health Service Executive
17. Commission for Regulation of Utilities
18. Office of Public Works

Further notifications should also be made, where deemed appropriate.

In accordance with section 146(5) of the Planning and Development Act, 2000 as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

In accordance with the fees payable to the Board and where not more than one pre-application meeting is held in the determination of a case, a refund of €3,500 is payable to the person who submitted the pre-application consultation fee. As only one meeting was required in this case, a refund of €3,500 will be sent to you in due course.

The following contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

### **Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).**

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(7) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The

|                           |                |                                                        |
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| <b>Tel</b>                | <b>Tel</b>     | (01) 858 8100                                          |
| <b>Glao Áitiúil</b>       | <b>LoCall</b>  | 1800 275 175                                           |
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| <b>Ríomhphost</b>         | <b>Email</b>   | <a href="mailto:bord@pleanala.ie">bord@pleanala.ie</a> |

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Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website,  
[www.citizensinformation.ie](http://www.citizensinformation.ie).

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

If you have any queries in the meantime, please contact the undersigned officer of the Board or email [sids@pleanala.ie](mailto:sids@pleanala.ie) quoting the above mentioned An Bord Pleanála reference number in any correspondence with the Board.

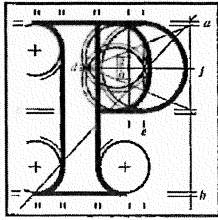
Yours faithfully,

  
\_\_\_\_\_  
Ashling Doherty  
Executive Officer  
Direct Line: 01-8737160

PC09

|                    |         |                                                        |
|--------------------|---------|--------------------------------------------------------|
| Teil               | Tel     | (01) 858 8100                                          |
| Glaó Áitiúil       | LoCall  | 1800 275 175                                           |
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An  
Bord  
Pleanála

**Board Direction**  
**BD-013217-23**  
**ABP-311198-21**

The submissions on file and the inspector's report were considered at a Board Meeting held on the 11/08/2023.

The Board decided having regard to the size, scale and location of the proposed wind farm and related development, it is considered that the proposed development constitutes development that falls within the definition of energy infrastructure in the Seventh Schedule of the Planning and Development Act 2000, as amended, thereby satisfying the requirements set out in section 37A(1) of the Act.

The proposed development is also considered to be of strategic importance by reference to the requirements of sections 37A(2)(a), (b) and (c) of the Planning and Development Act 2000, as amended. An application for permission for the proposed development must therefore be made directly to An Bord Pleanála under section 37E of the Planning and Development Act 2000, as amended.

The Board recommended the application documents should be forwarded the list of Prescribed Bodies below for their consultation and consideration for the purposes of Section 37E (3) (c) of the Act:

- Minister for Housing, Local Government and Heritage.
- Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (Development Applications Unit).
- Minister for Agriculture, Food and the Marine.
- Minister for the Environment, Climate and Communications.
- Mayo County Council.
- North and West Regional Assembly.
- Transport Infrastructure Ireland.

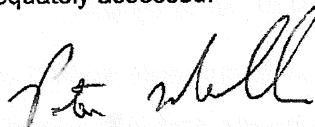
- An Taisce
- An Chomhairle Ealaíon
- Fáilte Ireland
- The Heritage Council
- National Parks & Wildlife Service.
- Inland Fisheries Ireland.
- Irish Water.
- Irish Aviation Authority.
- Health Service Executive.
- Commission for Regulation of Utilities.
- Office of Public Works.

Further notifications should also be made, where deemed appropriate.

**Note 2:** The prospective applicant is advised to submit a standalone document (which may form part of the EIAR) with the planning application, which outlines all proposed mitigation measures, in the interest of convenience and ease of reference.

**Note 3:** The prospective applicant is advised to submit sufficient drawings and details, including turbine dimensions, to fully describe the nature and extent of the proposed development and to allow its potential impacts to be adequately assessed.

**Board Member**



Peter Mullan

**Date:** 11/08/2023