



An
Bord
Pleanála

Inspector's Report PL04.248451

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| Development | Widening works to junction of road to facilitate deliveries of loads to wind farm development |
| Location | Inchincurka, Dunmanway, Co. Cork |
| Planning Authority | Cork County Council |
| Planning Authority Reg. Ref. | 16/453 |
| Applicant(s) | Shehy More Windfarm Ltd |
| Type of Application | Permission |
| Planning Authority Decision | Grant subject to Conditions |
| Type of Appeal | Third Party x 2 |
| Appellant(s) | (1) Tony Miller & Others (2) Nigel De Haas |
| Observer(s) | Sarah Hodkinson & Daphne Babington |
| Date of Site Inspection | 28 th August 2017 |
| Inspector | Mary Crowley |

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Inchincurka, Co Cork c 6 km north of Dunmanway and comprises a level triangle of meadow land that is bounded on two sides by public roads at the junction of R-585 road that runs from west to east and the more minor L-4607 that runs from north to south in the direction of Inchigela. A post and rail fence and a hedgerow run along the eastern perimeter with the L-4607 with a concrete post and rail fence fronting the R-585 to the south. To the west of the site runs a drainage ditch and circa 65 metres away flows the Cummarnamart River. The scheme involves the construction of a hard-core area on the western side of the junction between the R587 Regional Road and the L4607 Local Road.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I would also refer the Board to the photos available to view throughout the appeal file.

2.0 Proposed Development

- 2.1. The application submitted to Cork County Council on **15th July 2016** is for a 10-year permission for junction works to accommodate abnormal load vehicles. The proposed development involves the construction of a hard core area on the western side of the junction between the R587 Regional Road and the L4607 Local Road (Inchincurka Cross) in the townland of Inchincurka. These proposed temporary accommodation works will facilitate the delivery of abnormal loads such as turbine tower section and blades to the proposed Shehy More Windfarm (PL04.243486 (Reg Ref 13/551) refers). The area of land required for the proposed development measures approximately 1,560 sqm.
- 2.2. The “wind farm development” referred to in the public notices relates to a Local Authority decision (Reg Ref 13/551) that was appealed to An Bord Pleanála (PL04.243486 refers.) In December 2016 the Board granted a 10-year permission to construct a wind farm consisting of 10 turbines and all ancillary site works at Cloghboola, Gortnacarriga, Tooreenalour, Garryantorna and Shehy More subject to 24 conditions. The wind farm is located c7km northwest of the junction works described in this report. This history file is discussed further in Section 4.0 of this report.

2.3. The planning application was accompanied by the following:

- **Ecological Impact Assessment & AA Screening Report** prepared by McCarthy, Keville & O'Sullivan Ltd Planning and Environmental Consultants. The report states that the assessment is based on a desk study and a field visit conducted on the 20th June 2016 to assess the site of proposed works and on the EIS Addendum for the Shehy More Wind Farm prepared on the 15th September 2015 and the EIS prepared for Carrigarierk Wind Farm on the 21st December 2015. It is stated that this assessment specifically assesses the potential for the proposed development to impact on European sites.
- **Environmental Report** prepared by McCarthy, Keville & O'Sullivan Ltd Planning and Environmental Consultants. The report considers the potential impacts to the environment resulting from the proposed project alone and in combination with other plans and projects is examined under the following topics; human beings, flora and fauna, soils and geology, water, air and climate, noise and vibration, landscape, cultural heritage and archaeology and natural assets.
- **Landowners consent** to the making of the planning application

2.3.1. In response to a request for further information on the 6th September 2016 the applicant submitted a detailed report entitled "**Response to Further Information Request**" prepared by McCarthy, Keville & O'Sullivan Ltd Planning and Environmental Consultants on **2nd March 2017**. The response included:

- Archaeological Impact Assessment
- Revised Ecological Impact Article 6(3) Appropriate Assessment Screening Report
- Surfacing Proposals
- Temporary Boundary Treatment Details
- Drawings
- Hydro Environmental Services Technical Note

2.3.2. **Revised public / site notices** were submitted on the **13th March 2017** and **15th March 2017** indicating "significant further information" had been submitted to the Planning Authority. Correspondence on file from the applicant dated **24th March**

2017 states that the applicant has been monitoring the site notices erected on site and that on one such inspection, it was noted that the notices had been removed. The applicant states that the notices were immediately re-erected and that the applicant would continue to monitor the situation.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Cork County Council issued a notification of decision to **grant permission** subject to 13 conditions that may be summarised as follows:

- Condition No 1** Compliance with plans and particulars lodged on 15th July 2016 as amended on 2nd March 2017 and 13th March 2017.
- Condition No 2** All Environmental, Construction and Ecological mitigation measures set out in the Environmental Report received on 15th July 2017 and in further plans and particulars received on 2nd March 2017 shall be complied with.
- Condition No 3** A temporary robust fence shall be erected in order to protect water quality
- Condition No 4** A Construction Management Plan shall be submitted and agreed
- Condition No 5** Construction activities shall be carried out in accordance with good practise as set out in CIRCA Guidelines Control of Water Pollution from Construction Sites
- Condition No 6** Existing hedgerow running parallel along the L-4607 shall be retained
- Condition No 7** Details of the “temporary boundary treatment” and fencing and or traffic bollards along the L-4607 shall be agreed
- Condition No 8** Existing hedgerow and timber fencing together with new native indigenous hedgerow fencing running parallel to the R-595 shall be agreed.
- Condition No 9** All planting shall comply with landscaping scheme to be agreed

- Condition No 10** The two area of hard surfacing shall be surfaced in tar and chip for a distance of not less than 3.0m
- Condition No 11** Existing roadside drainage shall be preserved
- Condition No 12** No earth, spoil or soil shall be stockpiled on the site
- Condition No 13** Following the final use of the lands for delivery vehicles associated with the development of windfarm components the site shall be returned to its original condition of improved grassland.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The **Case Planner** (Philip O'Sullivan) in their first report of **6th September 2016** addressed matters of principle, project splitting, landscape and visual impact and road safety, archaeology, noise and vibration, surface water, phasing, decommissioning, flora and fauna and AA. The Case Planner recommended that the following further information be sought, as summarised:

- 1) Archaeological Impact Assessment
- 2) Revised and amended Ecological Impact Assessment & Article 6(3) Appropriate Assessment Screening Report to consider the impact of the proposed development upon the Cummernamart River and potentially the otter, the risk of nutrient increase within the Bandon / Caha Catchment area and the likely implications upon the freshwater Pearl Mussel, Brook Lamprey and Salmon. Information was also required on the potential issue of Japanese Knotweed which was found in the immediate geographical area.
- 3) Detailed proposals for a sealed (surface dressing) widened area to prevent any materials/stones being deposited onto the public roads R-585 and L-4607 from the site.
- 4) Detailed proposal on the type of temporary suitable fence / boundary treatment that could be removed as required, but that would also serve as well-defined road edge, without causing any confusion between the public road and widened area (non-public) given the location adjoining the junction of a regional road.

5) Entire route haul map submitted to An Bord Pleanála under PL04.243486 (Reg Ref 13/551) (Shehy More Wind Farm) and confirmation that the route haul map has changed to now include the R-585 and L-4607 and rationale for such a decision.

3.2.3. The **Senior Planner** (Keith Irwin) in their report of **6th September 2016** noted agreed with the recommendation of the Case Planner to request further information. **Further information** was requested on the **6th September 2016** that reflected the recommendation of both the Case Planner and the Senior Planner.

3.2.4. The **Case Planner** (Philip O'Sullivan) in their second report of **7th April 2017** and having considered the further information submitted recommended that planning permission be granted subject to 13 conditions. The **Senior Executive Planner** (Geraldine O'Mahony) in their report also of **7th April 2017** states that the issues raised in the further information request have been resolved. The report recommended a grant of permission in line with recommendation of the Case Planner.

3.2.5. **Other Technical Reports**

3.2.6. The **Ecologist** (Sharon Casey) their report of the **7th September 2016** requested the following further information:

- Clarification and details pertaining to excavated materials i.e. stockpile on site or dispose of off-site (other possibilities referenced)
- Measures to ensure that water quality in the adjacent river will be protected
- Planner to determine whether a Flood Risk Assessment is required as part of the site is located in an area identified to be at risk of flooding
- As site for road widening is not on the turbine delivery route as set out in the initial EIS details of proposed route required in order to determine whether any additional works may be required, and to determine what, if any possible environmental implications may arise as a result of the proposed change.

3.2.7. The **Biodiversity & Planning Report** (Ecologist Sharon Casey) of **6th April 2017** is satisfied with the conditions proposed by the Case Planner.

3.2.8. The **Area Engineer** in their first report of **16th August 2016** requested that the following further information be sought:

- 1) Proposals for a sealed (surface dressing) widened area to prevent any materials / stores be deposited onto the public roads from the site
- 2) Details on the type of suitable fence / boundary treatment

3.2.9. The **Area Engineer** in their second report of **28th March 2017** and having considered the further information submitted recommended that the following further information be sought:

- Full details on temporary fence / boundary treatment that can be removed as required, but also serving as well-defined road edge, not causing any confusion between public road and widened area (non-public) given the location adjoining the junction of a regional road.

3.2.10. The **Archaeologist** in their report of **5th September 2016** stated that the proposed development is immediately adjacent to recorded archaeological monument CO093-052 01 Fulacht Fiadha and CO093-052 02 Wedge Tomb and within its “zone of Archaeological Potential”. Recommended that an Archaeological Impact Assessment be sought by way of further information. The **Archaeologist** in their report of **3rd March 2017** and having considered the further information submitted set out the following:

- The Wedge Tomb (CO093-052 02) is located incorrectly on the historic map viewer. Both archaeological sites are over 100m to the east of the proposed development site.
- Given the distance between the proposed development and the archaeological sites and given the scale of the development it is considered that no further archaeological input is required.

3.3. Prescribed Bodies

3.3.1. There are no reports from prescribed bodies recorded on the appeal file.

3.4. Third Party Observations

3.4.1. There are several observations recorded on the planning file from (1) Nigel de Haas, (2) Karin Kempf, (3) Clifford J. Carter, (4) Tony Miller, Kristin Lauback & Family, (5) D. Babington, (6) Sarah Hodkinson, (7) Joseph Pittam, (8) Wendy Miles, (9) Mick &

Jula O'Connell, (10) Con Lehane and (11) Anton Floyd. The issues raised may be summarised as follows:

- Traffic safety and dangerous road junction
- Hydrological connection and potential risk to the River Bandon SAC
- Project splitting and multiple applications and should have been part of the original application
- Landowners consent an inadequate duration of consent
- Duplicate application
- Environmental omissions
- Validity of application
- O'Grianna judgement is relevant in that the applicant should be required to re-apply to the planning authority with a complete application and EIS covering the whole development
- Area subject to local flooding and drains directly into the Bandon River SAC
- Planning duration of 10 years is unjustified

3.4.2. In response to the further information a further number of observations were submitted from (1) Wendy Miles, (2) Mick & Jula O'Connell, (3) Nigel de Haas, (4) Sarah Hodgkinson & Daphne Babington, (5) Karin Kempf, (6) Con Lehane, (7) Tony Miller, Kristin Lauback & Family, (8) Clifford J. Carter and (9) Anton & Carole Anne Floyd. The issues raised may be summarised as follows:

- Dangerous road junction
- Submitted that the area is subject to local flooding
- Change in windfarms route haul map
- EIS required
- There is a hydrological connectivity / surface water connectivity between the site and the Bandon River SAC
- Misleading information
- Impact on Inchincurka Wedge Tomb (CO093-002) not assessed
- Failure to identify author of ecological reports.

4.0 Planning History

4.1. There is no evidence of any previous planning application or appeal at the site of the proposed development. However, there are two previous appeals referred to throughout the appeal. The most relevant planning history cases are set out below. I would draw the Boards attention to Map No Figure 2.1 “Cumulative Impact Assessment Map”, page 3 of the Environmental Report that was submitted with the Planning Application that sets out the territorial extent and location of the proposed Shehy More Wind Farm (PL04.243486 (Reg Ref 13/5541)) that is referred to in the public notices and the proposed Carrigarierk Wind Farm (PL04.246353 (Reg Ref 15/730)) that is referenced throughout the appeal.

4.2. **PL04.243486 (Reg Ref 13/5541) Shehy More Wind Farm**

4.3. This is the “wind farm development” referred to in the public notices. The applicant, Shehy More Windfarm Ltd, sought a ten year permission to construct wind farm consisting of 12 wind turbines and all ancillary site works. Cloghboola, Gortnacarriga, Tooreenalour, Garryantorna, Shehy More. Following appeal the Board granted a 10-year permission in December 2016 to construct a wind farm consisting of 10 turbines together with all ancillary site works at Cloghboola, Gortnacarriga, Tooreenalour, Garryantorna and Shehy More subject to 24 conditions.

4.4. Cork County Council granted a ten-year permission to construct wind farm consisting of 10 wind turbines and all ancillary site works at Cloghboola, Gortnacarriga, Tooreenalour, Garryantorna and Shehy More, Dunmanway, Co. Cork subject to 38 conditions. The planning application was accompanied by an Environmental Impact Statement (EIS) and a Natura Impact Statement (NIS). The decision was appealed by both the first party and two third parties. The reporting inspector in their first report recommended that permission be granted subject to 23 no conditions.

4.5. However, in light of the final judgement of the High Court in the case of O’Grianna & Ors. v. An Bord Pleanála [2014] IEHC 632 as delivered on 12th December, 2014, the Board issued a Section 132 Notice to the applicant on 12th May, 2015 wherein the first party was advised that the Board was of the view that the O’Grianna judgement may be relevant to the proposal and that there were concerns the details submitted in respect of a connection to the national grid may be inadequate for the purposes of carrying out an environmental impact assessment for the entire project, including the

assessment of cumulative impacts. On 18th September 2015, the applicant, submitted additional information to the Board in response to the Section 132 Notice which included the following documents:

- Addendum to Environmental Impact Statement
- Article 6(3) Appropriate Assessment Revised Natura Impact Statement
- Natura Impact Statement: Appendix 4.5: Addendum to Environmental Impact Statement
- Additional Planning Drawings (Booklet)

4.6. The Planning Inspector having considered the S.132 response recommended that a 25-year permission be granted subject to 25 conditions. The Board granted a 25-year permission subject to 24 conditions on 22nd December 2016. It is noted that Condition No 4 required that the permitted development be carried out ten years from the date of the order. Leave has been granted for a judicial review of An Bord Pleanála Decision PL04.243486. No decision has issued at the time of writing. It is reported that this is listed for hearing in the Commercial Court on 12th June 2018 (Hodkinson and Ors -v- An Bord Pleanála 2017/147 JR) refers.

4.7. **PL04.246353 (Reg Ref 15/730) Carrigarierk Wind Farm**

4.8. Cork County Council refused a 10-year permission for 5 wind turbines, with maximum height of 140m, upgrading of existing and provision of new internal access roads, wind anemometry mast (90m), electricity substation, connection to national grid at numerous at Carrigarierk, Dunmanway. The notification of decision to refuse planning permission was for one reason that the development would materially contravene Objective ED 3-5 of the Plan, relating to impact on visual amenity and the precedent which a grant of planning permission would set for other similar-type developments.

4.9. The decision was appealed by both the first party and three third parties. The reporting inspector recommended that a 25-year permission be granted subject to 20 conditions. The Board granted a 25-year permission subject to 20 conditions on 21st October 2016. Condition No 2 required that the permitted development be carried out ten years from the date of the order. Leave was granted for a judicial review of An Bord Pleanála Decision PL04. 246353. In November 2017 the High Court ruled that *the board conducted EIA and AA as it was required to do in respect of the*

Carrigarierk Development and di no in accordance with law. It recorded its decision in relation to the both the EIA and the AA in a lawful manner. Therefore the decision of the Board to grant permission stands.

5.0 Policy Context

5.1. National Policy

5.2. It is the Government's policy to promote the production of electricity from renewable resources like wind power in order to meet demand, reduce emissions and to meet commitments under the Kyoto Protocol. This policy is highlighted in government policy documents such as the National Climate Change Strategy 2007-2012 and Delivering a Sustainable Energy Future for Ireland – The Energy Policy Framework 2007-2020.

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

5.4. Development Plan

5.5. The Operative Plan for the area is the **Cork County Development Plan 2014**. The policy for wind-farms is contained in **Chapter 9 "Energy and Digital Economy"**. The onshore wind energy strategy set out in this plan identifies three categories of 'Wind Deployment Area' for large scale commercial wind energy developments as follows:

- "Acceptable in Principle"
- "Open to Consideration"
- "Normally discouraged"

5.6. The appeal site also lies within an Area "Open to Consideration" in relation to windfarm development (Figure 9 of the Development Plan refers). The lands are not designated as "High Value Landscape". There are numerous Scenic Routes within

the wider geographical area however the site does not front a Scenic Route and is removed from all such scenic routes.

5.7. Relevant planning policies in relation to this scheme include:

- **Objective ED 3-5: Open to Consideration** - *Commercial wind energy development is open to consideration in these areas where proposals can avoid adverse impacts on:*
 - a) *Residential amenity particularly in respect of noise, shadow flicker and visual impact;*
 - b) *Urban areas and Metropolitan/Town Green Belts;*
 - c) *Natura 2000 Sites (SPA and SAC), Natural Heritage Areas (NHA's) or adjoining areas affecting their integrity.*
 - d) *Architectural and archaeological heritage;*
 - e) *Visual quality of the landscape and the degree to which impacts are highly visible over wider areas.*
- **Objective GI 6-1: Landscape:**
 - a) *Protect the visual and scenic amenities of County Cork's built and natural environment.*
 - b) *Landscape issues will be an important factor in all land-use proposals, ensuring that a proactive view of development is undertaken while maintaining respect for the environment and heritage generally in line with the principle of sustainability.*
 - c) *Ensure that new development meets high standards of siting and design.*
 - d) *Protect skylines and ridgelines from development.*
 - e) *Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.*
- **Objective HE 2-1: Site Designated for Nature Conservation** - *Provide protection to all natural heritage sites designated or proposed for designation*

under National and European legislation and International Agreements, and to maintain or develop linkages between these. This includes Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas, Statutory Nature Reserves, Refuges for Fauna and Ramsar Sites.

- **Objective HE 3-3: Zones of Archaeological Potential** - *Protect the Zones of Archaeological Potential (ZAPs) located within historic towns and other urban areas and around archaeological monuments generally. Any development within the ZAPs will need to take cognisance of the potential for subsurface archaeology and if archaeology is demonstrated to be present appropriate mitigation (such as preservation in situ/buffer zones) will be required.*
- **Objective TM 3-3: Road Safety and Traffic Management:**
 - d) *Ensure that all new vehicular accesses are designed to appropriate standards of visibility to ensure the safety of other road users.*
 - e) *Improve the standards and safety of public roads and to protect the investment of public resources in the provision, improvement and maintenance of the public road network.*
- **Objective WS 5-3: Surface Water Management** - *Manage surface water catchments and the use and development of lands adjoining streams, watercourses and rivers in such a way as to minimise damage to property by instances of flooding and with regard to any conservation objectives of European sites within the relevant catchments and floodplains*

5.8. Natural Heritage Designations

- 5.8.1. The relevant Natura 200 site pertaining to this scheme are (1) Bandon River SAC, (2) Gearagh SAC and (3) Gearagh SPA

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. There are two third party appeals recorded on the appeal file from (1) Tony Miller, Clifford J. Carter & Con Lehane and (2) Nigel de Haas against the decision of Cork

County Council on to grant conditional permission to Shehy More Windfarm Limited for temporary road junction widening works at the junction of the R585 and L4607 in West Cork. The issues raised in both appeals may be summarised under the following general headings:

- 6.1.2. **Observation to the Planning Authority** - The grounds of this planning appeal against the decision of Cork County Council to grant conditional permission arise from the failure of the Planning Authority to give adequate weight to the valid and substantive observations of local residents as expressed in the submissions they have made to Cork County Council on the initial planning application and subsequently on the significant further information provided by the applicant.
- 6.1.3. **Multiple Planning Applications** – The sole purpose of the proposed development is to facilitate the delivery of abnormal loads to a specific wind farm development at Shehy More. This is the third in a series of planning applications that relate to a single, indivisible wind farm application. It is submitted that this planning application constitutes a “patch upon a patch” of an existing wind farm development. The multiple planning applications cannot be viewed as anything other than a single wind farm development that should be subject to a single Environmental Impact Assessment in accordance with the Environmental Impact Assessment Directive 2014/52/EU of 16th April, 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, and as ruled by Mr. Justice Peart in the case of O’Grianna and Others -v- An Bord Pleanála.
- 6.1.4. **Duration of Landowners Consent** - There is no reference in the landowners’ consent to any duration of planning permission, and therefore it is reasonable to infer that the landowner has consented to the standard duration of 5 years as publically specified on the Cork County Council website in the absence of specific consent to a longer period. There is consequently no justification of, or consent to, planning permission having a duration exceeding the standard 5 years.
- 6.1.5. **Road Safety** - Condition No. 8 of the grant of planning permission does not adequately address the interests of road safety given the restrictive emerging visibility at the R595 and L4607 road junction. In view of the very real continuing risk of a serious road accident arising from the dangerous skewed configuration of this road junction, it would be negligent to grant any form of planning permission to road

widening works at the proposed site without imposing simple conditions that would improve the safety of road users. To grant planning permission for junction widening without imposing conditions to simultaneously improve the safety of road users is to be deplored.

- 6.1.6. **Appropriate Assessment** – It is immediately apparent from even the most cursory inspection of the proposed site that the western boundary of the site is formed by an excavated ditch that drains via a culvert into the field on the opposite (southern) side of the R585 clearly indicating a direct drainage link into the Cummarnamart River. Submitted that Cork County Council are in material error in accepting the overall conclusion presented in Section 7.4 of the Revised Ecological Impact Assessment and Appropriate Assessment Screening Report that *the proposed development, in view of best scientific knowledge and on the basis of objective information, either individually or in combination with other plans or projects, is not likely to have significant effects on any European Sites* as it draws on the inaccurate information.
- 6.1.7. The site, which together with this section of the R585 is prone to flooding in periods of high rainfall, drains directly via the drainage ditch on the western boundary into the Cummarnamart River, which in turn flows into the Caha River which is a tributary of the Bandon River. The assessment failed to identify even the most obvious features of the direct hydrological linkage between the proposed site and the Bandon River SAC (002171), and that both the Environmental Report and the Ecological Impact Assessment and Article 6(3) Appropriate Assessment Screening Report repeatedly stipulate that there is no such linkage. Condition No. 11 in this context is meaningless as the measures will not be able to preserve proper roadside drainage and to prevent the flooding of the public road without draining into the excavated ditch as described
- 6.1.8. **Recommendation** – Submitted that this is a seriously flawed decision as it is based upon a factually incorrect Revised EIA with scant or no regard given by the Planning Authority to the scientifically valid and detailed observations made by the public on the further information provided by the applicant. The applicant has failed to justify ‘Screening Out’ of the Bandon River SAC (002171) in the Revised Ecological Impact Assessment and Appropriate Assessment Screening Report. The Bandon River SAC should have been ‘Screened In’. Requested that the Board refuse permission for the proposed development on the following grounds:

- Failure by the applicant to provide evidence to support ‘Screening Out’ of impacts on the Bandon River SAC in the Revised Ecological Impact Assessment and Appropriate Assessment Screening Report.
- Failure of the Planning Authority to take due cognisance of the observations by the public on the incorrect Further Information provided by the applicants required by law.
- Failure of Cork County Council to take steps to verify the integrity of the Further Information provided by the applicant and of the observations they received on that further information from the public, including myself.

6.2. Applicant Response

6.2.1. In response to the 2 no third party appeals from (1) Nigel de Hass and (2) Tony Miller & Others, McCarthy Keville O’Sullivan on behalf of the applicant submitted the following comments on **7th June 2017** as summarised:

- **10 year permission** – Submitted that a similar 10 year planning permission duration has been granted for Shehy More Wind Farm.
- **Landowners Consent** - Submitted that the landowners have been fully briefed on the nature of the works to be undertaken on the proposal site, as well as the necessity to seek a 10 year permission
- **Project Splitting / EIA** - The application currently before the Board seeks to obtain planning permission for road widening works to facilitate the delivery of abnormal loads to the permitted Shehy More Wind Farm. The proposed works have already been subject to EIA by the Board in respect of the permitted Shehy Road Wind Farm (PL04.243486 refers) as well as being a feature of the EIS for the permitted Shehy More Wind Farm grid connection which considered all potential “in combination effects”. Accordingly there is no issue in relation to project splitting with respect of the proposed development.
- **Western Boundary** - A small dry channel / drain that is located along the western side of the site of the proposed works (approx. 8 metres at closest from the works themselves) was not classified as a drainage ditch from an ecological classification perspective as it does not support water or wetland

vegetation. Its function is to drain the site but it is not considered to be a surface water feature and it does not continue in the fields to the south of the public road. It therefore does not provide a direct surface water connection to the Cumnamart or Caha Rivers.

- **Flooding Risk & Drainage** – Responses to these issues have been provided in a technical note prepared by Hydro Environmental Services (HES) who have previously undertaken a Stage 1 Flood Risk Assessment (FRA) of the proposal site as part of the further information response. The proposed works are minor in nature and located within an area that is not mapped in a flood zone. Any runoff can be controlled and there will be no increase in flood risk.
- **Archaeology & Visual Impact** – The location and nature of the proposed works have previously been the subject of Environmental Impact Assessment by the Board, including archaeology and cultural heritage, in respect of the permitted Shehy More and Carrigierk Wind Farm Schemes. In the case of both permitted developments it was determined that no significant or adverse cumulative visual impacts would occur as a result of these projects including the junction improvement works at the location of the proposal site.
- **Traffic Safety** – The Board will acknowledge that the current layout design of this junction is beyond the control of the applicant. In this regard, the Board are directed to the Cork County Council Planners Report on Further Information Assessment whereby the Planners has stated that the applicant *“has no control over the emerging sightlines along the R585 in an easterly direction and does not control this field however”*. In this regard, the Planning Authority has taken appropriate cognisance of the concerns raised in relation to traffic safety and the powers available to it under existing planning legislation, in imposing a condition (Condition No 8) in the interests of road safety given the restrictive emerging visibility at the R585 and L4607 road junction in its decision to grant permission for the proposed development.
- **Decision** - The proposed development is in accordance with the proper planning and sustainable development of the area as evidenced in the decision that this has been issued by the Planning Authority.

6.3. Planning Authority Response

6.3.1. **Cork County Council** in their response to An Bord Pleanála letter dated 11th May 2017 and the appeal by Tony Miller & Others submitted the following on **12th June 2017**:

- It is reiterated that the Planning Authority has considered all aspects of this application carefully including all very detailed submissions.
- The Planning Authority were well aware that a drainage ditch lies on the far western side of the site but were satisfied that, subject to appropriate mitigation measures, as set out in the conditions attached, that pollution and any perceived detrimental impacts on such a water course and consequently the SAC would not result. This view was endorsed by the Councils Heritage Officer in their email of 6th April 2017.
- The issue of Project Splitting is a matter for An Bord Pleanála. It is submitted that a decision to refuse on the basis of “project splitting” may be construed as most inconsistent with the Boards previous decision.
- No letter of complaint has been submitted from the landowner to state that consent has been restricted to a five year period. Submitted that logic alone would suggest that the landowner has given an unrestricted time period since none to the contrary has been specified.
- Whilst it would have been desirable to improve junction visibility over lands to the east of the road junction such a condition could not be complied with and thus cannot be imposed as it does not meet the “six tests” of a planning condition.
- Having considered the submission the Planning Authority has no wish to alter or amend its previously held and stated views on the matter and the recommendation to grant permission subject to 13 conditions which were carefully considered and drafted.

6.4. Observations

6.4.1. There is one observation recorded on the appeal file from Noonan Linehan Carroll Coffey Solicitors on behalf of Sarah Hodkinson and Daphne Babington who fully

endorse both appeal and submitted on the **31st May 2017**. The issues raised may be summarised as follows:

- Proposed development is integrally connected with a larger development proposal comprising a windfarm and grid connection works and require EIA pursuant to Part X of the Planning and Development Act (as amended).
- An application which does not comply with mandatory EIA requirements is invalid and planning permission must be refused on that basis.
- Additional concern raised regarding the “destruction of some beautiful tress that form an arch over the road.”

6.5. Further Responses

6.5.1. In response to the appeal by Tony Miller & Others **Nigel de Haas** submitted the following additional comments on **26th May 2017** as summarised:

- 1) The concerns raised by the appellant are shared in relation to
 - Hydrological connection with the Bandon River SAC
 - Dangerous road junction
 - Multiple planning applications cannot be viewed as anything other than a single wind farm development that should be subject to a single EIS in accordance with the EIA Directive
 - The decision to grant conditional permission by Cork County Council was seriously flawed both in its process and in its content
- 2) Maze of overlapping planning applications by Shehy More Windfarm have “propagated factually incorrect information over each successive stage”. It is a single wind farm development that should be subject to a single EIA
- 3) The duration of consent is not referred to anywhere in the letter of consent from the landowners. If the landowners have assumed that the standard 5-year duration of full planning permission is applicable, the 10-year duration referenced in the planning application is invalid.

6.5.2. In response to the appeal by Nigel de Haas, **Tony Miller & Others** submitted the following additional comments together with site photos on **2nd June 2017** as summarised:

- The conclusion set out in the further information is fatally compromised by the cumulative effect of succeeding layers of incorrect information in the preceding sections. The applicant’s assessment failed to identify even the most obvious features of the direct hydrological linkage between the proposed site and the Bandon River SAC and that both the ER and the EIA&AASR repeatedly stipulate that here is no such linkage. Since the applicant failed to justify “screening out” of the Bandon River SAC in the Revised EIA & AASR it should have been “screened in”.
- Concur that it is difficult to see the evidence that demonstrates that the Planning Authority has carried out a comprehensive and scientifically valid assessment of the further information received in as much as observations from the public on both the original EIA and the revised EIA have shown that it is not possible to “Screen Out” the Bandon River SAC based on the information provided
- The Preliminary Flood Risk Assessment mapping is indeed preliminary and there is no substitute for local knowledge until the definitive CFRAM mapping is released. The field directly south of the proposed site is subject to repeated fluvial flooding each year by the Caha River. This field which was accessed by a gate opposite the road junction, is also the receiving environment for pluvial run-off from the site via the culvert under the R585 as described.
- This is a seriously flawed decision as it is based upon a factually incorrect revised EIA with scant or no regard given to the scientifically valid and detailed observations made by the public on the further information

6.5.3. In response to An Bord Pleanála letter dated 28th July 2017 that included a copy of the response by Cork County Council received 12th June 2017 to the third party appeal by Tony Miller & Other, **Nigel de Hass** submitted the following additional comments on **9th August 2017** as summarised:

- Public confidence in the impartial administration of the planning process is enhanced where the concerns of the public are explicitly evaluation and a record of the evaluation with reasons is published into the public domain. Listing the “main salient points” is no substitute for a reasoned evaluation.

- It is not evident whether the County Ecologist had read any / all of the observations from the public on the further information provided
- There is no reference in the reports in the public domain to the drainage ditch on the western boundary of the site

6.5.4. In response to An Bord Pleanála letter dated 28th July 2017 that included the response from McCarthy Keville O’Sullivan on behalf of the applicant to the appeal by Nigel de Hass received 7th June 2017, **Nigel de Hass** submitted the following additional comments on **11th August 2017** as summarised:

- There is no mention of an assessment of the drainage at the Inchicurka Road widening works site in the NIS. Both EIS and the NIS set out how the works will be executed, but neither document provides the information necessary to assess the potential impact on the environment.
- The grant of planning permission for Carrigarierk Wind Farm did not include an assessment of the impact of the proposed Inchicurka road junction works by either Cork County Council or by An Bord Pleanála. As a consequence, this planning application is the first time that the impact of the proposed Inchicurka road junction is actually subject to assessment by the planning authority.
- Queried why the road engineers who built the R585 have constructed a culvert under the road if not allow water to escape through this ditch and so avoid flooding across the road during heavy rainfall.
- The evidence presented by the applicant, including that presented in the response, does not justify “screening out” any potential for impact on the Bandon River SAC.

6.5.5. In response to An Bord Pleanála letter dated 28th July 2017 that included the submission from McCarthy Keville O’Sullivan on behalf of the applicant received on 7th June 2017 **Cork County Council** submitted the following on **14th August 2017** as summarised:

- The Planning Authority has already forwarded detailed comments in respect of this appeal in a report dated 8th June 2017. All conclusions reached are correct including the fact that *“these are minor potential for impact*

the site is small, the runoff can be controlled and there will not be an increase in flood risk”.

6.5.6. In response to An Bord Pleanála letter dated 28th July 2017 that included copies of submissions received from McCarthy Keville O’Sullivan on behalf of the applicant on 7th June 2017 and from Cork County Council on 12th June 2017, **Tony Miller & Others** submitted the following additional comments on **15th August 2017** as summarised:

- **Planning Application** – Does not understand the difference between a development that is claimed to be necessary to facilitate delivery of components to a particular wind farm, and the construction of the wind farm itself, particularly when the planning application is lodged by the same company
- **Project Splitting** – Submitted that “whether these road works at Inchincurka are, were, or might be part of a wind farm development appears to depend on which way the wind is blowing”.
- **Ecology** – Queried why it would appear that surface water that flows into a waterlogged field that is bounded to the north by the R585, on the west by the Cumnamart River and the south by the Caha River does not constitute a direct surface water connection.
- **Flooding** – Submitted that the real question is whether the proposed development has sufficient area to generate a volume of runoff that would appreciably back-up on the proposed site and spill over as pluvial flooding onto the junction of the R585 and L4607 before draining through the culvert under the R585.
- **Archaeology** – The cumulative impact of this ever growing project on the archaeology of the area runs parallel to the issue of the project splitting.
- **Traffic Safety** – The applicant can easily exercise control over the emerging sightlines along the R585 in an easterly direction by virtue of the land being wholly owned by landowners who have consented to this proposed development.

6.5.7. In response to An Bord Pleanála letter dated 28th July 2017 that included copies of submissions received from Cork County Council relating to a third party appeal from

Tony Miller & Others, **McCarthy Keville O’Sullivan** on behalf of the **applicant** submitted the following additional comments on **15th August 2017** as summarised:

- **Project Splitting** – There is no issue in relation to “project splitting” with respect to the proposed development
- **Landowner Consent** – The relevant landowners have been fully briefed on the nature of the works to be undertaken on the proposed site and the necessity to seek a planning permission of the same duration (10 years) as that sought for the now permitted Shehy More Wind Farm
- **Ecology** – The proposed works will not have an adverse impact on any designated sites or protected habitats and species and
- **Road Safety** – The Planning Authority has taken appropriate cognisance of the concerns raised in relation to traffic safety and the powers available to it under existing planning legislation in imposing a condition (Condition No 8) in the interests of road safety.

7.0 **Assessment**

- 7.1. The proposed development involves the construction of a hard core area on the western side of the junction between the R587 Regional Road and the L4607 Local Road (Inchincurka Cross) in the townland of Inchincurka. These proposed temporary accommodation works will facilitate the delivery of abnormal loads such as turbine tower section and blades to the proposed Shehy More Windfarm. Cork County Council granted a 10 year permission for the junction works to accommodate abnormal load vehicles subject to 13 conditions.
- 7.2. The “wind farm development” referred to in the public notices relates to a Local Authority decision (Reg Ref 13/551) that was appealed to An Bord Pleanála (PL04.243486 refers.) The Board granted a 10-year permission in December 2016 to construct a wind farm consisting of 10 turbines and all ancillary site works at Cloghboola, Gortnacarriga, Tooreenalour, Garryantorna and Shehy More subject to 24 conditions. Leave has been granted for a judicial review of this decision.
- 7.3. Notwithstanding the description of the works proposed in the public notices I would also draw the Boards attention to Section 2 of the Environmental Report accompanying the planning application where it states that the proposed junction

accommodation works have been subject to environmental review as part of two planning application; (1) PL04.243486 (Reg Ref 13/5541) Shehy More Wind Farm and (2) PL04.246353 (Reg Ref 15/730) Carrigarierk Wind Farm. The Environmental Report also states that “*subject to favourable consideration of both wind farms, the proposed junction accommodation works will be used to facilitate abnormal load deliveries to **both wind farms***” (emphasis added). Both history files are discussed in Section 4.0 of this report above. It is noted from the EIS submitted with the Carrigarierk Wind Farm application that the “transport route” included works to the R585 / L4607 junction at Inchincurka (relevant extract provided in pouch). In the interest of clarity and having regard to the nature of the application before the Board, as described in the public notices, this assessment relates to the proposed temporary accommodation works required to facilitate the delivery of abnormal loads such as turbine tower section and blades to the proposed Shehy More Windfarm only (PL04.243486 refers).

- 7.4. The current application was submitted to Cork County Council on the 15th July 2016. In response to a request for further information the applicant submitted further information on 2nd March 2017 together with temporary boundary treatment details. Revised public notices were submitted on 13th March 2017 and 15th March 2017. Accordingly this assessment is based on the plans and particulars submitted on **15th July 2016, 2nd March 2017, 13th March 2017 and 15th March 2017** together with the information presented by the parties to the appeal.
- 7.5. As set out in Section 6 of this report there are two third party appeals recorded on the appeal file from (1) Tony Miller, Clifford J. Carter & Con Lehane and (2) Nigel de Haas against the decision of Cork County Council on to grant conditional permission to Shehy More Windfarm Limited. The issues raised relate principally relate to project splitting, landowner consent, traffic safety, flooding and appropriate assessment.
- 7.6. I note the concerns raised that the Planning Authority failed to give adequate weight to the observations submitted to Cork County Council during the planning application process. Together with my site visit I am satisfied that there is adequate information available on the appeal file to consider the issues raised in the appeal and to determine this application. I would also point out for the purpose of clarity that the development proposed is considered “de novo”. That is to say that the Board

considers the proposal having regard to the same planning matters to which a planning authority is required to have regard when making a decision on a planning application in the first instance and this includes consideration of all submissions and inter departmental reports on file together with the relevant development plan and statutory guidelines, any revised details accompanying appeal submissions and any relevant planning history relating to the application

7.7. Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings.

- Principle / Policy Considerations
- Traffic Impact
- Temporary Fencing & Re-Instatement
- Archaeological Impact
- Landowners Consent / Duration of Permission
- Flood Risk
- Project Splitting / EIA
- Screening for Appropriate Assessment

8.0 Principle / Policy Considerations

8.1. The works subject to this appeal will involve the provision of a hard-core area which caters for the larger turning areas required by the abnormal load vehicles required for wind turbine / farm construction (drawings and details refer) associated with Shehy More Wind Farm (243486). The new turning area is not intended to cater for all vehicles and will be strictly controlled so that public access remains restricted. Upon completion of the turbine delivery phase of the proposed wind farm, the granular fill and final surface running layer will be left in situ, within the works area and allowed to re-vegetate naturally, the concrete post fencing will be reinstated and the hedgerows that were removed will also be restated. It is submitted that leaving the granular fill and final surface running layer in place within the accommodation area will allow the area to be used again in the future should it become necessary

i.e. decommissioning stage for turbine removal, or in the unlikely event of having to swap out a blade component during the operational phase.

- 8.2. The provisions of the Cork County Development Plan, 2009 are generally in favour of the development of renewable energy, including wind energy, and acknowledge the economic and environmental benefits which can be derived from same. The appeal site also lies within an Area “Open to Consideration” in relation to windfarm development (Figure 9 of the Development Plan refers). The lands are not designated as “High Value Landscape”. There are numerous Scenic Routes within the wider geographical area however the site does not front a Scenic Route and is removed from all such scenic routes. I am satisfied, therefore that the proposed development is supported by the Development Plan policies and objectives. Accordingly, I consider that the proposal to be acceptable in principle. However, I would note that the acceptability of the proposal is contingent on other issues addressed below.

9.0 Traffic Impact

- 9.1. I note the concerns raised in the appeal that to grant planning permission for the proposed junction widening without imposing conditions to simultaneously improve the safety of road users is unacceptable. Specific concern is raised in respect of the existing layout of the junction of the R585 and the L4607 with the primary concern being a perceived lack of visibility at the junction for traffic coming from the L4607 onto the R585. It is submitted that Condition No. 8 of the grant of planning permission does not adequately address the interests of road safety given the restrictive emerging visibility at the R595 and L4607 road junction. Condition No 8 set out as follows:

Prior to development first commencing, a scaled plan shall be submitted to the Planning Authority to indicate that the existing hedgerow and timber post fencing running parallel to the R-585 to be removed, so far as it relates to the development site edged red, and a new native indigenous hedgerow/fencing which at the time of planting shall be substantial bare root hedging has been set back from the R-585 road edge the height of which shall not in perpetuity

exceed 1.0 metre in height. The hedgerow shall be planted during the first planting season following the removal of the existing fence and hedgerow.

Reason: *In the interests of road safety given the restrictive emerging visibility at the R-585 and L-4607 road junction*

- 9.2. As pointed out by the applicant the current layout design of this junction is out with the red line boundary of the application and also out with the control of the applicant. Accordingly I agree with the approach of the Planning Authority and recommend that should the Board be minded to grant permission that Condition No 8 above be attached.
- 9.3. While the proposed works are well within private lands, it is acknowledged that there is potential for short term nuisance to local road users and residents during the construction phase of the proposed wind farm at Sheehy More. It is submitted that abnormal load deliveries (such as turbine blade and tower vehicles) will be strictly controlled in timed convoys with Garda escorts and will also be subject to abnormal load permits. In this regard the applicant proposes that a traffic management plan will be developed and implemented to ensure any impact is short term in duration and light in significance. I am satisfied that this matter can be dealt with by way of condition. In addition I agree with Condition No 10 of the notification issued by Cork County Council requiring that the two areas of hard surfacing, indicated in Drawing Number 0521-03 be surfaced in tar and chip for a distance of not less than 3.0 metres and any damage caused to the nearby public road(s) by construction traffic during development works shall be made good by the Council at the expense of the developer. I recommend that a similar condition be attached should the Board be minded to grant permission. I am satisfied that there will be no operational phase impacts on traffic associated with the proposed development.
- 9.4. Overall I consider the proposal to be acceptable and I am satisfied that the proposed development will not result in the creation of a traffic hazard subject to the recommended conditions set out above.

10.0 **Archaeological Impact**

- 10.1. I refer to the Archaeological Impact Assessment Report on file. There are two recorded monuments, Fulacht Fiadh (CO093-052001) and Megalithic tomb – Wedge

Tomb (CO093-052002) located in pasture to the east of the proposed widening works at Inchicurka Cross. Both monuments are indicated as being situated approximately 25m – 30m to the east of the proposed works at Inchicurka cross on the opposite side of the L4607 to that which the proposed works are to be carried out. I refer to Figure 5-1 of the report indicating the location of both recorded monument relative to the proposed works. The assessment was based on desktop research and field inspection. The field inspection determined that the location of the Wedge Tomb (CO093-052002) is incorrectly shown on the Historic Environment view and 6 inch RMP maps. It is further stated that no surface trace of the Fulacht Fiadh (CO093-052001) was apparent and may be largely destroyed since the 1960's. The assessment concluded that the proposed development will not have any direct or indirect impacts on the recorded monument and that the creation of buffer zones is not necessary. Mitigation measures comprising archaeological monitoring of topsoil associated with widening works at Inchicurka Cross are recommended. Also recommended that a report on the monitoring should be compiled on completion of the work submitted to the Planning Authority and the National Monument Service.

10.2. I note the report of the Local Authority Archaeologist dated 3rd March 2017 that having considered the Archaeological Impact Assessment Report concluded that both archaeological sites are over 100m to the east of the appeal site and taken together with the scale of the development proposed that no further archaeological input was required. Having regard to the information available on the appeal file together with the Cork County Council Archaeological Report and recommendations and the sites location proximate to two recorded monuments, Fulacht Fiadh (CO093-052001) and Megalithic tomb – Wedge Tomb (CO093-052002) it is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the developer to facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site.

11.0 Landowners Consent / Duration of Permission

11.1. I note the concerns raised in the appeal that there is no reference in the landowners' written consent to any duration of planning permission, and therefore it is reasonable to infer that the landowner has consented to the standard duration of 5 years in the

absence of specific consent to a longer period. It is submitted that there is consequently no justification of, or consent to, planning permission having a duration exceeding the standard 5 years.

- 11.2. The application submitted to Cork County Council on 15th July 2016 was for a 10-year permission for junction works to accommodate abnormal load vehicles (both the public notices and the planning application form refer). Revised public notices were submitted on the 13th March 2017 indicating that “significant further information” had been submitted to the Planning Authority. The newspaper notice referred to a “ten year planning permission” while the accompanying site notice was silent with regard to duration. A further site notice was submitted on the 15th March 2017 also indicating that “significant further information” had been submitted to the Planning Authority. This site notice was also silent with regard to the duration of the proposed planning permission. Subsequently the notification of decision to grant permission issued by Cork County Council on 10th April 2017 makes no specific reference to the duration of the planning permission. It is however noted that Condition No 1 requires that the scheme complies with the plans and particulars lodged on 15th July 2016 as amended on 2nd March 2017 and 13th March 2017 and that Condition No 13 requires that *following the final use of the lands for delivery vehicles associated with the development of windfarm components for a period not exceeding 10 years, the site shall be returned to its original condition of improved grassland.*
- 11.3. The applicant submits that the proposed development is intended to facilitate the delivery of abnormal loads to the permitted Shehy More Farm development that sought a ten year permission to construct a wind farm together with all ancillary site works. Following an appeal the Board granted a 25-year permission subject to 24 conditions on 22nd December 2016. Condition No 4 required that the permitted development be carried out within ten years from the date of the order. Condition No 5 stated that the permission shall be for a period of 25 years from the date of commissioning of the wind farm. As previously documented leave has been granted for a judicial review of this decision. No decision has issued at the time of writing.
- 11.4. I agree with the applicant that having regard to the nature and extent of the proposed development, a logical approach would be to seek a planning permission for the same duration as that sought for the Shehy More Wind Farm which this development will serve. I am satisfied that the duration of the planning permission sought i.e. 10

years is clearly justified on this basis. The board will be aware that under Section 41 of the Planning and Development Act 2000 (as amended), the Board may specify a period of more than 5 years during which permission can have effect, having regard to the nature and extent of the relevant development. Notwithstanding the omission of a reference to the 10 year duration in the latter site notices I am satisfied that the applicant has clearly sought a 10 year planning permission and has justified same. Accordingly it is recommended that should the Board be minded to grant permission that two conditions be attached similar to Condition No 4 and 5 of An Bord Pleanála Decision PL04.243486 pertaining to the Shehy More Wind Farm Development and as referenced in Section 11.3 above.

- 11.5. With regard to the landowners consent it is accepted that the letter of consent from the landowner dated 20th August 2015 does not state that 10 year permission is given. It is also noted that the landowner has made no written objection to the scheme itself or the duration of permission. On balance I accept the applicants submission that the *“landowners have been fully briefed on the nature of the works to be undertaken on the proposed site as well as the necessity to seek a ten year permission”*. . Notwithstanding this I would draw attention to Section 34(13) of the Planning Act that states that a person is not be entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted and should the observers or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

12.0 Flood Risk

- 12.1. I note the concerns raised in relation to flood risk and drainage associated with the site and development and in particular the references to local flooding issues. In this regard I refer to the Hydro Environmental Services (HES) Report submitted with the further information and the HES Report submitted with the appeal response.
- 12.2. A Stage I Flood Risk Assessment (FRA) was undertaken by HES in September 2016 in response to a further information request. It was noted that there are no mapped flood incidences recorded on the OPW Flood Hazard Mapping for the site. Although

a fraction of the lands at the northern point is mapped as being susceptible to pluvial flooding, the site lies to the east of the Cummernamart River and outside the mapped area of fluvial flooding.

12.3. After completion of the Stage I assessment, further assessment of the proposed site (i.e. Stage II FRA) was not considered necessary. However in response to the third party appeal submission a more detailed Stage II site specific flood risk assessment was undertaken by the applicant. This included a site visit, quantification of changes in site runoff volumes and assessment of flood risk locally if the proposed development was constructed. It is submitted that the purposes of the Stage II FRA was to conform the findings of the Stage I FRA. The Stage II FRA concluded the following:

- The proposed site is located in fluvial Flood Zone C (Low risk) and is therefore appropriate for the type of development proposed
- There is no history of flooding at the proposed site location (from a review of the OPW Flood Hazard mapping and anecdotal evidence from a nearby landowner)
- Due to the relatively small area of the proposed development, any significant increased risk of pluvial flooding / ponding downstream of the site due to site runoff is not expected. Calculated figures based on worst case scenarios indicate millimetres of increase, and this is before drainage mitigation is applied at the site
- Due to the relatively small footprint area, no increased risk on downstream flooding in the Cummernamart Stream or Caha River is expected. Even with worst case scenarios applied, the potential increases are less than 0.06% of the 100 year flood flow (i.e. 0.007m³/s on top of estimated river flows of 5.2m³/s (Cummernamart) and 20.6m³/s (Caha) and
- Installation of roadside drainage would be sufficient to deal with potential increased runoff from the proposed development area, which is minor in nature being 1,560m² in a catchment area of some 22km².

12.4. Having regard to the information available on file I am satisfied that the potential impacts of the proposed development in terms of flooding have been established and that the type of development proposed is appropriate for this flood zone. I do

not consider that the proposed development would exacerbate the risk of flooding in the area. Should the Board be minded to grant permission it is recommended a condition be attached requiring that adequate roadside storm / surface water infrastructure is provided on site to ensure that the proposed scheme does not contribute or exacerbate any existing deficiencies in relation to storm / surface water infrastructure in the area.

13.0 Project Splitting / Screening for EIA

- 13.1. I note the concerns raised in the appeals regarding the multiple wind farm planning applications in the area, the “patch upon patch” nature of the application relating to single wind farm development that should be subject to a single Environmental Impact Assessment to avoid project splitting in accordance with the ruling provided for in the O’Grianna case.
- 13.2. The O’Grianna (Dec 2014) case determined that the grid connection and the proposed wind farm were to be cumulatively assessed as one project in terms of its potential environmental impacts. The Court found that the grid connection was an integral part of windfarm development. Therefore a windfarm application must include detailed proposals for a grid connection and in principle at least, the cumulative effects of the entire impact of both windfarm and grid connection must be assessed in order to complete EIA.
- 13.3. As pointed out by the applicant the Shehy More Wind Farm application had a single turbine route, as set out in the EIS submitted with the application in September 2013. The decision by Cork County Council to grant permission in May 2014 was appealed in June 2014. An Bord Pleanála sought further information in May 2015 seeking the submission of a revised EIS in relation to the overall proposal, including the grid connection. In response to this an EIS was submitted to the Board in September 2015 providing additional detail and assessment of the project and its cable route. It is submitted that during the preparation of the EIS addendum, the applicants and design team identified an alternative more direct potential turbine delivery route. The second turbine delivery route option differs from the initial turbine delivery route in that the turbine delivery vehicles will continue along the R585 rather than turning north onto the R587, as originally proposed, and will continue along the R587 before

turning north onto the L4607 in the areas of the appeal site. This route option then continues north where it follows the same route and the first delivery option before reaching Sheehy More Wind Farm.

- 13.4. The alternative turbine delivery route, which incorporates the use of the junction subject to this appeal was included as a turbine delivery option with the EIS addendum that was submitted to the Board. Figure 2.7 of the EIS Addendum shows the two turbine delivery options that were presented to the Board together with a detailed description and an assessment of the potential environmental impacts of the proposed turbine delivery route including the second turbine route option. Relevant extract from the EIS Addendum is provided in the pouch accompanying this report. I would also add that the “transport route” identified in the EIS submitted with the Carrigarierk Wind Farm application (PL04.246353 (Reg Ref 15/730)) incorporated works to the R585 / L4607 junction at Inchincurka and included a detailed description and an assessment of the potential environmental impacts of the proposed turbine delivery route including the works at Inchincurka junction.
- 13.5. The Board in their decision in relation to Sheehy More Wind Farm (PL04.243486) stated that they considered the Environmental Impact Statement submitted with the application, the Addendum to the Environmental Impact Statement, the submissions on file and the Inspector’s assessment of the environmental impacts. The Board considered that this documentation identified and described adequately the direct, indirect, secondary and cumulative effects of the proposed development, including the grid connection, on the environment. The Board adopted the Inspector’s report and concurred with its conclusions, and accordingly completed an Environmental Impact Assessment of the development. The Board concluded that the effects on the environment of the proposed development would be acceptable by itself and cumulatively with other development in the vicinity, including other wind farms and the proposed grid connection, subject to compliance with the mitigation measures proposed, and subject to compliance with the conditions set out in the direction.
- 13.6. Whilst I would acknowledge the concerns raised as regards the allegation of ‘project-splitting’ and the assertion that the subject proposal conflicts with the judgement of the High Court in the case of O’Grianna & v. An Bord Pleanála, I am not of the opinion that such a scenario has arisen in this instance given the circumstances of the application and the planning history pertaining to the turbine delivery routes as

amended in the Addendum to the Environmental Impact Statement pertaining to Sheehy More Wind Farm (PL04.243486) as submitted to the Board. Thus, I am satisfied that any concerns as regards 'project-splitting' have been addressed.

- 13.7. Notwithstanding the foregoing, of itself, the proposed development falls below the threshold levels in Schedule 5 of the Regulations in relation to EIA, and does not involve potential impacts on any sites or areas of specific environmental sensitivity. Having regard to the limited nature of the development, the absence of any nature conservation designation in the immediate area, the absence of any emission from the development and the absence of any direct connection to watercourses, it must be concluded that the development will not have a significant impact on the environment. Overall it is considered that the proposed development does not come within the scope of the classes of development requiring the submission of an EIS as set out in Schedule 5 of the Planning and Development Regulations 2001-2011. The submission of an environmental impact statement is not required.

14.0 Screening for Appropriate Assessment

- 14.1. I note the concerns raised that there is a direct surface water connection from the site of the proposed development to the Cummernamart River and therefore to the River Bandon SAC. Much of the concern centres on the western boundary of the site and whether this excavated ditch forms a surface water connection via a culvert to the field on the opposite (southern) side of the R585 which drains to the Cummernamart River, which in turns flows into the Caha River, which is a tributary of the Bandon River. The applicant submits that its function is to drain the site but it is not considered to be a surface water feature and it does not continue in the fields to the south of the public road. It is stated that it *does not provide a direct surface water connection to the Cummarnamart or Caha Rivers*.
- 14.2. I refer to the Ecological Impact Assessment & Appropriate Assessment Screening Report that accompanied the application along with the Revised Ecological Impact and Appropriate Assessment Report submitted by way of further information together with my site inspection where a small channel / drain was observed along the western side of the site of the proposed works (approx. 8 metres at closest from the works themselves).

- 14.3. The nearest designated European Site is the Bandon River SAC (Site code 002171) located 1.0km south east of the proposed site, followed by the Gearagh SAC (Site code 000108) at distance of c 10.3km from the site and the Gearagh SPA (Site Code 004109) at a distance of 12.1km from the site. The qualifying interests pertaining to the Bandon River SAC include a number of habitats and species dependent on water quality including freshwater pearl mussel and brook lamprey. To date a generic conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SAC / SPA has been designated stating that the *overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest.*
- 14.4. The proposed works are small scale in nature, comprising road widening works at an existing road junction. There will be minimal loss of low ecologically significant habitat, improved agricultural grassland and some scrub and hedgerow. This will be reinstated along roadside boundaries and the field allowed to re-vegetate once works are complete and the hard-core removed. There will be no land take within any European Site as a result of the proposed works and therefore no resultant direct impact on the designated sites are likely.
- 14.5. In terms of indirect effects there are no streams or watercourses within the area of works proposed. No impacts as a result of emissions from the proposed works are anticipated as the works are small in scale, located in isolation from any surface water feature and best practise construction measures are proposed to be in place to avoid any potential negative impacts such as run off of silt laden water and other pollutants. No impacts are predicted during construction, operation and decommission as the works will be temporary and short term in nature. Given the nature of the works proposed and the setback distance from the western boundary channel / drain there is no direct hydrological connection between the site and the SAC.
- 14.6. The proposed works are very small scale in nature and will be completely isolated from areas outside the actual site itself by fencing the site off at the outset of works and following environmentally sensitive work practises as set out in Section 1.2.2 of the Ecological Impact Assessment & Appropriate Assessment Screening Report. Therefore taking into consideration the small scale nature of the development as proposed, the separation between the proposed works and the western boundary of

the site, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European site in view of the site's conservation objectives. An appropriate assessment (and submission of a NIS) is not therefore required.

15.0 Recommendation

15.1. On the basis of the above planning assessment I recommend that the Board approve the application for the proposed development for the reasons and considerations and subject to the conditions set out below.

16.0 Reasons and Considerations

16.1. Having regard to:

- (i) The written submissions made in respect of the application
- (ii) The nature of the works proposed which are considered necessary to facilitate the delivery of abnormal loads such as turbine tower section and blades to the permitted Shehy More Windfarm PL04.243486 (Reg Ref 13/551)
- (iii) The nature, scale and form of the development and its location relative to nearby sensitive receptors,
- (iv) Mitigation measures which are proposed for the construction and operation of the development,
- (v) The provisions of the Cork County Development Plan 2014
- (vi) The nature of the landscape and the absence of any specific conservation or amenity designation for the site,
- (vii) The pattern of development in the area
- (viii) The submissions on file including those from the Planning Authority
- (ix) The documentation submitted with the application, including the Ecological Impact Assessment and AA Screening Report, Environmental Report and Revised Ecological Impact Appropriate Assessment Screening Report

16.2. It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of Local Policy, would not seriously injure the amenities of the area and would be acceptable in terms of traffic safety. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

17.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars including the mitigation measures specified in the submission lodged with the application as amended by the further plans and particulars submitted on 15th July 2016, 2nd March 2017, 13th March 2017 and 15th March 2017 and by further plans and particulars received by An Bord Pleanála, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be ten years from the date of this order.

Reason: Having regard to the nature of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

3. This permission shall be for a period of 25 years from the date of commissioning of the development.

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

4. All environmental mitigation measures set out in the Ecological Impact Assessment, AA Screening Report, Environmental Report and Revised Ecological Impact Appropriate Assessment Screening Report and associated documentation submitted by the developer with the application and by way of further information shall be implemented in full except as may otherwise be required in order to comply with the conditions of this order.

Reason: In the interest of clarity and to protect the environment during the

construction and operational phases of the development.

5. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

6. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. Details shall be agreed with the Planning Authority prior to commencement of work on site. In default of agreement, the matter shall be referred to An Bord Pleanála for determination.

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

7. The existing hedgerow, as indicated in Drawing Number 0521-03 running parallel along the L-4607 shall be retained in perpetuity other than the two areas of hedgerow shown to be removed on that plan.

Reason: In the interests of visual line amenity.

8. Prior to development first commencing, full and precise details of the “temporary boundary treatment” and fencing and or traffic bollards along the L-4607 road shall be submitted to and agreed in writing with the Planning Authority and the area of such boundary treatment shall be clearly demarked out on the site. Such details, as may be approved, shall include for timescale for the complete reinstatement of the boundary along the L-4607 road that shall also provide for the further planting of a native indigenous hedgerow which at the time of planting shall be substantial.

Reason: In the interests of amenity.me of planting

9. Prior to development first commencing, a scaled plan shall be submitted to the Planning Authority to indicate that the existing hedgerow and timber post fencing running parallel to the R-585 to be removed, so far as it relates to the development site edged red, and a new native indigenous hedgerow/fencing which at the time of planting shall be substantial bare root hedging has been set back from the R-585 road edge the height of which shall not in perpetuity exceed 1.0 metre in height. The hedgerow shall be planted during the first planting season following the removal of the existing fence and hedgerow.

Reason: In the interests of road safety given the restrictive emerging visibility at the R-595 and L-4607 road junction

10. The two areas of hard surfacing, indicated in Drawing Number 0521-03 received by the Planning Authority on the 2nd March 2017 shall be surfaced in tar and chip for a distance of not less than 3.0 metres and any damage caused to the nearby public road(s) by construction traffic during development works shall be made good by the Council at the expense of the developer.

Reason: In the interests of road safety.

11. Adequate roadside drainage arrangements shall be put in place to the satisfaction of the Planning Authority. Details shall be agreed with the Planning Authority prior to commencement of work on site.

Reason: To preserve proper roadside drainage and to prevent the flooding of the public road.

Mary Crowley

Senior Planning Inspector

27th April 2018