



An
Bord
Pleanála

Inspector's Report

ABP-304807-19

Development	Construction of a Windfarm consisting of up to 6 Wind Turbines
Location	Townlands of Aghanagran Middle, Aghanagran Lower, Ballyline West, Tullahennell South, Ballylongford, County Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19381
Applicant(s)	The Ballylongford Windfarm Group
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Ballylongford Windfarm Group Organising Committee of NMWT@Ballylongford
Observer(s)	Tom O'Donoghue
Date of Site Inspection	23/10/2019
Inspector	Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The site is located 8.7 km to the north of Listowel and 2.1 km to the south west of Ballylongford. The R552 runs between these two towns and it passes to the east of the site. The two access routes to this site from the east are off this regional road. The L-6012 runs to the west of the site and the existing means of access to it from the west is off this local road.
- 1.1.2. The site lies in an area of forestry and bogland. To the south west lies the recently constructed and now operational Tullahennel South Wind Farm, which comprises 10 wind turbines (hub heights of 80m and blade diameters of 90m). In other directions the surrounding farmland is punctuated by one off-dwelling houses and farm buildings. Within the wider surrounding area there are other wind farms.

2.0 Proposed Development

- 2.1.1. On the 12th April 2019 planning permission was sought for the construction of a windfarm of six turbines, with a blade tip height of 126.5m, battery units, upgrading of the existing access track and the provision of new internal roads, the development and improvement of existing entrances onto the public road, an 80m wind anemometry mast, a peat deposition area, underground electricity cables, an electricity substation with control room, a temporary construction compound, all on a site of 21.45ha. The applicant is seeking a 10-year planning permission and an operational period of 25 years.
- 2.1.2. The application was accompanied by an EIAR and appendices which includes a Landscape and Visual Assessment Photomontages and Zone of Theoretical Visibility Maps and a Natura Impact Statement.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 6th of June 2019, Kerry County Council advised of their intention to REFUSE permission for the following five reasons:
 - 1 The application site is located in the Listowel Municipal District in an area zoned 'Open to Consideration' for wind energy development. It is an objective (reference EP-12) of the Kerry County Development Plan 2015-2021 'not to permit the

development of windfarms in areas designated 'open to consideration' in the Tralee and Listowel Municipal Districts until....the cumulative effect of all permitted turbines in the vicinity of the proposal have been fully assessed and monitored'. To date, this has not been carried out. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- 2 Taken in conjunction with existing and permitted wind turbines in the area, it is considered that the proposed development would give rise to an excessive proliferation of wind turbines on this low-lying flat landscape. The proposed development would interfere with the character of the landscape, which is necessary to preserve, in accordance with Objective ZL-1 of the Kerry County Development Plan 2015-2021. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- 3 Based on the scale of the proposed windfarm development coupled with the challenging ground conditions in the proposed site and the lack of a detailed design on road construction and turbine foundation construction in particular, the Planning Authority considers that the proposed development would be detrimental to the quality of the receiving water bodies and would compromise the ability of the water body to achieve its Water Framework Directive objective. The proposed development would therefore cause water pollution. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- 4 The application site contains the monument Ke005 020, listed in the Record of Monuments and Places as a ringfort. Given the scale of the monument and the presence of the ringfort, pre-development archaeological testing is recommended for all areas of the site where grounds works are proposed. In the absence of such pre-development testing, the Planning Authority is not satisfied that the proposed development would not be injurious to the archaeological heritage of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- 5 Having regard to the location and scale of the proposed development and the ground conditions on the site, significant effects on Natura 2000 sites cannot be

rules out on the basis of the information submitted with the planning application. It is considered that the proposed development would be likely to adversely impact on the site integrity of the Lower Shannon cSAC and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. **County Archaeologist:** Site contains the monument Ke005 020. Given the scale of the monument and the presence of the ringfort, pre-development archaeological testing should be carried out on all proposed areas of ground disturbance. A report on the result of this testing should be submitted prior to any grant of permission.
- 3.2.2. **HSE South Emergency Management:** Six recommendations for site operations.
- 3.2.3. **Environmental Health:** Clear commitment to monitor noise required. A system to deal with complaints should be provided by the developer. Mitigation measures should be strictly adhered to.
- 3.2.4. **Roads Office:** No objection subject to 11 no. conditions. Recommended conditions include insisting on grid connection option A and a specific road improvement levy of €400,700 for the improvement/upgrade of local roads L-6015, L-1005, and L-6012.
- 3.2.5. **Environment Section:** Uncertainty exists in relation to peat stability, soil & Geology. Advises that the site lies within the Ballylongford_030 water body (IE_SH_24B030860), which has an “unassigned” status under the WFD. Given the challenging ground conditions and the scale of the proposal, strong reservations are expressed with respect to the potential impact upon this water body and the achievement of WFD objectives. Cannot recommend a grant of permission.
- 3.2.6. **Biodiversity Officer:** Extremely difficult to prevent deterioration of water quality. Adverse effects cannot be ruled out on the nearby watercourses that drain into the Lower Shannon cSAC. In relation to the SPA, site is hydrologically connected but it is not deemed likely that adverse effect on site integrity would arise. EIAR has been updated since 2017 application. However, a previous bat survey was re-submitted. this bat survey was undertaken at a time of the year when bats are inactive. Refusal is recommended based on the likely impacts on water quality to local watercourses due to the nature and scale of the proposed development. Adverse effects on the site integrity of the Lower Shannon cSAC cannot be ruled out.

3.2.7. **Planning Report:** Objective EP-12 provides that windfarms shall not be permitted where 80% of such permissions have been erected or expired and the cumulative impact has been assessed. This threshold has been reached but the cumulative effect has not been assessed. Proposed development would therefore contravene the development plan. Visual impact remains a concern. Noting concerns raised by internal reports, recommendation to refuse permission.

3.3. **Prescribed Bodies**

3.3.1. None on file.

3.4. **Third Party Observations**

3.4.1. Issues raised include interference with operators on a nearby telecoms tower, the noise from existing towers, that the proposed development is not in the interests of the common good, being part of a larger development, that the Board recently refused permission, inadequacies in the NIS and the EIAR, access to surrounding lands and ability to harvest turf.

4.0 **Subject Site Planning History**

4.1.1. **ABP-300368-19:** A ten-year planning permission was sought for the construction of a wind farm comprising 8 wind turbines with a maximum blade tip height of up to 126.5m and all associated works. Permission was REFUSED for the following reason:

“Having regard to the location and scale of the proposed development and the ground conditions on the site, it is considered that, on the basis of the information submitted with the planning application and the appeal and in the absence of a Natura impact statement and the necessary ecological surveys to inform same, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on any European Sites, in view of the sites’ conservation objectives. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

4.1.2. The Board noted that the Inspector had recommended a grant of permission and stated in their Direction “In deciding not to accept the Inspector's recommendation to

grant permission, the Board was not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, the hydrological conditions and proximity of Ballylongford Creek which is included in the Lower River Shannon Special Area of Conservation (Site Code: 002165), that adequate information has been provided on the impact of the proposed development either individually or in combination with the adjacent windfarm, on the European Sites, and considered that a Natura impact statement would be required to remove all reasonable scientific doubt as to the effects of the proposed development on the European Sites concerned, having regard to the sites' conservation objectives".

4.2. Adjacent sites to the south west of the current application site have been the subject of the following applications/appeals:

- Planning Authority reg. ref. **09/1175**: Permission granted for the construction of 10 wind turbines (hub heights of 80m and blade diameters of 90m) together with all ancillary works.
- **PL08.245722** (Planning Authority Reg. Ref. 15/725): Modification of 20-year operational period of wind farm permitted under 09/1175 to 25 years, refused at on the grounds that as the application relates only to the modification and not development, the Board is precluded from further consideration of this appeal.
- **PL08.246268** (Planning Authority reg. ref. 15/524): 10-year permission granted for the development of a borrow pit/repository and improvement to existing access track to adjoining property. Condition attached that tied the duration of this permission to that granted under 09/1175 and restrict extraction of material for use in the construction of this wind farm to a 24-month period only.

5.0 Policy Context

5.1. National Planning Framework 2018

The National Planning Framework (NPF) 2018, is the overarching national planning policy document for Ireland. It is a high-level strategic plan that sets out a vision for Ireland to 2040, expressed through ten National Strategic Outcomes (NSO). One of the key goals of the NPF (National Strategic Outcome 8) is that of Transition to a Low Carbon and Climate Resilient Society. It acknowledged that Ireland's energy policy is focussed on the pillars of sustainability, security of supply and

competitiveness. It states: “In the energy sector, transition to a low carbon economy from renewable sources of energy is an integral part of Ireland’s climate change strategy and renewable energies are a means of reducing our reliance on fossil fuels.”

5.1.1. It is an objective that: “40% of our electricity needs will be delivered from renewable sources by 2020 with a strategic aim to increase renewable deployment in line with EU targets and national policy objectives out to 2030 and beyond.”

5.1.2. **National Policy Objective 55** states: “Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.”

5.2. **Wind Energy Development Guidelines for Planning Authorities 2006**

5.2.1. The guidelines provide advice on wind energy development in terms of the Development Plan and development management processes. Guidance is given on matters such as noise, shadow flicker, natural heritage, archaeology, architectural heritage, ground conditions, aircraft safety and windtake. Whilst a setback distance is not established, it is stated that noise is unlikely to be a significant problem where the distance to the residential property is more than 500m. In respect of noise, the recommended standard is a lower fixed limit of 45dBA or a maximum increase of 5dBA above background noise and nearby noise sensitive locations, apart from very quiet areas where the daytime level is limited to 35-40dB(A). A night time limit of 43 dB(A) is recommended.

5.2.2. In terms of shadow flicker, the recommended standard is a maximum of 30 hours per year or 30 minutes per day for dwellings and offices within 500m. It is further stated that at distances of greater than 10 rotor diameters, the potential for shadow flicker is very low.

5.2.3. Chapter 6 provides guidance on siting and design of wind energy development in the landscape. This includes advice on siting, spatial extent and scale, cumulative effect, spacing of turbines, layout of turbines and height of turbines. Advice is also given regarding landscape character types as a basis for the application of the guidance on siting and design.

5.3. **Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy, and Climate Change (2017)**

- 5.3.1. These guidelines were issued under Section 28 of the Act. They focus on administrative procedures and do not replace or amend the existing WEDG 2006, which remain in place pending the completion of ongoing review. Section 28 of the Act requires both Planning Authorities and An Bord Pleanála to have regard to these interim guidelines and apply any specific planning policy requirements of the interim Guidelines in the performance of their functions.
- 5.3.2. The Guidelines provide specific guidance on making, reviewing, varying or amending a Development Plan, or a Local Area Plan, with policies or objectives that relate to wind energy developments. A Planning Authority shall acknowledge and document specific national strategy relating to energy policy, indicate how the implementation of the Development Plan or Local Area Plan over its effective period would contribute to realising overall national targets on renewable energy and climate change mitigation. Furthermore, the Planning Authority are required to demonstrate detailed compliance with the above in any proposal to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use in a Development Plan or Local Area Plan. This is reaffirmed in Departmental Circular PL5/2017.

5.4. **Kerry County Development Plan 2015-2021**

- 5.4.1. Energy/Power Provision is addressed under Chapter 7. The following two Objectives under this heading address renewable energy:
- **EP-11:** Implement the Renewable Energy Strategy for County Kerry (KCC 2012).
 - **EP-12:** Not to implement the development of wind farms in areas designated “open to consideration” in the Tralee and Listowel Municipal Districts until 80% of the turbines with permissions in those areas, on the date of adoption of the Plan¹, have either been erected or the relevant permission has expired or a combination of both and the cumulative effect of all permitted turbines in the vicinity of the proposal has been fully assessed and monitored.

¹ 16th February 2015.

- 5.4.2. Map 12.1a of the CDP shows the site as lying within an area zoned “**Rural General**”. Under Section 12.3.1, this zoning is addressed as follows:
Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.
- 5.4.3. Under the **Renewable Energy Strategy for County Kerry (RES)**, the site is shown as lying within an area that is “Open-to-Consideration” and associated Objectives NR 7-33 to 37 are of relevance. Under Table 7.4 of the RES, the northern portion of the site is identified as lying within the **Ballylongford Creek Landscape Character Area** and the southern portion is identified as lying within the Inner River Plain Landscape Character Area. Under the Wind Energy Development Guidelines both these Areas could be classified as a hilly and flat farmland landscape type.
- 5.4.4. The commentary accompanying the former LCA states “Having introduced wind development into the area, it is considered that this landscape does have the capacity to accommodate further wind development. The area with capacity for wind development begins in Tullahennel and then heads eastwards.”
- 5.4.5. The commentary accompanying the latter LCA states “The development of two existing permissions for wind development will alter the landscape in the area. There is scope for further consideration to be given to wind energy development in the area as the landscape throughout the area is similar in nature. It is being zoned as Open-to-Consideration due to the population level in the area and in order to properly assess the cumulative impact of numerous wind farms in the area.”

5.5. **Natural Heritage Designations**

- 5.5.1. The subject site is 1.9km from the River Shannon and River Fergus SPA (site code 004077) and the Lower River Shannon SAC (site code 002165), 12.3km from the Stack’s to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) and 9.2km from the Moanveanlagh Bog SAC (site code 002351).

5.6. EIA Screening

5.6.1. The proposal is for a wind farm composed of 6 no. wind turbines, each of which would have an electricity generating capacity of 2.75 to 3.5 MW and so the overall electricity generating capacity would be 16.5 - 21 MW. Under Item 3 (i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2018, wind farms, which have more than 5 turbines or which have an electricity generating capacity of more than 5MW, are required to be the subject of a mandatory EIA. The current proposal is thus required to be the subject of EIA.

5.6.2. This is addressed in section 7 below.

6.0 The Appeal

6.1. First Party Appeal

6.1.1. An agent on behalf of the Ballylongford Windfarm group have appealed the decision of the Planning Authority to refuse permission. The appeal is accompanied by a number of appendices. The grounds of the appeal can be summarised as follows:

- The appeal provides a detailed discussion of National and EU policy, regional development guidelines the Kerry County Development Plan and the Kerry Renewable Energy Strategy. The proposed windfarm will produce 9,337MWh per turbine, leading to a reduction of 27,192 tonnes of CO₂. It is submitted that the proposed development complies with the development plan and the RES.
- It is submitted that the proposed development meets the criteria of a Strategic Search Area – one with economically feasible wind speeds, relatively low ecological sensitivity and where the receiving landscape has the capacity to host a windfarm. The subject site has good wind speeds, lies outside any designated sites, can connect to the nearby existing electrical grid infrastructure, can use existing tracks and infrastructure including the national and regional road for haulage, meets the 500m from dwellings threshold and is located in an area designated as open for consideration for windfarms.
- The proposed development complies with the Wind Energy Development Guidelines for Planning Authorities 2006, as shown throughout the EIAR.

Reason no. 1

- The proposed development accords with national, regional and local policy in terms of its location, and the suitability of the site.
- The proposed development complies with policy EP-12 of the Kerry County development plan.
- The EIAR cumulatively assesses the impacts of all turbines in the open to consideration areas. Chapter 7 provides an assessment of the cumulative impact of proposed development and the permitted Tullahennel windfarm and finds that the predicted noise levels are acceptable. Chapter 8 provides a shadow flicker analysis for the combined Tullahennel South and Ballylongford and finds that no significant impact will arise. Chapter 9 assessed the cumulative impacts of the Tullahennel North and South windfarms and the Larha windfarm on terrestrial ecology and found that the residual ecological impacts would be imperceptible to minor in significance at the local level. Chapter 10 assessed the cumulative impacts on water quality. Chapter 12 assessed the visual cumulative impact of the Ballylongford and Tullahennel wind farm and found it to be Low. Chapter 13 assessed the cumulative impact of the proposed and existing windfarms and concluded that there would be no impact on air quality. Chapter 15 assessed the cumulative impact of the proposed, the two Tullahennel and the Larha windfarms on hydrology and hydrogeology and found that there would be a negligible effect. Chapter 16 assessed the proposed development and the proposed Ballylongford LNG terminal and concluded that substantial conflicts will not occur. Chapter 17 provides details of planning permissions for windfarm projects and the Shannon LNG project and concluded that if both projects are developed then some cooperation regarding traffic would need to be implemented. The NIA addressed in-combination effects.
- The Bord Inspector assessing the previous application found that the proposed development would not contravene Objective EP-12. It is submitted that the proposed development complies with the proper planning and sustainable development of the area.

Reason no. 2

- The proposed development would not interfere with the character of the landscape or give rise to an excessive proliferation of wind turbines as stated in the second reason for refusal.
- The subject site is zoned Rural General, lands which have the highest capacity to absorb development (section 5.1.3.3 of the RES). The area is identified in the RES as having capacity for wind energy development. The visual impact significance of the proposed development ranges from 'moderate slight' to 'imperceptible'.
- The receiving landscape is ordinary, not of high amenity value and not important for tourism or recreation. The visual changes that will arise from the proposed development are not significant given the character of the area as one of energy production such as windfarm, commercial peat harvesting, Moneypoint and Tarbert and the trafficking of fuels along the Shannon Estuary. It is submitted that the proposed development is not a new or unfamiliar form of development.
- A photolog of the surrounding road network is included in Appendix 5. The proposed windfarm will be visible from 5.5km of the 18.65km assessed. The photomontages submitted with the application are from locations from where the turbines will be clearly visible. This will not be the predominate view of the windfarm.
- Visual impacts can be positive. An SEI study in 2003 found that two-thirds of Irish adults are very or highly favourable to having a windfarm in their locality.
- As per the DoEHLG Guidelines, the subject site is 'Hilly and Flat Farmland'. The guidelines states that in such areas, visibility of two or more wind energy developments is usually acceptable. The proposed development, adjoining the Tullahennel South windfarm, complies with section 6.5 of the Guidelines. Sequential cumulative effects along the Wild Atlantic Way will be reduced by the concentrated rather than dispersed visual impact. The visual impact is deemed to be low.

- As turbines have no significant bulk, the landcover characteristics of the landscape will not be significantly impacted. The key elements of the landscape will prevail.
- Objective ZL-I of the Development plan refers to the landscape as a major economic asset and an invaluable amenity. It is submitted that the proposed development will accrue significant benefits to the local community in terms of income, rates and through a Community Gain Fund. The developer will make an annual contribution of 1% of the revenue from the development for local projects for 25 no. years.
- The proposed development complies with the proper planning and sustainable development of the area.

Reason no. 3

- Best practice construction and the mitigation measures within the EIAR / NIS will protect the receiving environment from the potential to cause water pollution.
- The application was accompanied by detailed road construction and turbine construction drawings. Chapter 2 of the EIAR provides details of the construction of the road and turbine foundations. Chapter 3 refers to access tracks and turbine bases. Chapter 14 covers the construction of new access road, the widening of existing tracks, new drainage infrastructure, turbine foundations and hard standing areas.
- Extensive site surveys were undertaken, including a walk over survey, peat probing, trial holes, shear vane testing, Ground Penetrating Radar survey, MASW and P-wave seismic refraction and Electrical Resistivity Tomography profile. The design of the project is in accordance with industry best practice and guidelines.
- It is submitted the Planning Authority's refusal is based on a perception of risk which is a disproportionate response to the actual risk. The proposed best practice of drainage design and surface water management can be enforced by appropriate planning conditions.
- Under PL03.245392, the Board expressed satisfaction with the removal of silt through drainage design and surface water management methods. This includes the separation of overland flow from construction areas, compartmentalised

drainage and the use of settlement ponds and silt busters. The Board was satisfied that catering for storm events in surface water management is a standard practice.

- Given the proximity of the subject site to the Aghanagran and Ballyline Rivers, which flow into the Lower Shannon Estuary, the applicant submitted a Drainage Design and Surface Water Management Plan (Site Drainage Management Plan) with the application. The aim was to ensure no significant siltation impacts would arise from the proposed development.
- The SWMP and the CEMP will be further developed prior to the commencement of works. The SWMP provides that clean and dirty water is separated. Treating only dirty water reduces the load on settlement ponds. The dirty water treatment system is two-tier with a two-chamber settlement pond, a secondary treatment system and then a gravel bed. The outflow is dispersed across a wide area to minimise the velocity.
- The site has three regions, each with its own three-tier treatment system. The system has been designed to cater for storm events.
- A borrow pit is not proposed for the development.
- After 18 months the windfarm will cease to be a source of perceived risk to water quality, and will a biodiversity gain to the area.
- Mitigation has been proposed in the EIAR in the form of environmental auditing, and ongoing inspection and maintenance.
- The SWMP can be included as a condition. An Environmental Clerk of Works, to be employed by the developer can provide continual monitoring and inspection of the SWMP and water quality. The ECoW should be empowered to halt works where a risk is found. Allowances for not working in extreme weather will be factored into the construction programme.
- The previous Inspector stated no significant impact would arise on the water quality of the Ballyline River System.

The proposed development is in accordance with the proper planning and sustainable development of the area.

Reason no. 4

- Pre-development archaeological testing has been carried out and the report is submitted with the appeal.
- A previous Archaeological Impact Assessment (2015) and an Underwater Impact Assessment (2015) were submitted with the application. An Archaeological, Architectural and Historical study was undertaken.
- Only a single archaeological site is recorded on the subject site. the two nearest turbines are 200m to the north (T6) and 100m to the south (T5).
- An updated AIA was carried out in 2019. (Appendix 7). The testing states that an in-situ burnt mound was found in test trench T26. No other archaeological material was found. There will be no impact on the recorded ringfort as the nearest point is c.60m distant.
- The ringfort, on private land has no clear planting area, is overgrown and not visible to the majority. The nearby Tullahennel windfarm is clearly visible. The visual impact is low.
- Turbine T4 will negatively impact on the burnt mound (fulacht fiadh).
- Mitigation measures proposed include a 50m buffer zone around the ringfort and the licenced excavation and recording of the burnt mound in test trench T26. Preservation in situ is not tenable due to the level of ground disturbance associated with windfarm development.
- The applicants undertake to implement all proposed mitigation measures and those listed in the AIA.
- Nothing of interest was found during the archaeological testing undertaken for the adjoining Tullahennel windfarm. The area is not within an archaeological landscape and the site has no monuments listed in the list of registered monuments. The subject site and cable route are not in any SAC, SPA or NHA.
- The applicants were not given the opportunity to carry out and submit pre-development testing.

Reason no. 5

- The appellant does not agree with the fifth reason for refusal. The Wetlands Survey Ireland concluded that “the proposed Ballylongford windfarm will not adversely affect the integrity and conservation status of either the Lower River Shannon cSAC or the River Shannon and River Fergus Estuaries SPA in view of conservation objectives for either site”.
- It is noted that the KCC Biodiversity Officer recommended a refusal based on the report of the KCC Environment department.

The following grounds of appeal are as those made for reason no. 3.

- It is submitted this is based on a perception of risk which is a disproportionate response to the actual risk. The proposed best practice of drainage design and surface water management can be enforced by appropriate planning conditions.
- Under PL03.245392, the Board expressed satisfaction with the removal of silt through drainage design and surface water management methods. This includes the separation of overland flow from construction areas, compartmentalised drainage and the use of settlement ponds and silt busters. The Board was satisfied that catering for storm events in surface water management is a standard practice.
- Given the proximity of the subject site to the Aghanagran and Ballyline Rivers, which flow into the Lower Shannon Estuary, the applicant submitted a Drainage Design and Surface Water Management Plan (Site Drainage Management Plan) with the application. The aim was to ensure no significant siltation impacts would arise from the proposed development.
- The SWMP and the CEMP will be further developed prior to the commencement of works. The SWMP provides that clean and dirty water is separated. Treating only dirty water reduces the load on settlement ponds. The dirty water treatment system is two-tier with a two-chamber settlement pond, a secondary treatment system and then a gravel bed. The outflow is dispersed across a wide area to minimise the velocity.
- The site has three regions, each with its own three-tier treatment system. The system has been designed to cater for storm events.

- The SWMP can be included as a condition. An Environmental Clerk of Works, to be employed by the developer can provide continual monitoring and inspection of the SWMP and water quality. The ECoW should be empowered to halt works where a risk is found. Allowances for not working in extreme weather will be factored into the construction programme.
- The submitted NIS, as part of the EIAR was prepared in accordance with Habitats Directive and DoEHLG Guidance. The AA Screening report found that the project did require a Stage 2 AA as significant adverse impacts on designated site downstream of the subject site could not be ruled out beyond reasonable scientific doubt.
- The Moanveanlagh Bog cSAC and the Stacks to Mullaghareirk Mountains SPA were screened out. The Stage 2 AA screening for the Lower River Shannon cSAC and the River Shannon and Fergus Estuaries SPA found that the proposed development “may, in the absence of mitigation measures, potentially lead to significant adverse impacts” on the sites, which are hydrologically linked 3.73km downstream of the proposed development. “Taking into account all matters discussed and provided that the mitigation measures and recommendations are adopted, it is concluded that the proposed Ballylongford Windfarm will not adversely affect the integrity and conservation status of either the Lower River Shannon cSAC or the River Shannon and River Fergus Estuaries SPA in view of conservation objectives for either site.”
- The hydrological link between the subject site and the European sites is addressed in the updated Aquatic Assessment (appendix 8). The report notes that the Aghanagran stream does not contain any fish and is of no ecological importance. A number of drains across the site can potentially provide a pathway for conveying pollutants downstream. This is deemed to be a very weak pathway due to negligible gradient and limited flow. The detailed and very robust mitigation measures will allow downstream aquatic habitats to be avoided. The conclusion of the Ecological Impact Assessment is that “the potential impacts assessed (direct, indirect and cumulative) during construction and operation, range from imperceptible to minor significance.”

- The Inspector assessing the previous application found that no significant impact would arise upon the water quality of the Ballyline River System.

Supplementary Information

- The appellant rejects the Planning Authority statement that the EIAR contains errors.
- The Planning Authority did not provide evidence or examples of any reference to 8 turbines, as suggested by them.
- The Bat survey was carried out in the summer, not the winter as suggested by the planning report. The report found that the area is not important for bats. The applicants will undertake pre-construction confirmatory bat surveys.
- The Aquatic report contained in chapter 10 is still relevant to the proposed development. That the map shows 8 no. turbines has no bearing on the results. Nonetheless the report has been updated (Appendix 8). The report concludes that the proposed development will not affect the aquatic ecology receptors in the receiving waters.
- The design of the watercourse crossing is shown on the planning drawings.
- The appellants reject the suggestion that the EIAR does not identify and describe all of the direct and indirect effects in the environment. A review of the EIAR found that the report complied with all requirements of the Directive. Supplementary information addressing the concerns of the Planning Authority is included with the appeal. This information could have been requested by a further information request.
- In conclusion, the Board is requested to grant permission.

Appendices

- The appeal is accompanied by 10 no. appendices as follows. These are addressed / summarised where relevant in section 7.0 below.
 - 1 Decision of Kerry County Council
 - 2 Planning Report of Kerry County Council
 - 3 Environmental Report of Kerry County Council

- 4 Biodiversity Officers Report of Kerry County Council
- 5 Photolog of screening on local road network, Local Screening and Visibility map and Viewpoints from local road network
- 6 10 no. drawings: Road Types, Site Road Details, Floating Road, Site Drainage Details, Land Drain Crossing, Turbine and Hardstand Details, Turbine Base, 2 x Site Road Details Sheet 2, Typical Piled Road Foundation Detail,
- 7 Archaeological Impact Assessment Report
- 8 Aquatic Ecology Assessment 2019
- 9 Bat Impact Assessment (Summer)
- 10 Compliance with Article 3 (a) to (e) of the EIA Directive 2014/52/EU.

6.2. **Appeal of the Organising Committee of NMWT@Ballylongford**

6.2.1. A third-party has appealed the decision of Kerry County Council, stating that they support the decision of the Planning Authority to refuse but that there are other substantive grounds for refusal. The grounds of the appeal can be summarised as follows:

- The NMWT objected to the proposed development, providing a petition of 567 no. residents of Ballylongford, Asdee and their environs.
- The subject application is largely the same as that previously refused by the Board, save for the removal of two turbines.

Land Ownership

- It is submitted that the applicant does not have the written consent of all landowners and therefore is in contravention of Article 22(2)(g) of the 2001 regulations. The Planning Authority should have invalidated the application. It is submitted that the claimed owners of the land differs from the registered owners of the lands in nine instances. It is submitted that, as per the decision of the High Court in *McGailig v An Bord Pleanála*, the Planning Authority should have insisted on the personal signature of the owner which identifies the land in respect of which the consent is given, distinguished on a map or plan.

Planning Application

- It is submitted that the application contains a number of errors and deficiencies
- The site notice should name all owners and refer to the proposed turning circle at Moran's Cross.
- The proposed turning circle has not been assessed in the EIAR or NIS.
- No site notice was erected at Moran's Cross.
- The applicants apparently preferred option for the cable route - option B, passes through Aghanagran Middle and Ballylongford, neither of which are mentioned in the site notice.
- None of the alternatives considered in the EAIR lie within the Strategic Site Search Area (SSSA) of the RES. This does not constitute proper planning and sustainable development. The environmental impacts of the alternative sites were not assessed. The application therefore does not comply with the Directive or the decision in *Holohan v An Bord Pleanála*.
- The appellants submission that the geo-technical survey undertaken for the previous application was deficient was supported by the Inspector. It is submitted that the current survey is also inadequate. There is no map detailing the location of the trial pits.
- The plans submitted do not show the adjacent Tullahennel South Wind Farm as required by article 23 of the regulations. The cumulative impact of Tullahennel was not assessed. This should have formed a reason for refusal.
- The proposed extended haul route is unnecessary as the applicant has submitted that a site entrance with enhanced turning circle capabilities and extensive road access to the site of the proposed development. The access and haul route used by and for the Tullahennel windfarm should be used for the subject development.
- The L6012 from Moran's Cross has recently been described by Garda as dangerous.
- The applicant appears to favour Option B for the cable route. Option A, an existing cable route currently connects Tullahennel South, Larha and the Tullahennel

North Windfarms to Kilpaaddoge. The Inspector for the previous application recommended that Option B be omitted.

- The proposed development is described as an extension of the Tullahennel windfarm. Other windfarms are proposed / planned in the wider area. Given the decision of *O Grianna v An Bord Pleanála*, the subject development should be considered with the existing development as a single project. The EIAR and the planning application do not cumulatively assess the existing and proposed windfarm. The Planning Authority should have refused permission on the grounds of project splitting.
- Notwithstanding that the occupant of the dwelling within 500m of a turbine, is one of the applicants and has provided consent, it is nonetheless a breach of the Wind Energy Development Guidelines. This should have formed part of the refusal.

Waste

- The peat and other material excavated as part of construction constitutes a “waste material” within the definition of Waste Directive. The applicant should have sought an Article 11 or Article 27 declaration. The filling of land is listed both as a waste disposal activity and a waste recovery facility in the Third and Fourth Schedules of the 2011 Waste Regulations. All was / excavated spoil from the development should be taken to an authorised facility. The transport of waste by an unauthorised haulier is illegal. The storage of waste in an unauthorised facility is illegal.
- There is no authorised waste facility in the Listowel Municipal District capable of accepting the likely volume of waste that will be generated. The applicant proposes to deal with the excavated material by mounding or spreading. Condition no. 14 of the previous Inspectors recommendation prohibited this.
- A recent decision by Kerry County Council agreed that the importing and spreading of building and general construction waste over agricultural land was waste and needed a waste management cert. The proposed treatment of waste in the subject application is the same.
- The EIAR did not include a waste management plan.

- The application is accompanied by a copy of the Planning Authority’s decision, a copy of the Appellants Objection acknowledgment and supporting information regarding the ownership of land.

6.3. Applicant Response to Third-party Appeal

6.3.1. An agent for the Applicants has responded to the third-party appeal. The submission states that information in the appeal is inaccurate and misleading. The submission can be summarised as follows:

- **Land Ownership:** The vast majority of folios mentioned by the appellant are outside the application redline boundary. A consent form for all lands within the boundary is attached with the response. The Property Registration Website is not a definitive record of ownership. The access track (KY3343L) was built by the landowners to the north-east to access their lands. A reference map clearly showing land parcels and the individual consent of the landowner was submitted to the Planning Authority in Appendix 3 of the EIAR.
- **Moran’s Cross:** Oversize deliveries will be restricted to the southern access only. The local road leading from Moran’s Cross will be used for the delivery of light goods only. An improvement to the cross roads will not be required. The proposed haul route and any required works will be agreed with the Planning Authority.
- **Cable Route:** The Roads Department in KCC and An Bord Pleanála (2017 application) both recommend that Option A be the only route considered. Therefore, only the townlands in Option A were mentioned in the site notice. The applicant has no control over the connection node location, which will be decided by Eirgrid. Option was included to show the options considered. Option A is the preferred option.
- **Waste Management:** In the event of a grant of permission, the applicants will consult with the Council about waste management.

6.4. Third-party Response to First party appeal

6.4.1. The third-party appellant responded to the first-party appeal. The response is stated to be on behalf of 567 no. residents of Ballylongford, Asdee and their environs. The nature of the submission is more an Observation on the proposed development as

opposed to a response to the other appeal of the Planning Authority decision. The response / observation, which includes 11 no. appendices provides a planning history, a comment on policy and repeats many of the items raised in the appeal. Other matters can be summarised as follows:

- The appellants additional documentation to the Board is an attempt to exclude the public and the Planning Authority to try to ensure a favourable decision. These documents should not be admissible at the appeal stage.
- In ten years, the number of wind turbines in the area has gone from 4 no. to 30, with 21 no. more visible in the wider area. The Board is asked to decide that this is enough.
- It is submitted that national policy 2006 Guidelines are of out of date and not fit for purpose. Planning Authorities and the Board are required to have regard to the Interim Guidelines. The proposed development should not be granted permission until the revised Wind Energy Development Guidelines have been published.
- It is submitted that Phase 1 of the windfarm breaches noise standards and causes shadow flicker.
- Protection of the environment is a central tenet of EU, national, regional and local policy, as well being part of the An Bord Pleanála mission statement.
- The proposed development does not comply with environmental or wind energy policies. It will alter the character of the coastal landscape, will generate large amounts of waste, does not protect or improve protected areas or species, will cause water pollution and will generate noise.
- The proposed development breaches the National Planning Framework, National Spatial Strategy, the Wind Energy Guidelines, the South West Regional Authority Planning Guidelines, the Kerry County Development plan 2015-2021 and the Kerry Renewable Energy Strategy.
- There are alternative sites in the Strategic Site search areas in Kerry.
- The proposed development will be a net contributor to CO₂ emissions. The applicant has not considered the CO₂ emitted in the construction of the windfarm

and the felling of a large amount of established forest. This is one of a number of serious flaws in the EIAR.

- The assessment required under EP-12 has not been undertaken.
- The EIAR did not adequately assess alternative locations.
- The Environment Section of Kerry County Council has serious reservations about the impact of the proposed development on the receiving environment.
- The decision of the Board to refuse permission for the previous application was sent to the Appellant in early Jan 2019. The subject application and NIS were submitted in March 2019. The appellant queries how an NIS can be undertaken in such a short period of time. The dates of the Bat Surveys are questioned.
- The applicant's conclusion that the probability of a bog slide is zero, without the benefit of a geophysical investigation, is questioned.
- The proposed development represents an unacceptable risk of pollution to surface and ground waters.
- The proposed development does not comply with development plan policies on tourism, the Shannon Way and the Wild Atlantic Way .
- The proposed development will negatively impact local property values, residential amenity, the landscape, television and communication signals and local heritage,
- The response is accompanied by a number of appendices: An Bord Pleanála invitation to respond to the appeal, soil erosion map, photos of sediment run-off from phase 1, newspaper article regarding wind farm development in Kerry, Natura 200 site maps, Bird Survey, photos of local wildlife, Kerry County Development plan maps, photos of the windfarms in the area, panoramic view, excerpts from Chapter 5 Kerry Development Plan, heritage survey of Ballylongford.

6.5. Planning Authority Response

- 6.5.1. The proposed development specifically contravenes Objective EP-12 of the Kerry County Development Plan. The wider landscape is now saturated with windfarms and the current proposal would create a negative visual impact on the rural character of the landscape. Internal reports from departments within KCC recommended

refusal. Further information regarding archaeological testing was not requested as the other significant issues warranted a refusal. It is submitted that the correct decision issued in this case.

6.6. Observations

- 6.6.1. **Department of Culture, Heritage and the Gaeltacht:** RMP KE005-020 lies within the proposed development site. The Dept. concurs with the Kerry County Archaeologist that pre-development testing should be carried out across the proposed development site in advance of a planning decision.
- 6.6.2. **Tom O'Donoghue:** during phase 1 of the project assurances were given that noise from the turbines would not adversely affect nearby dwellings. Now that the turbines are built, the noise greatly impacts the observer. This will become much worse if permission is granted for the proposed development.

7.0 Environmental Impact Assessment

- 7.1.1. The subject application was submitted to the Planning Authority on 12th April 2019. This application was submitted after 16th May 2017, the date for the transposition of Directive 2014/52/EU amending the 2011 EIA Directive. As the Directive has not yet been transposed into Irish legislation, in accordance with the advice on administrative provisions in advance of transposition, contained in Circular Letter PL1/2017, it is proposed to apply the requirements of Directive 2014/52/EU.
- 7.1.2. The Appellant notes that the Planning Authority found that the submitted EIAR does not identify and describe adequately all of the direct and indirect effects of the proposal on the environment in accordance with Items 1(a) – (e) of Article 3 to the 2014 EIA Directive. The appellant rejects this allegation and has submitted Appendix 10 to its grounds of appeal, a report that illustrates how the EIAR complies with these Items.
- 7.1.3. As required by Schedule 6 the EIAR submitted to the Board contains a non-technical summary, a reference list detailing the sources for the assessments within the EIAR, and a list of the experts who contributed to the preparation of the report. As is required under Article 3(1) of the amending Directive, the EIAR describes and assesses the direct and indirect significant effects of the project on the following factors: (a) population and human health; (b) biodiversity with particular attention to

the species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land, soil, water, air and climate; (d) material assets, cultural heritage and the landscape. It also considers the interaction between the factors referred to in points (a) to (d).

- 7.1.4. I have carried out an examination of the information presented by the applicant, including the EIAR. I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality, and that the information contained in the EIAR and supplementary information provided by the developer is up to date, adequately identifies and describes the direct and indirect effects of the proposed development on the environment, and complies with article 94 of the Planning and Development Regulations 2000, as amended.
- 7.1.5. Volume 1 of the EIAR starts with a Non-Technical Summary. **Chapter 1** refers to refers to EIA screening. It provides information in relation to the EU Directive 2014/52/EU which is an amendment of Directive 2011/92/EU. It provides details on the project team, the purpose and scope of the EIAR and a brief description of the development and the applicants.
- 7.1.1. **Chapter 2** provides details on the background to the proposed development, including the site and its planning history, details of the subject site including nature conservation designations, project implementation, project construction, operation maintenance and decommissioning details. This section notes that an NIS has been undertaken for the proposed development and that two options (A and B) are considered for grid connection. A list and map of the windfarms in the surrounding 10km and the wider is presented.
- 7.1.2. Appendices 17 and 19 (volume 2) of the EIAR provide details of the Community Engagement Plan and Public Information day. I am satisfied that the participation of the public has been effective, and the application has been made accessible to the public by electronic and hard copy means with adequate timelines afforded for submissions
- 7.1.3. Chapter 3 of Volume 1 refers to project implementation. It provides details of the proposed project construction, site requirements, turbine installation, anemometer mast, underground services, tree felling, the proposed grid connection and mitigation of impacts.

- 7.1.4. Chapter 4 sets out the policy and planning context, from European to local level. The chapter concludes with the finding that the proposed development is supported by the policy context.
- 7.1.5. Chapter 5 of Volume 1 addresses **Alternatives**. The option of do-nothing was dismissed at the opportunity to capture the valuable energy resource at the location would be lost. Alternative energy sources for electricity generation are assessed and dismissed by the applicant. In relation to alternative sites, the report states that siting criteria were applied. Four alternative locations within 10km of the connection node were assessed: site A Tullahennel North, site B Larha/Astee, site C Knockanore Mountain, and site D Guhard North (figure 5-3, chapter 5). Other sites within the Strategic Search Areas (SSA) were dismissed due to excessive distance to the suitable grid node.
- 7.1.6. The four sites are compared on terms of wind speed, size and topography, other factors such as planning, designated sites, ease of construction and previous assessments of site suitability. The conclusion under each section is that “the site at Ballylongford is suitable” but it does not state why the other sites were ruled out or on what basis. Section 5.3.2.5 lists the characteristics that make the subject site suitable but no assessment of the characteristics of the other three sites is presented. Alternatives for grid connection, configuration and layout are assessed. Appendix 5 in Volume 2 provides greater detail on the site layout evolution, including the most recent decision of the Board to refuse permission. Appendix 5 states that turbines T2 and T3 were omitted, the peat deposition area was moved from an area of active peat cutting to an area of cutaway peat to the south east of the site. The proposed compound and substation were also relocated.
- 7.2. In terms of the appellants reference to alternative locations within the strategic site search area, the EIAR states that sites were reviewed as part of the process but dismissed due to limited site availability, turbary issues and the willingness of landowners to develop. No further detail is provided. I note the finding of the Inspector of the previous appeal that “the cogency of the applicant’s discussion is constrained by the omission of any alternative locations within a Strategic Site Search Area”. I concur with that finding. However, given that the principle of the previous application was largely acceptable to the Board and given the scale and

extent of assessment that has been undertaken at the subject site at this point, it is considered that the subject of alternatives has been adequately assessed.

7.3. Likely Significant Direct and Indirect Effects

The likely significant indirect effects of the development are considered under the following headings, after those set out in Article 3 of the EIA Directive 2014/52/EU:

- population and human health;
- biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- land, soil, water, air and climate;
- material assets, cultural heritage and the landscape;
- the interaction between the factors referred to in points above

7.3.1. **Chapters 6 – 19:** Chapter 6 addresses Human Environment, Chapter 7 considers Noise and Vibration, Chapter 8 considers Shadow Flicker, Chapter 9 Terrestrial Ecology, Chapter 10 Aquatic Ecology – windfarm, Chapter 11 Aquatic Ecology – Cable Route, Chapter 12 Landscape, Chapter 13 Atmospheric Emissions and Air Quality, Chapter 14 Geology and Soils, Chapter 15 Hydrology & Hydrogeology, Chapter 16 Roads and Traffic, Chapter 17 Material Assets, Chapter 18 Cultural Heritage and Chapter 19 is Interaction and Impacts. Each of the chapters are considered in detail below, with respect to the relevant heading of the Directive.

7.3.2. Chapter 20 of the EIAR is a Natura Impact Statement.

7.3.3. Volume 2 of the EIAR has 19 no. appendices, as referred to in accompanying chapters of Volume 1

7.4. Population and Human Health

7.4.1. The likely significant effects of the proposed development on the population and human health are addressed in Chapter 6 of the EIAR. The chapter notes that the topic interacts with the chapters on landscape and visual (12), noise (7), air and climate (13), telecommunications and aviation as part of the material assets chapter (17), shadow cast and flicker (8) and cultural and archaeological impact (18). The location of residences within 600m of the proposed turbines are identified. Population statistics, employment, land uses are examined. No effect on population is likely. A minor positive effect on employment will be experienced during the

construction phase and operation phase. Notwithstanding that a short portion of the Shannon Way crosses an access track to the windfarm, there will not be a negative impact on tourism.

- 7.4.2. During the construction phase of the proposal, the human health of on-site workers would be affected by the possibility of accidents and the human health of on-site workers and local residents would be affected by the environmental impact of noise. This would be mitigated by adherence to all relevant health and safety regulations and the impact would be mitigated by the adoption of good construction management practices as proposed. No significant residual impacts are predicted.
- 7.5. The impact of noise on population and human health is addressed in chapter 7 and appendix 9 of the EIAR. The cumulative impact of the proposed development with the adjoining Tullahennel windfarm is assessed. The Noise Impact Assessment (NIA) draws upon a baseline survey of 4 representative dwelling houses, which are sited in locations surrounding the application site. Predicted noise levels during varying wind speeds at all the surrounding dwelling houses, including those of the applicant. Under BS 5228-1:2009, these noise levels would be comfortably within the threshold of 65dBA and so no significant noise impact would arise. The DoHPLG's "Proposed Revisions to Wind Energy Guidelines 2006: Targeted Review in relation to Noise, Proximity and Shadow Flicker has different, more rigorous noise standards. The proposed development, and the cumulative impact with the adjoining development, would be below or they would coincide with the relevant thresholds. No significant noise impact would, therefore, arise.
- 7.6. In relation to shadow flicker, the Wind Energy Development Guidelines (WED) recommend that "shadow flicker at neighbouring offices and dwellings within 500m should not exceed 30 hours per year or 30 minutes per day. Under the DoHPLG's proposed revised guidelines the elimination of shadow flicker at dwellings within a distance of 10 x the rotor diameter of the relevant wind turbine is required. The applicant has undertaken a modelling exercise to establish the extent of shadow flicker that would cumulatively arise from the proposal and the Tullahennel South Wind Farm (Figure 8.3, volume 1 and appendix 8, volume 2). Only the dwelling ID40 will experience shadow flicker for more than 30 hours per year. This dwelling house is derelict, in the ownership of one of the landowners and is well screened (photo 8-2, volume 1).

7.6.1. I am satisfied that potential effects would be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and best practice measures. I am satisfied therefore that the proposed development would not have any unacceptable direct, indirect or cumulative effects on population and human health.

7.7. Biodiversity

- 7.7.1. Chapter 9 of the EIAR refers to Terrestrial Ecology and takes the form of an Ecological Impact Statement. It notes that an NIS has been undertaken as a separate exercise, following the decision of the Board under 300368 and that the conclusion of the NIS is that the proposed development will not adversely affect the conservation objectives of any Natura 2000 sites. Additional survey information is contained in Appendix 11 (volume 2 of the EIAR).
- 7.7.2. In discussing habitats and vegetation, the EIAR finds that with the exception of the cutover bog and raised bog, the remaining habitat (conifer plantation, improved grassland, drainage ditches, dense bracken and hedgerows) is of low ecological importance. Raised bog has local importance but the actual example on site is of poor quality due to past peat-cutting, conifer plantation and associated drainage. The cutover bog is deemed to be of local importance. Field surveys indicate that no rare or protected plant species are present on the site and such species that have been identified within a 10 km grid of this site would not normally grow in its habitats.
- 7.7.3. Table 10 identifies target species identified for avifauna surveys, which were undertaken in 2015 – 2018. Other bird species present on the overall site were recorded, too. Table 14 identifies 11 key avifauna receptors, of which 4 bird species are recorded as being key ecological receptors, i.e. hen harrier, kestrel, snipe, and sparrow hawk. The first of these species is also recorded as being of high sensitivity, while the remaining 3 are of medium sensitivity.
- 7.7.4. Non-volant mammals are assessed in section 3.5 of the chapter. Table 15 identifies such mammals present within a 10 km grid of the application site. Of these 7 mammals, 4 are the subject of conservation protection of which 1 has been the subject of a confirmed sighting - the Mountain (Irish) Hare.

- 7.7.5. Potential impacts are listed as direct habitat loss where turbine bases, substation and associated infrastructure are to be placed. The proposed development would lead to a direct habitat loss of 3.07 hectares of the site, of which 0.5 hectares would be of raised bog and 1.72 hectares would be of cutover bog. The majority of this loss would be permanent and irreversible. Given the limited loss of the more sensitive bog habitats, the resulting impact would be negative and minor in its magnitude. A secondary impact on habitat is the drying out of peatland habitat in the immediate vicinity of the drainage system.
- 7.7.6. Impacts on birds may be the local but not full displacement of snipe, skylark and meadow pipit. It is noted that the habitat loss is small and habitats are present elsewhere. Impacts on mammals are predicted to be imperceptible. Noting the recording of hen harrier on the site, section 4.2.1.4 notes that the operational Tullahennel South windfarm may have led to a decreased usage of the development site. Temporary disturbance of the mountain hare is expected. Appendix 9 the appeal submission is stated to be a Summer Bat Assessment. The assessment notes that there are no buildings on the subject site and those derelict buildings in the wider area showed no evidence of bat usage.
- 7.7.7. The cumulative impact of the three immediate windfarms (Tullahennel north and south and Larha) on avifauna is assessed. The proposed development will not add any additional cumulative impacts and no significant impacts on ecology are foreseen.
- 7.7.8. In terms of mitigation, the EIAR proposes the appointment of an Ecological clerk of Works (ECoW) to minimise risks such as habitat disturbance. The evolution of the subject development has created a design that will cause the least ecological impact. Following the imposition of the recommended mitigation measures, insignificant residual impacts are predicted in flora, terrestrial habitats, birds and mammals.
- 7.7.9. Aquatic Ecology is assessed separately in the EIAR. A fish study undertaken in the catchment of the Ballyline River showed slight to moderate pollution levels with “unremarkable” numbers of fish recorded. A single hydrological connection between the north western extremity of the application site and a watercourse to the north, runs on a roughly west/east axis into the Ballyline River. The assessment finds that provided “best practice” water quality protection measures are undertaken; the

proposal would not have a significant impact upon water quality and the aquatic ecology of the catchment.

- 7.7.10. I have considered all information submitted in relation to biodiversity and I am satisfied that it has been appropriately addressed in terms of the application and the information submitted by the applicant and that no significant adverse effect is likely to arise.

7.8. Land, Soils and Geology

- 7.8.1. The proposed development would lead to a direct habitat loss of 3.07 hectares of the site, of which 0.5 hectares would be of raised bog and 1.72 hectares would be of cutover bog. The majority of this loss would be permanent and irreversible. Given the limited loss of the more sensitive bog habitats, the resulting impact would be negative and minor in its magnitude. A secondary impact on habitat is the drying out of peatland habitat in the immediate vicinity of the drainage system.
- 7.8.2. Chapter 14 of the EIAR assesses the soils and geology of the subject site and the proposed development. Section 14.1 of the EIAR provides details of the geotechnical investigations undertaken by the developer. I note the concerns of the Planning Authority under the previous application (300368) regarding peat stability and geotechnical assessments and that the same concerns were not raised in the subject application. This is likely due to the omission of turbines T2 and T3 from the current application.
- 7.8.3. A peat slope stability assessment undertaken for the previous application was stated to have been updated in April 2019 (the application was submitted to the Planning Authority on the 12th April 2019). The assessment found that a peat thickness of more than 11m existed in the north-west of the site. Key mitigation measures are noted in section 14.5, with the conclusion (section 14.7) that residual impacts will be insignificant.
- 7.8.4. I am satisfied that potential effects would be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and best practice measures. I am satisfied therefore that the proposed development would not have any unacceptable direct, indirect or cumulative effects on land, soils and geology.

7.9. Water

- 7.9.1. Site drainage is addressed in Chapter 3 of the EIAR, a watercourse assessment of the proposed grid connection is assessed in chapter 11 of the EIAR and throughout the various chapters as a potential impact. Appendix 15 of Volume 2 provides the Hydrology and Hydrogeology Report. Appendix 8 of the appeal refers to the updated Aquatic Assessment.
- 7.9.2. I note the concerns raised by the previous inspector regarding the limitations of the dirty water drainage network presented in the 2017 application. Appendix 5 in Volume 2 of the EIAR presents a rebuttal to each of the issues raised in that Inspectors report. Regarding drainage, the rebuttal states that “dewatering of excavations and protocols during extended periods of rainfall are included in the site drainage management plan. Both the clean and dirty networks are kept separated”.
- 7.9.3. A key feature of the proposed Site Drainage Management Plan (SDMP) is the separation of the existing and proposed drainage networks. During the construction and operational phases of the proposal, the wind farm would be drained in accordance with SuDS principles with the intention of ensuring that potential pollutants such as silt, sediments, and nutrients do not find their way into the existing drainage network. The previous application was criticised for not providing sufficient information on the exact layout of the proposed dirty water drainage network
- 7.9.4. The study area lies within the catchment of the Ballyline River. The site within this area is connected hydrologically to the north west and to the south east with tributaries to this River. The latter connection is continuous, and it comprises land drains and wet ditches, which accompany the eastern access road to the site from the R552 before diverting through a woodland. This connection then passes under this regional road from where it flows via a stream into the Ballyline River. Water quality within the Ballyline River is moderate and within the groundwater it is good.
- 7.9.5. Figure 9.1 of Chapter 14 of Volume 1 of the EIS/EIAR identifies three sampling points down stream of the study area in either the Ballyline River or tributaries of this River, which would be used in subsequent monitoring exercises
- 7.9.6. Section 15.2.1 of the EIAR notes that the lands have been extensively drained as part of peat harvesting and land reclamation, with the construction of drainage

channels of approx. 1m wide along field boundaries. The proposed new drainage infrastructure is explained in section 15.4.3 of the report.

7.9.7. Mitigation measures are presented for the operational and decommissioning phases. The conclusion of the report is that notwithstanding the hydraulic connection to the River Shannon and River Fergus Estuaries SPA, the Lower River Shannon SAC and the Ballylongford Bay NHA, with the proposed mitigation measures, the proposed development will have a negligible effect on the existing hydrology and hydrological environment.

7.9.8. I am satisfied that potential effects would be avoided, managed and mitigated by the measures which form part of the existing and the proposed scheme, the proposed mitigation measures and best practice measures. I am satisfied therefore that the proposed development would not have any unacceptable direct, indirect or cumulative effects on water.

7.10. **Air and Climate**

7.11. The EIAR identifies dust as a potential threat to air quality. Table 13-5 (repeated at table 13-7) of Chapter 13 of Volume 1 indicates the possible distances over which significant effects could be anticipated once standard mitigation measures are allowed for. This table is not site or the proposed development specific. Given that the nearest property to any turbine is 800m, the finding is that the separation distances are such that no significant impact would arise. Likewise, the distances are such that they would mitigate the effects of exhaust fumes from plant and machinery during the construction period. The one possible significant impact is 'soiling'. Proposed measures to reduce this include a wheel wash, hardcore surface at the road entrance and regular sweeping of the road.

7.12. In terms of climate (also chapter 13), the applicant estimates that the proposed wind farm would lead to an annual reduction of 27,192 tonnes of CO₂ emissions into the atmosphere or 748,901 tonnes over the 25-year life of this wind farm. The applicant also estimates that a total of 33,298 tonnes of CO₂ would be emitted as a result of factors such as its manufacture and construction and the consequential drying out of bog land on the site. This figure would represent 3.9% of the total reduction or a payback period of 11.3 months.

7.12.1. Short-term slight negative impacts will arise during the construction phase. Whilst the long-term impact will be neutral. Mitigation measures largely relate to dust management plans and adherence to good practice.

7.12.2. I am satisfied that potential effects would be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and best practice measures. I am satisfied therefore that the proposed development would not have any unacceptable direct, indirect or cumulative effects on air and climate.

7.13. **Landscape and Visual**

7.13.1. A landscape and Visual Assessment is presented in chapter 12 of Volume 1 and Appendix 12 of Volume 2 of the EIAR. Appendix 5 of the appeal submission to the Board also provides a photolog of screening on the local road network, local screening and visibility map and viewpoints from the local road network.

7.13.2. The Board will note that the second reason for refusal of Kerry County Council related to visual impact.

7.13.3. Section 12.4 of the chapter divides the impact on the landscape into that in the immediate area (<5km) and the wider area (5-20km). In the immediate area the receiving landscape is deemed to be of medium-low sensitivity largely due to the rural-general character of the area and the existence of the Tullahennel windfarm. The wider area is also deemed to have a medium-low sensitivity, being characterised as a robust and productive rural landscape. Overall, the impact on the landscape is deemed to be moderate- slight.

7.13.4. The visual impact of the proposed development is determined using a scale of value matrix, based on the sensitivity of the visual receptor point (VRP). 18 no. VRP are assessed. VRP no.s 1-8, 12 and 18 have a slight or slight / imperceptible significance. VRP9-11, 13-16 have a moderate sight impact. VRP 17 is found to have an imperceptible impact. The cumulative impact is assessed, using the 9 no. windfarms in the study area. The main impact is stated to be from the adjoining Tullahennel south windfarm. Section 12.4.3.3 states that the proposed development was designed to read as a seamless extension of the existing windfarm. The conclusion of the cumulative impact assessment is that the impact is low, due to the

exiting rural landscape being synonymous with energy production in various forms – windfarm, Moneypoint, Tarbert, the Shannon Estuary and the convergence of high voltage electricity lines.

- 7.13.5. I note and concur with the finding of the Inspector in the previous appeal (300368) that VPR 9 and 10 should be considered to be moderate, that VPRs 10 and 13 should be considered substantial moderate and that VPR 11 should be considered to have a substantial moderate visual impact. I do not agree with the EIAR assessment of VPR 11 as not the proposed turbines being overbearing and not occupying a disproportionate extent of the available vista. In addition to the above, I would add VPR 16 having a moderate rather than moderate slight visual impact.
- 7.13.6. Given the above, I also agree with the Inspectors assessment of the cumulative impact of the proposed development being medium-low, rather than the EIAR's assessment of low.
- 7.13.7. I am satisfied that potential effects would be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and best practice measures. I am satisfied therefore that the proposed development would not have any unacceptable direct, indirect or cumulative effects on landscape and visual.

7.14. Material Assets and Cultural Heritage

- 7.14.1. Chapter 17 and 18 divide the assessment of the likely impacts of the proposed development on material assets into those of natural origin and those of human origin.
- 7.14.2. Of natural origin (land, geology, natural amenities), the assessment finds that the area of land take for the proposal would be relatively small and the prospect exists that this land would be restored to its pre-existing use/converted to new use once the wind farm is de-commissioned. There are no known sites of interest in the study area and any draw upon materials of construction from off-site quarries would have only minor impacts upon the same. Natural amenities, insofar as biodiversity and water would be affected, are discussed under previous headings of this EIAR. Other natural amenities that are assessed lie at some remove along the coast or to the west, e.g. Knockanore Mountain. The 35 km walking/hiking trail, known as "The

Shannon Way”, passes through the study area and parts of the application site . This trail runs between Ballybunion and Tarbert and it passes over Knockanore Mountain. The EIAR states that a diversion route for the Shannon Way during the construction of the proposed windfarm is shown in Figure 17-2. The proposed temporary diversion runs to the north of the subject site.

- 7.15. In assessing material assets of human origin, electricity infrastructure, telecommunications, aviation, and roads infrastructure are listed. The likely significant impact on electricity infrastructure, would be positive - the proposal would contribute to the generation of electricity. The proposed grid connection would be either directly with the ESB network at Tarbert or indirectly via the existing grid connection established for the Tullahennel South Wind Farm. With respect to telecommunications, companies responding to the applicant’s consultation exercise raised no issues. RTE indicated that some viewers in the vicinity of the site may experience interference in their reception, but that this could be mitigated by the reorientation of aerials to alternative transmitters. No issues were raised by the IAA and no significant impacts are predicted. Predicted start date for the proposed development is 2021, during which time the road infrastructure may change.

In terms of cumulative impacts, section 17.3.2.5 of the EIAR refers to permission for other windfarms in the area, a solar farm, and the Shannon LNG. The EIAR recognises that there may be a risk of cumulative impact upon the road network between Tarbert and Ballylongford in the event that the current proposal is implemented at the same time as the proposed Shannon Liquefied Natural Gas Plant. HGV routes to and from the subject site are identified in the Outline Traffic Management Plan (Appendix 16 of Volume 2).

- 7.16. Under the heading of cultural heritage, Chapter 18 of Volume 1 of the EIAR addresses archaeology. The Board will note that this issue formed the fourth reason for refusal of Kerry County Councils decision to refuse. Additional desk top and site surveys were undertaken in 2019 by an Archaeologist (appendix 18 of Volume 2). Pre-development archaeological testing will be carried out if permission is granted.

- 7.16.1. Within the study area the only identified archaeology is that of a ringfort (Record of Monuments and Places (RMP) KE005-020), which consists of a sub-circular area

enclosed by a well-defined bank and exterior moat. Proposed wind turbines T7 and T8 would be sited at some remove roughly to the south and north of this ringfort.

- 7.17. The EIAR notes that no architectural was found during the construction of the Tullahennel South Wind Farm or its grid connection. The findings of a field survey of the study area did not identify from the surface any signs of archaeology.
- 7.18. The proposed development would not lead to any direct impacts on the known ringfort. A 50m buffer zone should be established around this fort for the duration of the construction phase. Construction works may have a direct impact upon any yet to be found sub-surface archaeology. The associated risk in this respect would be capable of being mitigated by the appointment of a site archaeologist and the monitoring of excavation works. The County Archaeologist considers that the further precaution of pre-development archaeological testing of all excavation areas of the site is warranted. Such testing would mitigate the identified risk.
- 7.19. The current proposal would have an indirect impact upon the ringfort insofar as it would affect its setting. However, as this setting is already affected by the presence of coniferous woodland and the Tullahennel South Wind Farm, this is not considered significant.
- 7.20. There are no buildings of architectural heritage within the study area.
- 7.20.1. I am satisfied that potential effects would be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and best practice measures. I am satisfied therefore that the proposed development would not have any unacceptable direct, indirect or cumulative effects on material assets or cultural heritage.
- 7.21. **Interactions**
- 7.22. Chapter 19 of the EIAR assesses the interaction of impacts. Each of the topics is comprehensively addressed in the preceding chapters of the EIAR. No new impacts would arise as a result of the identified inter-relationships, beyond the impacts already discussed elsewhere.
- 7.23. I am satisfied that the interactions between topics has been adequately assessed and that the finding of no additional potentially unacceptable environmental impacts will arise as a result of the proposed development.

7.24. Reasoned Conclusion on the Significant Effects

7.24.1. Having regard to the examination of environmental information contained above, all submissions received and in particular to the EIAR, it is considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

- **Biodiversity:** There will be habitat loss due to the construction of access roads, substation, hardstanding, cable trench etc. and felling of trees. There will be general disturbance during construction and operation phases. These will be mitigated by the mitigation measures outlined in the Construction and Environmental Management Plan, pre-construction mammal surveys, invasive species management plans, and the appointment of an Environmental Clerk of Works.
- **Hydrology and Water Quality:** Potential indirect effects could be caused by the increase in run-off, such as soil erosion and sediment release into the receiving watercourses. The Construction and Environmental Management Plan, Site Drainage Management Plan and Surface Water Management Plan, all detail the mitigation measures to be taken to mitigate any significant effect.
- **Landscape and Visual:** Possible cumulative impact arising from the proximity of the adjoining windfarm at Tullahennel, particularly on the R551 which forms part of the Wild Atlantic Way. It is considered however that the environmental would not justify a refusal of planning permission having regard to overall benefits of the proposed development, and in particular having regard to the context which is that of a highly moderated working landscape.

7.24.2. The proposed development is not likely to have significant adverse effects on population / human health, land, soils & geology, noise, traffic, material assets and cultural heritage.

7.24.3. The likely significant environmental effects arising as a consequence of the proposed development have therefore been satisfactorily identified, described and assessed. They would not require or justify refusing permission for the proposed development or requiring substantial amendments to it.

8.0 Assessment

8.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant, the planning authority, the prescribed bodies and the Observers. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Planning Policy
- Grid Connection

8.2. Principle of Development

8.2.1. I have read the previous Inspectors report (ABP-300388-17) and the subsequent decision by the Board. I note the recommendation of the Inspector to grant permission subject to conditions and the decision of the Board to refuse permission for a single reason. The subject application before the Board, with the exception of the number of turbines, is largely the same as that previously assessed by the Board. Given that the principle of the previously proposed development did not form a specific reason for refusal, I am satisfied that the principle of the currently proposed development is acceptable.

8.3. Planning Policy

- 8.4. I note the Planning Authority's first reason for refusal, namely that the proposed development contravenes Objective EP-12 of the County Development Plan. As noted above, this objective seeks to permit development in open for consideration zones in the Tralee and Listowel Municipal Districts, only where "80% of the turbines with permissions in those areas.....have either been erected or the relevant permission has expired or a combination of both and the cumulative effect of all permitted turbines
- 8.4.1. The Planning Authority's planning report states that it has been established that the 80% threshold has been reached but that the cumulative effect has not been assessed. I am satisfied that the comprehensive assessment of cumulative impacts in the EIAR adequately satisfies the requirements of policy EP12.

- 8.4.2. In the previous application, the Inspector identified a number of concerns regarding turbines T2 and T3. These related to an assessment of the deep peat deposits and the direct bearing on peat stability and the associated risk of pollutants being conveyed into a tributary of the Ballyline River and ultimately onto Ballylongford Creek. A second concern related to the trial pit under T2 which resulted in a large amount of water accumulating quickly. The Inspector concluded that with the omission of turbine T2 and T3, no significant effects would be likely to occur on the qualifying interests and the conservation objectives of the Lower River Shannon SAC.
- 8.4.3. The omission of turbines T2 and T3 and the choosing of Option A for the proposed grid connection addresses much of the concerns noted regarding the findings of the previous EIAR on the clean and dirty drainage networks.
- 8.4.4. I am satisfied that the proposed development complies with planning policy and is in keeping with the proper planning and sustainable development of the area.

8.5. **Grid Connection**

- 8.5.1. Chapter 2 of the EIAR refers to two options A and B for the proposed grid connection. It states that from the proposed onsite substation, the proposed windfarm will connect to the national grid via a 220/110Kv substation that is 14km from the subject site. The cable will be underground and subject to determination by Eirgrid. Option A would utilise the existing grid connection that serves the Tullahennel South Wind Farm on adjoining lands to the south west of the application site and Option B would require a new connection underneath the R551 to Tarbert. The Inspector assessing the previous appeal considered that option B had been insufficiently assessed in terms of impact on the receiving habitat and therefore must be omitted. A similar conclusion was reached by the Biodiversity Officer of Kerry County Council (report dated May 23rd, 2019).
- 8.5.2. In their appeal submission to the Board, the appellant noted the preference of Kerry County Council and the Board Inspector in the previous appeal (300368) for Option A and stated that Option A is therefore the preferred option of the Applicant. They state that the EIAR refers to both options to show that more than just one option was considered. Should the Board decide to grant permission, in the interest of clarity, a condition specifying grid connection Option A should be attached.

8.6. Appropriate Assessment

Applicants Natura Impact Statement

- 8.6.1. Chapter 20 of Volume 1 of the submitted EIAR is a Natura Impact Statement. The report, prepared in March 2019, provides a description of the proposed development and the subject site. The report identifies four European sites within a 15km radius of the site: the Lower River Shannon SAC (002165) 1.6km to the north, River Shannon and River Fergus Estuaries SPA (004077) 1.6km to the north, Moanveanlagh Bog SAC (002351) 9km to the south-west and the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) 14km to the south.
- 8.6.2. The Moanveanlagh Bog SAC and the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA are screened out due to distance and likelihood of significant impacts being low. The report notes that a direct hydrological connection exists from the subject site to a point 3.7km downstream in the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA. Therefore, a Stage 2 AA is necessary.
- 8.6.3. Section 4.3 of the report states that there is one potential significant effect that may arise from the development of the proposed windfarm, that of an adverse impact on water quality. The report assesses the likelihood of an adverse effect on each of the qualifying interests for both of the designated sites as follows:

Lower River Shannon SAC

- Estuaries: While a hydrological pathway exists, deterioration of water quality downstream highly unlikely due to the distance between the two sites and the assimilation capacity of the receiving environment.
- Tidal Mudflats: Water quality of not a conservation objective for this habitat. The distance between the two sites and the assimilation capacity of the receiving environment are such that deterioration of the water quality is highly unlikely.
- Large Shallow Inlets and Bays: Water quality of not a conservation objective for this habitat. The distance between the two sites and the assimilation capacity of the receiving environment are such that deterioration of the water quality is highly unlikely.

- Sea Lamprey: Water quality of not a conservation objective for this habitat. No suitable spawning habitat occurs downstream, the distance between the two sites and the assimilation capacity of the receiving environment are such that deterioration of the water quality is highly unlikely.
- River and Brook Lamprey: Water quality of not a conservation objective for this habitat. No suitable spawning habitat occurs downstream, the distance between the two sites and the assimilation capacity of the receiving environment are such that deterioration of the water quality is highly unlikely.
- Atlantic Salmon: Salmon may potentially occur along the Shannon Estuary downstream of the proposed windfarm and in the absence of mitigation, may be subject to adverse impacts on water quality.
- Bottlenose Dolphin: Suitable habitat for the bottlenose dolphin occurs 8.5km downstream. Given the hydrological connection between the site and the habitat, adverse impacts may arise.
- Otter: Water quality of not a conservation objective for this habitat. Proposed development may potentially lead to adverse water quality impacts within watercourses downstream of the proposed windfarm. Otter may use the natural watercourses in proximity of the site for commuting and foraging. Potential water quality impacts may affect the fish biomass available to otter within the SAC.

River Shannon and River Fergus Estuaries SPA

- Wetlands and Waterbirds: Considering the robustness and assimilation capacity of the receiving environment, significant adverse impacts are not foreseen.
- In the absence of mitigation, the SPA may potentially be adversely affected by the potential run-off of silt and / or other harmful pollutants from the proposed development site.

8.6.4. The NIS proposes a series of mitigation measures: a CEMP, works to be carried out in accordance with best practice, confining construction activity within the development footprint, protection of material piles from rain wash-out, a 20m buffer around streams or watercourses for the placing of stockpiles, designated refuelling sites away from watercourses, sediment control measures, SWMP, no direct discharge to watercourses and remediation of the site after decommissioning. The

NIS assesses in-combination effects from the adjoining Tullahennel windfarm and finds that there is no potential for increased effects. The conclusion of the NIS is that “the proposed Ballylongford windfarm will not adversely affect the integrity and conservation status of either the Lower River Shannon cSAC or the River Shannon and River Fergus Estuaries SPA in view of conservation objectives for either site”.

Assessment

- 8.6.5. I am satisfied that sufficient relevant information has been submitted with the subject application and appeal submission to the Board, to allow the carrying out of an AA.
- 8.6.6. I concur with the findings and reasoning of the Applicants NIS that the Moanveanlagh Bog SAC and the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA can be screened out due to distance and likelihood of significant impacts being low.
- 8.6.7. The direct hydrological connection between the subject development site and the Lower River Shannon SAC(site code 002165) and the River Shannon and River Fergus Estuaries SPA (site code 004077) requires further consideration.

Lower River Shannon SAC

- 8.6.8. As a starting point, I noted that the applicant’s NIS refers to the Lower River Shannon designated site as a *Candidate SAC*. The Board will note that the site is an SAC, not a candidate.
- 8.6.9. The NPWS description of the Lower River Shannon SAC comments on the extent of the designated site, noting that it stretches along the Shannon valley from Killaloe in Co. Clare to Loop Head/ Kerry Head, a distance of some 120 km. The site encompasses the Shannon, Feale, Mulkear and Fergus estuaries, the freshwater lower reaches of the River Shannon (between Killaloe and Limerick), the freshwater stretches of much of the Feale and Mulkear catchments and the marine area between Loop Head and Kerry Head. Rivers within the sub-catchment of the Feale include the Galey, Smearlagh, Oolagh, Allaughaun, Owveg, Clydagh, Caher, Breanagh and Glenacarne. Rivers within the sub-catchment of the Mulkear include the Killeenagarrieff, Annagh, Newport, the Dead River, the Bilboa, Glashacloonaraveela, Gortnageragh and Cahernahallia.

8.6.10. As indicated above, there are two source/pathway/receptor routes between the application site and Ballylongford Creek, which lies within the Lower River Shannon SAC and the River Shannon and River Fergus SPA. The said SAC is an extensive one, which is the subject of multiple qualifying interests and corresponding conservation objectives. The NPWS Conservation Objectives document includes within it a series of maps which enable the qualifying interests and corresponding conservation objectives for Ballylongford Creek to be delineated. These are set out below.

- 1140: Mudflats and sandflats not covered by seawater at low tide: To maintain their favourable conservation condition.
- 1170: Reefs: To maintain their favourable conservation condition.
- 1330: Atlantic salt meadows: To restore their favourable conservation condition.
- 1410: Mediterranean salt meadows: To restore their favourable conservation condition.
- 1349: Common bottlenose dolphin: To maintain its favourable conservation condition.
- 1355: Otter: To restore its favourable conservation condition.

8.7. Given the existence of the source/pathway/receptor routes and given the proximity of Ballylongford Creek to the application site, the possibility arises that, during the construction phase of the proposal, pollutants could be conveyed into the Creek that would be detrimental to the qualifying interests for which the site is designated.

8.7.1. The proposed site drainage management plan (updated to March 2019) is referenced throughout Volume 1 of the EIAR and contained in full in Appendix 2 of volume 2. The SDMP notes that the windfarm is located within one waterbody, with hydrological links of 2.5km to the Ballyline River and 7km to the Aghanagran River. Surface water running off the site drains into the Ballyline River which in turn drains into the Shannon Estuary River SAC and the Shannon Estuary River SPA. The main potential hydrological impact of the proposed development is an increase in run-off and run-off that has been contaminated.

8.7.2. The proposed surface water management plan (SWMP) determines that while surface water run-off will be minimal, this will be further controlled by the use of

swales at roadside edges and stiling ponds at the end of the swale run. To avoid the entry of soil sediment during the construction phase, silt protection controls are proposed at drain crossings. Potential construction impacts are listed in section 3.3.1 of Appendix 2 Volume 2 and include excavations, spoil heaps, silt on vehicle wheels, wet concrete operations, refuelling, cable trenches and tree felling. A series of measures to prevent the above are listed in section 3.4.1 and include standard good construction practices such as wheel wash, silt fences and control of traffic on site. In addition, tree felling is proposed to occur prior to the construction of site access and subject to a tree felling licence. Water Quality will be monitored on a regular basis.

- 8.7.3. Potential cumulative impacts arising from the proximity of the subject site to the existing Tullahennel windfarm are not foreseen due to the construction phases for the two farms not overlapping. Given that the largest risk arises during the construction phase, this finding is considered reasonable.
- 8.7.4. I am satisfied that, taking into account the possible adverse effect of the proposed development, the mitigation measures designed to remove or reduce these impacts, that no adverse effects on the integrity of the SAC or the SPA will arise from the proposed development.
- 8.7.5. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European Site Nos. 002165, 004077, or any other European site, in view of the Sites' Conservation Objectives,

9.0 Recommendation

- 9.1. I recommend permission be granted subject to the following reasons and considerations and subject to the conditions set out below.

Matters Considered

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

Reasons and Considerations

The Board had regard to:

- a) national policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions from greenhouses gases,
- b) the provisions of the Wind Energy Development Guidelines – Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June 2006,
- c) the policies of the planning authority as set out in the Kerry County Development Plan 2015-2021, including the Wind Energy Strategy for County Kerry, 2012
- d) the location of the wind farm site in an area which is identified in the development plan as an area ‘Open for Consideration’ where it is the policy of the planning authority to facilitate the development of appropriate wind energy proposals,
- e) the character of the landscape in the area and the absence of any ecological designation on or in the immediate environs of the wind farm site,
- f) the characteristics of the site and of the general vicinity,
- g) the pattern of existing and permitted development in the area, including other windfarms,
- h) the distance to dwellings and other sensitive receptors from the proposed development,
- i) the Environmental Impact Assessment Report submitted,
- j) the Natura impact statement submitted,
- k) the appeals and observation made in connection with the planning application, and
- l) the report of the Inspector.

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

The Board considered the Natura impact statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites, namely the Lower River Shannon Special Area of Conservation (site code number 002165), and River Shannon and River Fergus Estuaries Special Protection Area (site code number 004077) in view of the sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

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

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) the mitigation measures which are included as part of the current proposal, and
- (iii) the conservation objectives for the European Sites.

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

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

Environmental Impact Assessment

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

- The nature, scale and extent of the proposed development;
- The Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the planning application;
- The submissions from the planning authority, the appellants, the observer and the prescribed bodies in the course of the application; and

- The Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and also adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

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

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

- **Biodiversity:** There will be habitat loss due to the construction of access roads, substation, hardstanding, cable trench etc. and felling of trees. There will be general disturbance during construction and operation phases. These will be mitigated by the mitigation measures outlined in the Construction and Environmental Management Plan, pre-construction mammal surveys, invasive species management plans, and the appointment of an Environmental Clerk of Works.
- **Hydrology and Water Quality:** Potential indirect effects could be caused by the increase in run-off, such as soil erosion and sediment release into the receiving watercourses. The Construction and Environmental Management Plan, Site Drainage Management Plan and Surface Water Management Plan, all detail the mitigation measures to be taken to mitigate any significant effect.
- **Landscape and Visual:** Possible cumulative impact arising from the proximity of the adjoining windfarm at Tullahennel, particularly on the R551 which forms part of the Wild Atlantic Way. It is considered however that the environmental would not justify a refusal of planning permission having regard to overall benefits of the

proposed development, and in particular having regard to the context which is that of a highly moderated working landscape.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with European energy policy, the National Planning Framework and the Kerry County Development Plan 2015–2021.

It would

- make a positive contribution to Ireland's national strategic policy on renewable energy and its move to a low energy carbon future,
- have an acceptable impact on the landscape,
- not seriously injure the residential or visual amenities of the area,
- not adversely affect the archaeological or natural heritage, and
- be acceptable in terms of traffic safety and convenience.

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

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement

of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be served by Grid Connection Option A only.

Reason: In the interest of clarity

3. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars submitted with the planning application shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority, a schedule of mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and details of a time schedule for implementation of the mitigation measures and associated monitoring,

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

4. Prior to commencement of development, a detailed environmental management plan for the construction stage shall be submitted to and agreed in writing with the planning authority, generally in accordance with the proposals set out in the Environmental Impact Assessment Report. The environmental management plan shall incorporate the following:
 - (a) a detailed plan for the construction phase incorporating, inter alia, construction programme, supervisory measures, noise management measures, construction hours and the management of construction waste;
 - (a) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the construction period;
 - (c) an emergency response plan, and
 - (d) proposals in relation to public information and communication.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for public inspection by the planning authority.

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

5. The mitigation measures contained in the Natura Impact Statement which was submitted with the application shall be implemented in full.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European sites.

6. 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 and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

7. This permission shall be for a period of 25 years from the date of the first commissioning of the wind farm.

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

8. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

Reason: In the interest of clarity.

9. The following design requirements shall be complied with:

- (a) The wind turbines, including masts and blades, shall be finished externally in a colour to be agreed in writing with the planning authority prior to commencement of development.

- (b) Cables within the site shall be laid underground.
- (b) The wind turbines shall be geared to ensure that the blades rotate in the same direction.
- (d) No advertising material shall be placed on or otherwise be affixed to any structure on the site without a prior grant of planning permission.

Reason: In the interest of visual amenity

10. (a) Noise levels emanating from the proposed development following commissioning, by itself or in combination with other existing or permitted wind energy development in the vicinity, when measured externally at third party noise-sensitive locations, shall be in accordance with the levels specified in the Environmental Impact Assessment Report.
- (b) All sound measurements shall be made in accordance with ISO 1996: Acoustics – Description and Measurement of Environmental Noise.
- (c) Prior to commencement of development, the developer shall arrange for a noise compliance monitoring programme for the operational wind farm. Details of the nature and extent of the monitoring programme shall be submitted to, and agreed in writing with, the planning authority.

Reason: To protect the amenities of property in the vicinity of the site.

11. The following shadow flicker requirements shall be complied with:
- (a) The proposed turbines shall be fitted with appropriate equipment and software to control shadow flicker at dwellings to limits specified in the Environmental Impact Assessment Report.
- (b) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a shadow flicker compliance monitoring programme for the operational wind farm.

Reason: In the interest of residential amenity.

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

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

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

Reason: In the interest of air traffic safety.

14. (a) Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with the planning authority:
- (i) A Transport Management Plan, including details of the road network/haulage routes and the vehicle types to be used to transport materials on and off site and a schedule of control measures for exceptionally wide and heavy delivery loads.
 - (ii) A condition survey of the roads and bridges along the haul routes shall be carried out at the developer's expense by a suitably qualified person both before and after construction of the proposed development. This survey shall include a schedule of required works to enable the haul routes to cater for construction-related traffic. The extent and scope of the survey and the schedule of works shall be agreed with the planning authority prior to commencement of development.

- (iii) Detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority.
 - (iv) Detailed arrangements for the protection of bridges to be crossed.
 - (v) Detailed arrangements for temporary traffic arrangements/controls on roads.
 - (vi) A phasing programme indicating the timescale within which it is intended to use each public route to facilitate construction of the proposed development.
 - (vii) Within three months of the cessation of the use of each public road and haul route to transport material to and from the site, a road survey and scheme of works detailing works to repair any damage to these routes shall be submitted to and agreed in writing with the planning authority.
- (b) All works arising from the aforementioned arrangements shall be completed at the developer's expense within 12 months of the cessation of each road's use as a haul route for the proposed development.

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

15. Prior to the commencement of development, a fence shall be erected around the buffer zone to the ringfort (RMP: KE005-020) in the study area and, thereafter, this fence shall remain in-situ for the duration of the construction phase.

Reason: In order to safeguard the ringfort in the interest of conservation.

16. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (i) notify the relevant planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (ii) employ a suitably-qualified archaeologist prior to commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:
 - (i) the nature and location of archaeological material on the site, and
 - (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

17. Prior to commencement of development, details of the community gain proposals shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of the community and orderly development of the area.

18. On full or partial decommissioning of the windfarm, or if the windfarm ceases operation for a period of more than one year, the turbines concerned and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation. These reinstatement works shall be completed to

the written satisfaction of the relevant planning authority within three months of decommissioning or cessation of operation.

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

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

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

20. Prior to commencement of development, the developer shall lodge with the relevant planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the relevant planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project, coupled with an agreement empowering the relevant planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the relevant planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of the site.

21. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on

behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Gillian Kane
Senior Planning Inspector

29 November 2019