



An
Bord
Pleanála

Inspector's Report ABP-308643-20

Development	Amendment to Planning Permission ABP-304807-19 consisting of a change to the grid connection route
Location	Meelcon, Carhoona, Farranawana, Tarbert, Doonard Upper & Lower, Kilpaddoge, Ballyline West, Ballymacasy, Lislaughtin, Glancullare South, Gurteenavallig, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/438
Applicant(s)	Ballylongford Windfarm Group
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Ballylongford Windfarm Group
Date of Site Inspection	13 th & 14 th April, 2021
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The proposed underground cables would primarily be routed along public roads, commencing south-west of Ballylongford in County Kerry, through the villages of Ballylongford and Tarbert, and then west of Tarbert to an ESB substation. The roads to be followed would be Regional Road R551, Regional Road R552 and Local Road L-1010. The route would commence within lands on which a wind farm has been permitted at Aughnagran Lower south-west of Ballylongford and would follow the route of the R552 north-eastwards. It would enter private lands on the southern side of the R551 for a short section at Carhoona between Ballylongford and Tarbert. It would approach the substation in the vicinity of the road entrance to the ESB lands west of Tarbert village at Kilpaddoge. The cable would be located in the townlands of Ballyline West, Ballymacasy, Lislaughtin, Glancullane South, Gurteenavallig, Meelcon, Carhoona, Farranawana, Doonard Upper, Doonard Lower, Tarbert and Kilpaddoge.

2.0 Proposed Development

- 2.1. The public notices with the application submitted on 15th May 2020 state that the proposal seeks:

“... to amend a previously granted permission (Kerry County Council Planning Reference 19/381) (An Bord Pleanála reference ABP-304807-19) which relates to a change in the grid connection route for the permitted wind farm. The revised route will entail the construction of approximately 12.1km of 38kV underground electric cable connecting the existing permitted windfarm (19/381) to the 38Kva/110Kva substation at Kilpaddoge, Tarbert, County Kerry. The underground cables will be located along the public roads R-551, R552 and L-1010 and along 2 sections of private property. The cable will be installed in excavated trenches approximately 1.2m in depth and will include associated underground ducting, joint bays, communication chamber bays, drill pits, sheath link boxes and inspection chambers, associated equipment and all ancillary site and ground works. The development will also consist of the connection of the permitted windfarm (19/381), via existing permitted underground electricity cables, to the proposed cable ...”

The works would be carried out within the public road and adjacent verges other than at the Kilpaddoge end (for a distance of 930 metre) and for a distance of 340 metres at Carhoona where it would be within private lands. The latter is proposed in order to provide separation distances to existing cables laid within the R551. 92.5% of the length of the route would be located in the public road corridor. There would be eleven bridge/culvert crossings with watercourses or drains and no in-stream works are proposed.

2.2. The route description is described in the application as follows:

The proposed cable would exit the wind farm via a permitted underground cable and connect with the proposed cable at the R552. It would head north along the R552 for a distance of approximately 2.3km in the direction of Ballylongford. At the junction of the R552 with the R551 it would head in an easterly direction along the R551 for a distance of approximately 5.2km. It would then enter private lands to the south of the road carriageway for a distance of 340m at Carhoona and it would then re-join the R551 and head in the direction of Tarbert for a distance of 2.5km as far as the junction of the N69 and L-6010 in Tarbert village. The route would then move west along the local road to the Kilpaddoge site entrance for a distance of approximately 1km. It would then turn north through private lands to the entrance with the ESB substation.

2.3. Details submitted with the application included an AA Screening Report, an EIA Screening Report, a Planning Report, an Outline Cable Route Construction Methodology, a Preliminary Construction Stage Environmental Management Plan, an Outline Surface Water Management Plan, a Watercourse Assessment, an Archaeological Impact Assessment, a Preliminary Hydrology Report, a Preliminary Spoil Management Plan, and a Preliminary Waste Management Plan. Letters from the landowners affected permitting consent for the making of the application were also submitted.

2.4. An Archaeological Testing Report was submitted by way of unsolicited further information on 15th July 2020.

3.0 Planning Authority Decision

3.1. Decision

On 28th October 2020, Kerry County Council decided to refuse permission for the proposed development for one reason relating to the development placing future constraints on the public road network and materially contravening a condition attached to an existing permission for a windfarm.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the wind farm planning history, development plan provisions, and reports received. It was submitted that the proposal would contravene a condition of the permission for the wind farm granted by the Board relating to the grid connection. The visual impact of the proposal was rated as low. The contents of reports received were noted. The Biodiversity Officer's AA screening was repeated. It was considered that EIA was not required. A request for further information was recommended based upon the recommendations set out in reports received.

3.2.2. Other Technical Reports

The Archaeologist recommended that Conditions 14 and 15 of the Board's decision under ABP-304807-19 on archaeological monitoring should continue to apply. It was requested that pre-development archaeological testing be sought and a report submitted prior to any grant of permission, given the length of the route in greenfield areas and predicted archaeological impacts in Carhoona and Kilpaddoge. In a second report, the Archaeologist noted the submission of a pre-development archaeological testing report in respect of greenfield sections of the route in Carhoona and Kilpaddoge and the finding that no archaeological features or strata were encountered. It was recommended that Conditions 14 and 15 of the Board's decision under ABP-304807-19 be made a condition of any grant of permission.

The Fire Authority submitted that it had no objection.

The Roads Section submitted that the proposal did not comply with Condition 4 on grid connection routing of the Board's previous decision relating to the wind farm. It

was submitted that, in order to properly consider the proposal, the applicant should substantiate the reasoning for the proposed alternative approach and route for the connection of the underground cables. In addition, it was requested that a specific road improvement levy be applied to the development to allow for improvement / upgrading of the local roads in the vicinity.

The Environment Engineer requested further information relating to waste materials, reuse, storage, dewatering, geology/hydrogeological testing, and timeframe for works.

The Biodiversity Officer requested the submission of a Natura Impact Statement, having concluded in her screening that significant effects on European sites were identified.

3.3. Prescribed Bodies

Inland Fisheries Ireland requested consultation on the final CEMP and SWMP and notification of at least one week prior to commencement of works. Its requirements at the construction stage were listed.

The Department of Culture, Heritage and the Gaeltacht concurred with the recommendations made in the Archaeological Impact Assessment. It was submitted that the archaeological monitoring should include any impacts from haul roads and site compounds as well as the direct impacts from the works itself.

The Department of Agriculture, Food & the Marine noted the requirement for a felling licence if trees are to be removed.

3.4. A request for further information was issued on 15th July 2020 and a response to this request was received on 21st August 2020, which included a Natura Impact Statement

3.5. The reports to the planning authority following the receipt of the further information were as follows:

The Roads Section submitted that the further information did not sufficiently substantiate the need for varying from the previous grid connection route granted by the Board. It was stated that the proposed routing would unnecessarily place future constraints on the road network by placing constraints in potential future road alignment upgrades and constraints in the provision of potential future services and utilities. A refusal of permission was recommended.

The Biodiversity Officer undertook an appropriate assessment and concluded the proposal would not have any adverse effect on the integrity of a European site.

The Planner noted the reports received and recommended that permission be refused in accordance with the Roads Section recommendation.

4.0 Planning History

ABP Ref. 304807-19 (P.A. Ref. 19/391)

Permission was granted in 2020 by the Board for a wind farm consisting of six turbines and the connection of the proposed development, via underground cables, to the existing ESB substation at Kilpaddoge, Tarbert. Condition 4 attached with the decision was as follows:

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

Reason: *In the interest of clarity.”*

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

Energy

Objectives relating to renewable energy include:

EP-11

Implement the Renewable Energy Strategy for County Kerry.

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 Plan, 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.

The permitted windfarm site is located in an area designated ‘open to consideration’.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

Public Road Network

- The appellant considers the proposal would not place future constraints on the public road network.
- Council road improvement works are proposed to be carried out in 2021. The developer is willing, where possible, to complete the works prior to the commencement of any works on the roads and these works can be undertaken under licence to the Council or under the direct supervision of the Council staff prior to the commencement of the Council’s road works.
- Consultation took place with other utilities. The location of any existing cables and watermains has been confirmed. The siting of the cable and its location within the carriageway cross section has been chosen in order to achieve optimum separation distances, where possible, between existing water and ESB ducting within the public roadway. One location was identified where it was not possible to place the cable within the public road due to existing power cables and a wayleave was secured to avoid this section of carriageway.
- The regional roads are of sufficient width to accommodate the proposed cables and additional services into the future with the exception of where the wayleave has been obtained.

- No utility service provider has made any observations on the provision of future services.
- There are no other large commercial or industrial developments in planning in the area that would require cable routing or trenching works along the proposed grid route.
- The appellant concurs with the Council's Roads report that it is appropriate that the developer should contribute to the improvement of roads via a levy in the event of a grant of permission and should relate to approximately 4km of roads which form part of the roads mentioned for improvement of local roads in the Roads report.
- The road carriageway will be reinstated in accordance with TII guidance.
- The proposed cable would become the property of ESB Networks on energisation of the wind farm.

The appellant set out details of consultations with the planning authority prior to the submission of the planning application and details of ESB trench requirements.

Amendment of Planning Condition

- The purpose of the planning application is to amend the condition attached to the existing permission for the wind farm relating to the grid connection route.
- Information has been supplied in the application and further information why Option A referred to in Condition 4 of the Board's decision is no longer viable. These include:
 - The unique nature of the Tullahennell Windfarm is that the site substation was constructed adjacent to the ESB Networks node at Kilpaddoge instead of at the Tullahennell South Windfarm site, resulting in the cable from the Tullahennell Windfarm to the Kilpaddoge node remaining in the private ownership of Tullahennell Windfarm. That windfarm and the appellant's windfarm are separate entities. Thus, the existing cable along "Route A" is a "private wire" and is not in the ownership of ESB Networks and ESB Networks cannot grant access to the existing cable of another

entity. This could not have been foreseen and it is not possible to use the existing cable.

- Three cables were installed along a section of the “Lower Road” from Pier Mount Cross to the ESB Networks node entrance at Kilpaddoge between the making of the application for Ballylongford windfarm in 2017 and the grant of permission in 2020 – two windfarm cables and an EirGrid cable. Due to a requirement for separation distances from adjoining cables and the rating impact of increasing power/heat on the existing cables along this section of road, it is not possible to fully utilise the power potential from Ballylongford Windfarm whilst using the existing cable. Due to the proximity of the 3 cables, over a 1km distance where they are adjacent to each other in a confined carriageway cross section, the available power carrying capacity of the 33kV Tullahennell Windfarm has been reduced to a maximum of less than 10Mw. The subsequent derating of the cable due to this issue makes Route A unviable. The result would entail a significant loss of renewable energy generating capacity.
- A report contained in Appendix 8 of the appeal outlines the technical, regulatory and legal considerations as to why the existing cable, Route A, is not viable, which include derating of the existing cable, current ownership of the private cable, access of non-REFIT generators to REFIT meters and access to ESB Networks / Tullahennell Windfarm equipment under section 12.1 of the Distribution General Conditions.
- It is noted that the Board did not rule out a cable along the previously proposed Route B but considered that it was not sufficiently assessed. This route option has now been fully assessed in this application, with an EIA screening report, AA screening report and a Natura Impact Statement prepared and the planning authority’s Biodiversity Officer satisfied the proposal would not give rise to adverse effects on European sites.
- The local authority has the authority to amend conditions associated with planning permissions and the practice of amending planning permission is fundamental to the planning process. It is not a valid reason for refusal.

Proper Planning and Sustainable Development

- The development, and by association the proposed amendment to the grid route, is in line with the proper planning and sustainable development of the area.
- Reference is made to conformity with the renewable energy provisions of the South West Regional Planning Guidelines, Kerry County Development Plan and Kerry Renewable Energy Strategy. By refusing permission for the amended cable route, none of the guidelines, objectives or strategies are being satisfied.

Compliance with Policy

- The development, and by association the proposed amendment to the grid route, is in accordance with national and regional policy assisting with targets for the reduction in fossil fuel consumption, reduction in the emission of greenhouse gases, and reduced dependence on imported fuels.

6.2. Planning Authority Response

The planning authority submitted that the proposal was refused permission for one reason relating specifically to the negative impact of the proposal on the road infrastructure in the area. It was further submitted that a Roads report recommended a refusal for this reason and that the reason for refusal is in line with condition 4 of the Board's decision under ABP-304807-19. It was stated that no pre-planning took place with the Area Planner and only a general query was put to the Planner in relation to technical matters. The planning authority considers the correct decision issued.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. I consider that this assessment should consider the need for Environmental Impact Assessment and address the issue of appropriate assessment and the planning and environmental impacts likely to arise from the proposed development.

7.2. **The Need for Environmental Impact Assessment**

Introduction

I note that the Board completed an environmental impact assessment of the windfarm development under Appeal Ref. ABP-304807-19. In the Board Order it was stated:

“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.”

The Board will note that the Environmental Impact Assessment Report with the wind farm application included details on grid connection options and that the Board attached a condition with the permission (Condition 4) which required the proposed wind farm to be served by ‘Grid Connection Option A’ only, which is different from that now proposed. The reason given was “In the interest of clarity”.

It is evident that the Board’s environmental impact assessment included an assessment of the two grid connection alternatives presented in the planning application for the wind farm. While I note that the Board Order did not refer to the

grid connection other than by way of the condition referenced, I acknowledge that the Order states that the Board had regard to the report of the Planning Inspector. I note from the Inspector's report in Section 8.5 that Option A was the preferred option of the applicant because of the preference of Kerry County Council and the Board Inspector in the previous appeal relating to the wind farm site (ABP-300368-19) for Option A. The Inspector noted that the previous Inspector had reported that Option B had been insufficiently assessed in terms of impact on the receiving habitat and was required to be omitted and that a similar conclusion was drawn by the Council's Biodiversity Officer.

It is apparent from the above that the applicant had been in favour of Option A previously and the Board's reasoning for the attachment of Condition 4 was rational and warranted at that time. Clearly, circumstances have now changed, requiring the applicant to seek an alternative. The Board is now required to determine if there is adequate information to allow for the assessment of the effects of the current proposed grid connection on the receiving habitat and its other likely environmental impacts.

I note that the EIA Directive and Schedule 5 of the Planning and Development Regulations 2001 (as amended) do not refer to a grid connection as being a development in itself for which environmental impact assessment is required. I again note that the wind farm which the grid connection would serve was subject to environmental impact assessment.

Environmental Impact Assessment Screening

My considerations are as follows:

Introduction

The applicant's EIA Screening Report has concluded that there will be no significant impacts associated with the proposed development on the receiving environment either in isolation of or cumulatively with other projects or proposals in the area.

Mandatory EIA – Schedule 5 Part 1

The classes of development which require a mandatory EIA are defined in Article 93 and Schedule 5 of the Planning and Development Regulations. The proposed development does not fall within the classes of development which require a mandatory EIA.

Sub-Threshold EIA – Schedule 5 Part 2

The development consisting of the laying of an underground cable does not comprise a type of development defined in Schedule of 5 of the Planning and Development Regulations. It, therefore, follows that it cannot qualify as a sub-threshold development.

I acknowledge again that the grid connection options considered for the wind farm under ABP-304807-19 were subject to EIA as part of that application. While noting the previous EIA undertaken by the Board, I also acknowledge the integral part the grid connection plays in the development of a wind farm, forming an inherent component of the overall development. In light of this, as well as the nature and extent of the grid connection route now being sought as an alternative to that previously permitted, and for completeness, it is considered reasonable to undertake an assessment similar to that for sub-threshold development as set out in Schedule 7 of the Planning and Development Regulations.

Assessment of Environmental Significance

Characteristics of the Proposed Development

- The proposed development would comprise the laying of an underground cable, primarily within a road corridor, for a distance of approximately 12km between a permitted wind farm and an ESB substation. The cable would be laid in trenches. These works would be subject to a Construction Methodology

Plan, a Construction Environmental Management Plan and a Traffic Construction Management Plan.

- Regarding cumulative impacts with the permitted wind farm, it is noted that the Board was satisfied that the wind farm development, by itself, or in combination with other plans and projects, would not adversely affect the integrity of European sites in view of the site's conservation objectives. The Board also completed an environmental impact assessment in relation to the wind farm 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, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable.
- There would be a very limited use of natural resources. The laying of a cable in trenches would involve the use of concrete to encase the cable and backfilling material.
- Where topsoil or other material excavated along the route cannot be reused it would be sent to a licensed landfill.
- There would be no in-stream works proposed as part of the laying of the cable. Cabling across natural watercourses and drains would be by directional drilling and would be used to cross underneath a riverbed. There would be a low risk from runoff. Due to the nature of the works, there would be a low risk of any significant dust generation.
- The development would involve the excavation of the road surface, soils and subsoils in places. Protective measures would be built in via the construction methodology and the plans to be adhered to would significantly reduce the risk of any accidents.

Location of the Proposed Development

- 92.5% of the cable would be laid within the public road corridor. The remainder would be within the wind farm lands, a short stretch at Carhoona

where it would traverse agricultural lands alongside the R551, and then on lands on the approach alongside the access to the ESB substation.

- The route traverses no areas of any particular natural environmental sensitivity.
- The route would be laid within road corridors within the villages of Ballylongford and Tarbert.

Characteristics of the Potential Impacts

- The site of the proposed development would be located primarily within a road corridor. Where it enters populated areas, it would remain underground within the road corridor.
- The proposed construction stage would be short term and temporary and the grid connection cabling would not be visible.
- Potential impacts with existing underground utilities would be managed, mitigated and avoided.
- There is no known likelihood of any risk to human health arising from the proposed development.
- There is no particular environmental sensitivity relating to the route for the proposal. It would not impact in a significant manner on the regenerative capacity of the natural resources of the area.
- Mitigation measures to be employed are set out within a Construction Methodology Plan, a Construction Environmental Management Plan and a Traffic Construction Management Plan. The application has also provided a Preliminary Spoil Management Plan, an Outline Surface Water Management Plan and a Preliminary Waste Management Plan. The proposed development has also been subject to hydrological assessment, watercourse assessment and archaeological impact assessment
- There would be no transboundary impacts arising from the proposed development.

- There would be no potential significant effects from the proposed development having regard to its magnitude and complexity.
- There would be no potential significant effects from the proposal having regard to the probability of its impact.
- Having regard to the expected onset, duration, frequency and reversibility of the environmental effects of the proposal, the development would be understood to be permanent in its effects.
- The proposed development would not result in any known significant cumulative impacts with the wind farm development already approved. Likely potential impacts arising are considered to be negligible.

Conclusion

Overall, having regard to the consideration of the likely environmental significance of the proposal, it may reasonably be concluded that the characteristics of the development, its location, and the type and characteristics of the potential impacts arising from the construction and operation of the grid connection would not result in any significant environmental impact. It is, thus, reasonably determined that Environmental Impact Assessment would not be required and the requirement to submit an Environmental Impact Assessment Report would not arise.

7.3. Appropriate Assessment - Screening

7.3.1. Background

The applicant submitted an Appropriate Assessment Screening Report as part of the application to the planning authority. This Stage 1 AA Screening Report was prepared in line with current best practice guidance and provided a description of the proposed development and identified European Sites within a possible zone of influence of the development. The applicant's AA Screening Report concluded with a finding of no significant effects on European sites. The planning authority requested the submission of a Natura Impact Statement and this was submitted by way of

further information. This concluded that, provided mitigation measures listed in the NIS are implemented, the proposed development, alone or in-combination with other plans and / or projects will not give rise to significant effects on the integrity of the Natura 2000 network of sites.

Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone or in combination with other plans and projects, on European sites.

7.3.2. *Description of Development*

The applicant provides a description of the project in Section 3.1 of the AA Screening part of the NIS document. In summary, the development comprises the laying of an underground grid connection cable to connect the permitted Ballylongford Wind Farm to an ESB substation at Kilpaddoge in Tarbert. It would include:

- Underground grid connection (UGC) cable within road infrastructure;
- UGC development along or under floating roads;
- UGC development through agricultural lands;
- Watercourse crossings; and
- Joint Bays.

Trenches would typically be approximately 1.2m deep and 0.6m wide. There would be eleven watercourse crossings along the route, with no in-stream works proposed. Watercourses would be crossed by either directional drilling or trenching over the arch of a bridge. Where the route would traverse agricultural lands at Carhoona and at the final stretch in Kilpaddoge there are no watercourses to be crossed. Small sections of hedgerow would be removed to facilitate the works. The habitats affected would be artificial surfaces, grass verges, and improved agricultural grassland.

7.3.3. *European Sites*

European sites within 2km of the route for the proposed development were identified in Section 3.4 of the applicant's NIS. This was considered to be a precautionary measure which has taken account of the scale and character of the proposed development. This is considered reasonable in the context of the nature and extent of the development proposed. There are two European sites identified within 2km of the route, namely the Lower River Shannon SAC (Site Code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077). I note that these coincide with the European sites for which appropriate assessment was undertaken by the Board in its consideration of the wind farm proposal. I also note that these European sites are at their nearest to the grid connection route within the urban areas of Ballylongford and Tarbert.

7.3.4. *Identification of Likely Effects*

General Observations

- The proposed development is not directly connected with or necessary to the management of any European site.
- The route of the proposed development is not located in or in the immediate vicinity of any European site.
- The site of the proposed development does not have habitat to support any of the Special Conservation Interests of any Special Protection Area.

Lower River Shannon SAC (Site Code: 002165)

The Qualifying Interests of this SAC are:

- Sandbanks which are slightly covered by sea water all the time
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Coastal lagoons

- Large shallow inlets and bays
- Reefs
- Perennial vegetation of stony banks
- Vegetated sea cliffs of the Atlantic and Baltic coasts
- Salicornia and other annuals colonising mud and sand
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- *Margaritifera margaritifera* (Freshwater Pearl Mussel)
- *Petromyzon marinus* (Sea Lamprey)
- *Lampetra planeri* (Brook Lamprey)
- *Lampetra fluviatilis* (River Lamprey)
- *Salmo salar* (Salmon)
- *Tursiops truncatus* (Common Bottlenose Dolphin)
- *Lutra lutra* (Otter)

The Conservation Objectives are:

To restore the favourable conservation condition of:

- Fresh Water Pearl Mussel
- Sea Lamprey
- Atlantic Salmon
- Coastal lagoons
- Atlantic salt meadows
- Otter
- Mediterranean salt meadows
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*),

To maintain the favourable conservation condition of:

- Brook Lamprey
- River Lamprey
- Sandbanks which are slightly covered by sea water all the time
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Large shallow inlets and bays
- Reefs
- Perennial vegetation of stony banks
- Vegetated sea cliffs of the Atlantic and Baltic coasts
- Salicornia and other annuals colonising mud and sand
- Bottlenose Dolphin
- Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachium* vegetation
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinia caerulea*),

The following is noted:

- Ballylongford Bay forms part of the SAC and would be within 50m of the proposed grid connection route. The route at this location would be within the urban centre of this settlement and within the road corridor.
- Tarbert Bay which forms part of the SAC would be within 80m of the proposed grid connection route. The route would be to the west of this nearest part of the SAC, within the village centre edge at this point, and within the road corridor.

River Shannon and River Fergus Estuaries SPA (Site Code: 004077)

The Qualifying Interests of this SPA are:

- Cormorant (*Phalacrocorax carbo*)
- Whooper Swan (*Cygnus cygnus*)
- Light-bellied Brent Goose (*Branta bernicla hrota*)
- Shelduck (*Tadorna tadorna*)
- Wigeon (*Anas penelope*)
- Teal (*Anas crecca*)
- Pintail (*Anas acuta*)
- Shoveler (*Anas clypeata*)
- Scaup (*Aythya marila*)
- Ringed Plover (*Charadrius hiaticula*)
- Golden Plover (*Pluvialis apricaria*)
- Grey Plover (*Pluvialis squatarola*)
- Lapwing (*Vanellus vanellus*)
- Knot (*Calidris canutus*)
- Dunlin (*Calidris alpina*)
- Black-tailed Godwit (*Limosa limosa*)
- Bar-tailed Godwit (*Limosa lapponica*)
- Curlew (*Numenius arquata*)
- Redshank (*Tringa totanus*)
- Greenshank (*Tringa nebularia*)
- Black-headed Gull (*Chroicocephalus ridibundus*)
- Wetland and Waterbirds

The Conservation Objectives for each are the same, namely to maintain their favourable conservation condition

The following is noted:

- The SPA overlaps with the SAC at the nearest sections to the proposed grid connection route.
- It is again noted that the route at these locations would be within the urban centre of the settlements and within the road corridor.

7.3.5. *Potential Effects*

The following is observed:

- The route of the proposed grid connection would be within roads in the vicinity of European sites and would be separate from the European sites.
- There would be no direct impacts. The habitats that would be directly affected would be artificial surfaces and improved agricultural grassland, which are of low ecological value.
- The indirect effects that could potentially arise relate to the construction works at watercourse crossings and the potential spread of invasive species at the construction phase. I acknowledge that non-native invasive species were identified at five locations along the route and are Rhododendron and Himalayan balsam.
- Habitats Directive Annex I habitats and species listed as Qualifying Interests for the SAC and birds of Special Conservation interest for the SPA would occur within the bay areas around Ballylongford and Tarbert. The grid connection route which would be separate from these bays would run through the urban settlements.
- No habitat or species fragmentation would arise for the SAC or SPA. There would be no impact on species density.
- Potential indirect effects may arise by runoff or fuel spillages at the construction stage via watercourses that have connectivity with the European sites. I note watercourse crossings would be by way of horizontal directional drilling or by trenching over bridged crossings. Thus, there would be no in-stream works. It is also proposed to provide a buffer of a minimum of 20 metres from riverbanks along the route.

- The route of the proposed cable would avoid the two invasive plant species.

7.3.6. *In-combination Effects*

The only project requiring consideration for in-combination effects, in my opinion, is the permitted wind farm development which the grid connection would serve. I note the Board's conclusions once again relating to its previous appropriate assessment and the conclusions drawn on significant environmental effects.

7.3.7. *Mitigation Measures*

No measures designed or intended to avoid or reduce any harmful effects of the proposed alterations on a European site have been relied upon in this screening exercise.

7.3.8. *Screening Determination*

The proposed development has been considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would be likely to give rise to significant effects on the Lower River Shannon SAC (Site Code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077), in view of their Conservation Objectives, and Appropriate Assessment is therefore required.

This determination is based on the following:

- The nature and extent of the proposed works associated with the proposed development,
- The proximity to the European sites, and
- The known pathways between the site and the adjoining European sites.

7.4. **Appropriate Assessment**

7.4.1. **Background**

The proposed development is not directly connected to or necessary for the management of any European site. It is therefore subject to the provisions of Article 6(3) of the EU Habitats Directive. Following the screening process above, it has been determined that appropriate assessment is required as it cannot be excluded on the basis of objective information that the proposed development individually or in-combination with other plans or projects will have a significant effect on the Lower River Shannon SAC (Site Code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077). The possibility of significant effects on other European sites has been excluded on the basis of objective information. Measures intended to reduce or avoid significant effects were not considered in the screening process.

7.4.2. **Natura Impact Statement**

The applicant submitted a Natura Impact Statement by way of further information on 21st August, 2020. The NIS addresses the AA screening process, gives a description of the project, identifies the relevant Natura 2000 sites and assesses the potential significant effects thereon (inclusive of cumulative effects), and details mitigation. Potential adverse effects of the proposed development on the Lower River Shannon SAC (Site Code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077) were examined and assessed. The NIS was prepared in line with current best practice and provides an assessment of all potential effects on the SAC and SPA arising from the proposed development. The significance of potential impacts that might arise was identified through the use of the key indicators of water quality, habitat loss, habitat alteration, disturbance and/or displacement of species, and habitat or species fragmentation.

The NIS concluded that, provided that the mitigation measures listed in Section 4.5 of the NIS are implemented, the proposed development, alone or in-combination with other plans and projects would not give rise to significant effects on the integrity of the Natura 2000 network of sites.

I note the submission received from Inland Fisheries Ireland on this application and the considerations of the planning authority's Biodiversity Officer, as well as the further information received from the applicant.

Having reviewed the documents, submissions, reports and consultations, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the Lower River Shannon SAC and the special conservation interests of the River Shannon and River Fergus Estuaries SPA.

7.4.3. **Appropriate Assessment**

Introduction

This assessment considers all aspects of the proposal which could result in significant effects. Mitigation measures designed to avoid or reduce any adverse effects are considered and assessed. The assessment has had due regard to the applicant's submitted AA Screening Report, the Natura Impact Statement, and the reports received by the planning authority and the Board.

The following guidance is adhered to in the assessment:

DoEHLG (2009) Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities.

EC (2002) Assessment of plans and projects significantly affecting Natura 2002 sites. Methodological guidance on the provisions of Articles 6(3) and 6(4) of the Habitats Directive 92/43/EC.

EC (2018) Managing Natura 2000 sites.

Observations on Land Use

I note the following relating to this the grid connection route:

- The habitats that would be directly affected would be artificial surfaces and improved agricultural grassland, which are of low ecological value.

- The route of the proposed grid connection would be within roads in urban settlements in the vicinity of European sites and would be separate from the European sites.

European Sites

The following sites are subject to appropriate assessment:

- Lower River Shannon SAC (Site Code: 002165)
- River Shannon and River Fergus Estuaries SPA (Site Code: 004077)

A description of these sites and their Conservation and Qualifying Interests / Special Conservation Interests, including any relevant attributes and targets for these sites, are set out in the NIS. Details of these European sites' Conservation and Qualifying Interests / Special Conservation Interests are set out in the Screening undertaken earlier in this report.

Relevant Aspects of the Proposed Development

Section 3.1 of the applicant's NIS details the characteristics of the proposed works associated with the project and Section 4.6 identifies other plans, projects and activities relating to potential in-combination effects. As referenced in the Screening undertaken earlier, the main aspects of the proposed development that could adversely affect the conservation objectives of the European sites are potential indirect effects by runoff or fuel spillages at the construction stage via watercourses that have connectivity with the European sites and from invasive plant species.

The potential effects would thus relate to water quality impacts from contamination and spread of invasive species.

Lower River Shannon SAC

Table 5 of the applicant's NIS identifies the habitats in the SAC, identifies the threats, examines the potential for significant effects and makes a determination on likely significant impacts. It is accepted that the potential for significant effects arising from the aspects of the development that could adversely affect the conservation

objectives of the qualifying interests of the SAC relate to Estuaries, Atlantic salt meadows, brook and river lamprey, salmon and otter. The nature, scale, and separation distance of the proposed route from other Annex I habitats determines that it is reasonable to conclude that there would be no likely significant effects for these habitats and other species identified as qualifying interests.

It is considered that there may be the potential for the receiving marine waters within the SAC to be altered as a result of the indirect ingress of pollutants such as hydrocarbons, chemicals or sediments during the construction phase, reducing water quality and potentially having a negative effect on water quality, which could potentially affect habitats and/or the distribution or abundance of species. It is, therefore, accepted that mitigation would be required to control pollutant emissions to the water environment.

River Shannon and River Fergus Estuaries SPA

Table 6 of the applicant's NIS identifies the Special Conservation Interests of the SPA, the principal supporting habitat, and the food/prey requirements, examines the potential for significant effects and makes a determination on likely significant impacts. It is accepted that the potential for significant effects arising from the aspects of the development that could adversely affect the special conservation interests relate to Wetlands and not to the array of individual bird species identified as SCIs. This is due to the habitats along the route not being habitats that would support the birds of special conservation interest, the route being separated from habitats which the bird species would utilise, and the separation distance from many of the habitats that would be utilised by many of the bird species. This would result in the birds being very unlikely to be in vicinity of the proposed grid connection route.

It is considered that, due to hydrological connectivity with the watercourses traversed by the proposed grid connection route, there may be the potential for the receiving marine waters within the SPA to be altered as a result of the indirect ingress of pollutants such as hydrocarbons, chemicals or sediments during the construction phase, reducing water quality and potentially having a negative effect on water quality, which could potentially affect the wetlands. It is, therefore, accepted that mitigation would be required to control pollutant emissions to the water environment.

7.4.4. Potentially Significant Cumulative Effects

The only project requiring consideration for cumulative effects, in my opinion, is the permitted wind farm development which the grid connection would serve. The Board previously undertook appropriate assessment for the wind farm and was satisfied that the wind farm, 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. The relevant sites were the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA. It may reasonably be determined that there would not be significant cumulative effects on the integrity of the two European sites in view of their conservation objectives.

7.4.5. Mitigation

Section 4.5 of the applicant's NIS details the range of mitigation measures intended to be employed as part of the proposed development. I note that best practice construction methodologies would be employed to prevent substances entering watercourses, that the storage of oils and fuels would follow best practice, and that the route of the proposed cable would avoid the known locations of invasive plant species while mitigation measures would be applied in accordance with NRA guidance. The mitigation measures are to be incorporated into the Construction Environmental Management Plan.

In my opinion, these constitute suitable, robust, comprehensive and necessary measures to avoid any adverse impacts on the integrity of the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA.

7.4.6. Residual Impacts

If the proposed mitigation measures are implemented in full, it is expected that significant effects would not result for the qualifying features of the Lower River Shannon SAC or the species of conservation interest of the River Shannon and River Fergus Estuaries SPA.

Following my appropriate assessment of the proposed development and with due regard to consideration of the proposed mitigation measures, I am able to ascertain with confidence that the proposed development would not adversely affect the integrity of the Lower River Shannon SAC and the River Shannon and River Fergus

Estuaries SPA in view of the Conservation Objectives of these sites. This conclusion is drawn on a complete assessment of all implications of the proposed development alone and in combination with other plans and projects.

7.4.7. **Appropriate Assessment Conclusion**

7.5. **The Planning Issues**

Adequacy of Application to allow for Assessment

I note that the Inspector, in dealing with grid connection options relating to the development of the wind farm under ABP-300368-19, reported that grid connection Option B with that application had been insufficiently assessed in terms of impact on the receiving habitat and was required to be omitted. The planning authority's Biodiversity Officer drew a similar conclusion. I submit to the Board that the current application has now addressed the level of information necessary to allow for an adequate assessment of the proposed grid connection. Further to this, the Board will note the Biodiversity Officer's findings, who undertook an appropriate assessment and concluded that the proposal would not have any adverse effect on the integrity of a European site.

The current application includes an AA Screening Report, a NIS, an EIA Screening Report, a Preliminary Construction Stage Environmental Management Plan, an Outline Cable Route Construction Methodology, a Preliminary Hydrology Report, a Preliminary Spoil Management Plan, an Outline Surface Water Management Plan, an Archaeological Impact Assessment, a Preliminary Waste Management Plan, and a Watercourse Assessment. The proposed development consists of the laying of a cable underground, which primarily would follow the road between a permitted wind farm and an existing ESB substation. There is adequate information to allow for the

consideration of the planning and environmental impacts of the provision of this underground cable.

Condition 4 of ABP-304807-19

Condition 4 of the Board's previous decision, which opted for one of the proposed grid connection routes, was based upon the level of information available on options and, indeed, was the preferred option of the applicant at that time. It was an entirely reasonable condition to attach at that time given these circumstances. However, it is evident that this option is not now available to the appellant. In light of this, the application to seek to change the grid connection route is reasonable and rational. A clear understanding has been provided by the applicant to the planning authority as to why it is not feasible to pursue the permitted grid connection route. The following is again noted:

- The Tullahennell Wind Farm substation was constructed adjacent to the ESB Networks node at Kilpaddoge and, therefore, the cable from the Tullahennell Windfarm to the Kilpaddoge node remains in the private ownership of Tullahennell Wind Farm. The existing cable along "Route A" is a "private wire" and is not in the ownership of ESB Networks. ESB Networks cannot grant access to the existing cable of another entity.
- Three cables were installed along a section of the "Lower Road" from Pier Mount Cross to the ESB Networks node entrance at Kilpaddoge between the making of the application for Ballylongford Wind Farm in 2017 and the grant of permission in 2020 – two windfarm cables and an EirGrid cable. Due to a requirement for separation distances from adjoining cables and the rating impact of increasing power/heat on the existing cables along this section of road, it is not possible to fully utilise the power potential from Ballylongford Wind Farm whilst using the existing cable. Due to the proximity of the 3 cables, over a 1km distance where they are adjacent to each other in a confined carriageway cross section, the available power carrying capacity of the 33kV Tullahennell Wind Farm has been reduced to a maximum of less than 10Mw. The subsequent derating of the cable due to this issue makes

Route A unviable. The result would entail a significant loss of renewable energy generating capacity.

- The technical, regulatory and legal considerations as to why cable Route A is not viable have been provided in the appeal submission. These include derating of the existing cable, current ownership of the private cable, access of non-REFIT generators to REFIT meters and access to ESB Networks / Tullahennell Windfarm equipment under section 12.1 of the Distribution General Conditions.

For the permitted wind farm to function there is a necessity to provide an alternative grid connection route to the Kilpaddoge substation. The reasons given for this need are accepted.

Policy Compliance

Section 6.11.3 of the *Wind Energy Development Guidelines for Planning Authorities 2006* addresses preferred methods of connection to electricity providers, with an understanding that the cost of undergrounding to the national grid is generally prohibitive and that consideration be given to burying cables in sensitive landscapes. I acknowledge that there is no particular sensitivity relating to the landscape under which the cable would run. It is reasonable to determine from the approach being taken that the landscape impacts of the proposed development are more than adequately being addressed in this application and meet with the requirements of the Guidelines.

The provision of the proposed grid connection will allow Ballylongford Wind Farm to supply power to the grid. Such development can reasonably be understood to be supported at national, regional, and local levels, through the National Policy Objectives supporting renewable energy through to the renewable energy objectives of Kerry County Development Plan.

Planning and Environmental Impacts

The following is submitted:

- There would be no known adverse impacts at the operational phase.

- The proposed development would have no significant impacts on the population of the area in which the grid connection would be laid. The routing underground would minimise impact on residential property, being placed out of site and mainly within the public realm.
- There may be some degree of nuisance and/or disturbance at the construction stage as cable is being laid along streets within the villages of Ballylongford and Tarbert. However, it is evident that noise, dust, traffic delays, etc. arising at this stage would be short term and temporary in nature and would not be significant.
- The proposed development, being a cable primarily laid underground along public roads and within improved agricultural grassland where it deviates, would have no significant impacts on flora or fauna of this area. The routing would mainly be on made ground and would avoid ecologically sensitive areas.
- The routing, being primarily on made ground, would have no significant impact on land or soils.
- The potential impact of the proposed laying of the cable on watercourses has been fully considered in this application. There would be no in-stream works. The proposal is being carefully managed to minimise interference with surface waterbodies. A wide range of best practice mitigation measures would be employed. There is no concern that the proposed development would adversely impact on groundwater.
- The proposed development would be routed to avoid impact on known archaeological or cultural heritage sites. Where it would be routed across agricultural lands this can reasonably be monitored at the construction stage.
- The laying of the cable would have a similar pattern of effects as the laying of other utilities underground. Road restoration works consistent with what already occurs would follow.
- The laying of the cable underground ensures there would be no visual impact. Following the route of the established road network would result in the proposal not having any discernible landscape impact.

- The proposed cable would be easily accessible in times of fault and its routing underground would be consistent with other utilities and services.

It is reasonable to determine that the laying of a cable underground between the permitted wind farm site and the existing ESB substation would have no significant adverse impacts on the environment.

Development Contribution

I acknowledge that the proposed development would result in a cable being laid within and along the verge of public roads on its route to the substation. This would bring with it some degree of disturbance and interference with road surfaces and carriageway edges and this would require repair after the cables are laid in trenches. I note that the Council's Area Office Roads Engineer alludes to how the proposal would unnecessarily place future constraints in the provision of potential future road alignment upgrades and in the provision of future services and utilities. It is my submission to the Board that such conclusions have not in any meaningful manner been demonstrated. Addressing and diverting underground utilities and cables at the time of road alignment upgrades is a common part of such developments. The proposed additional cables would place no known outstanding implications over those that presently exist underground. Furthermore, it has not been demonstrated how or why the routing of the cable would impact in a substantial manner on any other services or utilities either at present or into the future.

Having regard to the above, it is reasonable to include a condition with any grant of planning permission which would require a contribution to be made to restore the public roads under which it is proposed to provide the cable.

8.0 Recommendation

- 8.1. I recommend that permission is granted in accordance with the following reasons, considerations and conditions.

9.0 Reasons and Considerations

Having regard to:

- (a) national policy with regard to the development of sustainable energy sources,
- (b) the Wind Energy Development Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006,
- (c) the provisions as set out in the current Kerry County Development Plan, including those regarding renewable energy development, in particular Objectives EP-11 and EP-12,
- (d) the location for the grid connection primarily within a road corridor and in an area not subject to natural heritage protection,
- (e) the pattern of development along the grid connection route and the pattern of permitted development in the area, and
- (f) the limited scale of the proposed development,

it is considered that, subject to compliance with the conditions set out below, the proposed development, would not seriously injure the amenities of the area or of property in the vicinity, would not have an unacceptable impact on the road network of the area, would not be detrimental to the natural or cultural heritage of the area, and would otherwise be in accordance with the proper planning and sustainable development of the area.

10.0 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. All mitigation measures identified within the Natura Impact Statement and the associated documentation with the planning application shall be implemented in full.

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

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

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

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

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

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

5. The developer shall pay to the planning authority a contribution for road restoration works following the installation of the grid connection cable along the public roads affected by the proposed development as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000. This contribution shall be paid prior to commencement of development. The form and amount of the contribution shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the restoration of the public road network affected by the grid connection development.

Kevin Moore
Senior Planning Inspector

21st April 2021