



An
Bord
Pleanála

Inspector's Report ABP-309906-21

Development	Construction of a 38kv electricity substation; and the installation of approximately 22km of 38kV electricity cables from proposed substation to existing substation.
Location	North County Monaghan extending in a north west to south east line, across the townlands listed at paragraph 1.1.1 of this report.
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	18562
Applicants	Coolberrin Windfarm Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	An Taisce
Observers	Wild Ireland Defence CLG
Date of Site Inspection	1 st October 2021
Inspector	Dolores McCague

Contents

1.0 Site Location and Description.....	4
2.0 Proposed Development.....	4
3.0 Planning Authority Decision	6
3.1. Decision.....	6
3.2. Planning Authority Reports.....	7
3.3. Prescribed Bodies.....	15
3.5. Third Party Observations.....	21
3.6. Further Information	21
3.7. Further Information Response.....	21
3.8. Further Reports.....	27
3.9. Further Third Party Observations	28
4.0 Planning History.....	29
5.0 Policy Context.....	31
5.1. Development Plan.....	31
5.3. Climate Action Plan 2019	32
5.4. A European Clean Deal, EU Commission, 2019	32
5.5. Ireland's National Energy and Climate Plan, 2021-2030.....	33
5.6. Climate Action and Low Carbon Development (Amendment) Act 2021	33
5.7. Wind Energy Development Guidelines 2006	34
5.8. Action for Curlew in Ireland Recommendations of The Curlew Task Force, May 2019	34
5.9. Draft Prioritised Action Framework (PAF) for Natura 2000 in Ireland, pursuant to Article 8 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) July 2020.	35

5.10. Curlew Conservation Programme Annual Report 2020, National Parks & Wildlife Service.	37
5.11. Curlew Conservation Programme Annual Report 2021, National Parks & Wildlife Service.	38
5.12. Natural Heritage Designations	39
6.0 The Appeal.....	39
6.1. Grounds of Appeal	39
6.2. Applicant Response	52
6.3. Planning Authority Response	60
7.0 Board Correspondence	60
7.2. Applicant Response (post JR)	60
7.3. Appellant Response (post JR)	64
7.4. Applicant Further Response	65
7.5. Observations	67
8.0 Assessment.....	67
8.2. The Principle of the Proposed Development	67
8.3. Appropriate Assessment.....	67
8.4. Impact on Curlew.	74
8.5. Environmental Impact Assessment	77
9.0 Recommendation.....	84
10.0 Reasons and Considerations	84

1.0 Site Location and Description

- 1.1.1. The proposed development is located in north Monaghan and extends from the townland of Luppan which is c2km east of the border with Co Tyrone to Lisdrumdoagh, approx. 4km east of the Monaghan town. It extends in a generally north-west to south-east direction across the townlands of Luppan, Shanmullagh, Coraghbrack, Drumlester, Knockabeany, Drumbristan, Tonintlieve, Cloghfin, Derrykinnigh More, Killybreen, Killycarran, Derrygola, Tamlet, Derrilla, Tonyfinnigan, Knockcor, Drumdart, Aghaclogha, Drumcoo Woods, Drumlish, Aghagally, Doogary, Killygavna, Sheetrim, Drumshanny, Drumgeeny, Legacurry, Mullabrack (Scott), Enagh, Griggy, Straghan or Cornasore, Eden Island, Crumlin, Drumrutagh, Aghnasedagh, Coolmain, Feeban and Lisdrumdoagh; all in County Monaghan.
- 1.1.2. The site extends from the uplands of Slieve Beagh in the north-west descending to lower drumlin areas, as it moves south. The land is undulating, with longer range views in the northern section and typical drumlin landscape further south. The northern end of the site has a remote quality but there is some dispersed rural settlement in the area. Rural housing becomes more concentrated towards the south. At the northern end of the site the land is wet and rushy. Land in other sections is more suitable for agricultural use. The site crosses a number of rivers and also crosses the Ulster Canal, which extends in an east west direction across County Monaghan in the vicinity of Monaghan town. The section of the canal where the crossing is proposed is overgrown but intact. This section of canal runs close to and parallel to the national secondary road. The site also crosses the N2 and N12.
- 1.1.3. The site area is given as 109.4ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the construction of a 38kv substation and a powerline to connect the permitted, not yet constructed, Mountain Waters windfarm, located approx. 22km north of Monaghan Town, with the existing 110 kv ESB Lisdrum substation at Lisdrumdoagh, approx. 4km east of the Monaghan town. The proposed 38kv substation will be in the townland of Luppan.
- 2.1.2. The proposed development is described in the planning notices as follows:

- The construction of a new 38kv electricity substation, switchroom and equipment compound with palisade fence; the construction of approx. 400m of site access track and the upgrading of approx. 150m of existing agricultural track and an existing agricultural entrance; approx. 200m of underground cabling and all associated site development and reinstatement works in the townland of Luppan.
- The installation of approx. 22km of 38kV electricity lines and cables from the substation to the existing electricity substation in the townland of Lisdrumdonagh; comprising approx. 17km of overhead line (OHL) and approx. 5 km of underground cable; overhead lines will consist of 3 no. cables suspended from wooden poles, with a maximum height of 16 metres; and all associated site development and reinstatement works. Underground cables will be located within private lands and within the local public roads (LI5171, L1400 and L1171), installed in excavated trenches of approx. 1.2m depth and will include associated underground ducting, joint bays, communication chamber bays, sheath link boxes and inspection chambers; with directional drilling beneath the N12 and Ulster Canal; and all associated site development and reinstatement works. A vehicle access track of up to 4m wide will be provided immediately adjacent to underground cables within private lands.
- The buried cables of the proposed c200m of underground wind farm cabling, will be of a solid polymeric construction with either aluminium or copper conductors and will follow the alignment of the access track.
- The planning application is accompanied by an Environmental Impact Assessment Report which includes an assessment of the likely impacts of the proposed development as a whole and in combination with the relevant off-site or secondary impacts which will occur as a direct result of the proposed development, including the wind farm development permitted pursuant to Planning Reference 10/110 and An Bord Pleanála Reference PL18.240760 and proposed to be amended by Planning Reference 17/258 and An Bord Pleanála Reference PL18.300998. A Natura Impact Statement will also be submitted to the planning authority with the planning application.

The documentation shows 188 no. pole sets to carry the overhead line of 5 different structure types: single, double and triple pole structures of up to a maximum height of 16m, every 650-750m.

2.1.3. Accompanying the application are:

- ☐ An EIAr,
- ☐ A NIS (as Annex 1 to the EIAr),
- ☐ Letters of consent from landowners,
- ☐ Plans and Drawings.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to 17 no. conditions:

- 1) development contribution.
- 2) & 3) before and after road condition surveys.
- 4) bond.
- 5) the locations of proposed poles to be agreed prior to the commencement; also prior to any directional drilling works at the Ulster Canal, the developer shall submit correspondence from Waterways Ireland confirming acceptability of the proposed development particularly with regard to the depth of the cables beneath the canal floor.
- 6) consultation and agreement with TII and Road Design Section of Monaghan Co Co prior to work on N2 or N12.
- 7) cabling to avoid TII infrastructure.
- 8) no instream works without the written approval of IFI; copy of the written approval of IFI to be submitted to the PA for agreement in writing prior to commencement.
- 9) a) re. trenchless watercourse crossings.
b) re. open cut watercourse crossings.

- c) it will be necessary to temporarily remove, using electrofishing equipment, fish from the reaches involved.
 - d) best practice to minimise silt.
 - e) use of pre-cast concrete where possible.
 - f) no concrete washing out.
 - g) cement to be stored in a dry secure area.
- 10) stone aggregate to match parent rock in the surroundings to ensure minimal change in soil ph; to be clear of invasive species; management of the site and infrastructure shall not entail the use of herbicides or biocides.
- 11) (a)–(c) archaeological monitoring.
- 12) (a)–(z) measures to prevent water pollution.
- 13) (a)–(h) re waste.
- 14) (a)–(n) re traffic.
- 15) (a)–(c) re traffic – signage, agreeing TMP, and to be in accordance with agreed details.
- 16) maintain the roads clean.
- 17) in accordance with details submitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. Planning Report – 4/9/19, recommending further information – which includes:

The proposed development is located within and will traverse private lands except for a number of locations where the proposed underground lines will be located within the carriageways of local roads.

Objection related to letter of consent from Anthony Keenan, folio MN1430F. The planning authority has undertaken a land registry search and notes that the owner of folio MN1430F is Mary Keenan who has owned the folio since 28th October 2009. A letter of consent from Mary Keenan has not been submitted.

The development has two main elements.

1) Proposed 38kv electricity substation, switchroom and equipment compound with palisade fence, and construction of approx. 400m of site access track and the upgrading of approx. 150m of existing agricultural track and an existing agricultural entrance; approx. 200m of underground cabling and all associated site development works. Minor upgrade works will be required to provide sight visibility splays.

The substation will contain connection points and associated equipment and will be constructed on blockwork and finished in sand and cement render with a slate roof covering. The substation will measure a maximum height of 6035mm. The access track to the proposed substation will be similar to normal agricultural tracks but with a slightly wider width of approx. 5m. Additional excavated strips will be required alongside the track to accommodate drainage and cable trenches. The access track will be unsealed and constructed of crushed stone material on compacted sand to allow for permeability and to minimise any water run off.

2) The installation of approx. 22km of 38kV electricity cables from the substation to the existing electricity substation in the townland of Lisdrumdonagh; comprising approx. 17km of overhead line and approx. 5 km of underground cable. Overhead lines will consist of 3 no. cables suspended from wooden poles, with a maximum height of 16 metres. Underground cables will be located within private lands and within the local public roads.

Approx. 200m of underground cabling is required to connect the proposed substation to the wind farm. Cable installation trenching will be by mechanical digger and the proposed depth of the cable trench will be circa 1 m with a width of around 0.5m. the excavated material will be placed alongside the trench (topsoil and subsoil stored separately) for use during the reinstatement following the laying of cables.

The overhead line will require the erection of 188 wooden pole sets. Pole design will include:

- ☐ Single intermediate pole,
- ☐ Intermediate portal suspension structure and portal strain structure,
- ☐ Light angle suspension structure and light angle strain structure,
- ☐ Heavy angle portal structure,

- Three pole structure.

The ones most commonly used are single intermediate pole, light angle strain, heavy angle portal structure and three pole structure.

Re. policy EGP3 undergrounding of electricity lines:

- The EIAR alternatives state:
 - The design has been arrived at after detailed iterative analysis.
 - The permitted wind farm included the provision of a 38kV substation, however ESB Networks requirements as to the design and configuration of the 38kV substation has substantially changed and the substation no longer complies.
 - Modifications sought to redesign the permitted substation to a revised 20kV substation. Following correspondence with ESB re its current grid connection policy, the applicant is now obliged to transmit to the national grid at a voltage of 38Kv.
 - The possibility of connecting via overhead lines to the existing 20kV substation in Derrykinnigh More was also assessed but is not now feasible.
 - Following confirmation from ESB that the connection to the national grid at a voltage of 38Kv is required the option of connection to the Lisdrum substation via overhead and underground methods was examined.
 - The potential underground cable route option within the public road was identified, connection via this method was not considered optimal due to possible conflicts with existing underground infrastructural constraints such as existing sewerage services, water services and drainage infrastructure.
 - Following detailed analysis, examination and evaluation of each of the alternatives listed, it was determined that the proposed development was the most suitable option.

Nevertheless the policy EGP3 has not been met in full (this appears to refer to current policy EGP 2).

Re landscape & visual amenity – the development is located within or in the vicinity of 3 area of secondary amenity: Mountain Water River Valley, Blackwater River

Valley and Ulster Canal & Environs. Section 4.5.2 of the Monaghan County Development Plan 2013-2019 Co Monaghan has a number of other sensitive landforms and amenity areas that require protection from inappropriate development. At the point where the proposed line crosses the Mountain Water River, the PA notes that a light angle pole is proposed to the north of the River whilst a heavy angle pole is located to the south of the river in close proximity to the river. A combination of pole types is being proposed to run along the River Blackwater. The crossing of the canal is also referenced. With respect to these sensitive landscape areas the submitted documentation acknowledges a degree of visual impact. The PA contends that the detail has failed to adequately demonstrate that the location of the proposed line will not adversely impact upon the sensitive locations. No photographic evidence has been submitted to illustrate the impact of the line at this location and this to be requested.

The documentation has failed to make reference to whether the proposed development will impact on scenic views in the north of the county, in particular scenic views 2-8.

N2 Clontibret to Border Road Scheme - The site is within the study area for the above road scheme. The National Roads Office has no objections.

EIA assessment:

The proposed development does not exceed the mandatory threshold. However the applicant has submitted an EIAR on the back of the O’Grianna & Others v An Bord Pleanála judgement.

Population and human health – Disruption to traffic during cable laying – only 40m to be laid along public roads.

The overhead line will remain in excess of 23m from all dwellings. 50m width to allow for micro-siting. Beneficial impact.

Biodiversity – no likely impacts.

Land & soil – mitigation measures will ensure land and soils are protected.

Water – mitigation measures will ensure no impact on the hydrological and hydrogeological environment.

Air & climate - mitigation measures will ensure that air quality is not reduced.

Landscape – it will be evident during construction. The underground line will have no surface expression. The access tracks will be similar to agricultural tracks and will not appear out of context; and will in general follow existing vegetative boundaries. Overhead lines and associated pole sets are a common feature within the Irish landscape. The proposed overhead line is unlikely to result in any significant landscape or visual impact.

The applicant has failed to demonstrate the impact of the development on secondary amenity areas / scenic views. Further information is required.

Effect on cultural heritage – the implementation of archaeological monitoring will ensure that any previously unrecorded archaeological findings which may be discovered during construction will be appropriately recorded and managed.

Effect on material assets – not expected to result in any significant effects on agriculture.

Interactions – matrix used to illustrate, and

Alternatives – a number which were considered are set out. The proposed development is considered to be the optimum and most environmentally sensitive arrangement available.

PA assessment – the potential for environmental impacts will be confined to the immediate local area. It is not considered any such impacts will be to an unacceptable degree. The proposed development appears to be acceptable. A number of issues require additional information.

Appropriate Assessment – At its closest point the proposed site lies within 2km of Slieve Beagh SPA.

There will be no direct impacts.

Indirect impacts:

The construction phase may give rise to disturbance to local avifauna via mechanical noise and human activity.

The operational phase could pose a risk of collision/electrocution impacts on local avifauna including Hen Harrier.

Following the site survey (June 2018), it was concluded that no suitable breeding habitat for Hen Harrier is located within the site boundary and therefore if the Hen Harrier were to pass through the site it would be for foraging purposes only.

Due to the lack of suitable breeding habitat, loss of habitat as a result of the proposed development is not considered to be a likely impact.

The preferred foraging habitat of Hen Harrier is predominantly moorland/grassland which are not present within any section of the proposed site.

Hen Harrier usually have a foraging range of 1-2 km from the nesting site.

As the northern section of the development is situated c2km from the SPA, Hen Harrier may occasionally pass near the site, however given the breeding sites have moved to the west into Northern Ireland, the frequency with which flights may occur in the vicinity of the proposed development and indeed the permitted wind farm site, is therefore significantly reduced.

The proposed development comprises elements which are located underground and overground. There is no potential for collision with those elements located underground whilst access tracks and the substation are not considered to pose a collision risk.

Risk of collision arises solely from overhead line and notably the proposed overhead line route is not located within or in close proximity to any known nest site for Hen Harrier. The movement of birds over the proposed route of the overhead line is low and there are no known important foraging or breeding sites within the route or in close proximity to it.

The likelihood of effect on the Natura sites as a result of collision is extremely low.

There is potential for disturbance during the construction phase

collision/electrocution impacts during the operational phase which could potentially affect Hen Harrier.

Cumulative Impacts

Permitted Coolberrin wind Farm; North/South Interconnector, residential, industrial and agricultural developments. The main threat to Hen Harrier is unsustainable afforestation and extensive peat extraction.

Cumulative impacts may arise in combination with the permitted wind farms in respect of disturbance during construction and the potential for collision risk during the operational phase. Numerous previous assessments have however concluded that the construction and operation of the Mountain waters windfarm will not result in any likely significant impact on the Hen Harrier or SPA.

Hen Harrier usage of the site is low.

Unsustainable development and afforestation within the SPA and the development of the windfarm may result in cumulative impacts however these impacts are not considered to be significant.

NIS conclusion:

No impacts which would have the potential to affect the conservation status of the Annex 1 species listed as a qualifying feature.

Planning Authority's Assessment

The planning authority notes that pathway connectors have not been discussed within the NIS however the submitted EIAR acknowledges that the proposed development traverses a number of surface water features but notes that none are hydrologically connected to designated sites, there is no evident downstream connectivity to the nearest SACs Kilroosky Lough Cluster and Slieve Beagh SAC (Northern Ireland).

NIS inadequate – further information.

3.2.3. Other Technical Reports

3.2.4. Monaghan Municipal District – Engineer – conditions including:

Where directional drilling is to take place under the N12 National Primary Route permission for same shall be sought from the TII.

Where directional drilling is to take place under the bed of the Ulster Canal permission for same shall be sought from the Inland Waterways Ireland.

3.2.5. Environmental Report -29/01/2019 - located in areas consisting of low, moderate, high and extreme vulnerability; located on an aquifer ranging from poor, locally important and regionally important fissured and karstified aquifer. The development

lies within the Emy Outer Lough Catchment, Emy Lough Inner Catchment and the Mountain Water Area for Action.

The development will cross through the following catchments and their tributaries north leg of the Monaghan Blackwater, Mountain Water River, Blackwater Main Channel and the Clontibret Stream.

The Mountain Water _020, upstream of the proposed transmission line crossing is classified as High Status. The Mountain Water _030, reduces to Good Status further downstream at the transmission line crossing location, followed by a further reduction to Poor Status on the Mountain Water _040 downstream of the transmission line.

The River Blackwater, is classified by the EPA as Good Status upstream (_010 and _030) of the transmission line, but reduces to Moderate Status at the transmission line crossing and downstream of it (_040).

The Clontibret Stream is classified as Poor Status downstream of the transmission line.

Further information to be requested is detailed, including details of all watercourses proposed for overhead, instream and underground works and preparation of a Surface Water Management Plan.

- 3.2.6. EHO – 4/02/2019 - all issues have been addressed in Environment Report.
- 3.2.7. Roads Section - 5/02/2019 – no objection. Conditions, including – prior to any directional drilling works being undertaken at the Ulster Canal, a letter must be furnished to Monaghan County Council as proof that Waterways Ireland have been consulted with regards to the depth of cables beneath the canal floor.
- 3.2.8. Westmeath National Roads Office - 5/02/2019 – although within the study area for the N2 Clontibret to Border road scheme, they have evaluated the application and have no objection. They advise that the applicant be made aware of the proposed N2 Clontibret to Border road scheme.

3.3. Prescribed Bodies

- 3.3.1. TII - 23rd January 2019 - The development is at variance with policy relating to the control of development on national roads, as outlined in DoECLG Spatial Planning and National Roads Guidelines.

It is located within an area considered for a future national road scheme and is premature per DoECLG Spatial Planning and National Roads Guidelines 2.9.

There are impacts to existing and future national roads schemes in the National Development Plan such as N2 Clontibret to the Border Scheme (to be progressed through pre-appraisal and early planning).

Routing should safeguard future road schemes. TII will not be responsible for costs associated with future relocation of cable routing where proposals are catered for in an area of a proposed national road scheme. Consideration should be given to routing options, use of existing crossings, depth of cable laying etc.

The planning authority should consult with the local RDO.

Cabling should avoid impacts on all existing TII infrastructure such as traffic counters, weather stations, etc.

Road licences from the road authority may be required for trenching or cabling on the road network and any such, likely to affect the existing national road network, should be referred to TII.

- 3.3.2. IFI – 28th January 2019 - The route crosses a number of watercourses in the county, including the Monaghan Blackwater River, the Mountain Water River and a number of their tributaries and tributaries of the Ulster Blackwater River. These watercourses contain valuable fishery habitat with stocks of salmonid, pike, European eel and coarse fish. Lamprey species have been recorded in the Monaghan Blackwater River and Mountain Water River, these species are protected under the Habitats Directive.

The Water Framework Directive charges local authorities with maintaining high/good ecological status and reinstating poor and moderate ecological status. The development should not impact negatively on the aquatic habitat.

There are significant variations in the timing and duration of spawning activity throughout the Republic of Ireland. To minimise adverse impacts on the fisheries resource, works in rivers, streams and watercourses should normally (except in exceptional circumstances with the agreement of IFI), be carried out July to September. Trenchless crossings are preferred. The body's requirements for trenchless crossings and for open cut watercourse crossings are detailed in the submission; as are best construction practice for work which could impact on surface waters. No instream works may be carried out without the written approval of IFI.

- 3.3.3. An Taisce – 01/02/2019 – outlines the planning history, including the application for technical amendments PA reg. ref 17/258, ABP ref. PL18.300998. The manner in which development is sought, prior to a decision being made on PA reg. ref 17/258 is inappropriate.

Their submission in relation to PA reg. ref 17/258, ABP ref. PL18.300998 is referred to. It is difficult to appropriately assess with required certainty the cumulative impact of a project when elements are yet to be decided.

- AA – Hen Harrier The most recent national survey of hen harrier shows the population in decline nationally. The hen harrier SPA network is in decline. Only one pair of hen harriers bred successfully in the Slieve Beagh SPA in 2015. Given the decline in this species within the region, it is necessary to ensure that no development has the potential to result in further pressure to this endangered species. The NIS is flawed. The likelihood and frequency of hen harriers passing through the site is based on foraging distance of 2km from the nesting site. It should be noted that hen harriers have been recorded to forage up to c5km from the site utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank. An Taisce considers the proposed development has the potential for negative impact on this endangered species.
- Curlew – it is not obvious if the grid connection route identified is the redesigned route referred to in Section 5.3.2. If this is the redesigned route the proposed development still has the potential to impact on this species. Curlew is among the more susceptible species to windfarm displacement effects, with behavioural avoidance and reduced breeding densities.

- The successive and incremental development within this area poses a serious risk to remaining bird species.
- The proposal lacks the necessary level of detail and assessment required under the Habitats Directive for the planning authority to carry out AA.

3.4. DAU - Dept. of Culture, Heritage and the Gaeltacht:

3.4.1. Archaeological monitoring conditions should be attached.

3.4.2. Nature Conservation - The site is in close proximity to the Slieve Beagh SPA. The site is comprised of several diverse habitats. Significant ecological value and concerns have been identified for a proportion of the site which requires further attention.

Curlew

The route runs through or close to important habitats for ground nesting waders in North Monaghan. The key curlew breeding areas that would be affected are in the townlands of Luppan, Shanmullagh, Coraghbrack, Drumlester, Tonintlieve, Cloghfin and Derryhellan (based on known Curlew sites recorded during the 2015-2017 National Curlew Survey).

Possible negative effects of the development and associated structures on the declining breeding populations of Curlew in this area are not fully addressed in the documentation. One of six Curlew Conservation Action Areas in Ireland is in North Monaghan. In 2017-2018 actions were implemented in the form of field surveys, working with landowners to protect nests from predation (seen as the greatest constraint to breeding success) and limited habitat enhancement. In 2018 there were 4 active Curlew nests in the North Monaghan area, which represents almost 10% of the total national number.

Curlew is particularly susceptible to displacement as a result of windfarm developments, Pearse-Higgins study 2009 showed nesting avoidance of up to 800m from wind turbines. Populations of waders (Curlew and Snipe) have been shown to decline during construction of wind farms and do not recover. It is estimated that the extensive loss of breeding and foraging habitat may cause desertion of the last known breeding areas for Curlew in Monaghan, a key area in the attempt to conserve the species nationally.

Research has shown that utility poles, including those used for overhead powerlines attract avian predators (including corvids) as they provide perches for prey detection, hunting and vigilance and as a result increase nest predation frequency.

It is widely known that avian predators (primarily corvids) are primarily responsible for the high rates of nest failure in Curlew and other breeding waders in Ireland. This issue has not been addressed in the reports on the environmental impacts of the grid connection.

The fact that Curlew in north Monaghan showed no evidence of successful fledging (EcLA 4.3.3) highlights the vulnerable situation that endangered Curlew are in. Research shows that in their first year they are more vulnerable to collisions with overhead wires than adults, this highlights the importance of avoiding areas with breeding Curlew when deciding where power lines should be erected.

The NPWS of the department welcomes the fact that the proposed route was redesigned following the discovery of curlew nests. However the survey carried out in 2018 by Ecofact offers only a snapshot of the situation with regards to breeding Curlew in north Monaghan, and does not offer a broader understanding of the more long-term use of the wider area by Curlew. No consultation was had with the NPWS Agri-Environmental Unit and Birds Unit along with the local Curlew Action Team to obtain information on Curlew activity in this area in the years between the first application in 2010 and the most recent survey in 2018.

Detailed land use surveys over a minimum of two years would best identify areas used by Curlew for feeding, courtship display, chick rearing etc, both during the breeding and non-breeding season. It would be desirable that flight paths used by Curlew between these key land use areas be identified prior to the selection of suitable wind farm development sites, to reduce the likelihood of collisions with turbines of overhead lines and ensure the development is sustainable in the wider Monaghan landscape.

There may also be unintentional negative impact on ground nesting birds (including waders) as a result of the installation of access network (roads and tracks), providing linear features for carnivorous mammals to follow and hunt along (e.g fox and pine marten).

Due to the significant loss of breeding Curlew in Ireland and the need to protect the sensitive habitat used by this important species, Monaghan County Council could consider designating the areas used by breeding Curlew as County Biodiversity Sites.

Hen Harrier

The proximity to the Sliabh Beagh SPA (2km to the southwest) means that the proposed development has the potential to negatively affect the qualifying interest Hen Harrier. The presence of foraging Hen Harrier (EIAR p30) at any time of year indicates that the development location is used by Hen Harrier, and as a result suitable habitat for foraging is present. The surveys carried out by Ecofact show that the proposed area is being used by Hen Harrier for foraging and as a flight path.

The surveys were carried out over a very limited time period and only provide a brief snapshot of the population dynamics during these limited observations. No details of the timing of the surveys were provided in the reports and it is not possible to determine the appropriateness of the timing. It is recommended that at least two years of baseline surveys may be necessary for species that display significant variation in distribution, as displayed by Hen Harrier. Long term surveys of at least 2 years of continual monitoring during breeding and non-breeding would be required to gain a more comprehensive understanding of land use by Hen Harrier in the wider area before decisions can be made in relation to development and the possible negative effects.

It is noted that the conclusion that the core traditional breeding area has shifted westwards and is now located within the Slieve Beagh-Mullaghfad-Lisnaskea SPA, is based on 2015 survey and only relevant for that year. The cross border Hen Harrier colony which occurs in the Slieve Beagh SPA and the Slieve Beagh-Mullaghfad-Lisnaskea SPA is very dynamic and there is constant interchange of breeding pairs from year to year. The breeding pairs move between the two neighbouring SPAs using a proportion of the traditional nest sites in various years. The occupancy of specific breeding sites in one particular year will dictate the areas used for foraging and their relative importance to nesting success.

The applicant did not obtain any recent information on Hen Harrier from the Golden Eagle Trust who have been monitoring the population in Slieve Beagh SPA for a

number of years as part of the Hen Harriers EIP and EU funded CANN project. In 2018 only 5 nest sites in the Slieve Beagh (Monaghan) SPA were occupied, which increases the importance of the foraging sites, including those identified as sub-optimal, in North Monaghan, including the northern section of the current development site and the wider area of the proposed windfarm site.

Very little is known about the feeding or resting areas used by Hen Harriers outside the Slieve Beagh SPA. Detailed surveys, far beyond the boundaries of this development site would be required to firstly identify all feeding/foraging and resting areas in the vicinity and secondly, identify flight paths between these areas and to and from breeding sites. References to frequent flight routes in the EcLA seem unjustified due to lack of information.

Re. collision risk, contrary to what is stated in the report, collision risk with overhead wires is likely to be an important mortality factor among Hen Harrier.

Re. the assertion that the development would not constitute in-combination impacts with afforestation or peat extraction; these activities result in a loss of both foraging and nesting habitat. The proposed development and associated works could also result in loss of suitable foraging habitat due to avoidance. Pearse-Higgins research is again cited. The impact may be twofold: loss of foraging and being forced to travel further to find suitable foraging, noting that surrounding areas are primarily improved grassland and of limited suitability for foraging; and secondly reduced density of Meadow Pipit and other small upland birds for Hen Harrier that continue to forage.

Marsh Fritillary – the development may result in a loss of suitable habitat for Marsh Fritillary (Annex II EU Habitats Directive) and potential species loss in unsurveyed areas, where species may be present. Specifically in Lupan, the habitat loss may increase the possibility of isolation of the colony located at Mullagh Otra.

Conservation status inadequate and declining.

Biodiversity – a significant proportion of Ireland's remaining breeding Curlew nest sites are present in the surrounding townlands and there is a presence of foraging Hen Harrier during the breeding season in the upper route section. The reliance of both these endangered species on the locality makes this part of North Monaghan very environmentally significant.

Recommending further information.

3.5. Third Party Observations

- 3.5.1. A letter of objection was submitted by a farmer, who signed a letter of consent as a 'landowner', to allow three poles on a holding, and later signed a second amended letter which he did not understand would allow 6 poles on the landholding. Observer states that although he signed his consent, he is not the landowner.

3.6. Further Information

- 3.6.1. A further information request issued, 6/02/2019 on 8 points:
- 1) Policy EGP3 – justification of how the development complies.
 - 2) Policy EGP2 – these areas are justified by reason of their landscape quality and recreational potential and policy SAP1 seeks to limit development. Submit photo montages and other details.
 - 3) Policy AVP1 – protect views from scenic routes - Submit photo montages and other details.
 - 4) Re. letter of objection – in the event that the submitted correspondence has not been signed by the relevant landowner, submit an updated letter of consent.
 - 5) In the interests of environmental protection submit details, (as listed).
 - 6) An OCEMP has been submitted submit a revised plan, (as listed).
 - 7) Respond to the issues raised by the Dept. of Culture, Heritage and the Gaeltacht.
 - 8) Respond to the issues raised by An Tasice.

3.7. Further Information Response

- 3.7.1. A response to the request for further information was received, 11/07/2019, which includes:

A letter and accompanying documents,

Annex1 Photomontages from additional viewpoints – areas of secondary amenity value,

Annex 2 scenic view photomontages,
Annex 3 landowner consent – clarifies observation,
Annex 4 water protection plan checklist,
Annex 5 revised substation layout plans,
Annex 6 indicative locations of temporary compounds,
Annex 7 drawings of watercourse locations,
Annex 8 outline CEMP, including surface water management plan, water quality inspection and monitoring plan, waste management plan, and
Annex 9 response to Dept. of Culture, Heritage and the Gaeltacht and An Taisce, prepared by Ecofact Environmental Consultants.

- 3.7.2. The response to Dept. of Culture, Heritage and the Gaeltacht and An Taisce, prepared by Ecofact Environmental Consultants, includes:

Curlew:

- 3.7.3. Re the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding the presence of Curlew - extensive surveying of the grid route has been undertaken and Curlew nesting sites in the area identified. Many pressures on Curlew exist in the area independent of the current proposal. The current proposed grid connection route was revised and moved away from the main areas used by Curlew and in most cases is further away than existing wires, one-off houses etc. Curlew nest in sub-optimal fields. The proposed development is relatively benign. Pole sets with suspended cables are ubiquitous in the Irish countryside. Notwithstanding, in accordance with the precautionary principle, a substantial re-design was undertaken following the discovery of a Curlew nest site in 2018. The applicant has sought to maximise the separation distance between the proposed development and the identified nest sites (active & failed) insofar as is practical. The proposed development is located in excess of 370m from the nearest 2018 Curlew nest site and 260m from the nearest 2019 Curlew nest site. In the event that future nest sites are located at a lesser distance from the proposed development, which is considered unlikely given that Curlew exhibit notable levels of fidelity to nesting locations, given the significant telecommunications infrastructure and treelines/hedgerows, it is

assessed that the proposed development is unlikely to result in a significant increase in perch/predation opportunities.

Although avian predators are a pressure on Curlew populations, it is considered that the loss of optimal nesting habitat, and the requirement to nest in suboptimal conditions, is likely to be the reason for an increase in corvid predation of Curlew nests. The habitats in the vicinity of the proposed development which have been assessed as potentially suitable for ground nesting waders, comprise improved agricultural grassland fields and unimproved grassland fields. While these areas are being used by Curlew, they are not optimal breeding habitats. In particular, one of the nesting sites in 2018 was located within an improved grassland field which was subject to intensive operations and, as a direct result of these operations, the nest failed. Fig 1 provides an update of the EclA as it can now be confirmed that all Curlew nests in the wider area failed in 2018. It is assessed that the failure of these nests was a result of suboptimal nesting habitat (and the associated predation risks) and human activities. Preliminary information on nesting locations identified during the current ongoing 2019 breeding survey are also included.

The applicant is aware of the key Curlew Breeding Areas that have the potential to be affected by the proposed grid connection; and the townlands in which nests are located and which the route crosses are listed.

Predation by corvids is not assessed as being the primary risk for Curlew in the vicinity of the proposed development. Sub-optimal nesting habitat is. Given the separation distance between the proposed development and the identified 2018 and 2019 nesting sites and the sub-optimal nature of the habitat in the immediate vicinity, the proposed development is unlikely to significantly increase the likelihood of predation of any future nests, including as a result of providing additional perching opportunities. The findings of the EclA are supported.

- 3.7.4. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding the route redesign and the 2018 survey being only a snapshot - the 2018 survey was designed to address the presence of Curlew in the vicinity of the proposed development. The process of surveying, from desk study to walkover, is set out. Prior to the submission of the planning application, consultation was undertaken with

the Curlew Nest Protection Officer and is ongoing with the NPWS Agri-Environment/Ecology Unit.

3.7.5. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding the need for detailed minimum two year surveys – extensive ornithological surveys were undertaken to inform the EIS prepared for the wind farm. Further survey work was undertaken in 2017-2018 at the northern extent of the proposed grid connection route. Survey work has been ongoing since the preparation of the EclA and is likely to continue up to commencement of construction: 2 years survey work has been undertaken. Areas and locations used by Curlew are well known to the applicant and have been avoided insofar as practical. There are no records of Curlew in the area colliding with existing obstacles.

3.7.6. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding the development providing linear features for carnivorous mammals to follow and hunt along – this is acknowledged, however the locations of proposed tracks or track upgrades are sufficiently distant from any potentially sensitive location identified. Each of the nest sites is the 2018 and 2019 breeding season and potential Curlew breeding habitat identified, is already located immediately adjacent to existing roads and linear features. The distances of the linear routes (access tracks) to be developed are listed. They will not result in any likely significant additional effect on ground nesting birds including waders.

Hen Harrier:

3.7.7. Re the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding the presence of Hen Harrier recorded in surveys – numerous surveys indicate that Hen Harrier activity is low. Their occasional presence is an indication that other pressures may be forcing the species to forage in areas outside the SPA in sub-optimal habitat. The benign nature of the development and its construction methodologies will not result in any appreciable loss of potentially suitable foraging habitat. The substation and hardcore areas will result in permanent loss of an extremely limited area of sub-optimal habitat, loss to pole sets will be imperceptible. There is no evidence of collision with existing overhead lines. The height of the proposed grid connection is lower than other similar electricity lines/pylons and, due

to their good eyesight and manoeuvrability, it is assessed that there is no residual risk of collision/electrocution.

- 3.7.8. Further survey work: autumn 2018, winter 2018/2019 and breeding season 2019 – no activity recorded during winter, occasional activity April – June 2019 – male foraging near the northern end. Only occasional activity recorded.
- 3.7.9. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht that it is irrelevant that low numbers were recorded in surveys – the numerous surveys have provided the applicant with a clear and best available scientific understanding of Hen Harrier usage of the site. Hen Harriers have never been recorded displaying or breeding at the permitted wind farm site or the proposed grid connection route. It can be concluded that in-combination effects will not be significant.
- 3.7.10. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht that the surveys are only a snapshot – surveys have been carried out since 2009. Ecofact have been involved in breeding bird surveys in this part of north Monaghan since 2011 and are extremely familiar with and have a good scientific understanding of the activities of Hen Harrier in the area.
- 3.7.11. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht that the cross border Hen Harrier colony, which occurs in the Slieve Beagh SPA and the Slieve Beagh-Mullaghfad-Lisnaskea SPA, is very dynamic and moves between breeding sites – none of the proposed development site contains suitable Hen Harrier breeding habitat. Numerous surveys confirm little activity. It is assessed with reasonable scientific certainty that in-combination with the permitted wind farm the proposed development will have no adverse effects on Hen Harrier or on the integrity of the SPAs.
- 3.7.12. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding information from the Golden Eagle Trust who have been monitoring Hen Harrier in the area – the EIAr and EclA were prepared predominantly on the basis of ornithological information obtained from recent survey efforts targeted directly at the permitted wind farm and proposed grid connection sites and supplemented by publicly available data sources. Given the volume of survey data it was concluded that sufficient information was available.

3.7.13. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding lack of information on feeding and resting areas outside the SPA and the need for detailed surveys far beyond the development site boundaries – detailed surveys have been carried out in accordance with Scottish Natural Heritage Guidance. It can be concluded that the construction and operation of the proposed grid connection will not result in any barrier effects.

3.7.14. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding collision impacts, citing research by Rose and Baillie - Hen Harrier collision risk is both site and OHL design specific. The proposed line is not high, max height 16m and is similar to many other structures in the landscape. More recent studies support low levels of collision risk with OHL of this height. Species with a high wing loading (ratio of body weight to wing area) and species with broad wings are typically more at risk of collision. Hen Harriers and other birds are more susceptible to collisions during periods of reduced visibility. They avoid flying in adverse weather conditions. Field surveys carried out by Eirgrid during 2012 and 2013 did not find any evidence of power line collisions by raptors. There is reasonable scientific certainty as to the absence of adverse effects on Hen Harrier.

3.7.15. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding in-combination effects with afforestation and peat extraction (also referring to the impact of turbines on Meadow Pipit breeding, and Pearse Higgins research regarding Hen Harrier avoidance of wind farms) – the Board's Appropriate Assessment of the windfarm is referred to. The research found no consistent avoidance in relation to overhead power lines. The conclusions of the NIS remain valid.

Marsh Fritillary:

3.7.16. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding loss of suitable habitat for Marsh Fritillary – following desktop appraisal and site walkover it was concluded that the proposed development will not result in any significant direct effects on Marsh Fritillary habitat. The only direct loss will relate to the substation and will be imperceptible in the wider landscape.

3.7.17. Proposed surveys by the ECoW (ecological clerk of works) prior to construction will be extended to include Marsh Fritillary in Luppan.

- 3.7.18. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding biodiversity value – it is acknowledged that some localised areas in the vicinity of the northern extent of the development are of greater environmental significance due to Curlew and Hen Harrier.
- 3.7.19. Re. the submission from the Dept. of Culture, Heritage and the Gaeltacht regarding relying on information from an interim report – the EclA and NIS were prepared prior to the completion of the 2018 breeding season survey but on the basis of extensive multi-annual surveys. Subsequent surveys did not identify any occurrence which would conflict with the findings or conclusions of the NIS.

3.8. Further Reports

- 3.8.1. Environmental Report -19/07/2019 – including – two streams will be subject to instream works: Killagava and Mullamurphy. No objection to granting permission; conditions.

- 3.8.2. Further Planning Report – 4/09/2019 – which includes:

The applicant has indicated that the proposed electricity line will not form part of the national transmission system and does not constitute a transmission line. The Electricity Regulation Act 1999 provides for very specific and deliberate definitions to differentiate between transmission and distribution electricity infrastructure. As the proposed electricity line comprises 38kV infrastructure only, it is considered to fall within the definition of a distribution system which, as defined in the Electricity (Supply) Act 1927 comprises ‘that portion of an undertaking used or intended to be used for the distribution and supply of electricity to consumers’. EGP3 previous plan and EGP2 current plan are not directly applicable.

A number of viewpoint locations, having been agreed, photomontages were prepared and submitted. The proposed development will not result in any significant visual or landscape impacts.

The substations permitted under planning ref. 10/110 / PL18.240760 and under planning ref. 17/258 / ABP-300998-18 no longer meet with ESB technical requirements and a new 38Kv substation design is therefore required. An alternative

route, connecting to a nearer 20Kv substation to the south is not now feasible and a 38kv connection to Lisdrum is therefore the only feasible option.

The applicant has fully assessed the potential for locating the 38kV line underground for its entire length.

Undergrounding of the overhead line in the public roads was considered feasible from a technical perspective, but discounted on the basis of conflicts with existing underground services, impacts on traffic and the more prolonged construction phase, progressing at a rate of c100m per day over a 23km distance. Undergrounding of the cable through private lands would require a 4m wide construction access track along the entire route with potential for increased disruption to agricultural activities.

As it is not part of the transmission system but of the distribution system the development plan policy does not apply.

Visual assessment – from selected viewpoints it is not possible to view the proposed development. Due to the narrow profile of the proposed wooden pole sets and electrical line and careful siting, the proposed development will be imperceptible from Brangan mountain.

No further comments have been received from Dept. of Culture, Heritage and the Gaeltacht or An Taisce.

Re. a further objection from a landowner to the route running through their property – having viewed the documentation it is noted that the site falls outside the ownership of the objector.

Recommending permission.

3.9. Further Third Party Observations

- 3.9.1. An observation from Paul and Sandra Doran states that they did not give permission to the proposed route through their property and object to its negative impact, (see planner's report which states that the line does not go through the property).

4.0 Planning History

ABP ref. PL18.240760, PA ref. 10/110 - permission granted on appeal, May 2013, for the Mountain Water Wind Farm, comprising 7 no. turbines at Luppan, Cornaheive, Greagh, Carrickroe, Mullanafinnog, Co. Monaghan. The development includes upgrading 1km of existing Coillte forestry tracks and site entrance, the construction of 100m of new access tracks on Coillte lands. EIA and Screening for AA were involved. Conditions included the following:

2. 10 year period during which the development may be carried out.
4. 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.
16. The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake a programme of appropriate avian surveys at this site prior to and after the commencement of development. Details of the surveys to be undertaken shall be agreed with the planning authority. The results shall be submitted to the planning authority and to Department of Arts, Culture and the Gaeltacht in appropriate format.

Reason: To monitor the impact of the development on the local population of the Hen Harrier.

ABP ref. 300998-18, PA reg. ref. 17/258 - permission refused on appeal, May 2019, for amendments to the development permitted under PL18.240760, comprising:

- realignment of site access tracks and underground cabling;
- the redesign and realignment of turbine hardstand areas;
- relocation and resizing of the substation, omission of external transformers, transformer foundations and palisade fencing;
- relocation and design changes to the meteorological mast from a free standing mast to a guy-wired lattice structure;
- approx. 820m of underground cable from the meteorological mast to turbine T2;
- 2 no. temporary storage compounds; and
- minor local road upgrade works along the L5151-0 and L11131-0.

Reasons:

1. Having regard to:

- (a) the location in proximity to Slieve Beagh SPA and the Slieve Beagh – Mullaghfad -Lisnaskea SPA and within the foraging range of Hen Harrier, which is the species of special conservation interest for the Special Protection Areas,
- (b) the potential for suitable foraging habitats on the site for Hen Harrier and use of the site by Curlew,
- (c) the absence of up to date survey data of use of the appeal site by these species,
- (d) the limited information on the proposed route of the grid connection and the potential for in-combination effects, and
- (e) on the basis of the information provided with the application and the appeal, including the Natura Impact Statement submitted to the planning authority

the Board cannot be satisfied that the proposed development will not impact adversely on the designated sites, individually or in combination with other plans or projects, in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

2. Having regard to:

- (a) the absence of assessment of the likely visual and landscape effects of the proposed changes to finished floor levels, and
- (b) the policies and objectives of the Monaghan County Development Plan, in respect of European sites, biodiversity and landscape protection,

the Board cannot be satisfied that the proposed development will not detract from the visual and landscape amenity of the area.

ABP ref. PL18.239585, PA ref. 10/41 - permission granted on appeal in 2012 for a windfarm comprising 5 no. turbines, substation compound and associated works at Coolberrin Hill, immediately south of the substation currently proposed. This permission was granted with a life of 10 years. The application did not include any details of the proposed grid connection; development not constructed to date.

5.0 Policy Context

5.1. Development Plan

5.2. Monaghan County Development Plan 2019 – 2025 is the operative plan, relevant provisions include:

Policies:

HLP 2: To adopt and implement in partnership with all relevant stakeholders the objectives and actions detailed in the Biodiversity Action Plan and any relevant action plan.

HLP 3: To contribute as appropriate towards the protection of designated sites in compliance with relevant EU Directives and applicable National Legislation.

HLP 4: No projects giving rise to significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall be permitted on the basis of this plan (either individually or in combination with other plans or projects).

HLP 13: To resist development in or adjacent to any Natura 2000 site where it would result in the deterioration of that habitat or any species reliant on it. The onus will be on the developer to demonstrate that any such development will not adversely impact on the qualifying interest of such sites subject to the preparation of an appropriate assessment exercise under the provisions of the Habitats Directive.

SAP 1 To limit development in Areas of Secondary Amenity Value and to only permit compatible amenity developments where they do not unduly impact on visual amenity.

8.15 Wind Energy - Monaghan County Council will seek to achieve a balance between enabling the wind energy resource of the County to be harnessed while taking account of the visual, environmental and amenity impacts.

15. Development Management Standards - Renewable Energy Policies

ENP 1: To encourage and facilitate renewable energy proposals at suitable locations where it is demonstrated the development will not have a detrimental impact on the

visual and residential amenities of the surrounding area and other matters of acknowledged importance where it is located and assessed in line with the criteria set out in Section 15.20 of the Development Plan.

EGP 1: Facilitate electricity and gas infrastructure improvements/installations which will not result in adverse impacts on the natural or built heritage of the county.

EGP 2: The undergrounding of electricity transmission lines shall be considered in the first instance, as part of a detailed consideration and evaluation of all options available in delivering and providing this type of infrastructure.

5.3. Climate Action Plan 2019

Section 7.2 sets sectoral targets: for electricity:

To meet the required level of emissions reduction, by 2030:

- ☐ Reduce CO₂ emissions by 50–55% relative to 2030 Pre-NDP projections (based on MACC (marginal abatement cost curve - analysis which seeks to identify the technologies (including fuel switches), and associated levels of adoption, required to meet 2030 target, based on our current commitments, in the most economical way).
- ☐ Deliver early and complete phase-out of coal and peat-fired electricity generation.
- ☐ Increase electricity generated from renewable sources to 70%, indicatively comprised of:
 - at least 3.5 GW of offshore renewable energy.
 - up to 1.5 GW of grid-scale solar energy
 - up to 8.2 GW total of increased onshore wind capacity
- ☐ Meet 15% of electricity demand by renewable sources contracted under Corporate PPAs.

5.4. A European Clean Deal, EU Commission, 2019

This includes:

- ☐ no net emissions of greenhouse gases by 2050,
- ☐ economic growth decoupled from resource use,
- ☐ no person and no place left behind.

5.5. Ireland's National Energy and Climate Plan, 2021-2030

This identifies how Ireland will achieve its 2030 targets for greenhouse gas emissions in a manner consistent with a trajectory to achieve net zero emissions by 2050. The ESR (effort sharing regulation) enshrines a greenhouse gas emissions reduction target for Ireland of 30% by 2030 relative to 2005 levels. The Climate Action Plan sets out over 180 actions, together with hundreds of sub-actions, that need to be taken and embraces every relevant sector: electricity, industry, enterprise, housing, heating, transport, agriculture, waste, and the public sector. Renewable energy resources, will be a critical and growing component of Irish energy supply to 2020 and beyond. An ambitious and challenging target of increasing reliance on renewables from 30% to 70% by 2030 has been established. Ireland is committed to delivering an early and complete phase-out of coal and peat fired electricity generation.

5.6. Climate Action and Low Carbon Development (Amendment) Act 2021

This includes:

To require for the approval of plans by the Government in relation to climate change for the purpose of pursuing the transition to a climate resilient, biodiversity rich and climate neutral economy by no later than the end of the year 2050 and to promote climate justice; to make certain changes to the Climate Change Advisory Council; to provide for carbon budgets and a sectoral emissions ceiling to apply to different sectors of the economy; to provide for reporting by Ministers of the Government to a joint committee of the Houses of the Oireachtas; to provide for local authority climate action plans; for those and other purposes to amend the Climate Action and Low Carbon Development Act 2015; to require local authorities, when making development plans, to take account of their climate action plans and, for that purpose to amend the Planning and Development Act 2000; to extend the purposes for which moneys may be paid out of the Climate Action Fund and, for that purpose to amend the National Oil Reserves Agency Act 2007; and to provide for related matters.

5.7. Wind Energy Development Guidelines 2006

Guidance on wind energy in relation to planning, which includes with reference to connection to electricity providers:

Power line connections between turbines and control buildings should be underground.

In certain landscapes, such as highly sensitive Mountain Moorland, consideration should be given to burying the cables until such a distance as the poles and cables would be visually acceptable, for example, where other power lines exist.

Wooden poles are preferred to reduce visual impact.

5.8. Action for Curlew in Ireland Recommendations of The Curlew Task Force, May 2019

This 100 page document looks at all the factors which have contributed to the decline 96% in population 89% in areal extent, of breeding in Ireland in the past 30 years and which has led to it being on the red list of Birds of Conservation Concern in Ireland. It includes:

‘The impact of predation on ground nesting birds is felt to have increased over recent decades and this is shown, in a number of studies, to be driven by land use change. These changes include the intensification of agriculture, the introduction of forestry into open ground and the reduced area of wetlands, all resulting in a fragmented and edge-rich landscape, with strong populations of meso-predators including Fox, Mink, Pine Marten, Badger, Hooded Crow, Magpie etc. In the case of breeding waders, that will mob potential predators in a colony type response, a decline in the breeding population will also see the remaining nests and chicks made increasingly vulnerable to predation.’

The background document states:

‘At the same time as breeding habitats have been deteriorating in quality and extent, predator densities have been recovering from the adverse effects of persecution, over-hunting and/or toxic pesticides (Amar et al.,2010). These two factors together (particularly when habitat is fragmented and breeding numbers drop below certain thresholds) are likely to have led to increased predation of eggs and chicks, contributing to the negative trends in nest

success and chick survival recorded in western Europe in the last 40 years'. 'In 2017, the National Parks & Wildlife Service designed a Curlew Conservation Programme, which has three key pillars, with an emphasis on 'local' to ensure flexibility to adapt to local situations and requirements: (1) Action on the ground by a Local Curlew Team consisting of a Curlew Advisory Officer, a Curlew Champion and a Nest Protection Officer (2) Action on the ground by landowners (through the Curlew Conservation Partnership) and (3) A research project investigating the effectiveness of the measures undertaken, with a view to informing future roll-out and application of measures.'

The subject site is in one of the 6 core breeding areas included in the pilot project.

'The 'Goldilocks' analogy of habitat being too hot (intensive) or too cold (extensive/abandoned) is appropriate to the Curlew. Fundamentally, action taken should be about results and habitat that is 'just right' should be envisioned and agreed upon and appropriate action taken from there to deliver that habitat.'

'In many areas, given a fragmented landscape and an unbalanced meso-predator population (e.g. crows, foxes, mink), there may be little point in putting all resources into providing the best habitat for Curlew, if predator control and/or nest protection are not fully considered and supported.'

5.9. Draft Prioritised Action Framework (PAF) for Natura 2000 in Ireland, pursuant to Article 8 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) July 2020.

Curlew is listed as having unfavourable conservation status as a breeding and wintering species for Ireland and is on the BoCCI red list for both breeding and wintering populations. The breeding Curlew population is regarded as being at high risk of extinction in Ireland.

The first national survey of breeding Curlew, between 2015 and 2017 recorded 138 pairs and thus a 96% decline since Bird Atlas of 1988-1991.

The cause of decline in the breeding Curlew population is considered to be a combination of factors, ultimately linked to habitat change. This includes both

agricultural intensification and farm abandonment driving changes in sward type and structure, vegetation cover and associated factors, large-scale commercial peat extraction and afforestation. Potentially increasing in significance is the development of renewable energy infrastructure further posing a threat or potentially having impacted at some sites already. Predation is widely cited as a major cause of Curlew decline and this is likely linked to the composition and configuration of habitats on a landscape scale. These threats and pressures are accounted for in the International Single Species Action Plan for the Conservation of the Eurasian Curlew.

Measures needed to maintain or restore favourable conservation status:

- ☐ Enhance conservation provision for all remaining Curlew pairs and build potential for expansion of the population to secure it for future (more habitat, better productivity etc.)
- ☐ Utilise agri-environment provision more effectively; cooperative working, better guidance, redesigned measures, capital works (NPIs) and advisory supports
- ☐ Tackle identified wider countryside threats to species by ensuring development planning, forestry and other land use takes proper account of the species
- ☐ Utilise state lands as effectively as possible for the species; national parks and nature reserves in particular but also where semi-state bodies can contribute
- ☐ Pilot approaches to rehabilitating ground currently under forest stands or managed as commercially exploited peatlands
- ☐ Ensure existing designated sites that have Curlew are suitably supported
- ☐ Raise public awareness to ensure support for actions to conserve the species are widely supported
- ☐ Establish a framework through Species Action Planning and ensure it is implemented
- ☐ Ensure ongoing research and monitoring to inform action is carried out

5.10. Curlew Conservation Programme Annual Report 2020, National Parks & Wildlife Service.

Dept of Housing, Local Government & Heritage; and Dept of Agriculture, Food & The Marine.

In 2020, the Curlew Conservation Programme focussed on nine of the most important areas in Ireland for breeding Curlew, including the Stack's Mountains in Kerry, Lough Ree, Roscommon/Mayo, Leitrim, North Monaghan, Donegal, Lough Corrib, Slieve Aughties and Laois/Kildare. In each of these areas, local teams surveyed for Curlew, engaged in nest protection efforts and liaised with landowners. Funding was made available for landowners and communities to engage in efforts on the programme, including habitat improvement works.

It is clear that the pressing issues of habitat loss, degradation and fragmentation, which have led to the current situation for Curlew are still present and in fact continue to expand and intensify, despite the best efforts of agri-environmental and conservation measures. Until the situation with habitats and the wider environment is secured, Curlew in Ireland are likely to continue to decline and be lost from particular areas.

It is clear that the nest protection fences have proven beneficial in progressing breeding attempts beyond the egg stage to chick stage. Of a total of 20 breeding attempts protected by fencing to date, 16 have hatched chicks, representing an 80% hatching success rate. This will need to be up-scaled in future years to derive greatest benefit. The teams did particularly well to locate these nests as soon as possible, given the lockdown restrictions happened at a particularly important time for finding Curlew displaying and nesting. An interesting observation was made by the Nest Protection Officer in County Monaghan, when he noticed (using night vision equipment) that each night for the first couple of weeks of their lives, the male Curlew was brooding his chicks within the nest protection fence, i.e. the family would return to the fence each evening presumably having recognised the safety that it provided them from predators.

5.11. Curlew Conservation Programme Annual Report 2021, National Parks & Wildlife Service.

Dept of Housing, Local Government & Heritage; and Dept of Agriculture, Food & The Marine.

Conclusion - until this year the populations of the areas where the Curlew Conservation Programme has been active had remained relatively stable. 2021 however, saw the apparent loss of a number of sites where breeding pairs were active in recent years. This, in the face of apparently sufficient breeding productivity in recent years, points to an old population, akin to the Freshwater Pearl Mussel situation in Ireland, where animals may still be present, but ultimately dying out. Given the 96% decrease, which has occurred in the past 30 years, it is sadly unsurprising that the population continues to decrease. The process of extinction is not halted overnight and until the factors that led to such a massive population collapse in the first place are fully addressed, pairs will continue to be lost. At this point, entire geographical areas will likely soon be lost. The recommendations of the Curlew Task Force, particularly in relation to land-use policy and head starting¹ are particularly relevant in relation to addressing the wider issues driving the decline of the Curlew. The efforts of the Curlew Conservation Programme (or other efforts) alone, while trying to keep the candle alive, are dwarfed by the larger landscape issues that have driven the decline. Even what should be smaller issues in the wider landscape (e.g. increasing numbers of feral geese ousting Curlew from their nesting site) are now significant issues given the small number of breeding pairs, every pair and every chick is significant proportion of the remaining national population. In relation to what has been taken to be the minimum number of chicks required to maintain a stable population (a figure that has been met by the CCP annually), it is taken that the more the breeding population decreases, the higher that threshold should become if we are to maintain the population we started with in 2017, let alone 30 years ago. Evidence of senescence (birds becoming too old to breed) was suggested at a number of sites in 2021 and 2020. This is more likely to become an issue in 2022 and beyond also of course. Only four of nine areas are known to have fledged chicks for certain (including one area that fledged only one chick), and two

¹ Head starting is beginning rearing in captivity.

areas failed to record any hatching. This is all the more concerning given the greater effort and investment in the 2021 season compared to previous years (particularly 2020 when the programme was briefly put on hold in line with the first Covid-19 lockdown). One can only assume that where no action was taken in other areas across the country, the situation was just as bad or even worse. It is clear that greater intervention will be required, given the crisis situation which the Curlew is in. Large scale habitat remediation and improvement works will be required in many if not all areas, concentrating firstly in those areas where breeding productivity has been consistently low. In the interim, head starting (rearing chicks in captivity to the point of release at fledging) appears essential, to ensure that the birds are not lost from those areas before the landscape and wider environment is improved for them. At a very minimum, if breeding Curlew are to remain a sight and sound in the Irish countryside, policies and circumstances and activities (legal and illegal) leading to habitat loss and degradation need to be urgently addressed.

5.12. Natural Heritage Designations

- 5.12.1. The nearest Natura sites are Slieve Beagh SPA site code (and Slieve Beagh-Mullaghfad-Lisnaskea SPA site code (located c 2 km straight line distance at the closest point, to the west and southwest.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An Taisce have submitted an appeal (1/10/2019) against the planning authority's decision, which includes:
- ☐ There is functional interdependence between Ref. 10/110 and Ref. 18/562 and the impacts of the project as a whole must be considered when deciding on whether Ref. 18/562 is compliant with the requirements of the EIA Directive and the Habitats Directive. Having considered the positions taken by Department of Culture, Heritage and the Gaeltacht, Birdwatch Ireland and An Taisce and the history of past decisions made by Monaghan County Council

and the Board, one must conclude that Ref. 18/562 in combination with Ref. 10/110 will have significant negative impact on:

- ☐ Hen Harrier – breeding
- ☐ Curlew – breeding
- ☐ Sliabh Beagh SPA (site codes 004167 and UK 902302) and
- ☐ Sliabh Beagh SAC (site code UK 0016622).
- ☐ The Board must refuse.
- ☐ Contrary to Monaghan CDP.
- ☐ Contrary to Article 6 of the Habitats Directive. The applicant has failed to properly assess all the direct, indirect or cumulative impact of the project on Hen Harrier as required under Article 6(3).
- ☐ Contrary to Wind Energy Guidelines – quoted.
- ☐ The scope of the project and the failure to properly assess the development in its entirety:
 - ☐ Mountain Rivers Windfarm (ref. 10/110, PL18.240760) and the application in question, are one development, one cannot survive without the other, there is clear functional interdependence between the two. Whether assessed as a whole or as a direct consequence of the other it is clear that the direct, indirect or cumulative impacts of 10/110 and 18/562 must be assessed together.
 - ☐ An Taisce v An Bord Pleanála (2015) IEHC 633 and O’Grianna v An Bord Pleanála (2014) IEHC 632 are cited.
 - ☐ Even if the O’Grianna judgement predates the subject application, it applies.
 - ☐ The applicant has accepted the functional interdependence in Vol 1 of the EIAr.
- ☐ Planning History:

- The decision of Monaghan County Council to refuse permission ref. 10/110 was overturned by the Board in 2013: PL18.240760. An Taisce considers this decision to have been incorrect.
- The reasons for the Monaghan decision 10/110 and the Board's decision ABP300998 (17/258), are directly applicable to this application, given the functional interdependence between 10/110 and 18/562. The decision Ref 17/258 is more relevant to this application than the original approval Ref 10/110 as the planning authorities were in a position to consider: the current conservation status of Hen Harrier and Curlew at local, regional and national level; the fact that both species are subject to a Threat Response Plan and a Conservation Task Force respectively, both of which recognise the negative impact of wind farm development on these two species; up to date scientific research on the interaction of species like Hen Harrier and Curlew with wind farm developments; and recent case law.
- The Board, one must conclude that Ref. 18/562 in combination with Ref. 10/110 will have significant negative impact on:
 - Hen Harrier – breeding
 - Curlew – breeding
 - Sliabh Beagh SPA (site codes 004167 and UK 902302) and
 - Sliabh Beagh SAC (site code UK 0016622).
- The Board must refuse.
- Scope of the planning application:
 - Without up to date breeding and wintering bird surveys of the site Mountain Rivers Wind Farm (ref. 10/110) the Board cannot assess the project as a whole. The legal requirements of Article 6(3) of the Habitats Directive go even further, requiring that the potential direct, indirect and cumulative effects of a plan or project be assessed. The ecological assessment has failed to fully assess the direct, indirect and cumulative effects of the development on Hen Harrier a qualifying interest of the Slieve Beagh SPA or Slieve Beagh-Mullaghfad-Lisnaskea SPA.

- Adequacy of ecological/ornithological surveys
 - The information provided is not adequate, much relates to past planning applications on the site and other planning applications on completely different sites. The applicant has failed to provide survey information during the breeding season. Records of breeding Hen Harrier held by the Northern Irish Raptor Study Group and referred to by BirdWatch Ireland, have not been provided. These recordings are well within foraging distance of the site (4km and 2.5km from the site). The observations by Joe Shannon and Daniel Moloney were highlighted by BirdWatch Ireland in ref 17/258 but have not been referred to by the Consultant.
- Biodiversity impacts
 - NPWS, the Northern Ireland Environment Agency and the Heritage Officer have previously highlighted the negative biodiversity impacts – ref 10/110: NPWS recommending refusal noted that the development site is part of the foraging range of breeding Hen Harrier and noted the sighting of four pairs of Curlew adjacent to the proposed site. Northern Ireland Environment Agency raised concerns about Hen Harrier and Greenland white-fronted goose and outlined survey requirements. Raising similar concerns the Heritage Officer noted that the development fell within the recorded 5km foraging distance of Hen Harrier, from the SPA.
- Hen Harrier:
 - Annex I
 - Slieve Beagh SPA is one of 6 SPAs which have been designated partly or wholly for the conservation of Hen Harrier.
 - The site is approx. 1.6km north east of the SPA within the 5km foraging distance of Hen Harrier. Pairs are known to be breeding in the vicinity of the site. Potential to impact on Hen Harrier breeding in the SPA.
 - In addition under Article 4 of the Birds Directive, member states are required to strive to avoid pollution or deterioration of habitats of interest in areas outside specifically identified protection areas.
 - Hen Harrier is subject to a Threat Response Plan.

- The presence of suitable Hen Harrier foraging habitat:
 - The assertion that the proposed project, including the approved wind farm and the grid connection, will not have a negative impact on the Slieve Beagh SPA or Slieve Beagh-Mullaghfad-Lisnaskea SPA, purely on the basis that the species has not been recorded breeding on the site is deeply flawed. The loss or degradation of foraging habitat would have the potential to negatively impact on the breeding success and survival rate of Hen Harriers.
 - The presence of foraging Hen Harrier (EIAR p30) at any time of year indicates that the development location is used by Hen Harrier, and as a result suitable habitat for foraging is present. All comments which relate to studies, which estimated typical Hen Harrier foraging range (NIS Sec 3.5.2), need to be evaluated in the context that it has been shown by the developer that Hen Harrier are foraging on the development site.
 - The applicant, acknowledging the presence of Hen Harrier within the site, refers to pressures on the species in terms of reduction of optimum habitat within the SPA, this implies that the habitats on site are important for the species given the degradation of habitat within the SPA. The poor conservation status of the habitats within the SPA should have been assessed as a cumulative negative impact on the breeding Hen Harrier. It highlights the precarious state of the breeding Hen Harrier and the need to ensure that protection afforded to this Annex I species under law is strictly implemented.
 - Recorded sightings indicate it supports valuable foraging habitat and that the habitats on site are likely to be important as a stepping stone habitat enhancing connectivity between suitable habitat within a broader landscape which has become fragmented and degraded due to a range of pressures, including agricultural intensification, commercial forestry and wind farm development.
 - No information has been provided to show that suitable foraging habitat or prey species are not found on the site.

- No information has been provided to show that the mosaic of rough grassland, forestry and scrub linking the site and Slieve Beagh SPA does not provide suitable foraging habitat for Hen Harriers. Their presence indicates it does.
- No information has been provided to show that the site is not within foraging distance of Slieve Beagh SPA or Slieve Beagh-Mullaghfad-Lisnaskea SPA, and known breeding birds within the Slieve Beagh range. Their presence indicates it does.
- The site description in the EIS for the wind farm ref. 10/110 is quoted. The site supports a mosaic of rough grassland, scrub, hedgerow, native woodland, blanket bog, forestry plantation and wet grassland. Hen Harriers forage in within pre-thicket forestry, rough grassland, blanket bog and scrub and will use linear features such as woodland edges, hedgerows, drains and stream edges to hunt.
- They have a diverse diet, with passerines the most popular prey type. As An Taisce have previously submitted, the value of the site for Hen Harrier is supported by the recorded sightings of prey species such as Meadow Pipit, Linnet and Skylark recorded in previous ornithological assessments on site.
- No information has been provided to the contrary.
- Impacts on Slieve Beagh / Slieve Beagh-Mullaghfad-Lisnaskea SPAs:
 - Of special conservation interest for Hen Harrier. The early stages of new and second-rotation conifer plantations are the most frequently used nesting sites, though some pairs may still nest in tall heather of unplanted bogs and heaths. Hen Harrier will forage up to c5km from the nest site, utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank. The site also supports Merlin, with two pairs recorded in 2002-03. Further survey is required to determine the exact status of this small falcon. Red Grouse is found in unplanted areas of bog and heath – this is a species that has declined in Ireland and is now Red-listed. Peregrine nest in the Northern Ireland sector of Slieve Beagh and can be seen over the site at times. Slieve Beagh SPA is of ornithological

importance because it provides excellent nesting and foraging habitat for breeding Hen Harrier and is one of the top sites in the country for the species. The presence of three species, Hen Harrier, Merlin and Peregrine, which are listed on Annex I of the E.U. Birds Directive is of note.

- Conservation objectives / status within the Slieve Beagh SPA:
 - To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA: Hen Harrier
 - The conservation status of Hen Harrier is not good given that the natural range of the species within the SPA is being reduced by habitat loss and degradation. The population within the SPA is in decline. Two nesting pairs have been lost this breeding season due to illegal fires within the northern section of the SPA. The future prospects for the population are not good given that no actions have been taken to date to address the pressure on the species within the SPA. This is despite being the subject of an ongoing Threat Response Plan.
 - The site is within foraging distance.
 - Suitable foraging habitat lies between the site and SPA. 49% of foraging takes place within 2km of breeding nest, 89% within 5km. The SPA boundary is well within 5km.
 - The degradation of habitat within the SPA is a cumulative impact. Analysis of cumulative impacts is inadequate.
 - Forestry, persecution, wind farm development and agricultural intensification have been identified as some of the key pressures driving declines in populations. These pressures are even greater outside the SPA.
 - Article 4(4) 'In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats’.

- ☐ Ireland has been found guilty of failing to implement Article 4(4).
- ☐ National Hen Harrier population:
 - ☐ The most recent national survey - 2015 indicates that national Hen Harrier population is in decline. A decline of 33.5% between 1998-2000 and 2015. It is in decline in SPAs. The survey indicates that the population in this area is under serious pressure, with breeding habitats under pressure from loss and degradation.
- ☐ The value of the site for Hen Harrier and cumulative impacts:
 - ☐ The national survey – 2015 recorded 11 pressures on Hen Harrier. Mechanical removal of peat was most frequently recorded; hand cutting of peat; uncontrolled burning; cattle trampling and forest maturation. None of these in combination and cumulative pressures have been adequately considered by any environmental assessment submitted.
 - ☐ At Slieve Beagh SPA pressures observed were primarily extensive mechanised turf cutting, such that the traditional core area was no longer considered suitable habitat due to extensive habitat loss and degradation; and few sightings were obtained from within the former moorland stronghold for the species. The eastern territory at Slieve Beagh has been continuously occupied since the late 1990s in a remnant deep heather bank on the outer edge of the plantation and remains relatively undisturbed. However, this pair failed to breed successfully in 2015. In relation to the lack of Hen Harriers on site, it is known that there has been extensive illegal burning of designated Hen Harrier habitat both sides of the border. This has not been adequately assessed as an in combination and cumulative pressure by any environmental assessment submitted and could have contributed to the paucity of sightings in addition to the short duration of some of the surveys and the inappropriate timing of others, outside Hen Harrier breeding season.
- ☐ The presence of suitable Hen Harrier breeding habitat:

- The presence of suitable Hen Harrier breeding habitat must be considered across the whole site covering Ref. 18/562 and 10/110. Hen Harrier mainly utilise restock forest, scrub and heather/bog. These habitats are found on site in tandem with suitable foraging habitat. The presence of improved grassland, as part of a matrix of suitable habitat, does not discount the potential for Hen Harrier nesting within the site.
- The suitability of the site for Hen Harrier was previously raised in observations by An Taisce, NPWS, the Northern Ireland Environment Agency and the Heritage Officer in relation to ref 10/110, which are relevant to assessment of the combined impacts.
- Records of breeding Hen Harrier held by the Northern Irish Raptor Study Group within foraging distance of the site and various observations by Joe Shannon and Daniel Moloney are referred to and have not been referred to by the Consultant, despite being previously been highlighted by observers. This is noted in the submission of NPWS on the subject file. Their Hen Harrier assessments are not based on the best available scientific information, as required.
- Approving developments based on the lack of Hen Harrier sightings, when the Hen Harrier population has undergone serious decline within Monaghan, sets a very negative precedent.
- The precautionary principle and the requirements of the Birds and Habitats Directives should be implemented with greater rather than lesser caution when species and habitats are undergoing decline in conservation status.
- An Taisce does not agree with the applicant's claims that the site is of little value to breeding Hen Harriers. They cite the site description in the EIS for 10/110. According to the site maps, the habitats most closely associated with the turbines are:

T1 (turbine 1) & T2 - Wet grassland; T3 - Wet grassland and nearby blanket bog; T4 - Wet grassland and conifer plantation; T5 - Wet grassland and conifer plantation; T6 - Wet grassland and Oak/ash woodland; T7 - Scrub and conifer plantation. Forestry will always be in a state of flux between planting and harvesting and therefore the most accurate way to

assess the value of the forestry on site is to accept that at some point in time it will provide suitable nesting and foraging habitat.

- ☐ The location outside the SPA should not be relevant. Under the Habitats Directive, for any project to proceed, it must be established beyond reasonable scientific doubt that there will be no adverse impact on the integrity to the conservation function of the Natura 2000 sites.
- ☐ In An Taisce's opinion there is reasonable scientific doubt. It may result in barrier effects and habitat fragmentation, reducing the coherence of the Natura 2000 network. Considering 10/110 and 18/562 as a whole, 18/562 must be refused.
- ☐ Curlew
 - ☐ There is a known Curlew breeding site adjacent to the proposed development, confirmed in 2016. NPWS noted sightings of 4 pairs in their 10/110 submission.
 - ☐ The Slieve Beagh SPA and surrounding lands are known to support nationally important numbers of Curlew and Golden Plover populations.
 - ☐ Curlew has been added to the BCCI list. It is classified as near threatened on the IUCN list and is on the Global Red List.
 - ☐ It is one of the species most affected by wind farm developments.
 - ☐ Section 5.3.2 of the EIAR states that the route was revised following the discovery of a Curlew nest. It is accepted that this is Curlew breeding habitat.
 - ☐ The importance of the site and adjacent lands for breeding Curlew has not been adequately assessed, in particular during the breeding season; nor has the potential negative impacts that the development may have on local and regional Curlew population, given the established negative impacts of wind farms.
 - ☐ In 2016 4 pairs were recorded in the area. This is one of the last breeding sites in Monaghan.

- The Dept. of Culture, Heritage and the Gaeltacht highlighted that the route runs through or close to important habitats for ground nesting waders in North Monaghan. The key Curlew breeding areas that would be affected are in the townlands of Luppan, Shanmullagh, Coraghbrack, Drumlester, Tonintlieve, Cloghfin and Derryhellan (based on known Curlew sites recorded during the 2015-2017 National Curlew Survey). It is widely known that avian predators (primarily corvids) are primarily responsible for the high rates of nest failure in Curlew and other breeding waders in Ireland. This issue has not been addressed in the reports on the environmental impacts of the grid connection.
- Refusing inappropriate developments, like wind farms and their constituent infrastructure, is a pre-requisite to enhanced conservation efforts, given the established negative relationship between the species and wind farms.
- The applicant has argued that the greater the number of potential impacts in the area, the less serious any one constituent threat should be considered. An Taisce wholeheartedly disputes this line of thinking and considers it not aligned with the precautionary principle. The greater the range of pressures/threats there are on a species, the greater is the chance that additional pressures/threats will result in the cumulative impacts being significant. This is supported by NPWS.
- Curlew Task Force recommendations:
 - The Curlew Task Force highlights the negative impact of wind turbines on breeding Curlew.
 - Curlew are significantly impacted by the construction of wind turbines within their breeding areas (e.g. Pearce-Higgins et al. (2012). In Ireland, there are ambitious targets for expanding the role of renewable energy. The Planning and Development (Strategic Infrastructure) Act 2006, provides for new streamlined consent procedures that apply to wind farms expert opinion indicates that wind turbines are likely to have a population-level impact as increasing numbers of wind farms are constructed within breeding areas and are likely also to prevent the re-establishment of populations if lost due to other reasons. Specific guidance for siting of wind

farms in relation to Curlew should be provided. This new guidance should apply equally to new applications and applications requiring renewal. This should form part of Ministerial Guidance.

- ☐ Recommendation 6.1 – In the planning system, safeguard Curlew sites from inappropriate development by providing Curlew locational data and Ministerial Guidelines to Planning Authorities.
- ☐ Recommendation 6.3 - Consider protecting key areas for Curlew through improved regulation or legislative powers.
- ☐ To approve the proposed development would negatively impact on 2% of the remaining Irish breeding population of Curlew.
- ☐ Impacts of wind farms on Hen Harrier and Curlew:
 - ☐ Direct impacts on Hen Harrier such as mortality from collisions with rotating blades.
 - ☐ Indirect effects of displacement and disturbance; Pearce-Higgins et al. (2012) found that the species such as Red grouse and Curlew densities (declined) at wind farm sites during construction. Red grouse densities recovered subsequently in these areas, but Snipe and Curlew densities did not. Seven of the 12 species studied exhibited significantly lower frequencies of occurrence close to the turbines.
 - ☐ The avoidance of wind farms for a 250m radius will result in a loss of foraging habitat for the local Hen Harrier population. The reduced densities of Meadow pipit and Skylarks, within the footprint of the wind farm and other altered habitats, will have a knock on effect for any Hen Harriers whose territory the wind farm falls within.
 - ☐ Curlew show avoidance up to 800m from turbines.
 - ☐ Fernández-Bellón et al, 2018 found that total bird densities were lower at wind farms than at control sites and the greatest differences occurred close to turbines. For open-habitat species, wind farm effects may occur at a landscape scale. The open-habitat species in the study included Meadow Pipit and Skylark, which are the primary prey species for Hen Harrier.

- Other studies (of Hen Harrier and wind farms) cited in the submission are: Wilson et al 2016; O'Donoghue et al 2011, Whitfield and Madders 2006; Scott and McHaffie 2008; and Madden and Porter 2007.
- The impact on the Hen Harrier's ability to successfully capture prey within the footprint of a wind farm is another issue. Hen Harriers hunt aurally as much as visually. It is possible that noise from rotating turbines may deter hunting or reduce success.
- The legal case Kelly v An Bord Pleanála, is cited regarding the need to carry out Appropriate Assessment in light of the best scientific knowledge in the field and that the final determination must include complete, precise and definitive findings. The Board must decide that no reasonable scientific doubt remains.
- An Taisce's opinion is that wind farms and their associated infrastructure should be located in wholly unsuitable Hen Harrier and Curlew habitat and outside the 5km foraging distance.
- Given the presence of suitable nesting and foraging habitat for Hen Harrier within the site, and the connectivity of these habitats on a landscape level to the Slieve Beagh SPA, An Taisce believes that it would not be appropriate to approve the development as a whole. Refusal is supported by the declining status of the local and national Hen Harrier and Curlew populations and the lack of data for Curlew in and around the site in the current and previous environmental reports.
- According to BirdWatch Ireland's Wind Sensitivity Mapping Tool, the proposed site is sensitive for both Curlew and Hen Harrier, with scores for Curlew at 19.90 and Hen Harrier at 19.0.
- Conclusion
 - There is clear functional interdependence between Ref. 10/110 and Ref. 18/562. The impacts of the project as a whole must be considered when deciding on whether Ref. 18/562 is compliant with the requirements of the EIA Directive and the Habitats Directive. Having considered the positions taken by Department of Culture, Heritage and the Gaeltacht, Birdwatch Ireland and An

Taisce and the history of past decisions made by Monaghan County Council and the Board, An Taisce submits that one must conclude that Ref. 18/562 in combination with Ref. 10/110 will have significant negative impact on:

- ☐ Hen Harrier – breeding
- ☐ Curlew – breeding
- ☐ Sliabh Beagh SPA (site codes 004167 and UK 902302) and
- ☐ Sliabh Beagh SAC (site code UK 0016622)
- ☐ The Board must refuse.

6.2. Applicant Response

- 6.2.1. Coolberrin Wind Farm Ltd t/a Energia Renewables have responded, 30 Oct 2019, to the grounds of appeal, including:
- 6.2.2. The appeal comprises technical issues some of which include a legal element. Gaeltech Energy Services and A&L Goodbody have been engaged to respond.
- 6.2.3. Gaeltech Energy Services
- 6.2.4. Many of the issues raised have been addressed in the application documents or in response to the request for further information. Many are a return to issues raised in the permitted Mountain Waters Wind Farm and amount to a *de novo* collateral objection to the extant permission.
- 6.2.5. Re. the contention that the permitted wind farm site contains habitat which is suitable for foraging Hen Harrier. They direct the Board to the appellant's submission (p20) where it is stated that the site would be likely to support foraging Hen Harrier if suitable actions were taken: an acknowledgement that suitable foraging habitat for Hen Harrier is not currently available. The permitted wind farm site and the proposed grid connection site are located predominantly on improved agricultural grassland and do not support, and are not likely to support, optimal foraging habitat for Hen Harrier.
- 6.2.6. Scope of the project – in order to ensure full and transparent compliance with the O'Grianna judgement the applicant resubmitted the entirety of the original EIS/EIAR for the permitted Mountain Waters Wind Farm as part of the planning application.

The results of additional bird surveys, which have been ongoing since August 2017 were also utilised to understand the baseline environment, particularly in relation to any notable changes to the habitat composition of the permitted wind farm site and its use by birds.

- The case referred to in the appeal ((2015) IEHC 633) is of no relevance whatsoever.
- Furthermore, the extant permitted development site has now been subject to a comprehensive assessment on two separate occasions: in respect of PL18.240760 and in the EIAR/EIS and NIS for the proposed development.
- The EIAR/EIS submitted fully acknowledges that there is a functional interdependence between the permitted wind farm and the proposed grid connection infrastructure; and the proposed development has been assessed cumulatively by reference to each of the environmental factors included in the EIAR/EIS and NIS, submitted.

6.2.7. Planning History: Re. the appellants contention that the applicant's main line of argument for concluding the absence of impacts on the environment, is based on the fact that the Board previously granted planning permission for the wind farm and that the submission made by the Dept. of Arts, Heritage and the Gaeltacht and Birdwatch Ireland have clearly established that the construction of the wind farm and its associated infrastructure would result in significant negative impacts on Hen Harrier, Curlew, the Slieve Beagh SPA and Slieve Beagh SAC.

- These assertions are entirely unfounded. The EIAR/EIS and NIS, submitted have been undertaken in full cognisance of the intervening time period between the previous decision and the subject application. Evidenced by the assessment of the permitted development site to determine if any adverse effects, additional to those previously assessed, were likely to occur and by the comprehensive cumulative assessment undertaken.
- The response refers to the nature of the proposed development, which of itself would not require EIA. The site extends progressively away from the permitted development site and the Slieve Beagh SPA and SAC. Given that the proposed development in itself would have no likely significant impacts on the environment it

stands to reason that there will also be no likely significant cumulative effects, taken together with the permitted wind farm.

□ The EIAR/EIS and NIS submitted was prepared by suitably qualified and competent experts and details extensive desk and field based assessment of the nature and location of the proposed development, the likelihood of significant effects on the environment and cumulative effects. The planning authority have independently made a determination.

□ In the documentation submitted, the applicant has referred to comments made by the Board and the Board's Inspector in respect of the permission. These were solely to demonstrate that there has been no material alteration to the baseline environment in the intervening years.

6.2.8. Scope of the Planning Application: Re. the appellant's contention that without up to date breeding and wintering birds surveys of the Mountain Waters Wind Farm the Board cannot assess the project as a whole, and that the ecological impact assessment has failed to fully assess the direct, indirect and cumulative impact of the proposed development on Hen Harrier. These contentions are entirely unfounded. As set out in the response to the request for further information, detailed multi-annual bird surveys at the wind farm site and along the route of the proposed grid connection have been ongoing since 2017. These were the bases for the EclA and the NIS. The NIS was prepared based on scientific evidence obtained from a range of documentary sources and from recent ornithological and habitat surveys undertaken since 2017.

6.2.9. Adequacy of ecological / ornithological surveys - Re. the appellant's contention that information submitted is not adequate to meet the requirements of an ornithological survey, that much of the information relates to previous planning applications, and that adequate breeding season survey of Hen Harrier has not been provided. These contentions are entirely refuted. Best practice guidance has been followed Scottish Natural Heritage Guidance 'Recommended bird survey methods to inform impact assessment of onshore wind farms (SNH, 2017) and assessment and mitigation of impacts of power lines and guyed meteorological masts on birds' (SNH, 2016). It is based on recent survey work, predominantly since 2017. Methods, standards and fieldwork are fully described.

Re. the appellant's reference to sightings of Hen Harrier by Mr Joe Shannon and Mr Daniel Moloney and the contention that these have not been acknowledged. Section 1.1 of the NIS sets out desktop sources from the publicly accessible information. The applicant is fully aware of previous sightings of Hen Harrier in the general vicinity of the proposed development site. Mr Shannon reported 2 active nest sites on the eastern side of Slieve Beagh approx. 4km and 2.5km from the site of the permitted wind farm. However no information is provided as to whether the Hen Harriers associated with these nests were ever recorded flying over the permitted wind farm, or, as would be expected, their foraging was primarily undertaken within the confines of the SPA. Re. the survey by Irwin et al, suggesting that 49% of foraging occurs within 2km and 89% within 5km of the nest site; only 1 nest site, located with the Slieve Beagh SPA, was identified (2019) within 5km of the permitted wind farm, and 4km south west of the nearest permitted wind turbine. Studies by Arroyo et al (2009) and Arroyo et al (2014) conclude that typical foraging range from nest sites is 1km for females and 2km for males. Given the separation distances, the permitted and proposed development sites are not located within the core foraging areas for these nests and due to the absence of suitable habitat, it will never comprise a core foraging area.

Studies by Wilson et al (2016) conclude that the presence of wind farm developments located within areas of Hen Harrier populations has not resulted in a statistically significant negative trend on Hen Harrier populations.

Re. Mr Daniel Moloney sightings towards Coolberrin Hill – neither the permitted wind farm, nor the proposed grid connection, are located on Coolberrin Hill. The permitted wind farm is located c400m to the nearest turbine to the north of Coolberrin Hill, on lower ground, while the proposed grid connection runs to the east. Given the separation distance from the nearest permitted turbine it is considered that no adverse displacement impacts would arise. The proposed development (grid connection) and permitted wind farm would have no impact on any occasional visits to Coolberrin Hill by Hen Harrier from the SPA located to the north and east. These rare sightings do not alter the overall conclusions of the EclA and NIS.

The applicant has never disputed the fact that Hen Harrier may on occasion visit the site of the permitted wind farm. The habitats contained within the wind farm site are sub-optimal for Hen Harrier and this conclusion was formerly accepted by the Board

in determining to grant planning permission. Habitats present remain generally unchanged and this has been incorporated into the cumulative assessment.

Habitats within the proposed development are predominantly improved agricultural grassland and not of particular use to Hen Harrier. The proposed development would have no impact on Hen Harrier. None of the sightings reported were within either the permitted wind farm site or the proposed development site, and were at distances of 2.5 to 4.5km; core foraging between 1-2km. In 2018 Ecofact identified the location of 1 nest approx. 4km from the permitted wind farm site. At this distance both the permitted wind farm site and the proposed development site are beyond the core foraging area.

- 6.2.10. Biodiversity Impacts - The points raised refer entirely to the permitted development and do not refer to the proposed development. The extensive field work undertaken in the intervening years since the permission, continues to confirm that the permitted development will not result in adverse impacts on the environment.
- 6.2.11. Hen Harrier – the location of the Hen Harrier nest was recorded by Ecofact in 2018, located 4km south of the permitted development and 3.5km west of the proposed development. There was no evidence of a nest at this location in 2019. This is consistent with the 2015 National Survey of Breeding Hen Harrier which recorded a general spatial shift from the Monaghan section to the Northern Ireland section of the SPA. This serves to increase the separation distance between the proposed development and the permitted wind farm from key Hen Harrier breeding habitats. The infrequent, occasional visits to the permitted wind farm site confirms this.
- 6.2.12. Re. the purported absence of information available from the Golden Eagle Trust, this has been addressed in the FI response. From recent targeted surveys and publicly available data sources sufficient information was available to undertake an assessment of the potential for adverse effects.
- Re. the contention that the habitats on site provide suitable foraging habitat, no scientific evidence or site specific fieldwork has been provided to refute the results of surveys undertaken by the applicant.
- 6.2.13. The presence of suitable Hen Harrier foraging habitat: Re. the contention that the suitability of habitats on site as suitable foraging habitat and the degradation of foraging habitat and the mere presence of Hen Harrier indicating presence of

suitable habitat. Many of the points raised relate to the permitted development. A multitude of surveys at both the permitted and proposed sites have concluded that optimal Hen Harrier foraging habitat is not present. This has been the case since 2009 and the grant of permission. The Northern Ireland Environmental Agency (NIEA) stated that it holds no data which indicates that the appeal site is important for breeding or foraging raptors of conservation concern.

An array of information based on multi-annual surveys has been submitted and is before the Board, which unequivocally demonstrates that the site does not comprise optimal suitable foraging habitat for Hen Harrier.

6.2.14. Attached to the appeal response are letters from:

The Northern Ireland Environmental Agency, 5 April 2011,

RSPB 6 April 2011

A&L Goodbody 30 October 2019

6.2.15. The A&L Goodbody letter includes:

- ☐ That the applicant is incorrectly trying to limit the scope of the project to the grid connection.
- ☐ That the applicant has failed to include the best available scientific evidence to support the AA with the planning application.
- ☐ The evidence provided to An Bord Pleanála (the Board) is inadequate to allow it to determine that the project will not adversely affect the integrity of European sites and in particular Slieve Beagh SPA.
- ☐ A grant of permission for the proposed development would be inconsistent with the State's obligations to avoid pollution or deterioration of habitats of interest in areas outside specifically identified protection areas.

The scope encompasses the entire project:

The Board has been provided with:

An EIAR for the grid connection works, which assesses the in-combination effects of the grid connection and the Mountain Waters Wind Farm;
the EIS for the original Mountain Waters Wind Farm planning application;
all of the technical modifications planning and environmental reports.

The applicant has reviewed and where necessary updated information.

In circumstances where the applicant has produced a robust EIAR that complies with the requirement to assess the entire project and its cumulative impacts with other projects, An Taisce's reliance on O'Grianna and An Taisce v An Bord Pleanála are misconceived.

The developer has not sought to limit the scope of the NIS.

The applicant has provided the best scientific evidence to support the AA: updated surveys of the Mountain Waters Wind Farm site and the grid connection route.

An Taisce submits that the application does not include the best scientific evidence on the basis that it omits:

- a) Up to date breeding and wintering bird surveys of the site of Mountain Waters Wind Farm (10/110),
- b) Records of breeding Hen Harrier held by the Northern Irish Raptor Study Group which BirdWatch Ireland has highlighted as part of their submission on 17/258, and
- c) Observations by Joe Shannon and Daniel Moloney.

In relation to a) An Taisce is mistaken - up to date breeding and wintering bird surveys of the site of Mountain Waters Wind Farm are included.

In relation to b) & c) the observations are outside the windfarm and grid connection sites and are not recent surveys. The best scientific evidence consists of the full suite of the applicants surveys, which have continued since the lodgement of the application. The surveys are consistent with the decision of the Minister of Arts, Culture and the Gaeltacht not to include in the Slieve Beagh SPA, the area now making up the Mountain Waters Wind Farm site, or the mosaic of rough grassland, forestry and scrub linking the site and Slieve Beagh.

CJEU in Commission v Bulgaria requirements include that classification as an SPA cannot be the result of an isolated study of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the ecosystem in question and...that the ornithological criteria which alone form the foundation of the classification must have a scientific basis.

Nothing in the Habitats Directive or case law suggests that information over and above the applicant's recent site-specific surveys is required or that the Board is required to treat the other sources referred to by An Taisce as giving rise to reasonable scientific doubt as to the likelihood of adverse effects on the Slieve Beagh SPA.

Citing *Holohan v An Bord Pleanála* they state that even if the sources are expert opinion, it is not enough of themselves to create reasonable scientific doubt, provided the Board has other grounds to consider that there will be no adverse effects on the integrity of the SPA and provide an explicit and detailed statement of reasons.

Standard in relation to Slieve Beagh SPA - The Board is entitled to find that Coolberrin Wind Limited has provided sufficient information to eliminate scientific doubt as to the impact of the development on Slieve Beagh SPA and to predict the likely effects on Curlew. The standard required, per *Waddenzee* is reasonable scientific certainty or the absence of reasonable scientific doubt.

Standard in relation to Curlew – the requirements of the EIA directive have been complied with.

Section 4.2 of the EIAR details baseline habitats and 4.3.3 details baseline scenario for Curlew. No impacts are predicted. The affected habitat is not designated under the Habitats or Birds Directive.

Article 4 (1) of the Habitats Directive and Article 3 (1) of the Birds Directive are referred to. A primary legal obligation is that designated SPAs provide a sufficiently large habitat to maintain its populations on a long-term basis. Case law indicated that any classification presupposes that the competent authorities are convinced, based on the best scientific knowledge available, that the site in question is among the most suitable areas for the protection of birds. In declining to designate the vicinity the minister has complied with the requirements of the Directive and determined that the area is not among the most suitable habitats for the protection of the Curlew and is not essential to ensure the maintenance of the Curlew on a long-term basis. Undesignated areas are of significantly lesser degree of importance than designated areas.

The affected habitat will not be subject to pollution or deterioration, (citing Article 4(4) Birds Directive CJEU Commission v Ireland (C-418/04) & Natural Habitats Regulations 2011 Article 27(4)).

The Ecological Impact Assessment submitted with the planning application observes that .. given the lack of significant potential indirect impacts on birds, impacts are evaluated as being imperceptible negative in the local context. The proposed site is assigned the lowest sensitivity ranking for Curlew and Hen Harrier.

6.3. Planning Authority Response

- 6.3.1. The planning authority have not responded to the grounds of appeal.

7.0 Board Correspondence

- 7.1.1. On the 20th April 2021 the Board wrote to the parties stating that their previous decision under reference number ABP-305536-19 (on this appeal) had been quashed by the High Court on consent, and the case remitted back to the Board for determination. An invitation was issued to the parties to make any further general submissions / observations they might have on the planning application the subject of the appeal.

7.2. Applicant Response (post JR)

- 7.2.1. The applicant response, from Energia Renewables on behalf of Coolberrin Wind Limited, 17 May 2021, includes:

They understand that submissions must be limited to the matter in question, namely the matter which has arisen in relation to the appeal, in particular the error made by the Board regarding the scope of the environmental assessments. They understand the phrase environmental assessments to include environmental impact assessment and appropriate assessment.

They structure their submission under headings:

- d) The correct approach to cumulative assessment;
- e) The bird survey data and analysis relevant to the environmental assessments and, in particular, the necessary cumulative assessment;

- f) Any change or update in policy made since the appeal was made, 1 October 2019.

7.2.2. The correct approach to cumulative assessment:

- g) The proposed development the subject of this appeal is the grid connection for a permitted windfarm. The windfarm was granted by the Board and remains subsisting, free from legal challenge or any question about its validity.
- h) When considering the impact on the environment of the grid connection, the Board is not free to revisit whether permitted windfarm should or should not have been granted planning permission (*Narconon Trust v An Bord Pleanála* (2020) IEHC 25).
- i) Even the argument about so-called 'project splitting' cannot be utilised so as to, in effect, ensure that projects already granted approval (and in respect of which none of the applicants raised any objection) can be in any sense reconsidered or reopened within this application (*Griffin v Dublin City Council* (2020) IEHC 506). Arguments made, based on *O'Grianna v An Bord Pleanála* (2014) IEHC 632, do not change this fundamental matter.
- j) When considering the impact on the environment of the grid connection, the Board must consider the cumulative effects of the proposed development. This requires attention to the likely significant effects on the environment of the grid connection resulting from 'the cumulation of effects with other existing or approved developments, or both'.
- k) The requirement for cumulative assessment does not require the Board to attribute to the grid connection or assume the impact of the grid connection will include the impacts that might arise from every existing and/or approved development including the construction and operation of the permitted wind farm.
- l) The correct approach is for the Board to consider the effects of the grid connection on an environment that includes, and is burdened by, those existing and/or approved developments. In some cases, that might increase the risk being the straw that breaks the camel's back (as the baseline environment is perhaps more stressed) but it does not mean that the impact

of the grid connection must be assumed to include every other existing and/or approved development.

7.2.3. The bird survey data and analysis

- m) Extensive bird surveying, on both the proposed grid route and the permitted wind farm, have been carried out by EcoFact between Nov. 2017 and May 2021.
- n) 440 hours of vantage point surveys: 4 points along the route and 3 points on the permitted windfarm; and targeted walkover surveys as detailed in table 1 of the submission.

Curlew:

- o) Coolberrin has maximised the separation distance between the proposed development and the identified nest sites (active and failed). The proposed connection route is located in excess of 370m from the nearest 2018 Curlew nest site and 260m from the nearest 2019 Curlew nest site. Similarly track creation as part of the development cannot impact on known nesting sites, given the separation distances.
- p) As Curlew exhibit notable levels of fidelity to nesting locations and given the significant existing telecommunications infrastructure and treelines / hedgerows, it is not likely that future nest sites would arise closer to the proposed development and the proposed development does not result in any increase in perch / predation opportunities. It follows that the proposed development does not facilitate increased predation in the vicinity of existing nest sites.
- q) Breeding season survey in 2020 and 2021: 45 hours, concluded that the Curlew did not nest on the windfarm site.
- r) EcoFact consulted with the local Nest Protection Officer for the Curlew Conservation Programme in April 2021, who confirmed that Curlew had not been seen in the previous weeks and did not attempt to nest in the area. There are therefore no Curlew nests on or near the windfarm site in 2020 & 2021. There has been no significant change in the baseline information which formed the premise for the grant of planning permission for the windfarm.

Hen Harrier:

- s) The proposed development will have no direct or indirect impact on Hen Harrier. There is no suitable breeding habitat for Hen Harrier along the proposed grid route. The preferred foraging habitat of Hen Harrier is not present within any section of the site. The proposed grid route is not located on any regular flight route between either feeding area, resting, or breeding sites.
- t) Taking into account the nature of the surrounding area and the existing overhead line network, and the low usage of the northern section of the route by foraging Hen Harrier it can be concluded that collision impact on Hen Harrier is negligible. There is no doubt that the proposed development in itself is not likely to have significant adverse impacts on Hen Harrier or the achievement of the conservation objectives of the SPA.
- u) Out of an abundance of caution additional surveys have been carried out. From these surveys it can be concluded that the baseline environment, which formed the premise for the grant of planning permission, has remained largely unchanged. A table of hours of survey and sightings is provided.

7.2.4. Policy Update

- v) All of Government Climate Action Plan (2019) a commitment to 70% renewable electricity by 2030, including up to 8.2GW of onshore wind, a doubling of current capacity.
- w) Ireland's National Energy and Climate Plan, submitted to the EU Commission under the governance arrangements for the EU's Clean Energy Package, created a binding commitment to achieve at least 70% renewable electricity by 2030. Subsequently the EU's Clean Deal has increased Europe's climate ambition. The EU's Clean Deal will be underpinned by a new Climate Law, making the commitment to Net Zero by 2050 legally binding.
- x) The Climate Action and Low Carbon Development (Amendment) Bill (2021) proposes legally binding framework what builds on the commitments in the Climate Action Plan, and seeks to achieve a 51% (7%pa) reduction in carbon emissions by 2030 and commit to Net Zero by 2050.

- y) The ongoing review of the Climate Action Plan (CAP) retains commitments to 70% renewable electricity by 2030 but this may need to increase. The Climate Action Plan 2021 interim actions have referenced a number of actions required to achieve the 70% renewable electricity target by 2030. In the programme for Government (2020) the parties commit to taking the necessary action to deliver at least 70% renewable electricity by 2030.
- z) The county development plan has changed since the application was made. The current plan 2019-2025, section 8.15 refers to wind energy
- aa) Currently County Monaghan has 24.6MW of commercially installed wind energy of the 4,235MW nationally, less than 1%.
- bb) Monaghan County Council voted in favour of the Monaghan County Council Climate Change Adaption Strategy 2019-2024 and signed their Climate Action Charter with DECC in 2020 committing the local authority to the wider changes provided for in the CAP.
- cc) The EcoFact bird surveys is attached.

7.3. Appellant Response (post JR)

7.3.1. An Taisce have responded, 17 May 2021, which includes:

- dd) They express some concerns regarding the process of the JR proceedings, which appear to me to be outside the scope of this report.
- ee) The reiterate grounds raised previously in their appeal, highlighting certain matters, and state that the issues raised remain relevant.
- ff) BirdWatch Ireland is aware that breeding Curlew have been active in the area since 2016 and that a breeding pair is actively using the area within the footprint of the development in 2021.
- gg) Attached to the response is a copy of a letter addressed to the Chief State Solicitor's Office regarding the prohibitive costs for environmental non-Governmental Organisations in participating in Judicial review proceedings, as notice parties, and access to documents.

7.4. Applicant Further Response

- 7.4.1. The applicant submitted a response, 24 June 2021, to An Taisce's submission, which includes:

Following the remitting of the appeal to the Board, a further invitation was issued to the parties to make any further submissions/observations they might have on the planning application the subject of the appeal.

There is no dispute that the EIA Directive requires consideration of cumulative effects and that the Habitat's Directive requires consideration of in combination effects. The proper approach to same was the subject of the proceedings and the submission made by Coolberrin on 17 May 2021.

An Taisce invites the Board to consider the impact of the proposed development (grid connection) on Hen Harrier 'in conjunction with' the permission granted for the windfarm (10/110, PL18.240760), this is not the correct approach to cumulative assessment. As explained in their submission dated 17 May 2021: the requirement for cumulative assessment does not require the Board to attribute to the grid connection, or assume the impact of the grid connection will include the impacts that might arise from every existing and/or approved development, including the construction and operation of the permitted windfarm.

The correct approach is for the Board to consider the effects of the grid connection on an environment that includes, and is burdened by, those existing and/or approved developments. In some cases, that might increase the risk of being "the straw that breaks the camel's back" (as the baseline environment is perhaps more "stressed"), but it does not mean that the impact of the grid connection must be assumed to include every other existing and/or approved development'.

The proposed grid connection will have no direct or indirect impact on Hen Harrier. There is no lacunae. The area of the grid connection and, indeed, the windfarm, has been the subject of ongoing vantage point survey, with more than 440 hours 20 minutes of survey completed, during over 184 visits.

With regards to cumulative impacts, out of an abundance of caution only, additional surveys have been carried out at the site of the permitted windfarm. From those extensive surveys, it can be concluded the baseline environment which formed the

premise for the grant of planning permission has remained largely unchanged. April 2020 to April 2021 during 198.5 hours of formal survey, on 78 visits, only 291 seconds of flight activity was recorded within 500m of the permitted windfarm. Even assuming that during construction of the permitted windfarm Hen Harrier activity along the grid connection corridor should increase, there remains no direct or indirect impact on that species, its conservation status or the integrity of the European site.

The data on Curlew is just as clear. The proposed development (grid connection) is located more than 370m from the nearest 2018 Curlew nest site and 260m from the nearest 2019 Curlew nest site. These are too distant to be affected by the proposed development. With regards to cumulative impacts, out of an abundance of caution, additional surveys have been carried out at the site of the permitted windfarm. From those extensive surveys in 2020 and 2021, it can be concluded that Curlew did not nest on the windfarm site. This was confirmed by the Nest Protection Officer of the Curlew Conservation Programme in April 2021.

The personal communications confirming breeding Curlew in the area is too imprecise and informal to be preferred to the detailed survey work that has been completed. In the event that any reasonable scientific evidence of same is produced to the Board, they would expect to be given sight of same for comment.

It is possible to read the submission made by An Taisce to invite the Board to revisit whether the permitted windfarm should or should not have been granted permission. The Board cannot lawfully do that, by analogy with *Narconon Trust v An Bord Pleanála* (2020) IEHC 25. In particular the High Court has made clear that even argument about so-called “project splitting” cannot “be utilised so as to, in effect, ensure that projects already granted approval (and in respect of which none of the applicants raised any objection) can be in any sense reconsidered or reopened within this application” (*Griffin v Dublin City Council* (2020) IEHC 507. This means that arguments, if made, based on the High Court judgement in *O’Grianna v. An Bord Pleanála* (2014) IEHC 632 do not change this fundamental matter. The windfarm permission remains valid and extant.

There is no dispute that the EIA directive requires consideration of cumulative effects and that the Habitats Directive requires consideration of in-combination effects. The

proper approach to same was the subject of the proceedings and the submission made by Coolberrin on 17 May 2021.

7.5. Observations

- 7.5.1. Peter Sweetman on behalf of Wild Ireland Defence CLG has submitted an observation on the appeal, which includes:

hh)The decision of the CJEU in case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanala applies to this development.

8.0 Assessment

- 8.1.1. The issues which arise in relation to this appeal are: the principle of the proposed development, appropriate assessment, impact on Curlew, environmental impact assessment and the following assessment is dealt with under those headings.
- 8.1.2. Legal guidance / direction has been offered to the Board as to how to approach assessing the appeal. It is inappropriate for any party to seek to direct the Board in their approach to assessment, beyond setting out issues, and therefore I have not had regard to the legal guidance / direction offered. I have had regard to the Board's direction dated 19th April 2021.

8.2. The Principle of the Proposed Development

- 8.2.1. The substation and grid connection are intended to serve a windfarm permitted under PL18.240760, PA Reg Ref. 10/110. Having regard to the extant permission and the policy context, which is supportive of renewable energy projects subject to consideration of environmental impacts, it is considered that the development would be acceptable in principle.

8.3. Appropriate Assessment

- 8.3.1. A document titled NIS is supplied with the application, attached as Annex 1 to the EIAr.
- 8.3.2. It includes screening which identifies the potential for impact:

European Site	Relevant QI & SCI	Is there a likelihood of significant effects	Reason
Slieve Beagh SAC [Site Code UK 0016622] c.6km	Annex 1 habitats: Natural dystrophic lakes and ponds, Blanket bogs*, and European dry heaths	No	No ecological connection
Slieve Beagh SPA [Site Code 004167] c.2km	Hen Harrier	Yes	Proximity of protected site and range of the species
Slieve Beagh Mullaghfad Lisnaskea SPA [Site Code UK 902302] c.2km	Hen Harrier	Yes	Proximity of protected site and range of the species
Magheraveely Marl Loughs SAC) Site Code UK 0016621] c12km	Habitats Hard oligo-mestrophic waters with benthic vegetation of Chara Spp. Alkaline fens Calcareous fens with Cladium mariscus and species of the Caricon davallianae and White-clawed Crayfish	No	No hydrological connection

*denotes priority site, if active only

8.3.12. Slieve Beagh SPA and Slieve Beagh Mullaghfad Lisnaskea SPA are carried forward for stage 2 AA.

8.3.13. The screening considers that the construction phase of the proposed development may give rise to disturbance to local avifauna via mechanical noise and human

activity, while the operational phase could pose a risk of collision / electrocution for local avifauna including Hen Harrier.

- 8.3.14. No suitable breeding habitat for Hen Harrier is located within the site. If Hen Harrier were to pass through it would be for foraging purposes only.
- 8.3.15. Loss of habitat is not considered to be a likely impact.
- 8.3.16. The preferred foraging habitat is predominantly moorland/grassland mosaic habitats, these are not present in the subject site.
- 8.3.17. Typical foraging range of 1-2km. given the fact that breeding sites have moved west into Northern Ireland, the frequency of flights is reduced.
- 8.3.18. The risk of collision (and/or with electrocution) is related to overhead elements, and is unlikely given the extremely low levels of Hen Harrier activity in the site.
- 8.3.19. There is potential for disturbance impacts.

8.4. Screening Conclusion

- 8.4.1. I concur with the findings in the screening report that no other Natura sites and no qualifying interest species other than Hen Harrier requires to be considered in stage 2 Appropriate Assessment.

8.5. Appropriate Assessment

- 8.5.1. The NIS describes the species Hen Harrier in some detail. No works will be carried out within the SPA. The Ireland Hen Harrier Survey 2015 is cited, it includes, for Slieve Beagh, that much of the moorland habitat is now probably beyond usefulness for nesting Hen Harriers where historical burning took place, in the core habitat area.

Construction Phase

- 8.5.2. Despite there being no potential for disturbance during construction due to the distance of 2km from the SPA, works in proximity to sensitive areas, good quality hedgerows, treelines or woodland will be undertaken outside the bird nesting season, following consultation with the ECoW.
- 8.5.3. Although the habitats on site are considered suboptimal for foraging Hen Harrier, and outside the foraging range, previous surveys have noted occasional usage of foraging Hen Harrier in the most northern section of the site. Works in proximity to sensitive areas, good quality hedgerows, treelines or woodland, will be undertaken

outside the bird nesting season, following consultation with the ECoW; there is no potential for disturbance impacts on foraging Hen Harrier.

- 8.5.4. As there will be negligible impacts from the proposed development it can't constitute cumulative impacts with the permitted wind farm.

Operational Phase

- 8.5.5. The site is not identified as a wildlife corridor or stepping stone for Hen Harrier migration. The proposed development is not situated along regular flight routes between either feeding areas, resting or breeding sites so therefore would not be considered a barrier to Hen Harrier movement. No barrier effects will arise. Hen Harrier are unlikely to hunt far from the nest when visibility is poor. Therefore it is assessed (per NIS) that if weather conditions are bright and clear, due to their good eyesight and manoeuvrability, power lines will be avoided.
- 8.5.6. Raptors are susceptible to electrocution on power lines, which occurs when the gap between two lines is breached by a bird's wing span, nesting material or prey. In Ireland due to the arrangement of conductors and the design of power lines, electrocution risk is low; Hen Harriers account for <5% of all electrocutions. Taking this and the low level of usage in the upper route section only, avoidance rates, and the distance from the SPA, the potential for electrocutions is negligible.
- 8.5.7. No significant impacts affecting the SPA are envisaged.

Mitigation measures

- 8.5.8. Works in proximity to the SPA (upper section of the route), good quality hedgerows, treelines or woodland will be undertaken outside the bird nesting season (1st March to 31st August). The ECoW will be consulted in relation to identification of sensitive areas, good quality hedgerows, treelines or woodland. Off-road vehicle activity, outside the works area, will be avoided or minimised, and machinery will not encroach onto habitats outside the development footprint.
- 8.5.9. The NIS concludes that there is reasonable scientific certainty that the proposed development will have no direct, indirect and cumulative impacts on the integrity of the Slieve Beagh SPA / Slieve Beagh-Mullaghfad-Lisnaskea SPA.
- 8.5.10. The Development Applications Unit (DAU) Department of Culture, Heritage and the Gaeltacht observation on the application includes:

The presence of foraging Hen Harrier at any time of year indicates that the development location is used by Hen Harrier, and as a result suitable habitat for foraging is present. The surveys carried out by Ecofact show that the proposed area is being used by Hen Harrier for foraging and as a flight path.

Long term surveys of at least 2 years of continual monitoring during breeding and non-breeding would be required to gain a more comprehensive understanding of land use by Hen Harrier in the wider area before decisions can be made in relation to development and the possible negative effects.

The conclusion that the core traditional breeding area has shifted westwards and is now located within the Slieve Beagh-Mullaghfad-Lisnaskea SPA, is based on 2015 survey and only relevant for that year. The cross-border Hen Harrier colony which occurs in the Slieve Beagh SPA and the Slieve Beagh-Mullaghfad-Lisnaskea SPA is very dynamic and there is constant interchange of breeding pairs from year to year. The breeding pairs move between the two neighbouring SPAs using a proportion of the traditional nest sites in various years. The occupancy of specific breeding sites in one particular year will dictate the areas used for foraging and their relative importance to nesting success.

No recent information on Hen Harrier was obtained from the Golden Eagle Trust who have been monitoring the population in Slieve Beagh SPA for a number of years as part of the Hen Harriers EIP and EU funded CANN project. Only 5 nest sites in the Slieve Beagh (Monaghan) SPA were occupied in 2018, which increases the importance of the foraging sites, including those identified as sub-optimal, in North Monaghan, including the northern section of the current development site and the wider area of the proposed windfarm site.

Very little is known about the feeding or resting areas used by Hen Harriers outside the Slieve Beagh SPA. Detailed surveys, far beyond the boundaries of this development site would be required to firstly identify all feeding/foraging and resting areas in the vicinity and secondly, identify flight paths between these areas and to and from breeding sites.

Contrary to what is stated in the report, collision risk with overhead wires is likely to be an important mortality factor among Hen Harrier.

The development would constitute in-combination impacts with afforestation or peat extraction: loss of foraging and being forced to travel further to find suitable foraging, noting that surrounding areas are primarily improved grassland and of limited suitability for foraging; and secondly reduced density of Meadow Pipit and other small upland birds for Hen Harrier that continue to forage.

8.5.11. An Taisce's observation on the application includes: They consider the proposed development has the potential for negative impact on this endangered species. The most recent national survey of Hen Harrier shows the population in decline nationally. The Hen Harrier SPA network is in decline. Only one pair of Hen Harriers bred successfully in the Slieve Beagh SPA in 2015. Given the decline in this species within the region, it is necessary to ensure that no development has the potential to result in further pressure to this endangered species. The NIS is flawed. The likelihood and frequency of Hen Harriers passing through the site is based on foraging distance of 2km from the nesting site. It should be noted that Hen Harriers have been recorded to forage up to c5km from the site utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank.

8.5.12. In response to a further information request, the applicant responded to all the issues raised by the foregoing prescribed bodies, including:

The numerous surveys carried out indicate that Hen Harrier activity is low; Ecofact have been involved in breeding bird surveys in this part of north Monaghan since 2011 and are extremely familiar with and have a good scientific understanding of the activities of Hen Harrier in the area.

Regarding lack of information on feeding and resting areas outside the SPA, and the need for detailed surveys far beyond the development site boundaries – detailed surveys have been carried out in accordance with Scottish Natural Heritage Guidance such that it can be concluded that the construction and operation of the proposed grid connection will not result in any barrier effects.

Regarding collision impacts, the benign nature of the development and its construction methodologies will neither result in any appreciable loss of potentially suitable foraging habitat or collision or electrocution risk. The height of the proposed grid connection is lower than other similar electricity lines/pylons. Recent studies support low levels of collision risk with OHL of this height. Species with a high wing

loading (ratio of body weight to wing area) and species with broad wings are typically more at risk of collision. Hen Harriers and other birds are more susceptible to collisions during periods of reduced visibility. They avoid flying in adverse weather conditions. Field surveys carried out by Eirgrid during 2012 and 2013 did not find any evidence of power line collisions by raptors. There is reasonable scientific certainty as to the absence of adverse effects on Hen Harrier.

Regarding in-combination effects research has found no consistent avoidance in relation to overhead power lines. The conclusions of the NIS remain valid.

8.5.13. Arising from the Board's invitation to make further submissions, following the outcome of the judicial review proceedings, submissions were made by the applicant and An Taisce.

8.5.14. The applicant reported that further surveys had been carried out and that between April 2020 and April 2021 during 198.5 hours of formal survey, on 78 visits, only 291 seconds of flight activity was recorded within 500m of the permitted windfarm. They stated that even assuming that during construction of the permitted windfarm Hen Harrier activity along the grid connection corridor should increase, there remains no direct or indirect impact on that species, its conservation status or the integrity of the European site.

8.6. Assessment

8.6.1. The Board has before it sufficient information to enable the carrying out of an assessment of the potential effect of the proposed development on Hen Harrier, which is the only species required to be considered in stage 2 Appropriate Assessment.

8.6.2. The site is not within a Hen Harrier breeding area. The site at its closest point is 2km from the SPA. The proposed development has a small footprint and therefore any direct loss of foraging habitat is negligible. Extensive surveys over a prolonged period have demonstrated that there is little Hen Harrier flight activity across the site.

8.6.3. Having regard to the nature of the power lines proposed, Hen Harrier are not susceptible to power line collisions or electrocution.

- 8.6.4. In-combination effects - appropriate assessment was carried out in relation to the permitted windfarm which concluded that it was not likely to have a negative effect on the conservation objectives of the SPAs.
- 8.6.5. The proposed development will not have a negative effect on Hen Harrier, therefore notwithstanding that forestry and turf cutting have a negative effect on this species, in-combination effects with forestry and turf cutting will not arise.

Conclusion

- 8.6.6. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V [or 177AE] of the Planning and Development Act 2000 as amended.
- 8.6.7. Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be likely to have a significant effect on Slieve Beagh SPA and the Slieve Beagh-Mullaghfad-Lisnaskea SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.
- 8.6.8. Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site Nos 004167 and UK 0016622, or any other European site, in view of the sites' Conservation Objectives.
- 8.6.9. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

8.7. **Impact on Curlew.**

- 8.7.1. Curlew is not a qualifying interest of the SPAs.
- 8.7.2. The species is afforded protection under the EU Birds Directive (2009/147/EC) where it is listed as an Annex II species. In Ireland, the Curlew is also protected under the Wildlife Acts and the Birds and Natural Habitats Regulations, 2011. It is on the Red List of Birds of Conservation Concern in Ireland (BoCCI) and is the only Irish bird on the IUCN² Red List of Threatened Species.

² International Union for the Conservation of Nature and Natural Resources (IUCN) where it is assessed as critically endangered

- 8.7.3. Curlew are known to nest in the area. The overhead line has been designed to avoid known nests. Notwithstanding extensive ornithological surveys, the route required amendment when a nest was found in its vicinity. It is stated that the proposed development is located in excess of 370m from the nearest 2018 Curlew nest site and 260m from the nearest 2019 Curlew nest site. According to the further information response, if future nest sites are located at a lesser distance from the proposed development, which is considered to be unlikely given that Curlew exhibit notable levels of fidelity to nesting locations, given the significant telecommunications infrastructure and treelines/hedgerows, it is assessed that the proposed development is unlikely to result in a significant increase in perch/predation opportunities.
- 8.7.4. The response to the further information request (Mountain Waters Wind Farm Grid Connection Request for Further Information Response (Planning Ref: 18/562) Version 24th June 2019) also states that the already cluttered Co. Monaghan landscape, agricultural activity, forestry, one-off houses etc. is impacting the breeding Curlew population in this area. While acknowledging that cumulative effects can arise from individual insignificant effects from one or more sources, it states that there is no evidence to suggest that the proposed development will result in any additional effects on bird species. They also state that changes in habitat and habitat favouring predators are posing serious risk to remaining bird species, but consider that the current proposal for a grid connection, a benign development consisting of wooden pole sets and suspended cables, located in sub-optimal habitats and adjacent to treelines and field boundaries, would not significantly add to the existing risk on the remaining Curlew in this area.
- 8.7.5. As stated in the first section of this report, there is limited development in the northern part of the site, which could not be described as a cluttered landscape.
- 8.7.6. The further information response shows mapping on an aerial photo (orthophoto) of the proposed grid connection line and its 500m buffer. Included are Curlew nest site locations for 2018 and 2019 and potential Curlew breeding habitat, with the notation *'as mapped during 2018 breeding bird survey other potential areas may exist, surveys for 2019 are ongoing'*. A number of features on this map are worth noting. The area of interest in relation to Curlew extends across the subject site for a considerable distance from the northern end southwards. Not all nest sites are

located on lands which were identified as potential breeding habitat; other land was also selected for nesting. Five of the areas identified as having Curlew breeding habitat potential, are close to or adjoining the proposed line, and parts of those identified potential breeding areas belong to involved landowners. This is most easily seen from a comparison of the aerial photo with the drawing titled 'overall site location plan sheet 1 of 2, sheet number 05603-301a'.

- 8.7.7. The proposed development involves potential impact from disturbance arising from construction activities, and potential impact from predation arising from the creation of additional / improved routes through habitat and the creation of perches which would enable preying by corvids. The Dept. of Culture, Heritage and the Gaeltacht advice is that research shows that in their first year Curlew are more vulnerable to collisions with overhead wires than adults, highlighting the importance of avoiding areas with breeding Curlew when deciding where power lines should be erected.
- 8.7.8. A considerable body of work has been carried out nationally in relation to Curlew conservation. Publications such as 'Action for Curlew in Ireland Recommendations of The Curlew Task Force, May 2019', 'Curlew Conservation Programme Annual Report 2021, National Parks & Wildlife Service', and the Draft Prioritised Action Framework (PAF) for Natura 2000 in Ireland, pursuant to Article 8 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), July 2020, have been referred to earlier in this report.
- 8.7.9. The Curlew population has plummeted. The decrease of in population of 96% and of 89% in the extent of breeding area of Curlew, which has occurred in the past 30 years is of great concern³. This part of north Monaghan is one of only 9 areas selected nationally for the targeted conservation programme.
- 8.7.10. As stated in the most recent Curlew Conservation report 2021, even what should be smaller issues in the wider landscape are now significant issues, given the small number of breeding pairs, such that every pair and every chick is a significant proportion of the remaining national population. In light of the perilous state of the protected species, any possibility of negative impact is unacceptable.

³ breeding: long-term range decline of 89%.

8.7.11. The documentation on file indicates the possibility of negative impact on breeding Curlew arising as a result of the proposed development. In the absence of conclusive evidence that adverse effects on this species, which is one of the Government's target species for protection, with its own taskforce, can be mitigated, which evidence has not been provided, permission for the proposed development should be refused.

8.8. Environmental Impact Assessment

8.8.1. The following assessment relates to environmental considerations excluding Curlew and Hen Harrier, which have been dealt with under separate headings earlier in this report.

8.8.2. An EIAR was submitted with the application. It includes:

8.8.3. Vol 1 in sections:

1 Introduction

2 Description of the Proposed Development.

3 Description of the Existing Environment

4 Description of Likely Significant Effects – under the headings:

Population and human health

Biodiversity

Land & soil,

Water,

Air and Climate

Landscape

Cultural Heritage

Noise & Vibration

Radiation

Shadow flicker

Material assets: Transport & Access, Telecommunications & Services,

Agriculture and

Interactions of the Foregoing.

5 Conclusions

8.8.4. The 51 page long report is accompanied by Annexes:

Annex 1 Natura Impact Statement

Annex 2 Ecological Impact Statement

Annex 3 Hydrological, Geological and Hydrogeological Impact Statement

Annex 4 Traffic Management Report

Annex 6 Outline Construction Environmental Management Plan

Annex 7 Non-Technical Summary.

8.8.5. **Volume 2** Mountain Waters Wind Farm EIA report Volume II⁴ (set out in chapters):

Chapter 1 Introduction – this includes consultation.

Chapter 2 Site Description & Proposed Development.

Chapter 3 Project Construction Assessment.

Chapter 4 Consideration of Alternatives & Site Layout Design.

Chapter 5 Planning Policy

Chapter 6 Ecological Impact Assessment

Chapter 7 Ornithological Impact Assessment (includes AA screening)

Chapter 8 Geology Impact Assessment

Chapter 9 Hydrology & Hydrogeology Impact Assessment

Chapter 10 Landscape & Visual Comparative Impact Assessment

Chapter 11 Archaeological, Architectural & Cultural Heritage Impact Assessment

Chapter 12 Noise Impact Assessment

Chapter 13 Shadow Flicker Impact Assessment

Chapter 14 Infrastructure, Aviation & Telecommunications Chapter 9 Hydrology & Hydrogeology Impact Assessment

Chapter 15 Access Impact Assessment

Chapter 16 Air Quality Impact Assessment

Chapter 17 Human Beings

Chapter 18 Interactions of the Foregoing

⁴ This is the EIS which accompanied the application for the wind farm Board Ref 240570, PA Reg Ref 10/110.

8.8.6. **Volume III** Mountain Waters Wind Farm Site Layout Amendments⁵

8.9. Assessment

- 8.9.1. Article 3(1) of the EIA Directive, requires that the EIAR identifies, describes and assesses in an appropriate manner, the direct and indirect significant effects of the project on the following factors: (a) population and human health; (b) biodiversity, with particular attention to 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 and the interaction between the factors referred to in points (a) to (d).
- 8.9.2. The requirements of Article 3(2) to include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned, relates to 'establishments' and therefore does not arise in this case.
- 8.9.3. In accordance with Article 5 and Annex IV, the EIAR provides a description of the project comprising information on the site, design, size and other relevant features of the project. It also provides a description of the likely significant effects of the project on the environment and a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment.
- 8.9.4. Alternatives studied are addressed in section 1.7. The 38kv connection to Lisdrumdoagh is the only feasible option to comply with ESB Networks requirements. I am satisfied that the details comply with the requirements of the legislation, insofar as a description of the reasonable alternatives studied by the developer, together with an indication of the main reasons for selecting the chosen option have been provided.
- 8.9.5. The EIAR includes a non-technical summary of the information referred to in Article 5 (a) to (d).
- 8.9.6. No specific difficulties are raised as having been encountered in compiling the required information. The participation of the public has been effective and the

⁵ This is volume 3 of the Environmental Report which accompanied the application for the wind farm revised layout Board Ref 300988, PA Reg Ref 17/258.

application has been made accessible to the public by hard copy means with adequate timelines afforded for submissions.

- 8.9.7. I am satisfied that the information provided is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. Overall, I am satisfied that the information contained in the EIAR complies with the provisions of Article 3, 5 and Annex (IV) of EU Directive 2014/52/EU amending Directive 2011/92/EU.
- 8.9.8. It is stated in the EIAR that there is no requirement for underground electricity lines of substations to be subject to EIA. Schedule 5 Part 1 paragraph 20 of the Regulations is referred to in relation to the threshold for mandatory EIA for an overhead line. The proposed development is subthreshold. The EIAR has been prepared arising from the O’Grianna judgement which determined that a wind farm and its connection to the grid are one project. The EIS for the windfarm, and the EIAR for an amendment to the windfarm, which had not been determined at the time of making the application, are provided with the subject EIAR.
- 8.10. Direct and indirect significant effects
- 8.10.1. I have carried out an examination of the EIAR and other relevant information presented by the applicant in this case, together with the submissions received during the course of the application and appeal.
- 8.10.2. I have considered the direct and indirect significant effects of the development against the factors set out under Article 3(1) of the EIA Directive 2014/52/EU, which include:
- a. population and human health;
 - b. biodiversity, with particular attention to 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;
 - e. the interaction between the factors referred to in points (a) to (d).
- 8.11. Population and Human Health

8.11.1. Population and human health impacts are dealt with in section 4.1. Any construction impacts, such as noise, dust and traffic will be short term and confined to the immediate locality. Operational impacts will be negligible. Mitigation measures are outlined. Impacts on population and human health will largely be positive.

8.12. Biodiversity

8.12.1. Biodiversity is dealt with in section 4.2. Biodiversity is also dealt with in the NIS (Annex 1) and in the Ecological Impact Assessment (Annex 2). The potential impacts on designated sites and on the species Hen Harrier and Curlew have been addressed earlier in this report. The potential impact on Marsh Fritillary was raised by the Development Applications Unit (DAU) Department of Culture, Heritage and the Gaeltacht, in their observation on the application: that the development may result in a loss of suitable habitat for Marsh Fritillary (Annex II EU Habitats Directive) and potential species loss in unsurveyed areas, where species may be present, specifically in Lupan.

8.12.2. The applicant responded that following desktop appraisal and site walkover it was concluded that the proposed development will not result in any significant direct effects on Marsh Fritillary habitat. The only direct loss of any habitat will relate to the substation and will be imperceptible in the wider landscape. It is proposed that surveys will be undertaken by the ECoW prior to construction which will include for Marsh Fritillary in Lupan. It is not stated what measures would be taken were Marsh Fritillary to be found. Nevertheless no protected flora were recorded during the walkover survey and therefore the possibility that Marsh Fritillary might be found is not, in my opinion a reason to refuse or modify the proposed development.

8.13. Land, Soil, Water, Air and Climate

Land & Soil

8.13.1. Land & soil are dealt with in section 4.3 of the EIAR and in the Hydrological, Geological and Hydrogeological Impact Statement (Annex 3). Limited excavation will be required for the underground line to the substation, for the substation, and for the 4km of underground line within private lands. This will have temporary, negligible, local impact. Mitigation measures are outlined.

Water

8.13.2. Water is dealt with in section 4.4 of the EIAR and in the Hydrological, Geological and Hydrogeological Impact Statement (Annex 3). The watercourses to be crossed are also listed at page 10 of the response to the further information request, where table 2 gives the watercourse ID, the crossing methodology, and the easting and northing co-ordinates. Of the 14 crossings only 2 will be underground involving in-stream works. The proposed flume method of crossing, agreed with IFI, is detailed at section 2.4.2.1 of the CEMP.

Air & Climate

8.13.3. Air & Climate are dealt with in section 4.5 of the EIAR. Minor negative = impact during construction stage is temporary and insignificant; in the operational phase, impacts are positive.

8.13.4. I am satisfied that subject to mitigation outlined and / or conditioned there will be no significant residual impacts on land, soil, water, air or climate.

8.14. Material Assets, Cultural Heritage and the Landscape

Landscape

8.14.1. Landscape is dealt with in the section 4.6 of the EIAR and also in response to the further information request which includes a series of photomontages. Short term construction impacts are not significant. Operational impacts will include the substation which will be identified as associated with the windfarm. The underground line will have little surface expression. Overhead lines and associated polesets are described as a common feature in the Irish landscape.

Cultural Heritage

8.14.2. Cultural Heritage is dealt with in section 4.7 of the EIAR and also in the Cultural Heritage Impact Assessment (annex 4). The line has been designed to avoid features of cultural or heritage importance. The location of polesets has been chosen to maximise distance from features of interest. A desktop appraisal and walkover survey has determined that it is unlikely that previously unrecorded archaeological remains will be encountered, but mitigation is proposed for unrecorded archaeological or culturally significant remains in the form of monitoring.

Noise & Vibration

8.14.3. Noise & Vibration is dealt with in section 4.8 of the EIAR. No significant impacts are envisaged. The drilling operations beneath the N12 and Ulster Canal may result in minor localised levels of vibration, but any such impacts will only be experienced in the immediate vicinity and is unlikely to be experienced beyond the site boundary.

There are no sensitive receptors in the vicinity of the wind farm and cumulative effects are unlikely to arise.

Radiation and Shadow Flicker

8.14.4. Radiation and shadow flicker are dealt with in the sections 4.9 and 4.10 of the EIAR. No impact is envisaged under either heading.

Transport & Access

8.14.5. Transport & Access are dealt with in the section 4.11.1 of the EIAR and in the Traffic Management Report (Annex 5). Traffic management measures will be implemented during construction. There is potential for disruption on local road network during the laying of cables under public roads which generally comprise road crossings, 40m in total, which will not require extensive excavation or involve prolonged disruption. T Drilling will be used to cross under the N2 to reduce disruption. No significant operational impacts are envisaged.

8.14.6. Telecommunications & Services is dealt with in the section 4.11.2 of the EIAR. The route has been selected to ensure appropriate separation distances to existing underground services and appropriate construction methodologies will be employed in their proximity. Pre-construction surveys will be undertaken to determine if relocation is required, relevant service providers will be contacted. No operational impacts are envisaged.

8.14.7. Agriculture is dealt with in the section 4.11.3 of the EIAR. Only a small area of agricultural land will be removed from use. Disturbance of agricultural activity is unlikely to last more than 1 day at any location.

8.14.8. I am satisfied that subject to mitigation outlined and / or conditioned there will be no significant residual impacts on material assets, cultural heritage or the landscape

8.14.9. Interactions of the Foregoing is dealt with in the section 4.12, and includes a graph; nothing of particular note arises.

- 8.14.10. The conclusion, set out in section 5 of the EIAR is that the proposed development in combination with the associated windfarm development will not have any significant effects on the environment and that the resultant direct, indirect, secondary, transboundary environmental effects will be temporary, negligible, immaterial and imperceptible and will not result in any cumulative effects with existing, permitted or proposed developments, including in particular the Mountain Waters Wind farm, Collberrin Wind Farm and North-South Interconnector.
- 8.14.11. It is worth noting that Mountain Waters Wind farm has been referenced throughout the document and that a copy of the EIS for the windfarm is included as Volume II of the EIAR presented with the subject application and that Volume III of the EIAR for Collberrin Wind Farm (layout revision to the Mountain Waters Wind farm, since refused planning permission) is included as Volume III of the subject EIAR. The North-South Interconnector is not similarly documented, however the route runs southwards from a border crossing south east of Monaghan town, and no part of the route is near the subject route or the point of connection to the existing network at Lisdrumdoagh. Each of these projects have been subject to environmental impact assessment. The subject development, which is not likely to involve significant environmental effects, is also not likely to involve significant in-combination / cumulative environmental effects taken together with those developments.
- 8.14.12. It is considered that impacts can be avoided, managed or mitigated by the measures proposed as part of the development or otherwise by condition.

9.0 Recommendation

- 9.1.1. In accordance with the foregoing I recommend that permission should be refused, for the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to the location of the proposed development in a known breeding area of Curlew, an annex II species under the EU Birds Directive, a species on the red list of Birds of Conservation Concern in Ireland and on the IUCN red list being of high conservation concern and threatened with extinction; and which has been the subject of the work of the Curlew Task Force since 2017, in an area which is the

focus of a Curlew Action Team, the Board is not satisfied on the basis of the information submitted with the application and in response to the appeal, that the proposed development, would not have serious negative impacts on this protected species. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Planning Inspector

22 October 2021

Appendices

Appendix 1 Photographs

Appendix 2 Monaghan County Development Plan 2019 – 2025, extracts

Appendix 3 Wind Energy Development Guidelines 2006, extracts

Appendix 4 Climate Action Plan 2019, extracts

Appendix 5 Hen Harrier Survey 2015, NPWS, Ruddick et al, extracts

Appendix 6 Action for Curlew in Ireland Recommendations of The Curlew Task Force, May 2019.

Appendix 7 Curlew Conservation Programme Annual Report 2020, extracts

Appendix 8 Curlew Conservation Programme Annual Report 2020, extracts

Appendix 9 Draft Prioritised Action Framework (PAF) for Natura 2000 in Ireland, extracts