



An
Bord
Pleanála

Inspector's Report ABP-317772-23.

Development

Proposed amendments to previously consented grid connection) (pl.ref. 21/1620). Includes increase in numbers of joint bays from 35 to 45, grid connection at 38kV but install to 110kV cable and minor adjustments to the route and land boundary.

Location

Gortfree and Bolakeale, Co. Tipperary.

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

2360402

Applicant(s)

Gromane Ltd.

Type of Application

Appeal.

Planning Authority Decision

Granted with conditions.

Type of Appeal

Third Party

Appellant(s)

Wild Ireland Defence CLG

Observer(s)

None

Date of Site Inspection

23rd August 2024

Inspector

Philip Davis

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1.0 Introduction

This third party appeal is against the decision of the planning authority to grant permission for amendments to previously granted grid upgrades (an underground 110kV line) to facilitate a permitted (not yet constructed) 9 turbine windfarm in County Tipperary. The grid connection crosses over to the Kilkenny border. The continuation of the grid connection, with amendments similar to this appeal (i.e. an increase in capacity to 110kV), was granted permission by Kilkenny CC in December 2023 and was not appealed.

In a pre-Application submission (**ABP-315045-23**), the Board decided this grid connection was not SID and so should be decided by the planning authorities

A concurrent appeal - **ABP-320072-24** – is for the transformer substation proposed for the western end of the proposed 110kV cable.

The grounds of this appeal relate primarily to the adequacy and completeness of the appropriate assessment, specifically the mitigation measures set out in the application documentation.

2.0 Site Location and Description

2.1. General area

The proposed development is located on the east facing side of a broad valley overlooking the Munster River, a tributary of the River Nore, in County Tipperary. The Munster River at this point forms the border with Kilkenny. The Sliveardagh Hills, with a high point of 340 metres is 2 km to the north. The local highpoint is Warhouse Hill, at 300 metres AOD, with a drop in levels over around 2.5 km to the river to the east, at around 140 metres AOD. The area is rural in nature with a scattering of dwellings and farms along the minor road network. The nearest settlements are the village of Kilmanagh, 4 km east of the Munster River, and Commons Village, 2km north-west of Warhouse Hill. The landscape is characterised by grazing land bounded by ditches and high hedges, with occasional conifer plantations. It is served by a network of generally narrow third class roads. A number of windfarms are visible along the ridges on the western side of the Munster River Valley. At the top of Warhouse Hill is the Famine Warehouse 1848, a

former farmhouse museum dedicated to an event in the 1848 Young Irelander uprising.

2.2. Appeal site

The appeal site runs west and uphill along a narrow third class road from a bridge (Boalkeale Bridge) crossing the Munster River at around 140 metres AOD for around 1.5 km distance, then it follows a private farm track for around 800 metres, terminating in a grazing field at 220 metres AOD. It is part of a much larger proposed underground grid connection which runs in total for 33.64km, mostly to the east in Kilkenny, and is intended to serve a permitted windfarm of 9 turbines to in the lands west and south of the site.

The site area is given as 1.815 hectares, almost all of which is public road or farm track, with a small portion of grazing land at the western end where it meets a proposed transformer station, and a bare cleared area of land on the eastern side, next to the bridge over the Munster.

3.0 Proposed Development

The proposed development is described as follows:

Amendments to grid connection granted under 21/1620 to increase the number of joint bays, grid connection to be operated at 38kV but installed to a 110kV underground cable design and minor adjustments to the route and red line boundary.

The original application was submitted with plans and specifications; a letter providing an explanation for the amendments; a letter of permission from the landowner, and a Planning and Environmental Report dated May 2023; (the latter of which included a screening document for EIA) and an NIS.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 2 no. standard conditions.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planning report on file can be summarised as follows:

- Outlines national and regional policies and summarises key Tipperary County Development Plan 2022 policies of relevance (notes policy objectives 3-1, 10-1, 11-1, 11-2 and 11-7).
- In its appraisal, it notes that permission has been granted previously for the 9-no. turbine wind farm and a 38kV underground connection. It notes that the key difference between the permitted development and the current one is an upgrade the joint bays to 110kV underground cable design standards, along with some minor adjustments to the red line boundary to accommodate horizontal directional drilling at the Munster River bridge crossing.
- Having regard to the planning history, the nature of the proposed development is considered to be acceptable in principle.
- Notes that the Boalkeale Bridge over the Munster River is listed on the NIAH, but it is not proposed to run cabling across this bridge.
- It is noted that the cabling runs through an area of flood risk next to the river, but this is considered to be easily managed as it only constitutes an issue during construction.
- It is noted that the parent application (**21/1620**) was subject to EIA. This EIAR noted that the direct and indirect effects on the environment had been identified and described and were not likely to result in a significant impact on the environment. Full EIA has been screened out (notes the High Court Decision in South-West Regional Shopping Centre Promotion Association v

An Bord Pleanála). It is concluded that they will not result in an increase in size or have a likelihood of significant effects, therefore an EIA is not required.

- A Screening for AA concluded that there is the potential for effects on the River Nore SAC and SPA. The AA determination concluded that it has been established beyond scientific reasonable doubt that there will be no adverse effects.
- The third-party submission is noted. It is considered that all impacts on the River Nore SAC and SPA have been clearly identified and considered as part of the NIS.
- A grant of permission was recommended.

4.2.2. Other Technical Reports

District Engineer: Recommended standard conditions relating to road openings, the control of surface water, contact with Inland Fisheries Ireland, and no cabling to be laid on the deck of the Boalkeale Bridge.

4.3. Prescribed Bodies

No responses on file.

4.4. Third Party Observations

One public submission – by Peter Sweetman on behalf of Wild Ireland Defence. This submission outlines issues the PA must address and argues that some mitigation measures set out in the NIS are incomplete.

5.0 Planning History

Reference	Development Description/Council
ABP-320072-24/24/60280	Permission for amendments to the onsite substation at the previously consented Farranrory Wind Farm (20/972) – Tipperary County Council
20/972	Permission granted with conditions by Tipperary CC for a 9-turbine wind farm at Farranrory (EIAR).
21/627	Permission granted by Kilkenny CC for 38kV grid connection (31.5km) to the above site.
21/1620	Permission granted by Tipperary CC for 38kV grid connection to the above site.
23/60248	Permission granted (10/12/23) for a grid connection upgrade (revision to 21/627 above) to the above site (Kilkenny CC)

6.0 Policy Context

6.1. Development Plan

The site is in open countryside without a specific zoning designation in the Tipperary County Development Plan 2022-2028. Relevant policies include:

No.	Policy Objective
3.1	Promote and facilitate renewable energy development, in accordance with the policies and objectives of the Tipperary Renewable Energy Strategy 2016 (and any review thereof), and the Tipperary Climate Adaptation Strategy 2019.
3-A	Support and facilitate the implementation of European and National objectives for climate adaptation and mitigation, and to prepare a Climate Action Plan for Tipperary in compliance with the Climate Action

and Low Carbon Development (Amendment) Bill (DECC, 2020) and any review thereof.

- 10-1** Support and facilitate new development that will produce energy from local renewable sources such as hydro, bioenergy, wind, solar, geothermal and landfill gas, including renewable and non-renewable enabling plant, subject to compliance with normal planning and environmental criteria, in co-operation with statutory and other energy providers. The provisions of the Tipperary Renewable Energy Strategy (and any review thereof) as set out in Volume 3, will apply to new development.
- 10-5** Support and facilitate the co-location of renewable energy development and technologies to ensure the most efficient use of land identified as suitable for renewable energy generation. 10.10 Planning Objective
- 11-1** In assessing proposals for new development to balance the need for new development with the protection and enhancement of the natural environment and human health. In line with the provisions of Article 6(3) and Article 6 (4) of the Habitats Directive, no plans, programmes, etc. or projects giving rise to significant cumulative, direct, indirect or secondary impacts on European 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, programmes, etc. or projects).
- 11-2** Ensure the protection, integrity and conservation of European Sites and Annex I and II species listed in EU Directives. Where it is determined that a development may individually, or cumulatively, impact on the integrity of European sites, the Council will require planning applications to be accompanied by a NIS in accordance with the Habitats Directive and transposing Regulations, 'Appropriate Assessment of Plans and Projects, Guidelines for Planning Authorities', (DEHLG 2009) or any

amendment thereof and relevant Environmental Protection Agency (EPA) and European Commission guidance documents.

- 11-4**
- (a) Conserve, protect and enhance areas of local biodiversity value, habitats, ecosystems and ecological corridors, in both urban and rural areas, including rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and semi-natural grasslands in accordance with the objectives of the National Biodiversity Plan (DCHG 2017) and any review thereof.
 - (b) Safeguard, enhance and protect water bodies (rivers/canals/lakes) and river walks and to provide links, where possible, to wider green infrastructure networks as an essential part of the design process.
 - (c) Require an 'Ecosystems Services' approach for new development to incorporate nature-based solutions to SUDS, in so far as practical, as part of water management systems, public realm design and landscaping, in line with best practice.
 - (d) Where trees or hedgerows are of particular local value, the Council may seek their retention, or where retention is not feasible, their replacement and will seek a proactive focus on new tree-planting as part of new development.
- 11-7**
- a) Ensure the protection of water quality in accordance with the EU WFD, and support the objectives and facilitate the implementation of the associated Programme of Measures of the River Basin Management Plan 2018-2021 and any successor. This includes contributing towards the protection of Blue-Dot catchments and drinking water resources. Also, have cognisance of the EU's Common Implementation Strategy Guidance Document No. 20 and 36 which provide guidance on exemptions to the environmental objectives of the WFD.
 - b) Support an integrated and collaborative approach to catchment management in accordance with the River Basin Management Plan 2018-2021 and any successor.

c) Require an undisturbed edge or buffer zone to be maintained, where appropriate, between new developments and riparian zones of water bodies to maintain the natural function of existing ecosystems associated with water courses and their riparian zones, and to enable sustainable public access.

6.2. Natural Heritage Designations

The area drains east towards the Munster River, which is a designated SAC and SPA - part of the extensive River Barrow and River Nore SAC, site code 002162 and the Nore SPA, site code 004233.

7.0 The Appeal

7.1. Grounds of Appeal

The decision has been appealed by Peter Sweetman & Associates on behalf of Wild Ireland Defence CLG. The grounds of appeal are, in summary:

- Provides an overview of the context and argues that the planning authority did not adequately screen the application for EIA, and it did not fully come to a considered view of the potential adverse affects on wildlife under the Habitats Directive.
- Refers to CJEU Decision C-323/17 with regard to it being inappropriate for the planning authority to take account of the measures intended to avoid or reduce the harmful effect of the project.
- With regard to CJEU Case 258/11 paragraph 4, it is noted that the courts have stated that there cannot be *lacunae* in any assessment under Article 6(3) of the Habitats Directive.
- It is further noted that a development must be assessed for compliance with the requirements of the Water Framework Directive.

- It is submitted that statements within the submission documents, specifically leaving the full Methodology Statement of the works to the post-permission period, the statement that temporary access structures will be arranged in discussion with the ECoW and the provision of a settlement tank to address drilling fuels is evidence that mitigation measures were inappropriately considered in the application and that items that should have been decided prior to a grant of permission were left to condition.
- It is stated that there are excessive references to the EIAR – it is submitted that the NIS is a standalone document, which must be complete, precise and definitive.
- It is also argued that the application is incomplete as there is no information on the application to Kilkenny County Council.

7.2. Applicant Response

The applicant provides an overview to the application, including a description of the permitted Farranrory Wind Farm, and outlines the overall policy context. With regard to the specifics of the appeal:

- With regard to the Appropriate Assessment, it is argued that the NIS submitted is in accordance with guidelines and a comprehensive assessment was carried out by the planning authority. It is noted that Section 8 of the NIS requires all safeguards set out in the CEMP to be implemented. Table 3.1 of the response sets out clarifications of the elements of the CEMP which are for later clarification with the planning authority.
- It is argued in some detail that the planning authority fully assessed the application, specifically the NIS. The full planning report is attached in Appendix B of the submission.

7.3. Planning Authority Response

The planning authority has not responded to the appeal.

7.4. Observations

None on file.

7.5. Further Responses

None on file.

8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the proposed development can be addressed under the following headings:

- Background and description
- Policy context
- Visual impacts and amenity
- Cultural heritage
- Biodiversity
- Construction and transport issues
- Water and Drainage
- Other issues
- EIA Screening
- Appropriate Assessment

8.1. Background and description

The proposed development is for relatively minor amendments to an existing permission (**TCC Reg ref. 21/1620**) for an underground power cable to connect a permitted windfarm (**TCC Reg ref: 20/972**). It is proposed to connect via a transformer which was granted permission by Tipperary County Council (**24/60280**) and is now on appeal to the Board (**ABP-320072-24**). The remaining 31 km of the underground route was granted permission, with a subsequent grant for amendments, by Kilkenny County Council (**KCC Reg refs: 21/627 and 21/1620**).

All the above permissions were screened for EIA and AA. An EIAR was carried out for the windfarm, and an NIS was required for the other permissions, as the site is within the watershed of the Nore catchment, which is an SAC and SPA.

The proposed development is almost entirely underground – the proposed 110kV line (38kV is permitted) will run from the transformer for the wind farm to a connection to the national grid within County Kilkenny, mostly along the public road network. The applicant states that the reason for the amendment is a request from the statutory undertaker to upgrade the capacity of the cable from 38kV to 110kV to increase the overall robustness of the grid – it is not part of any proposal to increase the scale of the windfarm or to facilitate any other developments in the area. There are no current active proposals for additional major power generating plant in the area, although a number of small windfarms are in operation in these uplands. The amendments also include a few minor alterations to the red lined area to facilitate horizontal drilling works under the river. I note that it is not proposed to run cables over the bridge over the Munster River – the cables will be run under the river by way of horizontal drilling– there is no proposal to actively interfere with the watercourse either by trenching or laying the cables across the riverbed.

The appellant focuses on legal arguments relating to screening for EIA and for AA and the Water Framework Directive. I note that all permitted developments were fully screened in accordance with statutory requirements, and I am satisfied from the documentation available that the proposed amendments were screened in accordance with statutory requirements by the local authority. Notwithstanding this, as the appeal is to be addressed *de novo*, the Board is required to carry out a separate screening in addition to addressing the key planning issues raised by the proposal.

8.2. Policy context

The overall policy context for renewable energy and associated infrastructure is set by EU targets for renewables (**Directive 2018/2001/EU**) and related plans and guidance including the **REPowerEU Plan** from 2022 and the **Energy Roadmap 2050**. Irish national policy is set within **the National Planning Framework**, the **Integrated National Energy and Climate Plan 2021-2030**, White Paper 'Ireland's Transition to a Low Carbon Energy Future 2015-2030', the **National Energy &**

Climate Plan 2021-2030, the **National Renewable Energy Action Plan** (on foot of Directive 2009/28/EC) and the **Climate Action Plan 2024**. All generally favour the expansion of renewable energy within the context of infrastructure and environmental constraints. The windfarm associated with the proposed 110kV line was granted permission subject to conditions and this decision was not appealed. Neither was the application for a similar amendment to the grid connection within County Kilkenny.

The site is on unzoned land (public highway and along a private track on farmland). Policy in the Tipperary County Development Plan 2022-2028 is generally favourable to facilitating renewable energy, as set out in policies 3-1; 10-1 and 10-5, subject to general planning and environmental considerations and the requirements set out in the Habitats Directive.

The associated windfarm has been granted planning permission and a 38kV cable along this route has an active planning permission (**TCC Reg ref. 21/1620**). The remainder of the cable has also been granted permission by Kilkenny County Council – this was not appealed.

The amendment is to upgrade the cable along with a number of minor alterations along the route, the latter of which I consider to be generally *de minimis*. There are no policy or other objections to an upgrade to the line. As such I would concur with the conclusion of the planning authority that having regard to the planning history of the lands and national/local policy, the proposal is acceptable in principle.

8.3. **Visual impacts and amenity**

The works are almost entirely underground and follow an existing country road and a long established farm track (this track is marked in older OS plans). The construction works will have a short term visual impact and a potential short term amenity impact on the small number of dwellings in the area by way of noise and disturbance during the construction activities. These will generally be short term and will be mitigated by the measures set out in the supporting documentation. The amended works will not have a visual impact during the operational life of the cable compared to the already permitted 38kV line as there is no proposal to expand any above ground elements of the works.

8.4. Cultural heritage

There are a number of recorded ancient monuments in the area, but not along the route. The route follows almost entirely the road line and farm track, so the trenching will be into previously disturbed ground. As such, disturbance of archaeology is very unlikely, and as such I do not consider that an archaeological monitoring or recording condition is necessary.

The Boalkeale Bridge over the Munster River is on the NIAH. It is described as a humpbacked triple arched road bridge, built c. 1860 and of regional importance. It is not proposed to run the cable along or under the bridge and it is not anticipated that either the structure or immediate curtilage will require alterations.

A 19th century farmhouse, the Famine Warhouse 1948, is owned and operated by Heritage Ireland (part of the OPW) as a visitor attraction. It is located approximately 800 metres west of the western end of the application site and is accessed via a road further west. This building is on a local high point (Warhouse Hill), and there are fine views from the house to the north, but due to vegetation and local topography it is not visible from any part of the proposed route and as such I do not consider that there would be any impact on the building, its curtilage, or its overall setting.

8.5. Biodiversity

Section 6 of the submitted Planning and Environmental Report addresses biodiversity issues directly associated with the proposed amendments. It is noted that there is no additional impact above that of the previous permission for a 38kV line.

Table 6-1 outlines the water crossings associated with the works – these include horizontal directional drilling under the main river, plus a number of minor streams that run across the site (all tributaries of the Munster River and hence the Nore). They will be crossed by way of either horizontal directional drilling, culverts, or using existing bridge decks. All of these are within the footprint of existing roads (the exception being the drilling under the Munster, called the Nore in the report). It is noted that some existing bridges could potentially have bat roosts. Section 6.6.1 of the report addresses bats. It is also noted that in addition to the European sites

addressed in the NIS, there are a number of pNHAs downstream of the project, the closest being Inchbeg (wet Brassland) some 3.2km downstream.

It is noted that the works are, apart from the small section next to the Nore, all within the existing road network and will have no impact on adjoining hedgerows or other vegetation.

The report outlines the mitigation measures included in the works (discussed in more detail in the NIS section below).

The overall works are on the existing roadway (public and private), or on disturbed ground. I am satisfied from the information provided that the mitigation measures will ensure minimal disturbance to flora and fauna along the route, including birds and bats. Any impacts will be minor, and temporary.

8.6. Construction and transport issues

The overall works (including the wind farm) are subject to a construction and management plan permitted as part of that application. Section 3 of the Planning and Environment Report sets out the required amendments to this previously approved CEMP.

It is explained in this that the key difference between the previous application is that further joint bays (the sections where individual lengths of cable are joined – typically 650-850 metres apart) are needed due to the upgrade to 110kV. A total of 45 joint bays will be required along the entire 33.6km route. It is noted (section 3.10.5) that a traffic management plan will be required for the overall works, subject to the approval of the two County Councils, and all roads will be reinstated according to the Road Opening Licence which will be required from both Councils. It is noted that all planning conditions associated with the existing permissions will be complied with.

I am satisfied that the overall construction and traffic issues associated with the works do not substantively differ from that previously permitted – including all details included in the EIA for the windfarm. The additional joint bays required will not require a significant alteration in these works and so there are no additional impacts to address.

8.7. Water and Drainage (Water Framework Directive)

The underlying geology is mostly of flagstone, siltstone and limestone with overlying till. A number of springs and swallow holes are known in the area – these are identified in section 7 of the Planning and Environmental report. The watercourses in the area are indicated on EPA and WFD maps to range from ‘good’ to ‘poor’ status (Appendix C of the Report summarises available water quality information).

Groundwater in the area is designated as Good to Poor. The site is almost entirely along a slope, draining to the Munster River to the east. The area immediately next to the river is identified as a potential flood area. The site runs through Group Water Source protection areas. Although on a slope, the grid connection is within an area indicated as of low landslide susceptibility.

Measures to protect ground and surface waters (specifically, amendments to the previously permitted works) are set out in the overall Construction and Environment Management Plan in Section 3 of the Planning and Environment Report. This includes a range of standard measures to minimise the potential for any spillages or impact on watercourses. It is noted that the primary mitigation measure was the choice of route – via existing roads rather than across countryside. It is stated that while the horizontal drilling area next to the river is within the flood zone, potential impacts are restricted to the construction period only as the cabling is designed to work even during a major flood.

The report concludes that residual impacts (i.e. those after mitigation measures) are such that there will be no significant impact on the European sites or the surrounding environment or on the WFD status of watercourses in the area.

From the information submitted, I am satisfied that the proposed works would not impact on local water quality (surface or groundwater) and will not alter the drainage characteristics of the area after construction. The proposed amendments do not significantly alter any impacts from that already permitted.

8.8. Other issues

I do not consider that there are any other substantive issues raised in this appeal.

I note that the planning authority did not consider that a development contribution applies, nor was it considered that a bond is necessary.

8.9. EIA

The applicant submitted a Screening Report, confirmed by the planning authority in its planning report which concluded that EIAR was not required. The appellant to this appealed suggests that the screening was inadequate but does not give a detailed reasoning.

I note that the works are required to connect a permitted windfarm, which was subject to full EIAR, to the national grid. A 38kV line has been permitted along this route, this application is for an upgrade to this line with some minor alterations. The upgrading of the line does not significantly increase the overall construction or operational impact.

Under Part 1 of Schedule 5, the applicable class is class 20:

Construction of overhead electrical power lines with a voltage of 220kilovolts or more and a length of 15 km.

As all powerlines for the grid connection will be underground and have a capacity of 110kV this application does not fall within the scope of Part 1 of Schedule 5.

Relevant classes under Part 2 of Schedule 5 are as follows:

3(b): 'transmission of overhead cables... where the voltage would be 200kv or more'.

The proposed development does not fall under any of these classes by way of the nature of the proposed development – it does not involve overhead lines and the proposed voltage is 110kV.

Part 2 of Schedule 5, paragraph 13 with regard to changes or extensions of a development includes developments that would:

'result in an increase in size greater than 25%, or

An amount equal to 50 per cent of the appropriate threshold,

Whichever is greater'.

The proposed amendment upgrades the capacity of the line but does not increase the length or physical characteristics of the underground line to a degree which would fall under this paragraph. The amendments are quite minor and do not bring

the proposal within any other type of project as set out under Schedule 5 Part 2(3) of the Regulations as amended.

Under Section 7 of the Regulations criteria are set out for assessing whether or not the project will have a 'likely' and/or 'significant' effect on the environment.

The planning and environment report submitted outlines potential likely & significant effects on the environment under these criteria. It concluded that it would not result in any likely and significant effects on the environment, therefore an EIAR was not warranted. This report is based upon the EIA submitted for the windfarm, which also included predicted impacts for the grid connection, although this was part of two different applications (in each local authority area). These indicate that the significant effects are minor and are minimally different from those of the permitted grid connection, and do not substantively impact on the permitted windfarm or the grid connection within County Kilkenny

I am satisfied that this document provides the information deemed necessary for the purposes of screening sub-threshold development for an Environmental Impact Assessment. The Planning and Environmental Report submitted with the application addresses a variety of environmental issues and assesses the impact of the proposed development in addition to cumulative impacts with regard to other permitted developments in proximity to the site and demonstrates that, subject to the various construction and design related mitigation measures recommended, the proposed development will not have a significant impact on the environment.

The proposed development runs along an existing road and a private agricultural track. It does not impact directly upon any habitats of significance – there is no removal of hedgerow required or tree felling. There is a possibility of some of the culverts and bridges along the road having bat roosts (although this is unlikely due to the very small size of these structures) – a pre-works survey will identify these, and they will be protected in accordance with a licence for removal (if needed).

I have assessed this Screening with regard to publicly available sources of information on the local environment and my observations during my site visit. I am satisfied that the screening has had full regard to the nature of the site and the surrounding area and represents an accurate assessment of the nature of the site.

The site itself is existing public highway or private agricultural track and the works will not significantly impinge upon any surrounding lands.

I have had regard to the characteristics of the site, location of the proposed development, and types and characteristics of potential impacts. I have examined the criteria having regard to the Schedule 7A information and all other submissions, and I have considered all information which accompanied the application including the Environmental Report, associated documents and all plans and particulars and other related reports submitted with the application, in addition to my observations of the nature of the site and local area made during my site visit.

The EIA screening report prepared by the applicant under the relevant themed headings considered the implications and interactions between these assessments and the proposed development, and as outlined in the report states that the development would not be likely to have significant effects on the environment. I am satisfied that this report is comprehensive and satisfies regulatory requirements. I am satisfied that all other relevant assessments have been identified for the purposes of screening out EIAR.

I conclude that the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency or reversibility.

In these circumstances, the application of the criteria in Schedule 7 to the proposed sub-threshold development demonstrates that it would not be likely to have significant effects on the environment and that an environmental impact assessment is not required before a grant of permission is considered.

This conclusion is consistent with the EIA Screening Statement submitted with the application.

8.10. Appropriate Assessment

The permitted windfarm and grid connection was subject to AA Screening by the applicant and planning authority, which concluded that adverse effects on the qualifying interests of the River Nore SAC and SPA could not be ruled out. An NIS of both elements (i.e. the windfarm and grid connection) concluded that the projects, individually and in combination, would not adversely affect the integrity of both European sites. The current application for amendments to the Tipperary section of the grid connection was also subject to Screening and an NIS, and the planning authority concluded that it would not adversely affect the integrity of both sites. The appellant has raised a number of issues in regard to this (although I consider that the arguments apply more to the overall permitted development, not the current amendments).

I would summarise the points raised as follows:

- The mitigation measures set out in the application documents are insufficiently detailed to permit an informed conclusion.
- Some mitigation measures do not fulfil the criteria set out in paragraph 44 of the CJEU case 258/11, i.e. *‘so far as concerns the assessment... it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned’*.
- There is excessive reliance in the NIS on documentation within the EIAR, it is argued that the NIS must stand alone as a document, and it must be precise and definitive.

8.10.1. Screening

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under Part XAB Section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

The applicant has submitted an NIS (not a screening report) for Appropriate Assessment as part of the planning application. This was subject to screening by the planning authority *de novo*. The planning authority Stage 1 AA Screening Report

was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European sites within a possible zone of influence of the development. This report identified a number of European Sites within the general area, but with regard to the Source-Pathway-Receptor Model, two were identified as potentially subject to adverse effects – the River Barrow and Nore SAC, site code 002162 and the River Nore SPA, site code 004233. The Munster River, which is next to the termination point of the eastern end of the site, is part of both designated sites. There is therefore a direct hydraulic connection between the site and the two EU protected areas.

The Screening also identified two other European sites within 15km of the site – the Loughrans SAC, located 11.4 km distant, and the Spahill and Clomantagh Hill SAC, 12.6km from the site. These are habitats which have no hydraulic connection to the site, or are any Qualifying interests present on or near the appeal site. Therefore, due to the separation distance and the absence of a connection using the Source-Pathway-Receptor model, these were screened out.

The assessment of likely significant effects identified the potential for contamination of the Munster River and the two River Nore EU designated sites arising from silt laden surface water runoff and the use of horizontal directional drilling from the construction phase. No potential impacts were identified during the operational phase. The type of change identified which could have an adverse affect on a Qualifying Interest of the designated habitats include:

- The discharge of polluted surface water which would have the potential to undermine the status of aquatic habitats to support Nore freshwater pearl mussel, otters, qualifying fish species and the white clawed crayfish in both the main channel of the Munster and downstream in the main channel of the Nore.
- Adverse impacts to the water quality of the Nore catchment downstream with the potential to alter key invertebrate communities, relied upon by qualifying species.
- The release of pollution could result in the loss of suitable foraging habitat for the otter, lamprey and white clawed crayfish.

It was concluded that in the absence of specific mitigation measures, there is the potential for likely significant effects on the aquatic qualifying interests within the Zone of influence of the proposed development, and as such the River Nore and Barrow SAC and the River Nore SPA were screened in by the applicant and the planning authority.

European site	Distance	Possible effect alone	In-combination	Conclusion
River Barrow and Nore SAC. 002162	Adjacent	Freshwater SAC designated for a range of invertebrates and fish. Possible effects from construction.	No effect	Possible significant effects cannot be ruled out.
River Nore SPA 004233	Adjacent	Designated for kingfisher. No direct effect, but possible effect on foraging and feeding through construction run-off	No effect	Possible significant effects cannot be ruled out.
Spahill and Clomantagh Hill SAC 000849	12.6km	No effect	No effect	Screened out
Loughans SAC 000407	11.4km	No	No effect	Screened out

I concur with the overall conclusion that all Natura 2000 sites within 15km or more from the site can be screened out with the exception of those in hydraulic continuity. The Spahill SAC is an area of dry grassland with orchids is not in hydraulic continuity with the site, and the habitats identified as Qualifying Interests of those sites are not represented on the appeal site or in the vicinity. The Loughans SAC features Turloughs, but are not in hydraulic continuity with the Munster River.

With specific regard to the relatively minor amendments required for the proposed works, the separation distance, and the absence of hydraulic connectivity, I am satisfied that these can be screened out. The other two designated sites – the **River Barrow and River Nore SPA site code 004233** and the **River Nore SAC site code 002162** are in hydraulic continuity with the site and immediately adjacent to the works. The key elements that may give rise to impacts are as follows:

- Vegetation clearance.
- Surface run-off from excavation, infill and other works, including the horizontal drilling under the river.
- Dust, noise, vibration.
- Storage of excavated/construction materials
- Access to the site.

All the above during construction of the works. I am satisfied that the operational impacts will have no potential adverse impacts as it will not impact on the drainage of the area and there is no realistic potential for contaminating water in the drains or watercourses.

I note that the works will be carried out in parallel to the permitted windfarm and the continuation of the grid connection within Kilkenny County Council area. These works have been subject to full Appropriate Assessment, as is the permitted 38kV line on the site. I am satisfied that the proposed amendments to the latter will not result in any material alteration to the construction works such that there would potentially be additional in-combination effects.

No mitigation measures designed or intended to avoid or reduce any harmful effects of the project have been relied upon in this screening exercise.

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually could have a significant effect on European sites no. 002162 and 004233, in view of these sites Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is therefore required.

8.10.2. NIS

Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed amendment to the permitted 38kV underground line, individual, or in combination with other plans or projects will have a significant effect on the following European sites:

- River Barrow and Nore SAC site code 002162
- River Nore SPA site code 004233

The possibility of significant effects on other European sites has been excluded on the basis of objective information. The following European sites have been screened out for the need for appropriate assessment:

- Spahill and Clomantagh Hill SAC
- Loughans SAC

Measures intended to reduce or avoid significant effects have not been considered in the screening process.

The applicant provided an NIS from Doherty Environmental Consultants Limited dated 22nd May 2023. The applicant's NIS was prepared in line with current best practice and provides an assessment of potential impacts on the qualifying interests of the River Nore SAC and SPA. The applicant's NIS concluded that the project would not adversely affect the integrity of the River Barrow and Nore SAC, site code 002162 or the River Nore SPA site code 004233 in view of the Conservation Objectives of these sites.

Having reviewed the documents, submissions and consultations, I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the following European sites alone, or in combination with other plans and projects, i.e.

- River Barrow and Nore SAC site code 002162
- River Nore SPA site code 004233

The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in

significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

In this regard, I have had specific regard to best practice as set out in the DoEHLG Guidance '*Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities*' (DoEHLG 2009).

River Barrow and Nore SAC site code 002162

This is a very large, extensive mostly aquatic site covering most of the waterways associated with both the Barrow and Nore Rivers, including the estuary. The Munster is designated as part of the SAC – the smaller tributaries and drains on higher ground which run under small bridges or culverts across the site are not part of the designated area.

The qualifying interests of the SAC include:

- Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation
- Petrifying springs with tufa formation
- Alluvial forests with Alnus glutinosa and Fraxinus Excelsior
- Vertigo moulinsiana
- Margaritifera margaritifera (pearl mussel)
- Nore Pearl Mussel
- White clawed crayfish
- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twaite Shad
- Salmo salar
- Lutra lutra

The SAC also includes a number of heath, montane and salt water qualifying interests.

The proposed works do not involve significant removal of vegetation, interference with the banks of the watercourse, or other forms of direct impact. The Screening concluded that there would be no adverse affects from operational works. The potential impacts are restricted to water pollution from run off from the works (either spillages, from spoil heaps, accidental contamination or dust), impacting upon the water quality of the river, which is identified on EPA mapping as being medium to low quality – apparently as a result of agricultural run-off. The potential for impacts would not be direct but would be the result of a deterioration in water quality (temporary or permanent) from works, resulting in either a direct impact on a qualifying interest (vertebrate or invertebrate), or by way of reducing the available habitat (water of a sufficient quality) or on foraging, by way of reducing the number of prey species for fish or invertebrates listed as qualifying interests.

The NIS outlines the mitigation measures for the construction works, which are part of the overall CEMP submitted with the windfarm application. As such, it takes a fully holistic approach to preventing water pollution through standard good practice measures to minimise the contamination of water during works and preventing any unavoidable contamination from reaching the main watercourse, by way of bunding of construction plant and other standard measures.

Key elements of the proposed mitigation works includes:

- The timing of the trenching and cable laying to ensure it is only carried out in dry weather.
- An Ecological Clerk of Works (ECoW) will be on site in order to ensure site integrity is maintained.
- Any temporary access structures will be arranged in agreement with the ECoW, and the site will be fully restored.
- All chemical fluids used in the boring process will be inert.
- All drilling fluids and drill spoils will be disposed of on-site at approved licensed locations.
- All run off with the potential to entrain solids will be contained by means of temporary berms.
- Monitoring of works to ensure there is no spread of invasive species.

The appellant has raised concerns about the level of detail in the proposed mitigation, noting that many details are left to the final agreement/approval of the local authority with the contractor(s) for the project. While I would concur that this could be a problem if there was a novel or particularly hazardous activity proposed, the trenching and associated activities are standard works for which the contractors and local authorities will have extensive knowledge and experience, so I do not see any justification for requiring a pre-decision level of precision in every last detail of every element of the works. The direct works for which permission is sought, and the associated windfarm works and the works in the neighbouring County Council, will all be subject to a detailed CEMP which was fully assessed in the previous applications and has been appropriately amended/updated to take account of the current proposed works.

I am satisfied that the details provided are fully in line with best practice and were submitted with a reasonable and appropriate level of detail to permit a final determination in the light of available scientific knowledge. I am also satisfied that there are no in-combination effects with other proposed, permitted, or existing developments in the area.

River Nore SPA site code 004233

This SPA is designated on the basis of a single qualifying interest, the Kingfisher (*Alcedo atthis*). There are no records indicated that this bird is known to forage or nest close to the site. The adverse effects identified is the potential impact on foraging by way of reducing the water quality with a consequent reduction in potential prey species for this bird.

As with the SAC, the potential impacts to the qualifying interest are solely connected with potential water deterioration due to run off or other contamination during the construction process. The mitigation measures set out in the NIS and other documents submitted with this application and the associated wind turbine development. I am satisfied that the proposed measures set out in these documents represent best practice to ensure there is no impact from construction on ground or surface water quality with consequent impacts on the qualifying interest (Kingfisher) of the SPA. For reasons similar to those I have outlined above with regard to the SAC, I consider that the information on construction measures within the application

documentation are in line with best practice and reasonable given the nature of the proposed works and thus permit an informed decision. The proposed transformer (ABP-317772-23) works and the permitted windfarm are likely to be carried out at the same time as the grid connection works. All will be carried out in accordance with the agreed CEMP to ensure there are no cumulative or in-combination impacts.

8.10.3. Integrity Test

Following the appropriate assessment and the consideration of mitigation measures, including:

- Measures that are embedded by virtue of the design of the development,
- The detailed arrangements for the management of surface water during all phases of the development, to minimise the potential for water pollution or significant effects on surface water flows (volume and rate of discharge), and the proposed arrangements for monitoring of water quality, as set out in the project description and the CEMP for the overall project
- The standard good practice nature of the proposed mitigation measures and the efficacy of these to prevent water pollution and for managing flows.
- The absence of potential for cumulative effects with other policies, plans or projects in the area of the site,

I am able to ascertain with confidence that the project would not adversely affect the integrity of in view of the Conservation Objectives of the River Barrow and Nore SAC, site code 002162 and the River Nore SPA site code 004233. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

8.10.4. Overall Conclusion

Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of the **River Barrow and Nore SAC, site code 002162** or the **River Nore SPA site code 004233** in view of the Conservation Objectives of these sites. This

conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

The amendments to the previously consented 38kV grid connection to increase the total of joint bays to 45 no and to install a 110kV underground cable design has been considered in light of the assessment requirements of Section 177AE of the Planning and Development Act as amended.

Having carried out screening for Appropriate Assessment of the project, I have concluded that it may have a significant effect on **River Barrow and Nore SAC site code 002162** and **the River Nore SPA site code 004233** sites. 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.

Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European sites 002162 or 004233 or any other European sites, in view of the sites Conservation Objectives.

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.

This conclusion is based specifically upon:

- A full and detailed assessment of all aspects of the proposed works including the proposed mitigation measures and monitoring of the River Barrow and Nore SAC site code 002162 and River Nore SPA site code 004233.
- The nature of the works and the relatively minor amendments required to the previously permitted 38kV underground grid connection.
- The detailed assessment of in combination effects with the other related plans and projects.
- The required level of detail provided in the construction management proposals with this development and the associated windfarm and grid connection in the neighbouring planning authority.

9.0 Recommendation

I recommend that the Board grant permission for the proposed amendments to the underground grid connection, subject to the conditions set out in section 11 below, for the following reasons and considerations.

10.0 Reasons and Considerations

- (a) EU legislation including in particular: the provisions of Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which sets out the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union, and the EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy and associated infrastructure,
 - (b) the National Planning Framework published in February 2018,
 - (c) the Government Policy Statement on the Strategic Importance of Transmission and Other Energy Infrastructure, July 2012,
 - (d) the provisions of the Tipperary County Development Plan 2022-2028,
- and also having regard to the following matters:
- (e) the nature, scale and design of the proposed development as set out in the planning application, existing permissions in the area, and the pattern of development in the vicinity,
 - (f) other relevant guidance documents,
 - (g) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development, and,
 - (h) the submissions and observations made to An Bord Pleanála in connection with the application,

It is considered that subject to the conditions set out below, the proposed amendments to the underground grid connection would accord with European, national, regional and local planning and that it is acceptable in respect of its likely effects on the environment and its likely consequences for the proper planning and sustainable development of the area.

Appropriate Assessment: Stage 1

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspectors report that the River Barrow and Nore SAC site code 002162 and the River Nore SPA site code 004233 are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submission sand observations on file, and the Inspectors assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European sites River Barrow and Nore SAC site code 002162 and River Nore SPA site code 004233 in view of these Sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

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

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the Sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the Sites' conservation objectives and there is no reasonable scientific doubt remaining as to the absence of such effects.

Proper Planning and Sustainable Development and the Likely effects on the environment:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area, would not constitute a traffic hazard and would not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

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

Reason: In the interest of clarity.

2. The development shall comply with the terms and conditions of Tipperary CC Planning reg. no. 21/1620, including the expiry date of same, which govern the overall development of the lands in which the site form's part.

Reason: In the interest of orderly development.

Philip Davis
Planning Inspector

7th October 2024