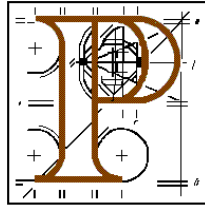


An Bord Pleanála



Inspector's Report

REFERRAL

An Bord Pleanála Refs:	RL3436
Planning Authority:	Tipperary County Council
Planning Authority Ref:	55/15/56
Referrer:	Tipperary County Council
Developer:	Ecopower Developments Limited
Location of Referral Site:	Glenough Lower, Rossmore, Cashel, County Tipperary
Question:	Whether the laying of underground 20kV electricity cables and ancillary works to link Turraheen Windfarm (Planning Ref. 13/24) to Glencarbry Windfarm (Planning Ref. 07/255) is or is not development or is or is not exempted development.
Date of Inspection:	20 January, 2016.
INSPECTOR:	Brendan Wyse

1.0 THE SITE (see Map and Photographs)

- 1.1 The site is located in a rural area approximately 15 kms northwest of Cashel. Comprising the route of the proposed electricity line it extends northeast-southwest from the Turraheen Windfarm (currently under construction) to the Glencarbry Windfarm.
- 1.2 The route generally traverses the lower reaches of Ring Hill, located a short distance to the north, and includes steep terrain in several places particularly towards the southwestern end where it crosses the Aughnaglanny River Valley.
- 1.3 The route is mostly across open grassland, close to/paralleling hedgerows in several places and through/adjacent to commercial forestry, but also includes short stretches along existing tracks. It includes five stream crossings. There are also three public road crossings at the southwestern end of the route.
- 1.4 The surrounding area is generally characterised by farmland, and associated housing, yards etc., commercial forestry and existing windfarms.
- 1.5 Maps and photographs are included in the file pouch.

2.0 APPLICATION FOR DECLARATION

- 2.1 The application to Tipperary County Council was lodged on 4 August 2015. The documentation submitted includes the following: -
 - Application Form.
 - Maps and Drawings.
 - Stream Crossing Outline Construction Methodology.
 - Linear Route Archaeological Impact Assessment.
 - Screening for Appropriate Assessment.
- 2.2 The proposal provides for/includes the following: -
 - The laying of underground 20 kV electricity cables and ancillary works to link the Turraheen Windfarm (Planning Ref. 13/24) to the Glencarbry Windfarm (Planning Ref. 07/255) over a distance of approximately 3.5 kilometres.

- The cable would be laid by Ecopower Developments Limited and the route would be partly in public roadway with other sections requiring wayleave options and lease options over private land. Landowners' names and addresses provided.
- Five stream crossings are to be executed using horizontal directional drilling. This involves running a 150 millimetre diameter bore under each of the streams from launch to reception pits on either side – details illustrated on Drawing No. 16375-1002 Rev. B. The methodology is outlined in detail in the Stream Crossing Outline Construction Methodology Report. This includes references to required consultations with Inland Fisheries Ireland (IFI) and the National Parks and Wildlife Service (NPWS) and practice methodologies, including the engagement of a Project Ecologist, to ensure the protection of the stream channels during construction works. It also includes details of ground investigations carried out to confirm suitability for directional drilling.
- The remainder of the cable would be laid in a trench approximately 1.2 metres deep by 0.6 metres in width. The trench would be mechanically excavated and back filled with the excavated material.
- Construction will take approximately 6 weeks.

3.0 PLANNING AUTHORITY DECISION

- 3.1** It is noted that the planning authority did not issue a Declaration in this case but referred the matter on to the Board under section 5(4) Planning and Development Act 2000, as amended, for determination.

4.0 REFERRAL TO THE BOARD

4.1 Tipperary County Council

- 4.1.1** It is noted that the documentation submitted by the planning authority includes an unsigned Declaration to the effect that the proposal the subject of the referral constitutes development and constitutes exempted development. It appears from email correspondence also submitted that it was decided to refer the matter to the Board so as to remove any doubt arising from the O'Granna decision.

4.1.2 Report of District Planner, dated 26/8/15

This recommended as per the unsigned Declaration referred to at section 4.1.1 above. The assessment includes: -

- Reference to: Class 26, Part 1, schedule 2, Planning and Development Regulations 2001 as amended, and Article 9 (1)(a) (v), (vi), (vii) (viiA), (viiB) and (viiC), Planning and Development Regulations 2001, as amended.
- Reference to a Habitats Directive Assessment Screening Report (also submitted).

4.2 Observation – Paul and Edel Grace and Peter Sweetman

4.2.1 Includes: -

- Reference to section 4 (4), Planning and Development Act 2000, as amended.
- As the development may have potential impacts on the lower River Suir Special Area of Conservation and the planning authority have stated that mitigation measures have been proposed it is not considered that the development is exempted development.
- By reference to O’Grianna & Others v. ABP the connection between the two windfarms is development and is not exempted development.
- Reference to Kelly v. BP [2013/802 JR] paragraphs 26 and 47-49 re the threshold for Appropriate Assessment.
- Reference to the Aarhus Convention. Given the potential impacts of the proposed development it should be open to public participation and scrutiny and, therefore, should not be granted exemption status.

4.3 Ecopower Developments Limited (Developer) – Response to Observation

Includes:

(a) Legal Opinion (Matheson Solicitors)

(b) Screening for EIA Report (incl. cumulative assessment)

The legal opinion includes:

Background

- The proposed works comprise what is effectively an internal windfarm cable linking the 3 Turraheen turbines to wind turbines at Glencarbry. The electrical control building approved in the Turraheen application, and which would have been required for any grid connection works, will not now be built as no 'grid connection' will now be required for the Turraheen turbines.
- All mitigation strategies and measures referenced in the application Appropriate Assessment Screening Report form part of the best practice design methodology of the construction works.
- A screening report for EIA, including cumulative analysis, should be provided to An Bord Pleánala.

O’Grianna v. An Bord Pleánala

- This case concerned planning permission for a wind farm and the environmental assessment of the wind farm and grid connection. The subject referral case is entirely different in that:
(a) the wind farms have planning permissions which cannot be the subject of collateral or retrospective challenge; and
(b) the works comprise underground cabling to connect two windfarms (not a grid connection) and are exempt under Class 26, Part 1, Schedule 2 of the Planning Regulations.
- The subject works are not listed in Schedule 5, Planning and Development Regulations and do not require EIA.
- Even if the findings of O’Grianna were to be applied, such that the works could be considered to be part of an “installation’ with Glencarbry and Turraheen wind turbines for the purposes of Schedule 5 of the Regulations (which it is submitted is inappropriate and amounts to a collateral attack on the planning permissions for the wind farms), the Screening Report for EIA, and cumulative analysis, demonstrates that the works are not likely to have significant effects on the environment.

Lower River Suir SAC

- There is not likely to be a significant effect on this European Site and this is demonstrated by the Appropriate Assessment Screening Report and by the interim finding of Tipperary County Council.
- Reference to Rossmore Properties & Anor v. An Bord Pleánala (August 2014) re mitigation measures being an intrinsic part of a project as applies in this case (best practice methodologies).
- By reference to Kelly v. An Bord Pleánala it would be 'overkill' to require planning permission in the subject case.

Aarhus Convention

- There is no statutory right in the Planning Act for the public to participate in a section 5 decision based on the Aarhus Convention.

4.4 Planning Authority Response to Observations

- 4.4.1** Confirms the planning authority view that the proposal constitutes development and constitutes exempted development.

4.5 Landowners

- 4.5.1** It is noted that details of the referral and the observer submission were circulated to landowners for comment but no responses were received.

5.0 PLANNING HISTORY

Planning Authority Reference 07/255, An Bord Pleánala Reference 225618

2008 grant of permission for 9 no. wind turbines to Ecopower Developments Limited at Glencarbry, County Tipperary. The application was accompanied by an EIS (file attached).

Planning Authority Reference 13/24, An Bord Pleánala Reference 242710

2014 (April) grant of permission for 3 no. wind turbines to Ecopower Developments Limited at Turraheen. The application was accompanied by an EIS and NIS (file attached).

6.0 DEVELOPMENT PLANS/NATURAL HERITAGE DESIGNATIONS

6.1 South Tipperary County Development Plan 2009 – 2015 (as varied – December 2015)

No relevant objectives.

6.2 Designated Sites

Lower River Suir SAC (Site Code: 002137)

Very large site comprising freshwater stretches of the River Suir and several tributaries as well as the tidal stretches of the river as far as the confluence with the Barrow/Nore in County Waterford. At its nearest point the site is approximately 1.8 kilometres (straight line) to the east of the proposed works. The five streams proposed to be crossed drain to the SAC – closest crossing approximately 3 kilometres upstream of SAC.

Map, Conservation Objectives, Standard Data Form and Site Synopsis included in file pouch.

7.0 LEGISLATION AND CASE LAW

7.1 Legislative Provisions

(a) Planning and Development Act 2000, as amended.

Section 2(1)

““works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and.....”

Section 3(1)

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to –

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,*
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or*
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.”*

Section 4(2)(a)(i)

“The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or....”*

Section 4(4)

“Notwithstanding..... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.

Section 172(1)

“An environmental impact assessment shall be carried out by a planning authority or the Board, as the case may be, in respect of an application for consent for –

- (a) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which exceeds a quantity, area or other limited specified in that Schedule, and*
- (b) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule*

but which the planning authority or the Board determines would be likely to have significant effects on the environment”.

Section 177U(9)

“In deciding upon a declaration or a referral under section 5 of this Act a Planning Authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section”.

(b) Planning and Development Regulations 2001, as amended

Article 3(3)

““electricity undertaking” means an undertaker authorised to provide an electricity service”.

Article 6(1)

“Subject to article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1”.

Schedule 2, Part 1

Development by Statutory Undertakers

Class 26

“the carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking”.

Article 9(1)

“Development to which Article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would –

- (v) *consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31(a) specified in column 1 of Part 1 of Schedule 2 applies,*
- (vii) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*
- (viiA) *consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*
- (viiB) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*
- (c) *If it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.”*

7.2 Case Law

O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM (copy in file pouch).

8.0 ASSESSMENT

8.1 I propose to deal with the issues in this referral under the following headings:

- O’Grianna
- Legislative Tests
- Precedent Referral Cases (if any)

8.2 O’Grianna

8.2.1 The Board will be aware that the O’Grianna case refers to a High Court judgement on Judicial Review of a permission granted on appeal by the Board for a development comprising 6 wind turbines and associated buildings/infrastructure in County Cork. The Board’s decision on the appeal (Ref. 242223) was made on 15th November, 2013 and the High Court judgement (Ref. 2014 No. 19 JR’ 2014 No. 10 COM) was delivered on 12th December, 2014.

8.2.2 That application for permission attracted a mandatory requirement for EIA as the development exceeded the 5 wind turbine threshold provided for in Class 3(i), Part 2, Schedule 5, Planning and Development Regulations 2001, as amended. As was the case with most wind farm development applications at that time, and in line with advice contained in the Planning Guidelines, no details were included in relation to the connection to the national grid. This would be a matter for later determination as its design (including line, form, overhead/underground) would be undertaken by ESB Networks.

8.2.3 In essence the High Court judgement, quashing the Board’s decision, was based on the conclusion that the windfarm and the grid connection constituted a single project and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Directive.

- 8.2.4** As a consequence of the judgement new applications for permissions for wind farms developments, and which require EIA, now include relevant information on proposed grid connections.
- 8.2.5** While the proposal before the Board in the instant referral is not a grid connection as such, but rather a proposed connection between two permitted windfarms, I consider that the O’Grianna, whole project approach, is applicable in that it needs to be considered in the assessment of this referral.
- 8.2.6** In this regard the key consideration here is that the subject windfarms both have the benefit of planning permission granted prior to the O’Grianna judgement – Turraheen granted in 2008 (Planning Authority Reference 07/255 and An Bord Pleánala Reference 225618) and Glencarbry granted in April 2014 (Planning Authority Reference 13/24, An Bord Pleánala Reference 242710). These decisions were in accordance with the law as it stood at that time and are, therefore, valid and beyond challenge. The applications were subject to EIA and it is not now proper or possible to revisit this.
- 8.2.7** In the referral details are provided of the proposed connection between the windfarms. The question of EIA, including cumulative assessment, can be addressed in accordance with the requirements of the Directive and as provided for in domestic planning legislation to the extent that is appropriate for the purposes of a referral. As indicated at Section 7.1 above one of the tests that has to be considered in the referral is whether or not EIA is required for the subject development.
- 8.2.8** I can see no impediment, therefore, to the Board proceeding to deal with the subject referral while still meeting fully its obligations under the Directive.

8.3 Legislative Tests

- 8.3.1** To recap the question before the Board can be stated as follows:

Whether the laying of underground 20kV electricity cables and ancillary works to link Turraheen Windfarm (Planning Ref. 13/24) to Glencarbry Windfarm (Planning Ref. 07/255) is or is not development or is or is not exempted development.

- 8.3.2** The relevant legislative provisions in this case are as set out at Section 7.1. above.

Development

- 8.3.3** Having regard to the nature of the proposal, namely the construction of c.3.5 kilometres of underground cable, it is clear, by reference to Section 2(1) and 3(1) of the Act, that it does constitute development for planning purposes. The focus, therefore, is on whether or not the proposed development constitutes exempted development.
- 8.3.4** Following on from Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is, as indicated, Class 26, Part 1, Schedule 2, Planning and Development Regulations 2001, as amended. I am satisfied that the proposal is *“a development consisting of the laying underground of....cables....for the purposes of the undertaking”*. The other requirement of this class is that the development be carried out by an *“undertaker authorised to provide an electricity service”*.

Undertaker/Statutory Undertaker

- 8.3.5** As indicated Article 3(3) of the Regulations states that an electricity undertaking means *“an undertaker authorised to provide an electricity service”*. However, there is no statutory definition to clarify what exactly this means. The Electricity Regulation Act 1999, at Section 2(1), provides the following definition:

“electricity undertaking” means any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under section 37 of the Principal Act”.

- 8.3.6** I note that while this definition refers to holders of licences/authorisations/permits the use of the conjunction *“including”* prior to the reference to these instruments indicates that they are not essential and that the term *“electricity undertaking”* can apply to *“any person”* engaged in generation, transmission, distribution or supply of electricity.
- 8.3.7** As indicated Class 26 falls under the heading *“Development by Statutory Undertakers”*. It is one of several classes (Classes 23 – 32) in this part of the Schedule. It seems to me, therefore, that the references to undertakers, undertakings and other bodies/authorities referred to in these classes must be construed as meaning statutory undertakers.

- 8.3.8** The definition of “*Statutory Undertaker*” as provided in the Act appears to encompass a very broad spectrum of categories of persons or bodies. It includes “...a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity”. In my opinion Ecopower Developments Limited would appear to fall within this category on foot of their authorisation under the Planning Act to construct wind farms that are projects/works for the provision of electricity.
- 8.3.9** As an aside I would note that the current definition of “*Statutory Undertaker*”, clearly contemplates undertakings that are not solely public undertakings. This compares to the definition in the original 1963 Act [Section 2(1)] that appears to have contemplated public undertakings only. The change presumably reflects the liberalisation of markets in services and infrastructural provision that has occurred since then.
- 8.3.10** I am satisfied, therefore, that the proposed development falls within the scope of the said Class 26.
- 8.3.11** The next step is to consider Section 4(4) of the Act which effectively de-exempts any development which attracts a requirement for Environmental Impact assessment (EIA) or Appropriate Assessment (AA).

Environmental Impact Assessment (EIA)

- 8.3.12** Being an underground cable for the transmission of electricity the proposed development does not fall within a class of development for the purposes of EIA. It cannot, therefore, attract a requirement for EIA.
- 8.3.13** The Board will note that the legal opinion submitted by the applicants (section 4.3 above) draws a similar conclusion. It also indicates that insofar as the works could be considered to be part of an installation [referencing Class 3(i), Part 2, Schedule 5, Planning and Development Regulations 2001, as amended, and which refers to wind farms] the applicants Screening Report for EIA demonstrates that they are not likely to have significant effects on the environment.
- 8.3.14** The Screening Report assesses the potential impact of the proposal under all of the environmental topics prescribed for EIA. It also includes a cumulative assessment by reference to the Glencarbry and Turraheen wind farm projects and the other operational wind farms in

the general locality, namely the Glenough and Hollyford wind farms. The conclusions drawn are that there are not likely to be any significant effects on the environment as a result of the proposed development. I consider the conclusions to be reasonable. There is, therefore, no requirement for EIA.

Appropriate Assessment (AA)

- 8.3.15** In relation to AA the application documentation submitted to the Planning Authority included Screening for Appropriate Assessment (see section 2.1 above).
- 8.3.16** The report correctly identifies the most relevant European site as the Lower River Suir SAC (Site Code 002137). At its nearest point this site is approximately 1.8 kilometres to the east of the proposed works. More significantly the five streams proposed to be crossed ultimately drain to the SAC and the nearest crossing point is approximately 3 kilometres upstream of the SAC.
- 8.3.17** Copies of relevant documentation for this site, including, in particular, the site conservation objectives, is included in the file pouch. The objectives are generic relating to the maintenance and restoration of the favourable conservation condition of the habitats and species for which the SAC has been selected. These are

Habitats

- Atlantic Salt Meadows.
- Mediterranean Salt Meadows.
- Floating River Vegetation.
- Hydrophilous Tall Herb Communities.
- Old Oak Woodlands.
- Alluvial Forests (priority habitat).
- Yew Woodlands (priority habitat).

Species

- Freshwater Pearl Mussel.
- White-clawed Crayfish.
- Sea Lamprey.
- Brook Lamprey.
- River Lamprey.
- Twaite Shad.
- Atlantic Salmon.

- Otter.

8.3.18 It should be noted that the report also considers likely significant effects on the Slievefelim to Silvermines Mountains SPA (Site Code 004165). This is located approximately 5.2 kilometres to the north-west of the proposed development. The conservation objective for this site is also generic and relates to the sole species for which the SPA was selected, i.e. Hen Harrier. Given the nature of the proposed cable route, being laid underground, and following a mix of agricultural grassland, forestry edge and fire break, as well as stretches of existing track and the considerable separation distance in excess of 5 kilometres, I consider the report conclusion, discounting any likely significant effects in terms of species disturbance or displacement in relation to this site, to be reasonable.

8.3.19 In relation to the Lower River Suir SAC the report considers likely significant effects in relation to; habitat loss/habitat alteration; water quality/resource; and disturbance/displacement of species. It also addresses in-combination effects.

8.3.20 In relation to habitat loss/alteration the report correctly in my view, concludes that neither of these, either direct or indirect, would occur to any significant extent.

8.3.21 In relation to water quality the report identifies the potential vulnerability of the qualifying interest species for the site and the qualifying habitat Floating River Vegetation.

8.3.22 The key issue relates to the proposed stream crossings, all located within 3-6 kilometres upstream of the SAC. These are to be executed by horizontal directional drilling under each stream with no in-stream works proposed. The installation technique is stated to be extremely protective of the environment. I note, in particular, the following: -

- Works areas to be set back a minimum of 20 metres from river/stream banks.
- Any excess bentonite, injected during the drilling process, to be removed off site.
- No joint bays to be located within 20 metres of any stream/river.
- Measures to ensure continuous flow in drain ditches, where these are to be crossed and contain water, and to prevent siltation.
- Other best practice measures as outlined, including proposed Construction and Environmental Management Plan (CEMP).

On this basis, I consider that it is reasonable to objectively conclude that no significant effects in terms of water quality are likely to arise. I would also emphasise that I consider the measures referred to above constitute best practice, intrinsic to the project, and in no sense do they amount to mitigation measures.

8.3.23 In relation to disturbance/displacement of species the Screening Report correctly, in my view, identifies otter as the species potentially at risk during the construction phase. It is indicated that the surveys of stream crossings along the proposed route produced no evidence of otter. However, the potential of otter to exploit such habitats is noted. Given the short time frame for construction, approximately 6 weeks, and the existing levels of potential disturbances (minimum activity, traffic etc.) I consider that the conclusion of no likely significant effects is reasonable.

8.3.24 In relation to in-combination effects the Screening Report concludes that no such significant effects are likely to arise in the context either of other existing activities in the area, such as forestry or farming, or of wind farm development in the area, existing or planned. I concur with this conclusion having regard, in particular, to the small scale and nature of the proposed development, being an underground cable, laid in a trench approximately 1.2 metres deep by 0.6 metres in width, over a distance of approximately 3.5 kilometres and involving a short construction period of about 6 weeks.

8.3.25 Finally, I would note the similar overall conclusions drawn in the Planning Authority's Planning Officers' Habitats Directive Assessment Screening Report (see section 4.1.2 above).

8.3.26 I consider, therefore, that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002137, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

8.3.27 I am satisfied, therefore, that the proposed development does not fall within the scope of Section 4(4) of the Act.

Article 9(1) De-exemptions

8.3.28 The next, and final, step in this assessment is to consider the relevant provision of Article 9(1) of the Regulations (see Section 7.1(b) above) in order to check if any of these ‘de-exemptions’ apply.

8.3.29 In relation to Article 9(1)(a)(v) I have already concluded that the proposed development falls within the scope of Class 26 (See Section 8.3.11 above) so that this article does not apply.

8.3.30 Articles 9(1)(a)(vii) and (viiA) refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives. The Board will note that the application documentation submitted to the planning authority included an Archaeological Impact Assessment (see Section 2.1 above). The assessment was based on both a desk-top review of relevant source material and a walk-over survey/field inspection of the proposed route. While archaeological monitoring during construction is recommended no findings suggesting any direct impacts of significance are made. On this basis I am satisfied that the proposed development does not fall within the scope of Articles 9(1)(a)(vii) or (viiA).

8.3.31 Article 9(1)(a)(viiB) refers to the issue of Appropriate Assessment and as such the conclusion reached at paragraph 8.3.26 above applies.

8.3.32 Similarly Article 9(1)(c) refers to the issue of EIA and as such the conclusion reached at paragraphs 8.3.12 to 8.3.14 above applies.

9.3 Precedent Cases

9.4.1 ABP Refs. RL3369 and RL3375

Recent, April 2016, decisions that the laying of a 20 kV underground cable by Raragh Developments Limited, forming the grid connection for a windfarm in County Cavan, is exempted development (copy orders in file pouch).

ABP Refs. RL3377 and RL3401

Recent, May 2016, decisions that the provision of a 20 kV overhead electricity line by Cnoc Windfarms Limited, forming the grid connection for a windfarm in County Tipperary, is exempted development (copy orders in file pouch).

ABP Ref 04.RL2789

This is a 2011 decision that the laying of an underground electricity cable by SWS Energy, also associated with a wind farm, in the Limerick/Cork border area, was exempted development. While the decision was heavily focussed on the matter of the route traversing an SPA, it is of interest in that it also included the decision that the development in question came with the scope of Class 26, Part 1, Schedule 2 of the Regulations (copy order in file pouch).

ABP Ref. 03.RL.2778

This is a 2011 decision that the laying of an underground electricity cable by ESB Networks Projects South, also associated with a wind farm, in County Clare was exempted development. Again while much of the decision focussed on the matter of the route crossing an SPA it also confirmed that the development in question came within the scope of Class 26 (copy order in file pouch).

I also note that **ABP Ref. 13.RL.2786** is a further 2011 decision of a similar nature (copy order in file pouch).

9 RECOMMENDATION

I recommend that the Board should decide this referral in accordance with the following draft order:

WHEREAS a question has arisen as to whether the laying of underground 20 kV electricity cables and ancillary works to link Turraheen Windfarm (Planning Ref. 13/24) to Glencarbry Windfarm (Planning Ref. 07/255), is or is not development or is or is not exempted development;

AND WHEREAS Ecopower Developments Limited, Sion Road, Kilkenny, Ireland, requested a declaration on the said question from Tipperary County Council and the said Council referred the question to the Board on the 20th day of November, 2015;

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1), 3(1), 4(4), 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 3, 6 and 9 and Class 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- (c) O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the said underground cables come within the scope of sections 2(1) and 3(1) of the Act, as amended, and constitute development,
- (b) the said underground cables come within the scope of Class 26, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,
- (c) the said underground cables do not come within the scope of section 4(4) Planning and Development Act, 2000, as amended. In this regard the Board adopts the report of the Inspector in relation to EIA and AA and, thereby, has carried out the necessary assessments to conclude that neither EIA nor AA is required,
- (d) the said underground cables do not come within the scope of articles 9(1)(a)(v), (vii), (viiA) or (viiB) or article 9(1)(c) Planning and Development Regulations, 2001, as amended, and
- (e) as the wind farms for which the proposed electrical connection is required were approved prior to the O’Grianna decision the Board can proceed to decide the subject referral, including the consideration of EIA and AA to the extent that is necessary, in accordance with the relevant legislative provisions.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the laying of underground 20 kV cables and ancillary works to link Turraheen Windfarm (Planning Ref. 13/24) to Glencarbry Windfarm

(Planning Ref. 07/255), is development and is exempted development.

**Brendan Wyse,
Assistant Director of Planning.**

11 May, 2016.

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