



An
Bord
Pleanála

Inspector's Report

RL11.RL3482

Question	Whether an electricity grid connection to connect wind farm at Cullenagh Mountain to a sub-station in Port Laoise, is or is not development and is or is not exempted development.
Location	Cullenagh Mountain, Ballyroan and Port Laoise, Co. Laois.
Declaration	
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	10/5
Applicant for Declaration	People Over Wind
Planning Authority Decision	None
Referral	
Referred by	Laois County Council
Owner/ Occupier	Coillte Teoranta
Observer(s)	People Over Wind
Date of Site Inspection	10 th March 2017.
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site is linear (15.4km), linking a permitted wind farm of 18 no. turbines and associated site works, within a Coillte forestry plantation at Cullenagh Mountain (high point 317m), to the east of the village of Ballyroan; connecting it via underground cable (mostly within public roads – amongst which are the R425, R426 and R922 Regional Roads) linking Ballyroan with a sub-station at Abbeyleix Road, Port Laoise, Co. Laois. Only two short sections of county road are included – the run into Ballyroan village and the county road (L6310) connecting the R426 and R922 at Meelick townland just to the south of Port Laoise. The route crosses over the M7 Motorway by-pass of Port Laoise within the Rathleague over-pass bridge structure. A total of 12 no. watercourse crossings have been identified along the route. There is one stretch of bog rampart construction on the R425, within the townlands of Ballyknockan and Pass (a length of approximately 1.0km), flanked mostly by Coillte forestry plantations. The cable route is off-road along most of this bog rampart section.
- 1.2. There has been considerable clear-felling within recent months at the Coillte plantation at Cullenagh Mountain (the wind farm site). There are two mobile phone masts within this plantation – recently exposed through clear-felling. The roads along which it is proposed to lay the cable are wide enough for two vehicles to pass – with the exception of one small stretch (the Coach Road) just to the east of the village of Ballyroan where two cars can pass only with care. The roads in the vicinity of Port Laoise are heavily trafficked – the R922, L6310, R426 and R425 as far as Sheffield Cross Roads, being particularly busy on the date of site inspection. There is an amenity picnic area at the junction of the R425 and R427 roads, with overhead 400kV cables at this location. Where the route leaves the public road network and enters farmland in the townland of Cloncullane, there is a farm track running a considerable way up the hill towards the Coillte forestry plantation at Cullenagh Mountain. The area comprises intensively farmed, improved agricultural grassland which has been drained, fenced, gated and provided with drinking troughs for livestock. There are a number of one-off houses flanking the route – with a particular concentration just to the south of Sheffield Cross Roads, at Cappoley townland.

2.0 The Question

- 2.1. Whether an electricity grid connection for a wind farm at Cullenagh Mountain, is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Laois County Council considered that the level of information available to it, in relation to the question put by People Over Wind, did not allow it to make a Section 5 Declaration in this instance. Given that the Board had issued the grant of planning permission in relation to the wind farm at Cullenagh Mountain (ref. 13/268 – PL 11.242626), which the grid connection would serve, it was deemed appropriate to seek a declaration from the Board under section 5(4) of the Planning and Development Act 2000.

4.0 Planning History

Ref. 13/268: Permission refused by LCC to Coillte Teoranta for development comprising a wind farm of 18 no. turbines and associated infrastructure [but not including a grid connection] at Cullenagh Mountain and lands to the south. The application was accompanied by an EIS and an NIS. The applicant appealed the decision to the Board (**PL 11.242626**), and by Order dated 17th June 2014, permission was granted subject to 22 no. conditions. The development has not been carried out to date.

Ref. 16/481: Permission granted by LCC on 16th November 2016, to construct a 15.4km long, 38kV, underground grid connection from Cullenagh Mountain wind farm site to an existing electricity sub-station at Abbeyleix Road, Port Laoise. Approximately 78% of the route is located within public roads/verges. This decision was the subject of a third party appeal to the Board (**PL 11.247703**). There is no decision to date on this appeal.

5.0 Policy Context

5.1. Wind Energy Development – Planning Guidelines (2006)

At section 6.11.3 it is indicated that- “The cost of underground connection from the compound to the national grid is generally prohibitive. This connection can thus be above ground in all but the most sensitive landscapes”.

5.2. Development Plan

The relevant document is the Laois County Development Plan 2011-2017. Section 3.2.2 indicates that it is a Core Aim of the Plan- “To promote and support the development of the renewable energy resource of the County including in particular from wind, waste material, solar, hydro and biomass energy, subject to normal proper Planning considerations”. Policy ET 9 / P01 seeks to- “Facilitate energy infrastructure provision, including the development of renewable energy sources at suitable locations, so as to provide for the further physical and economic development of County Laois”.

The Coach Road, Bunny’s Bridge, just to the east of Ballyroan village is included in the Record of Protected Structures (RPS) – no. 661.

5.3. Laois Wind Strategy 2011-2017

The Wind Strategy is contained within Appendix 5 of the County Development Plan. There are no specific policies or objectives within this document relating to grid connections for wind farms, other than 6.13 which states- “Connections within the wind farm will be laid underground”.

5.4. Draft Laois County Development Plan 2017-2023

This Draft Plan includes at Section 2.1.2, Aim 13 which states- “Ensure that development is promoted, supported or facilitated by the Laois County Development Plan, provides for climate change including the increased risk of flooding and the promotion of renewable energy where possible;”. Policy EN3 states- “Promote and facilitate wind energy development in accordance with Guidelines for Planning Authorities on Wind Energy Development (Department of Environment, Heritage and Local Government, 2006) and the Wind Energy Strategy which forms part of this Plan, and subject to compliance with normal planning and environmental criteria;”. It is further policy of the Council- ELEC1 “Ensure the provision, where feasible, of electricity cables been [sic] located underground, especially in the urban environment, and generally within areas of public open space;”. The Coach Road, Banny’s Bridge, remains on the list of Protected Structures (no. 661).

5.5. Draft Laois Wind Strategy 2017-2023

The Wind Strategy is contained within Appendix 5 of the Draft County Development Plan. There are no specific policies or objectives within this document relating to grid connections for wind farms, other than 6.13 which states- "Connections within the wind farm will be laid underground".

5.6. Natural Heritage Designations

There are a number of European sites within a 15km radius of the linear grid connection route-

- River Barrow and River Nore SAC (Site code 002162).
- River Nore SPA (Site code 004233).
- Slieve Bloom Mountains SAC (Site code 000412).
- Slieve Bloom Mountains SPA (Site code 004160).
- Mountmellick SAC (Site code 002141).
- Ballyprior Grassland SAC (Site code 002256).
- Lisbigney Bog SAC (Site code 000869).

6.0 The Referral

6.1. Referrer's Case

The Planner's Report from the Council (dated 18th May 2016) can be summarised in bullet point format as follows-

- People Over Wind consider that the grid connection for the wind farm at Cullenagh Mountain was not subject to EIA or AA, as required by law, and, therefore, cannot be considered exempted development.
- A section 5 declaration was sought from LCC on the matter.
- A grid connection did not form part of wind farm application ref. 13/268, and it was indicated that it may be exempted development. The connection was indicated to the sub-station at Abbeyleix Road, Port Laoise.
- The Council considers that the question put to LCC is too vague.

- Further information was requested of the applicant for the declaration (People Over Wind). The response received was insufficiently detailed to allow LCC to make a declaration.
- Given the importance of the question, and as it relates to a large wind farm development which was granted by the Board, it was considered appropriate to seek a section 5(4) determination from the Board.

By letter dated 24th June 2016, the Board wrote to LCC requesting details of the grid connection route and type. By letter dated 14th July 2016, LCC responded that it did not have any details in relation to the grid connection route.

6.2. Original Observer's Response

The Board referred the referral case to People Over Wind on 24th May 2016, requesting comment. The response, received by the Board on 14th June 2016, can be summarised in bullet point format as follows-

- The EIS for the wind farm at Cullenagh Mountain states that the grid connection will be to the sub-station at Abbeyleix Road, Port Laoise. The grid connection was not the subject of the wind farm application.
- A development cannot be exempted development, if EIA is required.
- The decision of the High Court in the O'Grianna case issued subsequent to the granting of planning permission for the Cullenagh Mountain wind farm.
- The EU is ensuring that Ireland takes necessary steps to ensure grid connections for wind farm developments are properly assessed in compliance with the EIA Directive, the Habitats Directive and the SEA Directive.
- The grid connection for this wind farm development is identical to the O'Grianna case and, therefore, must be subject to EIA in association with the wind farm it is to serve. The fact that the decision pre-dates the O'Grianna decision does not in any way remove the obligations outlined in the Directives.

The observation is accompanied by a copy of a letter from the European Commission in relation to EU pilot 8398/16 concerning wind farm developments and grid connections – compliance with the EIA Directive, the Habitats Directive and the SEA Directive.

6.3. Owner/Occupier's Response

6.3.1. The Board referred the referral case to Coillte Teoranta on 24th May 2016, requesting comment. It would appear that the post was not directed to the correct person within the company (RPS Planning & Environment) acting for the owner/occupier, Coillte Teoranta. The Section 131 Notice was reissued – requesting a response by 14th July 2016. The response of the owner/occupier was received on 14th July 2016, but was misplaced upon receipt within the Board. The owner/occupier was requested to furnish a second copy of the submission – which was duly received on 4th August 2016. In the meantime, the original submission of 14th July was unearthed within the Board's offices. It is this earlier submission of 14th July which is attached to the current referral file.

6.3.2. The response of Coillte, received by the Board on 14th July 2016, can be summarised in bullet point format as follows-

- The history in relation to wind farm application (13/268) is set out. The Board carried out EIA and AA and granted planning permission ref. PL 11.242626.
- An underground 38kV power line is proposed from Cullenagh to Abbeyleix Road sub-station in Port Laoise. The trench will be approximately 1.2m deep. Some 78% of the length is located within roads or road verges. The remainder is located within Coillte forestry plantation or agricultural land – the one affected farmer has consented to the cable laying within his farm.
- There will be no in-stream works. All watercourse crossings are indicated at Table 3.1 of the document. The cable will be laid within bridge/culvert structures at watercourse structures or else beneath the watercourses using directional drilling. Details of the technology involved is included within documentation submitted with this response.
- The route traverses a section of old coach road at Banny's Bridge to the east of Ballyroan Village. The coach road is listed on the Record of Protected Structures within the Laois County Development Plan.
- There are a number of Recorded Monuments within the village of Ballyroan.
- There is a section of floating road/bog rampart within the townlands of Pass and Ballyknockan – approximately 1.0km. The grid route is diverted off this

section of road into Coillte plantations to east and west. Approximately 300m will be located within floating road – and directional drilling may be required for this section – between points 6 and 7 on Figure 3.6.

- A Road Opening Licence will be required from LCC, and this Licence will deal with issues of traffic management during trench works.
- The term ‘electricity undertaking’ can apply to any person. The term ‘Statutory Undertaker’ within the Act encompasses 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 *inter alia* ‘(b) provide, or carry out works for the provision of gas, electricity or telecommunications services...’ Coillte has a planning permission to develop a wind farm for the generation of electricity.
- Section 4 of the Planning and Development Act provides for exempted development. Section 4(4) provides that any development requiring EIA or AA shall not be exempted development. Screening exercises for both have been carried out, and it is concluded that the grid connection would not require EIA or AA.
- Articles 6 & 9 of the Planning and Development Regulations provide that certain classes of development shall be exempted. Class 26 of Part 1 of Schedule 2 provides for- ‘The carrying out by an undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purpose of the undertaking’. There are no conditions or limitations attached to this Class.
- Class 16 of Part 1 of Schedule 2 is also of relevance – relating to works required temporarily in connection with the carrying out of a permission. This class is restricted by the necessity to remove structures, works, plant or machinery at the expiration of the prior and the land reinstated.
- Works within the Rathleague overbridge on the M7 fall under section 4(1)(h).
- Article 9 de-exempts certain classes of exempted development. 9(1)(v) provides an exclusion of development under class 26 (amongst others).

- The submission goes on to refer to a number of section 5 referral cases where the Board has decided that grid connections can be considered exempted development – particularly where permission was given for the wind farm prior to the O’Grianna judgement in December 2014.
- A number of local authorities have concluded that the laying of underground grid connection cables for wind farms constituted exempted development.
- This underground grid connection is considered to be exempted development.

6.3.3. The response is accompanied by a number of supporting documents as follows-

- Opinion from Arthur Cox, Solicitors (dated 14th July 2016) that underground grid connection is exempted development under Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended).
- Letter from Coillte (dated 14th July 2016) stating that it intends to rely on the opinion of Arthur Cox Solicitors, to construct the underground grid connection as exempted development under the aforementioned Class 26. Coillte is designated as a ‘Public Authority’ under Article 2(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended). Screening for AA was carried out in relation to the grid connection, and Coillte concluded that AA was not required in this instance (dated 14th July 2016).
- Outline Construction Environmental Management Plan (dated July 2106) which broadly sets out the best practice to be followed, roles and responsibilities, site management and procedures.
- Outline Cable Route Construction Methodology (July 2016) which broadly sets out methodologies of laying cable within different ground conditions. Appendix B contains a set of Preliminary Grid Route Drawings.
- Ecological Report (dated July 2016) which broadly describes existing environment and habitats along the route, proximate European sites and nature conservation areas – and includes a Stage 1 Presence/Absence Freshwater Pearl Mussel Survey (dated 17th June 2016).
- Environmental Impact Assessment Screening Report (dated July 2016), which concludes that EIA is not required for the grid connection – taking into

consideration cumulative impact with the Cullenagh wind farm development. An appendix to this report is a Cultural Heritage Assessment Report.

- Appropriate Assessment Screening Report (dated July 2016) which concludes that the grid connection, either by itself or in-combination with other plans and projects would not have any significant effect on European sites.

6.4. Further Responses

6.4.1. The response of Coillte, received by the Board on 14th July 2016, was referred to LCC for comment. There was no response received.

6.4.2. People Over Wind made a submission to the Board on 12th September 2016. This was returned, on grounds that it constituted elaboration on a submission already made. On 19th October 2016, the Board received a letter from O'Connell & Clarke, Solicitors, agent on behalf of People Over Wind, stating that their clients had become aware that Coillte had submitted substantial screening reports to the Board. It was the opinion of the agents that their client should be given an opportunity to comment on these reports. By letter dated 16th November, the Board referred the submission of 14th July 2016, from Coillte, to People Over Wind, for comment on or before 6th December 2016. The response of People Over Wind, received by the Board on 29th November 2016, can be summarised in bullet point format as follows-

- The EIS screening is not valid, as it does not assess the combined effects of the grid connection and the associated wind farm development. The O'Granna judgement is of relevance in this instance. The judgement applies to all applications, regardless of whether permissions were granted before or after the judgement issued.
- The AA screening identifies potential significant effects on the [sic] SAC. AA screening for the grid connection in-combination with the wind farm is required.
- Mitigation measures have been used to screen out AA. This is not acceptable. The mitigation measures are not specified or detailed.
- Condition 17(k) of the wind farm permission specifies stringent limits in relation to discharge of silt to watercourses. This condition was critical to the

development proceeding. There is no such guarantee in relation to the grid connection – which is located within the same Freshwater Pearl Mussel catchment.

- It is understood that the declaration of the Board in relation to RL2269 was quashed (14th October 2016) following Judicial Review proceedings.

7.0 Statutory Provisions

7.1. 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(4)

Notwithstanding paragraphs (a), (i), (ia) and (l) of *subsection (1)* and 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 proposed development where either–

(a) the proposed development would be a class specified in-

(i) Part 1 of Schedule 5 of the Planning and Development Regulations 2001, and either-

(I) such development would exceed any relevant quantity, area or other limit specified in that Part, or

(II) no quantity, area or other limit is specified in that Part in respect of the development concerned,

or

(ii) Part 2 of Schedule 5 of the Planning and Development Regulations 2001, and either-

(I) such development would exceed any relevant quantity, area or other limit specified in that Part, or

(II) no quantity, area or other limit is specified in that Part in respect of the development concerned,

or

(b) (i) the proposed development would be of a class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001 but does not exceed the relevant quantity, area or other limit specified in that Part, and

(ii) the planning authority or the Board, as the case may be, determines that the proposed development 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.

7.2. 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.

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.

Part 1, Schedule 2

Temporary structures and uses

Class 16

The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out. Column 2 restricts this exemption as follows- "Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

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.

8.0 Assessment

I propose to address the issues of this referral under the following headings-

- General comment in relation to the nature of the underground grid connection and the likely principal impacts on the environment.
- The need for Environmental Impact Assessment (EIA).
- Appropriate assessment (AA).
- Implications of the O’Grianna judgement.
- Legislative Impacts.
- Precedent cases.

8.1. General Comment

8.1.1. Likely Construction Impacts

Some 78% of the length of the route is to be constructed within public roads. The trench will be 1.2m deep and 0.6m wide. There is one section of floating road/bog rampart within the townlands of Pass and Ballyknockan. For that section within Pass townland, the cable is to be rerouted off-road into Coillte plantation to east and west of the road – crossing beneath the R425 at one point using directional drilling. There is a further section of bog rampart road identified immediately to the north (300m linear metres), within the townlands of Ballyknockan and Ballycarnan (the centre of the road being the townland boundary) which may require special construction measures. Certainly the road would appear to be of bog rampart construction – raised above the level of flanking lands. The lands to the east of this section of road are named Castlebog Wood – the name alone indicating the nature of the underlying ground. There is no option for off-road construction along this 300m length. The Outline Cable Route Construction Methodology indicates that directional drilling may be required under some or all of this 300m section – depending on the extent of bog rampart construction. Some 1.3km of the route is located within farmland. Existing excavated material will be used in backfilling the trench. Some 1.5km of the route is located within the wind farm site. A further 0.6km is located within Coillte plantations at Pass townland. A 1.2m wide trench is to be excavated, almost entirely within

existing forest roads (within the wind farm site), with cables laid as outlined above. Excavated material will be used in backfilling the trench. The Coillte response included an Outline Cable Route Construction Methodology indicating exactly how the cable is to be laid along different sections of the route. Approximately 50-100m lengths of trench will be open at any one time. Cables will be laid by a number of crews working simultaneously – with a minimum separation of 2-3km, to prevent unacceptable impact on road traffic. The construction period is estimated at 30 weeks.

8.1.2. Ecology

The Coillte submission included an Ecological Report. General walk-over site surveys were undertaken on 17th December 2015 and 14th January 2016. Some 78% of the route is laid within the bed of public roads/verges. A length of 1.3km lies through improved grassland where the route emerges from the Coillte coniferous forestry plantation at Cullenagh Mountain. Within the townland of Pass, the route will be diverted off-road into Coillte forestry plantations (0.7km) – first to the west and then to the east of the R425. This will involve felling of trees to create a passage for the new cable trench. All watercourse crossings along the 15.4km route have been identified. In addition, there is a section of floating road on the R425 built on peat within the townlands of Ballycarnan and Ballyknockan (0.3km). The cable will be laid within the road base at watercourse crossings where there is sufficient depth for such; otherwise directional drilling will be used beneath the watercourse – to ensure that there is no disturbance of water-based habitats along the route. This will involve construction of launch and reception pits up to 2.5m wide, 6.0m in length and 2.5m deep.

Aquatic surveys were undertaken on 3rd and 4th May 2016, for purposes of assessing water quality. Eight of the twelve identified water crossings are Environmental Protection Agency (EPA) mapped. Only two had water flows suitable for Q-value sampling. Macro-invertebrate surveys were carried out for the two – a tributary of the Ballyroan Stream at Banny's Bridge and the Triogue River within Meelick townland. Both revealed Q-values of Q3-4 – Moderate Status. The southern half of the grid connection route is located within the Nore Freshwater Pearl Mussel Catchment – established by the Freshwater Pearl Mussel Nore Sub-Basin

Management Plan (2009). The remainder of the route is located within the Barrow catchment, within which the status of Freshwater pearl mussel (previously recorded) is unknown. The Freshwater pearl mussel surveys were undertaken on 3rd May 2016, at eight EPA-identified water crossings, under licence from the NPWS. The surveys revealed no evidence of either adults or juveniles, alive or as dead shells. A number of the first order watercourses were dry/ephemeral channels, or were significantly culverted or piped, and, therefore, not suitable habitat for this species. The closest point of the River Nore is 11.0km downstream of a stream crossing in Ballyroan village – via the Gloreen River. No in-stream works are proposed as part of this development. Directional drilling is to be used where the cable is to be laid beneath watercourses. Construction practices outlined in the Outline Construction Environmental Management Plan, the Outline Cable Route Construction Methodology and Outline Surface Water Management Plan are included to ensure that the water quality at water crossings will not be impacted.

Approximately 50m of the grid connection route traverses the Ridge of Portlaoise pNHA (Site code 000876). This is an esker-based feature containing two rare plants protected under a Flora Protection Order. The Development Plan describes it as an “Esker ridge, ash/hazel woodland, species-rich grassland, disused gravel pits”. It extends through Portlaoise and out to the southeast along the R426. The R426 is a new road at this location (constructed as part of the N7 Motorway by-pass of Portlaoise). The grid connection route will be located within or along a public road in this location and will not impact on the pNHA.

There will be no impact on improved agricultural grassland habitat other than short-term disturbance during the laying of the cable. Considerable clear-felling is currently under way at Cullenagh Mountain – the wind farm site. The proposed development will not result in the loss of any significant amount of trees at this location – being almost entirely located within forest tracks within the wind farm site. Some coniferous plantation will have to be felled to facilitate the construction of part of the off-road section within the townland of Pass. Such trees would be subject to felling at some stage in any event. The loss will not be significant.

No Smooth newt or Common lizard were encountered during site surveys. Otter was recorded on the Triogue River. The watercourse at Banny’s Bridge is the only other

one suitable for Otter. The grid connection will be within the road base in both of these locations, and so will not have any impact on the species other than short-term disturbance. Pine Marten was recorded during site surveys at Cullenagh Mountain for the wind farm development. The laying of a trench within forest roads will not have any significant impact on the species. Badgers are likely to be active along most of the grid connection route. Works will be of limited duration and will not have any significant impact on the species – particularly along busy Regional roads. Bat roosts were identified during surveys for the wind farm development site. Mature trees have potential to be roost sites. Bat species forage throughout the forest at Cullenagh Mountain and along roadside hedgerows. Bridges along the grid connection route are stated not to be suitable for bat roosts. None of the water channels surveyed were substantive enough for Kingfisher – a species of conservation interest for the River Nore SPA. No invasive species (Japanese knotweed, Himalayan balsam, Giant hogweed or Rhododendron) were identified along road margins of the grid connection route.

The principal measures outlined to protect the ecology of the area (water quality and displacement of species) during the laying of the cable, would include the following-

- Absence of in-stream works.
- Sediment control measures and systems for dealing with accidental spillages of hydrocarbons/drilling fluids.
- Limited extent of trench openings at any one time (50-100m lengths).
- Temporary nature of construction phase over a wide area (15.4km) – limiting the impact of noise, vibration and dust on habitats and species.
- Limited loss of habitat within coniferous plantation areas.
- Limited overlap with wind farm site resulting in insignificant cumulative impact – even if works for both are carried out at the same time.
- Appointment of an ecological clerk-of-works to supervise all elements of construction.
- No trees will be felled between 15th April and 31st August.
- Machinery introduced to site will be checked for invasive species.

- Pre-construction surveys undertaken (where necessary under licence) for breeding bats, badger and otter.

If mitigation measures and good environmental/construction practices are observed during the construction phase, I would be satisfied that the proposed development will not have any significant impact on the ecology of the area – particularly the Nore Freshwater pearl mussel.

8.1.3. Cultural Heritage of the Area

The Coillte submission was accompanied by a Cultural Heritage Screening Report (included as an appendix of the Environmental Impact Assessment Screening Report. A site visit was undertaken on 9th March 2016 (colour plate photographs included). Ballyroan village is an area of archaeological potential which contains a number of upstanding items of archaeological interest including a motte, castle site, mediaeval church & graveyard site and a 17th century house. The majority of Protected Structures are contained within or around the village of Ballyroan. Only one, a Coach Road (RPS 661), would be directly impacted by cable laying. The remainder flank the Main Street – set back behind a footpath. The Cultural Heritage Assessment Report indicates that the Coach Road may in fact be of mediaeval origin. This Protected Structure is contained within an existing public road. The road has a modern tarmac surface. The cable trench will be constructed within the road, and there will, therefore, be no impact on this Protected Structure.

Archaeological test trenching under Licence from the Department of Arts, Heritage, Regional, Rural & Gaeltacht Affairs would be undertaken prior to excavation within the affected section of Coach Road. Archaeological monitoring would be undertaken at launch and reception pits, where directional drilling is to be undertaken.

There is one recorded archaeological site located along the proposed cable route – the deserted mediaeval settlement of Ballyroan (LA024-060) situated within the modern village of Ballyroan. The exact boundaries of this settlement are unknown, although the area of archaeological potential may extend as far east as the Main Street (along which it is proposed to lay the cable). For the purposes of the Report submitted by Coillte, the area of archaeological potential is stated to include the entire Main Street and a portion of the county road leading to Banny's Bridge (the Coach Road) to the east. A second associated site – a 17th century building in

Ballyroan village is located immediately adjacent to the cable route, on the west side of the Main Street (LA024-059). The cable route is located within the existing Main Street at this location, and will not have any significant impact on the recorded monuments – notwithstanding that mediaeval plots may extend beneath the existing street. The building itself is set back off the road behind a public footpath. Further sites with archaeological potential have been identified in Cloncullane townland – being an old roadway and associated iron works – currently located within fields. The cable route would be diverted off a trackway in this area in order to increase the separation distance from Recorded Monument LA024-011 – an enclosure site. Also identified is the bog at Pass townland (part of the Cashel Bog complex) – where the cable will be laid within the R425, which because of its nature, may contain preserved archaeological material.

A derelict smithy, a 20th century memorial and three old manual water pumps were also identified along the line of the route. None of these structures would be affected by the cable laying. A former toll house (now an outbuilding) and a mile stone (100m to the south of it) have been identified in Cashel townland on the R425. Neither would be impacted by the development. Banny's Bridge (late 18th or early 19th century) has been identified as an industrial heritage structure, as has Meelick Mill (late 18th century). The cable route may run through the structure of Banny's Bridge; although the option of directional drilling in this area is referred to. The Report identifies old bridges and culverts along the route of the grid connection and includes photographs of same. The cable laying will not impact to any significant degree on these structures.

Section 6 of the Report includes a number of mitigation measures which include the following items of note-

- Archaeological monitoring of cable route within Ballyroan village.
- Archaeological monitoring of old road within Cloncullane townland.
- Archaeological monitoring of cable route at bog in Pass townland.
- Archaeological testing within greenfield area in Cloncullane townland.
- Archaeological monitoring of launch and reception pits for directional drilling.

- Precautions to be taken when excavating in vicinity of upstanding Protected Structures, items on the National Inventory of Architectural Heritage and other cultural structures/features identified in the Report.

I would be satisfied that the issues of archaeological and cultural heritage have been comprehensively dealt with within the Cultural Heritage Assessment Report which accompanies the Coillte submission. Cable laying would not have any significant impact on this aspect of the environment.

8.2. Requirement for Environmental Impact Assessment

- 8.2.1. Section 4(4) of the Planning and Development Act, 2000 (as amended) effectively de-exempts development which would require EIA or AA.
- 8.2.2. The Coillte submission included an Environmental Impact Assessment Screening Report – dated August 2016. Schedule 5, Part 1 of the Planning and Development Regulations 2001 (as amended) sets out specified development for which EIA is mandatory. Class 20 refers to overhead electrical power lines of 220kV or more with an overall length of more than 15km. The grid connection is of 38kV and will be underground. Class 22 refers to changes or extension of projects listed in Part 1, subject to certain thresholds. An underground cable does not comprise a development specified in Part 1. Part 2 specifies sub-threshold development which may require EIA. There is no class of development referenced within the Part of Schedule 5 which approximates to underground power cables.
- 8.2.3. Schedule 7 of the Planning and Development Regulations 2001 (as amended), refers to criteria for determining whether a development would or would not be likely to have significant effects on the environment. The headings under which development is considered, relate to the characteristics of the proposed development, location of the proposed development and the characteristics of the potential impacts. Having regard to the limited extent of excavation works required; the location of the route within public roads/verges, coniferous forestry plantation and improved agricultural grassland; the avoidance of any in-stream works; separation distance from ecologically sensitive areas; limited construction time; extensive survey work carried out in relation to archaeology and cultural heritage impact; existing land uses in the area; the limited use of natural resources required; and

measures to be imposed to control pollution and nuisances, I would be satisfied that the grid connection would not have any significant effect on the environment.

8.2.4. In light of the O’Grianna judgement, the environmental impact of the grid connection in association with the wind farm which it is to serve must be considered. An EIS was prepared for the wind farm development at Cullenagh Mountain, and EIA was carried out by the Board in granting planning permission for it. Section 4 of the Environmental Impact Assessment Screening Report submitted, addresses the potential cumulative impact of both the wind farm development and the grid connection. Using the headings in Schedule 7 of the Regulations, the potential cumulative impact of both developments was considered. Having regard to-

- Short duration of the construction period.
- Underground nature of the cable.
- Location of all but 1.5km of the 15.4km route outside of the wind farm site at Cullenagh Mountain.
- Location of the majority of the route within public roads/verges (78%).
- Absence of in-stream works.
- Measures to protect the environment set out in the Construction Environmental Management Plan which were submitted by Coillte to the Board.
- Detailed indication of cable route construction methodology submitted with the application.
- Measures outlined to control and deal with pollution and accidental spillages – particularly in relation to watercourses.
- Measures for the handling and disposal of waste.
- Route selection to avoid sensitive ecological areas.
- Suspension of forestry activities during construction of the wind farm.
- Consideration of other large projects within County Laois (listed at Table 4.1).
- The limited use of natural resources.

- The fact that the principal access to the wind farm site is located on a different road network to the grid connection route.

I would consider that the potential cumulative impacts are deemed to be insignificant, and no significant adverse cumulative impacts on the environment relating to the grid connection and wind farm (or any other plans or projects in the area) could be envisaged.

8.3. Appropriate Assessment

8.3.1. The Coillte response included an Appropriate Assessment Screening Report – dated August 2016. The site was visited on 17th December 2015 and 14th January 2016. An aquatic survey was undertaken on 4th May 2016, to establish the presence or absence of Freshwater pearl mussel (*Margaritifera margaritifera*) and Nore Freshwater pearl mussel (*Margaritifera durrovensis*) in watercourses along the grid connection route: none were found. The southern section of the grid connection route is located within the Nore Freshwater Pearl Mussel Catchment.

8.3.2. This linear site does not traverse any European site, and nor is it located in close proximity to any such site. The application for the wind farm development at Cullenagh Mountain (which this grid connection will serve) was accompanied by a Natura Impact Statement (NIS). The closest European sites are as follows-

- River Barrow and River Nore SAC – some 4.3km at its closest – but extending widely on all sides of the site along the Barrow, the Nore and their tributaries.
- River Nore SPA – some 6.4km to the southwest.
- Slieve Bloom Mountains SAC – some 11.0km to the northwest.
- Slieve Bloom Mountains SPA – some 8.6km to the northwest.
- Mountmellick SAC – some 11.0km to the north.
- Ballyprior Grassland SAC – some 8.8km to the east.
- Lisbigney Bog SAC – some 9.3km to the southwest.

8.3.3. There is no surface water connectivity with Ballyprior Grassland SAC, Lisbigney Bog SAC, Mountmellick SAC or Slieve Bloom Mountains SAC. There will be no impact on the conservation interests of these European sites. There will be no impact from

a development of this nature on bird species within either the River Nore SPA or the Slieve Bloom Mountains SPA – regard being had to the separation distances involved. The only European site which could potentially be impacted by the grid connection is the River Barrow and River Nore SAC – surrounding as it does the route of the grid connection on all four sides, and being connected to it by a number of surface water features. Whilst the separation distance as the crow flies is 4.3km at its closest – the connection via surface water is considerably longer – the River Nore being some 11km downstream of the grid connection route (via the Ballyroan Stream) and the River Barrow being some 15.5km downstream of the grid connection route (via the Triogue River) which flows through Port Laoise.

8.3.4. The qualifying interests of the River Barrow and River Nore SAC (Site code 002162) are as follows-

- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Reefs.
- Salicornia and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- European dry heaths.
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels.
- Petrifying springs with tufa formation (Cratoneurion).
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*).
- *Vertigo moulinsiana* (Desmoulin's Whorl Snail).
- *Margaritifera margaritifera* (Freshwater Pearl Mussel).

- *Austropotamobius pallipes* (White-clawed Crayfish).
- *Petromyzon marinus* (Sea Lamprey).
- *Lampetra planeri* (Brook Lamprey).
- *Lampetra fluviatilis* (River Lamprey).
- *Alosa fallax fallax* (Twaite Shad).
- *Salmo salar* (Salmon).
- *Lutra lutra* (Otter).
- *Trichomanes speciosum* (Killarney Fern).
- *Margaritifera durrovensis* (Nore Freshwater Pearl Mussel).

8.3.5. The primary protection measure employed for European sites was avoidance, when examining potential routes for the grid connection. Other measures to protect this SAC include best practice during the construction phase – to ensure that no silt or other contaminants enter watercourses. There are no in-stream works proposed as part of this development. Watercourses along the route have been identified, and directional drilling will be used to channel cables beneath watercourses where it is not possible to contain cables within the bridge/culvert structures. The Coillte submission included an Outline Cable Route Construction Methodology which explains by way of text, drawings and photographs, how construction of the grid connection would be carried out – with particular regard to the need to prevent contamination of watercourses. Construction site management measures include cessation of works during heavy rainfall; works to be carried out under supervision of a suitably-qualified environmental engineer/ecological clerk of works; consultation with the NPWS and IFI; and use of silt traps/check dams/bunds/”silt-busters” to prevent polluting matter entering watercourses; and limited lengths of trench being open at any one time.

8.3.6. I note that the closest point of the grid connection route is some 11.0km downstream to the Nore River and some 15.5km downstream to the Barrow River. Having regard to these significant separation distances, and to the protection measures which would be employed to protect watercourses during construction, I would be satisfied that the potential for impact on aquatic species is slight.

- 8.3.7. An NIS was submitted as part of the wind farm application at Cullenagh Mountain. The Appropriate Assessment Screening Report, which accompanies the Coillte submission, addresses the issue of in-combination effects with other plans and projects – particularly the development of the wind farm itself at the same time. The grid connection route is located almost entirely within forest tracks within the larger wind farm site (1.5km). There are no in-combination effects which could impact on European sites – as work within the wind farm site would be subject to the same degree of construction and environmental management as the grid connection route, and works within the wind farm site are limited to the excavation of a trench 1.2m deep in limited lengths – almost entirely within existing forest roads.
- 8.3.8. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, grid connection route as described, individually or in combination with other plans or projects would not be likely to have a significant effect on European site no. 002162, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not, therefore, required.

8.4. **O'Grianna Judgement**

- 8.4.1. 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 six wind turbines and associated buildings/infrastructure in County Cork. The Board's decision on the appeal (Ref. PL 04.242223) 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.
- 8.4.2. 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, of the 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 Wind Energy Planning Guidelines, no details were included in relation to the connection to the national grid. This would be a matter for later determination, as design (including line, form, overhead/underground) would be undertaken by ESB Networks.

- 8.4.3. In essence the High Court judgement, quashing the Board's decision, was based on the conclusion that the wind farm 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. As a consequence of the judgement, new applications for permissions for wind farm developments, and which require EIA, now include relevant information on proposed grid connections.
- 8.4.4. The key consideration here is that the wind farm at Cullenagh Mountain, which this grid connection will facilitate, has the benefit of planning permission granted prior to the O'Grianna judgement (ref. 13/268 – ABP Ref. PL 11.242626). The decision was in accordance with the law as it stood at that time and is, therefore, valid and beyond challenge. The wind farm application was subject to EIA and AA, and it is not now proper or possible to revisit this.

8.5. **Legislative Context**

Is or is not Development

- 8.5.1. Having regard to the nature of the grid connection, namely the construction of c.15.4km of underground 38kV 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.
- 8.5.2. 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, of the 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”.
- 8.5.3. 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 is meant by this. 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”.

8.5.4. 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. 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 would seem, therefore, that the references to undertakers, undertakings and other bodies/authorities referred to in these classes must be construed as meaning statutory undertakers. 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”*. I would be satisfied that Coillte Teoranta would appear to fall within this category on foot of its authorisation under the Planning Act to construct a wind farm at Cullenagh Mountain, that can be considered to be – projects/works for the provision of electricity. I 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 that time. I am satisfied, therefore, that the proposed development falls within the scope of the said Class 26.

8.5.5. Coillte has argued that Class 16 of Part 1 of Schedule 2 is also of relevance in this referral. I consider that this class refers to ‘temporary structures and uses’ – which this grid connection could not be considered to come under. The reference to this class may be related to the temporary nature of the construction works which would be necessary to lay the grid connection.

Is or is not exempted development

- 8.5.6. The final step in the assessment is to consider the relevant provisions of Article 9(1) of the Planning and Development Regulations, 2001, in order to establish if any of the 'de-exemptions' apply in this instance.

In relation to Article 9(1)(a)(v), I have already concluded that the proposed development falls within the scope of Class 26 of Part 1 of Schedule 2, so that this article does not apply. Articles 9(1)(a)(vii) and (viiA) refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives. The Coillte submission to the Board included a detailed Cultural Heritage Assessment Report. The assessment was based on both a desk-top review of relevant source material and a walk-over survey/field inspection of the grid connection route. Whilst 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 Article 9(1)(a)(vii) or (viiA). Article 9(1)(a)(viiB) refers to the issue of Appropriate Assessment and as such the conclusion reached elsewhere in this Inspector's Report applies. Similarly, Article 9(1)(c) refers to the issue of EIA, and as such, the conclusion reached elsewhere in this Inspector's Report applies.

8.6. Precedent Cases

Coillte has made reference to a number of precedent Board decisions in its response to the Board. Whilst there have been a number of referral cases in relation to wind farm grid connections, because of the distances involved, differing voltages, connection with other wind farms, and the option for over-ground and/or underground cables, the circumstances of each case can vary widely. This is particularly so in relation to visual amenity, impact on sensitive ecology, and the potential impact on European sites. For these reasons, I would adopt a cautious approach in quoting precedent decisions of the Board in relation to this 15.4km long, 38kV underground grid connection between Cullenagh Mountain and Abbeyleix Road, Port Laoise. There is also the added consideration of the implication of the O'Granna judgement for the consideration of grid connections for wind farm developments.

RL3377 & RL3401

By order dated 3rd May 2016, the Board determined that the provision of a 2.6km long, 20kV overhead electricity line between a consented wind farm at Cnoc, Co. Tipperary to a consented 38kV sub-station at Ballybeagh, Tullaroan, Co. Kilkenny, was development and was exempted development.

RL3408, RL3409, RL3410 & RL3411

These four related cases pertain to an existing, partially shared grid connection for four extant wind farms in County Wexford. The grid connections are almost entirely underground. By orders dated 28th July 2016, the Board determined that all four grid connections were development and were not exempted development – largely on the basis that the original wind farm permissions (which had not included details of grid connections) contained conditions requiring that grid connections be subject to separate planning permissions. In the event, the grid connections were provided by way of a claim of exempted development status. These determinations of the Board are subject to Judicial Review by the wind farm operators – two separate Judicial Reviews. [Copy of RL3411 in pouch accompanying this Inspector's Report].

RL3436

By Order dated 23rd June 2016, the Board determined that 3.5km of underground 20kV grid connection linking two wind farms in Co. Tipperary, was development and was exempted development. [Copy of decision in pouch accompanying this Inspector's Report].

8.7. Conclusion

Having regard to the preceding assessment, I would be satisfied that the underground grid connection between the permitted wind farm at Cullenagh Mountain and the sub-station at Abbeyleix Road, Port Laoise, is development and is exempted development. The laying of the grid connection would not attract the need for Environmental Impact Assessment and would not require a Stage 2 Appropriate Assessment.

9.0 Recommendation

I recommend that the Board should decide this Referral in accordance with the following Draft Order:

WHEREAS a question has arisen whether laying a 15.4km underground 38kV grid connection to link the permitted Cullenagh Mountain wind farm (Laois County Council Ref. 13/268 – ABP Ref. PL 11.242626) to an existing Electric Ireland sub-station at Abbeyleix Road, Port Laoise, is or is not development and is or is not exempted development;

AND WHEREAS Laois County Council, requested a declaration on the said question from the Board on the 20th day of May, 2016;

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 & 9, and Class 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended), and
- (c) O’Grianna (& Others) v. An Bord Pleanála (& 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 Environmental Impact Assessment and Appropriate Assessment 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) of the Planning and Development Regulations, 2001 (as amended), and
- (e) as the wind farm for which the proposed grid connection is required was approved prior to the O’Grianna decision of the High Court, 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 Planning and Development Act, 2000 (as amended), hereby decides that the laying of underground 38kV cables to link the permitted Cullenagh wind farm development (Laois County Council Permission Ref. 13/268 – ABP Ref. PL 11.242626) to the existing Electric Ireland sub-station at Abbeyleix Road, Port Laoise, is development and is exempted development.

Michael Dillon,

Planning Inspector.

3rd April 2017.