



An
Bord
Pleanála

Revised Inspector's Report

RL 04.RL3531B

Question

Whether underground electricity grid connections to connect wind farms to sub-stations, is or is not development and is or is not exempted development.

Location

Newmarket, Kanturk, Co. Cork.

Declaration

Planning Authority

Cork County Council

Planning Authority Reg. ref.

D/266/16

Applicant for Declaration

Patrick Cremins

Planning Authority Decision

No declaration issued

Referral

Referred by

Cork County Council

Owner/ Occupier

Brookfield Renewable & Others

Observer(s)

James, Patrick & Mary Hendrick

Kerry County Council

ESB International

Date of Site Inspection

12th & 13th April 2017

Inspector

Michael Dillon

1.0 Revised Inspector's Report

This Revised Inspector's Report is presented on foot of the Board's Memorandum of 5th December 2018, and contains changes to the Inspector's Report – dated 6th April 2018.

2.0 Site Location and Description

- 2.1. The underground cable routes are linear, and have been roughly defined by the original referrer to Cork County Council; and these are the lines which have been entered on the registry map at An Bord Pleanála. The registry map is not an accurate representation of the line of the underground cables referred to: the lines are located entirely within public roads, forest/agricultural tracks and within limited areas of commercial coniferous plantation. The lines indicated do not connect with either the sub-station at Glenlara, Co. Cork or the one at Ballynahulla, Co. Kerry. RPS, agent on behalf of Brookfield Renewable, has submitted a map to An Bord Pleanála, by way of response, which indicates an underground cable route between Glenlara sub-station and Ballynahulla sub-station, located entirely within public roads (or tracks at either end in the vicinity of the sub-stations). The route runs principally along the R578 Regional road linking Newmarket with Ballydesmond, Co. Cork. A portion of the R577 Regional Road linking Ballydesmond in County Cork with Castleisland, Co. Kerry is also used. Approximately 3.5km of county road (L5039) is traversed at the Glenlara sub-station (eastern end) of the route. Approximately 0.85km of county road (L11128) and forestry track is traversed within Co. Kerry – at the Ballynahulla sub-station (western end) of the route.
- 2.2. The 20kV underground cable between Glentanemacelligot wind farm and Knockacummer wind farm (both within Co. Cork) runs within county roads between the two wind farms – along portions of which it is not possible to pass two cars. The cable has been in place for some time, and it is not possible to identify it within the road network. This section of underground cabling can be inferred from documentation on file and history files. The section within Glentanemacelligot wind farm is within commercial coniferous plantation/wind farm tracks. The final section within Knockacummer wind farm is located within commercial coniferous plantation and tracks serving the wind farm.

- 2.3. The 110kV underground cable between Knockacummer wind farm and Glenlara sub-station has been in place for some time. It runs principally within county roads – crossing and within the R578 for a short stretch (0.1km). Short stretches are located within commercial coniferous plantation, wind farm track and agricultural track. It is possible to identify the line of the cable trench in places along the road. A number of above-ground concrete marker posts indicate that an underground cable exists within the road/margin. This section of underground cable can be inferred from documentation on file and history files.
- 2.4. The 110kV underground cable between Glenlara sub-station in Co. Cork and Ballynahulla sub-station in Co. Kerry has recently been laid. It is entirely within public roads/verges – principally along the R578 in Co. Cork, and R577 in Co. Kerry. Road works were not entirely completed, and re-surfacing of the L11128 within Co. Kerry was under way on 13th April 2017. A number of inspection chamber manholes for the cable were evident within the public road.
- 2.5. There are a number of one-off houses and farmhouses along the R578 and R577. Population density is lower to the north, in the direction of the wind farms (which these cables serve) – as the ground elevation increases. There is sporadic housing and farm yard complexes in this area. The principal land uses are agriculture and commercial coniferous plantation – higher ground exhibiting a higher percentage of commercial coniferous plantation. Ballydesmond is a spread-out village with a wide main street. Traffic volumes were not heavy on the dates of site inspection – not even on the R578. Access to the wind farms is controlled by security gates. Roadside signage in a number of places along the cable routes indicates the presence of Japanese knotweed; and warns against cutting it.

3.0 The Question

Whether, (a) an underground electricity cable connection between Glentanemacelligot wind farm and Knockacummer wind farm; (b) an underground electricity cable connection between Knockacummer wind farm and Glenlara 110kV sub-station; and (c) an underground electricity cable connection between Glenlara 110kV sub-station at Curraduff, Co. Cork and the Ballynahulla 220kV sub-station, Co. Kerry; is or is not development, and is or is not exempted development.

4.0 Planning Authority Declaration

Cork County Council considered that the complexity, in relation to the question put by the Planning Partnership, agent on behalf of Patrick Cremins, on 15th November 2016, did not allow it to make a section 5 declaration. Given that the Board had issued the grants of planning permission for the wind farms at Glentanemacelligot and Knockacummer, it was deemed appropriate to seek a determination from the Board, under section 5(4) of the Planning and Development Act, 2000. This was received by the An Bord Pleanála on 23rd December 2016.

5.0 Planning History

There is an extensive planning history relating to the two wind farms at Glentanemacelligot and Knockacummer.

Ref. D/247/16: Refers to a section 5 declaration of 27th September 2016, by Cork County Council, in respect of an underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm – to the effect that it was development and that it was exempted development. This declaration was not referred to An Bord Pleanála, and nor was it judicially reviewed to the High Court. The underground cable had been laid prior to the issuing of the declaration.

Ref. D/238/15: Refers to a section 5 declaration by Cork County Council, in respect of a permanent 110kV underground grid connection for Knockacummer wind farm and others, between Glenlara sub-station and Ballynahulla sub-station – the length within Co. Cork being 17.4km; whilst the length within Co. Kerry would be an additional 2.1km. The Declaration of 21st July 2015, decided that the underground cable was development and was exempted development. This declaration was not referred to An Bord Pleanála, and was not judicially reviewed to the High Court. [A separate Section 5 Declaration was simultaneously sought from Kerry County Council]. The cable was not in place at the time the declaration was made.

Ref. EX408: Refers to a section 5 declaration by Kerry County Council, in respect of a permanent underground 110kV grid connection for Knockacummer wind farm and others between Glenlara sub-station and Ballynahulla sub-station – the length within Co. Kerry being 2.1km, whilst the length within Co. Cork would be an additional

17.4km. The Declaration of 22nd July 2016, decided that the underground cable was exempted development. This declaration was not referred to An Bord Pleanála. [A separate Section 5 Declaration was simultaneously sought from Cork County Council].

Ref. D/257/10: Refers to a section 5 declaration, issued by Cork County Council on 13th September 2010, in respect of a 110kV underground grid connection (11.4km), from Knockacummer wind farm to an existing ESB sub-station at Clonfert in Co. Cork. [This is the same sub-station, elsewhere referred to as Glenlara, Curraduff]. The declaration had been sought by the wind farm developer – SWS Energy, and the decision of Cork County Council was that the development was not exempted development. The declaration of Cork County Council was referred to An Bord Pleanála by SWS Energy (ref. **RL 04.RL2789**). By Order dated 23rd February 2011, the Board issued a decision that the laying of cables constituted works which was development and which was exempted development. The cable was laid after the issuing of the decision. This decision was not the subject of judicial review to the High Court.

Ref. 02/4283: Permission granted for seven wind turbines at Glentanemacelligot, to SWS Co-op Ltd. and Newmarket Co-op. Condition 14 stated- “Commissioning of the wind farm shall be subject to an approved connection to the national electricity grid and shall be subject to the prior grant of planning permission of the Planning Authority. *Reason:* In the interests of orderly development”.

Ref. 04/8354: Permission granted to SWS Natural Resources Ltd. to construct 29 no. wind turbines and associated works at Knockacummer, Co. Cork. On appeal to An Bord Pleanála by 3rd Parties (ref. **PL 04.210685**), permission was granted subject to conditions on 23rd December 2005. Condition 19 stated- “This permission shall not in any way be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection. Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the national grid. *Reason:* In the interest of clarity and the proper planning and sustainable development of the area”. [This file is travelling with the current referral case].

Ref. 06/4077: Permission granted in April 2006, for modification to permission Ref. 02/4283, for six wind turbines, to Newmarket Co-Op Society and SWS natural Resources Ltd. Condition 42 stated- "Commissioning of the wind farm shall be subject to an approved connection to the national electricity transmission grid and shall be subject to the prior grant of permission of the Planning Authority. *Reason:* In the interests of orderly development".

Ref. 06/7114: Permission granted to ESB, for 110kV overhead grid connection from Knockacummer wind farm site to Glenlara sub-station. On appeal by a 3rd Party to An Bord Pleanála (ref. **PL 04.218815**), permission was granted on 5th December 2006. [This permission was never implemented].

Ref. 08/10248: Permission granted to SWS Energy Ltd. to construct an additional eight wind turbines at Glentanemacelligot wind farm site – not at that period yet developed. On appeal to An Bord Pleanála by 3rd Parties (ref. **PL 04.235930**), permission was granted on 19th August 2010, for five additional turbines (8, 9, 10, 14 & 15). Condition 7 stated- "This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection. *Reason:* In the interest of clarity". This wind farm is now operational. [This file is travelling with the current referral case].

Ref. 10/5211: Permission granted to SWS for extension of duration of permission ref. 04/8354 on 29th June 2010.

Ref. 11/4736: Permission granted to SWS on 1st March 2012, for modifications to internal road network and additional access at Glentanemacelligot site.

Ref. 11/5246: Permission granted to SWS on 6th February 2012, for modifications to internal road network, sub-station and wastewater facilities at Knockacummer site.

Ref. 13/04325: Permission granted to SWS for road-widening at Cronin's Bridge (1.5km southeast of Rockchapel on the R576 – to improve access to Knockacummer wind farm). On appeal by a 3rd Party to An Bord Pleanála (ref. **PL 04.241997**) permission was granted on 20th September 2013.

Ref. 14/4688: Permission granted on 26th August 2014, to SWS for erection of 3 no. meteorological masts at Knockacummer site.

Ref. 14/5023: Permission granted on 24th October 2014, for erection of a meteorological mast at Glentanemacelligot site.

Ref. 14/6578: Permission granted for turbulence felling and replanting at Glentanemacelligot wind farm. On appeal by a 3rd Party to An Bord Pleanála (ref. **PL 04.245644**), permission was granted on 9th March 2016.

Ref. 15/6631: Permission granted on 8th March 2017, for technician facilities at Glentanemacelligot wind farm.

Ref. VA 08.VA0012: Permission granted by the Board, on 23rd November 2011, for construction of a 110/220kV sub-station, and alterations to the Clashavoon to Tarbert overhead high-tension electricity cables, at Ballynahulla, Co. Kerry. This sub-station has been constructed.

6.0 Policy Context

6.1. 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”.

6.2. Cork County Development Plan 2014-2020

There is a Wind Strategy contained within the Development Plan. It is policy to encourage the generation of electricity from renewable resources. There are no specific policies in relation to underground grid connections.

6.3. Kanturk Electoral Area Local Area Plan 2011-2017

When the referral was made to An Bord Pleanála, this area of Co. Cork was located within the Kanturk electoral area. This LAP dealt principally with settlement issues. Since that time, a new plan for the area was adopted on 21st August 2017 – the Kanturk/Mallow Municipal District Local Area Plan. This LAP deals largely with settlement issues.

6.4. Natural Heritage Designations

There are a number of European sites within a 15km radius of the linear underground cable routes, of which the following three are either traversed by the cable routes or drain to watercourses, which in turn drain to the European sites-

- Blackwater River (Cork/Waterford) Special Area of Conservation (Site code 002170).
- Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site code 004161).
- Lower River Shannon Special Area of Conservation (Site code 002165).

7.0 The Referral

7.1. Referrer's Case

The Planner's Report from Cork County Council (dated 12th May 2016), can be summarised in bullet point format as follows-

- It is noted that the question put to Cork County Council entails three separate elements.
- The applicant for a determination considers that underground grid connections would constitute development, and would not be exempted development. This is based on conditions attached to existing grants of planning permission, requirement for environmental impact assessment or appropriate assessment, requirements under Strategic Infrastructure Development, and recent case law.
- In relation to the 20kV underground grid connection between Glentanemacelligot and Knockacummer wind farms, it is noted that this grid connection is already in place, and was undertaken by way of compliance submission in relation to permission ref. 06/4077 – on 14th July 2011.
- In relation to the 110kV underground grid connection between Knockacummer and Glenlara, condition 19 of the wind farm permission ref. 04/8354 (An Bord Pleanála ref. 04.210685) required prior planning consent for the grid

connection. This grid connection is in place. The Council has had regard to precedent referral cases to An Bord Pleanála – ref. RL2789 in particular.

- The Council has had regard to precedent referral cases to An Bord Pleanála – ref. RL2789, ref. RL3408/09/10/11 and ref. RL3234.
- The planning authority has had regard to environmental impact assessment and appropriate assessment regulations.
- Relevant conditions attached to the Glentanemacelligot wind farm permission indicate that a grid connection at this location, without prior planning consent, would contravene conditions of the wind farm permissions.
- The planning authority considers that the 110kV underground grid connection between Glenlara sub-station and Ballynahulla sub-station would be development and would be exempted development – based on precedent determinations of the Board.
- It is the contention of the Planning Partnership that this latter grid connection comes within the scope of section 182A of the Act. The Ó Grianna case is of relevance also.
- The planning authority considers that this grid connection, when viewed separately, could be considered exempted development, but that in view of the number of grid connections being proposed in the area, would welcome the determination of the Board in this instance.
- In the cases of the Glentanemacelligot wind farm to Knockacummer wind farm underground grid connection and the Knockacummer wind farm to Glenlara sub-station connection, these works were carried out prior to the Ó Grianna judgement.

7.2. Original Referrer's Response

An Bord Pleanála referred the case to The Planning Partnership, agent on behalf of Patrick Cremins, requesting comment. The response, received by An Bord Pleanála on 16th January 2017, can be summarised in bullet point format as follows-

- Works associated with the underground grid connections are located within the Stacks to Mullagharierk Mountains SPA and the Blackwater River (Cork/Waterford) SAC, as well as proximate to the Lower River Shannon SAC.
- Construction of grid connections contravened condition 19 of permission ref. PL 04.210685; condition 14 of permission ref. 02/4283; condition 42 of permission ref. 06/4077; and condition 7 of permission ref. PL 04.235930.
- Recent determinations of the Board in relation to wind farm grid connections, particularly in Co. Wexford, have ruled that contravention of a condition attached to a grant of permission removes the exemption status – Article 9(1)(a)(i) of the Planning and Development Regulations, 2001 (as amended).
- The exempted development provisions of the Regulations do not facilitate exempted development where development would interfere with the character of the landscape or views/prospects to be preserved – Article 9(1)(a)(vi).
- The exempted development provisions of the Regulations do not facilitate exempted development where development would interfere with sites 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 – Article 9(1)(a)(vii). There are objectives within the Plan to protect sites of nature conservation, species and biodiversity – including European sites, proposed Natural Heritage Areas and Natural Heritage Areas.
- The exempted development provisions of the Regulations do not facilitate exempted development where development would require appropriate assessment – Article 9(1)(a)(viiB). Individual appropriate assessments of the three separate elements of the underground grid connections would have been required.
- Cumulative impacts of wind farms/grid connections have not been assessed.

7.3. Owner/Occupier's Responses

7.3.1. An Bord Pleanála referred the case to the following; for comment (being landowners affected by the referral, as identified by Cork County Council) – by letters dated 7th February 2017-

- Coillte.
- Glentanemacelligot Wind Farm.
- Knockacummer Wind Farm.
- Brookfield Renewable.
- Kerry County Council.
- ESB International.
- James, Mary & Patrick Hendrick.
- John O'Keeffe.
- Dan & Marie Murphy.

7.3.2. ESB International responded by letter, received on 24th February 2017, indicating that detailed consideration of the An Bord Pleanála's correspondence would be required, and requesting an additional four weeks to respond.

7.3.3. Kerry County Council responded, by letter received on 10th February 2017, indicating that it had not received nor issued a decision on either a referral or planning application in relation to a grid connection at the location referred to by An Bord Pleanála. [The locations referenced were, of course, within County Cork – but did involve a 2.1km connection to the Ballynahulla sub-station within Co. Kerry].

7.3.4. James, Mary & Patrick Hendrick responded, by letter received on 17th February 2017, indicating that they had disposed of their property interests in Ballyduane, Newmarket, Co. Cork.

7.4. An Bord Pleanála Circulates Response of Patrick Cremins

7.4.1. The submission of the Planning Partnership, agent on behalf of Patrick Cremins, received by An Bord Pleanála on 16th January 2017, was circulated to the above parties, and to Cork County Council for comment.

- 7.4.2. Cork County Council responded by letter, received on 8th March 2017, indicating that it had no further comment to make in relation to the submission.
- 7.4.3. RPS, agent on behalf of Brookfield Renewable, responded on 23rd February 2017, indicating that a detailed response would be submitted on or before 6th March 2017.
- 7.4.4. The response of ESB International, received by An Bord Pleanála on 27th March 2017, can be summarised in bullet point format as follows-

- ESB was directly involved with the connection of Knockacummer wind farm to the sub-station at Glenlara. These connection works have already been subject of a referral to Cork County Council – subsequently dealt with by the Board – ref. RL 04.RL2789. The works were declared to be exempted development. The connection works do not contravene condition no. 19 of permission ref. PL 04.210685, as grid connection works generally fall within the scope of Class 26 or 27 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).
- It is highly improbable that condition 19 was intended to cut across exemptions specifically provided for in the Regulations, as this would seriously encroach on the statutory powers of the Minister. It is acknowledged that at the time of making the planning application for the wind farm, the planning authority had no information in relation to the grid connection, and would not have been in a position to state whether it would fall within the exemptions provided for in Classes 26 or 27.
- Where planning authorities wish to ensure that the exempted development provisions of the 2001 Regulations do not apply to a particular development that is the subject of a planning application, the relevant condition will generally provide for this in express terms. Where such conditions have been imposed in the past (rightly or wrongly) they have been prefaced by wording such as- “Notwithstanding the provisions for exempted development under the Planning and Development Regulations, 2001...”. No such wording was included in the instanced permission.
- The planning authority did not have any power to impose a condition on the lands outside the application site (as outlined in red/blue). For that reason, condition 19 must be interpreted in a manner that is consistent with the lawful

exercise by the planning authority to impose conditions on the grant of planning permission. Condition 19 cannot be interpreted as removing the statutory entitlement to rely on the exemption under Class 26.

7.5. Response of Brookfield Renewable

7.5.1. General Comment

The response of RPS, agent on behalf of Brookfield Renewable (the owner/operator of the Glentanemacelligot and Knockacummer wind farms), received by An Bord Pleanála on 6th March 2017, can be summarised in bullet point format as follows-

- The Glentanemacelligot wind farm to Knockacummer wind farm underground grid cable is 20kV; over a length of approximately 8.0km.
- The Knockacummer wind farm to Glenlara sub-station underground grid connection is 110kV; over a length of approximately 11.4km. This grid connection serves only the two wind farms referred to above.
- The Glenlara sub-station to Ballynahulla sub-station underground grid connection is 110kV; over a length of approximately 19.5km. This grid connection serves other wind farms in the area.
- The Knockacummer wind farm to Glenlara sub-station grid connection was completed before the Glentanemacelligot wind farm to Knockacummer wind farm underground cable.
- Both wind farms use the sub-station at Knockacummer – there being none at Glentanemacelligot.
- Laying of cables is considered to be development.
- Neither an Environmental Impact Statement nor a Natura Impact Statement is required for any of the grid connection works carried out.
- Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), is of relevance in relation to exempted development of underground grid connections.
- Other works are ancillary to the laying of the cables (of a temporary nature), and fall within Class 16 of Part 1.

- Article 9 of the Planning and Development Regulations, 2001, places restrictions on exempted development classes.
- The grid connections did not impact on landscape character or scenic routes – identified within the Cork County Development Plan 2009, the Kanturk Local Area Plan 2011, the Cork County Development Plan 2014 or the Kerry County Development Plan 2015.
- The grid connections did not impact on recorded monuments or Protected Structures – being almost entirely laid within public roads.
- The Environmental Impact Assessment Directive does not apply, as there is no class of development in Schedule 5 which approximates to this type of development. Notwithstanding this, Appendices C, G & K of the submission include reports/appraisals which address the potential that each of the underground cable developments had or have for likely significant impacts on various aspects of the environment, when considered cumulatively, and alongside other developments in the area.
- Appendices D, H, & I of the submission, include reports/appraisals which address the potential that each of the underground cable developments had or have for in-combination effects on European sites, taken together with other developments in the area.
- A developer is not obliged to obtain declarations for exempted development status. However, in the case of all three aspects of underground cabling referred to in this reference case, the applicant has declarations under section 5 – both from Cork County Council and from An Bord Pleanála.
- Section 182A of the Planning and Development Act, 2000 (as amended), considers strategic infrastructure development – a high voltage line where the voltage would be 110 kilovolts or more... As the development is considered to be exempted development, the provisions of Section 182A do not apply. The Board has stated- “At a meeting held on 12th October, 2007, the Strategic Infrastructure Division of the Board decided that the laying of underground electricity cables should continue to be regarded as exempted development by virtue of Class 26 of the 2001 Regulations, and that such works need not be subject to Section 182A of the Planning and Development Act 2000”. It is

noted that there is no voltage limitation on this decision of the Board. In this regard precedent cases ref. VC0016, VC0023 & VC0024 are of relevance.

- Reference is made to An Bord Pleanála reference cases RL3408, RL3409, RL3410 & RL3411 in Co. Wexford – recently decided. Grid connections were declared to be development which was not exempted development because of conditions attached to the parent wind farm permissions which required prior grant of planning permission for the grid connections. This situation does not obtain at Knockacummer, as permission had been obtained for an overhead grid connection – ref. 06/7114 (ref. PL 04.218815).
- Planning permission was granted for the wind farms prior to the Ó Grianna judgement on 12th December 2014. Therefore, the permissions are valid and beyond challenge. Section 50 of the Planning and Development Act, 2000 (as amended), precludes any questioning of the validity of those permissions – having regard to the eight-week time limit for such challenges.
- In the case of referral ref. RL3234, it was concluded that, from a reading of condition 4 of permission ref. PL 03.131382, that it did not expressly prohibit the developer of the wind farm from availing of the exempted development provisions under the Planning and Development Act. The condition reads- “Work on the proposed wind farm shall not proceed until full permission has been granted for the electricity connection to the national grid”. In the case of the Glentanemacelligot and Knockacummer wind farms, no condition expressly prohibits the developer from availing of exempted development provisions.
- The grid connections do not represent extensions to wind farms. The issue of cumulative impact for environmental impact assessment purposes does not arise. Class 13 of Part 2 of Schedule 5 is not relevant in this instance.
- Project-splitting is not an issue – as environmental impact assessment was undertaken for the wind farms which these underground cables serve.
- The Board decided that a 10.2km, 38kV, underground grid connection for a wind farm in Co. Clare was exempted development – ref. RL2778.

- A number of county councils have made decisions in relation to exempted development for grid connections for wind farms.

7.5.2. Glentanemacelligot Wind Farm to Knockacummer Wind Farm

- The Glentanemacelligot wind farm to Knockacummer wind farm underground cable works were carried out between June 2013 and July 2014. No in-stream works were required and no directional drilling was required either.
- Planning permission was granted ref. 06/7114 for an overhead connection between Knockacummer wind farm and Glenlara sub-station. The Glentanemacelligot wind farm connects to the national grid via Knockacummer wind farm. Condition 42 of permission ref. 06/4077 (Glentanemacelligot) stated- "Commissioning of the wind farm shall be subject to an approved connection to the national electricity grid and shall be subject to the prior grant of permission of the Planning Authority". The wind farm did, therefore, have a prior grant of planning permission to connect to the grid. Condition 42 was fully complied with and discharged. The 20kV underground cable linking Glentanemacelligot with Knockacummer did not conflict with or contravene condition 42.
- Condition 7 of permission ref. PL 04.235930, for phase 2 of the Glentanemacelligot wind farm merely required that- "The permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection". This condition has no impact on the 20kV underground connection to Knockacummer wind farm.
- The wording of condition 42 required that the commissioning must be subject to an approved connection – to avoid a stranded asset with no connection to the national grid – "In the interests of orderly development". The condition does not specifically state that the grid connection shall be subject to prior grant of planning permission.
- The plans and particulars, lodged with application ref. 06/4077, identified two possible overhead grid connections for this wind farm. The voltage would have exceeded the exemption granted in class 27 of Part 1 of Schedule 2 of

the Planning and Development Regulations, 2001 (as amended). Hence, the planning authority attached condition 42.

- Cork County Council was not in a position to assess the impacts of any grid connection, as full details had not been submitted with the planning application. The Council could not have determined whether the grid connection route would or would not fall within the exempted class 26 of Part 1 of Schedule 2.
- This condition can only reasonably be interpreted as requiring permission to be obtained where an obligation to obtain permission exists.
- The cable route runs through part of the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA; and crosses watercourses which drain into the Blackwater River (Cork/Waterford) SAC, and lower River Shannon SAC. Whilst a Natura Impact Statement was submitted with the Glentanemacelligot wind farm application, it would be more appropriately termed a Natura Impact Statement Screening Report. Mitigation measures were to be put in place during construction to ensure that there would be no detrimental impact on European sites. Mitigation measures can be taken into consideration in relation to appropriate assessment screening.
- Cable works would not have required environmental impact assessment.

7.5.3. Knockacummer Wind Farm to Glenlara Sub-station

- The works for this underground cable were undertaken between November 2012 and October 2013. No in-stream works were required, and no directional drilling was required either.
- Approximately 90% of the route is within public roads – the remainder being within commercial coniferous plantation/forest tracks, and small patches of wet grassland and scrub.
- The grid connection for the Knockacummer wind farm also serves the Glentanemacelligot wind farm.
- Condition 19 of permission ref. PL 04.210685 (Cork County Council permission ref. 04/8354) stated- "This permission shall not in any way be constructed as any form of consent or agreement to a connection to the

national grid or to the routing or nature of any such connection. Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the national grid”.

- Planning permission was granted ref. 06/7114, for an overhead connection from Knockacummer wind farm sub-station to the national grid, at Glenlara sub-station. This permission was in place prior to commencement of construction works on the wind farm in Knockacummer in March 2013. The requirements of condition no. 19 were fully discharged, by reason of permission ref. 06/7114. Whilst the grid connection was not ultimately implemented, condition 19 did not preclude some alternative grid connection being pursued at a later time.
- The grid connection was later constructed as exempted development – Cork County Council ref. D/257/10 (An Bord Pleanála ref. RL 04.RL2789). Therefore, the Board has previously determined that the grid connection from Knockacummer wind farm to Glenlara sub-station was exempted development, by way of a determination under section 5 of the Planning and Development Act, 2000 (as amended).
- The cable route runs through part of the Stack’s to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA, and crosses watercourses which drain into the Blackwater River (Cork/Waterford) SAC. An Appropriate Assessment Screening Report accompanied the original Section 5 referral (dated August 2010). Mitigation measures were to be put in place during construction to ensure that there would be no detrimental impact on European sites. Mitigation measures can be taken into consideration in relation to appropriate assessment screening.
- Cable works would not have required environmental impact assessment.

7.5.4. Glenlara Sub-station to Ballynahulla Sub-station

- This 110kV underground connection serves a number of wind farms in the area. Approximately 17.4km is located within Co. Cork – the remaining 2.1km being located within Co. Kerry.
- The works commenced in 2016, and are due to be completed in 2017.

- This development does not contravene any conditions attached to planning permissions.
- An Appropriate Assessment Screening Report was prepared for this grid connection route, as part of the section 5 referral to Cork Co. Council, ref. D/238/15.
- Cable works would not have required environmental impact assessment.

7.5.5. Associated Documentation

The response submission is accompanied by the following Appendices-

Appendix A

Letter from A & L Goodbody, Solicitors (dated 2nd March 2017).

- Mr. Cremins is attempting to re-open already decided referral cases by grouping all three elements of the underground cabling together. It is noted that he did not seek to refer the Council's declarations on the three separate elements of the underground cable to An Bord Pleanála, and did not bring judicial review proceedings. If this referral is allowed, it would be possible for individuals to continue to refer cases by reference to Article 9(1)(a) – each addressing a different potential restriction under Article 9 and/or a different combination of developments. This practice should not be encouraged by the Board. The Board should not revisit its previous decisions in relation to referrals already decided.
- In relation to the Knockacummer wind farm to Glenlara sub-station grid connection (ref. RL2789); it is acknowledged that the Inspector's Report did not specifically refer to the Blackwater River (Cork/Waterford) SAC. However, the Board should be able to conclude that the laying of the cable would not have had a significant effect on the SAC.
- The Glenlara sub-station to Ballynahulla sub-station underground cable referral to Cork County Council and Kerry County Council, included an Environmental Impact Assessment Screening Report and an Appropriate Assessment Screening Report – both of which concluded that the cable would not have any significant impacts on the environment, or significantly affect any European sites.

- Where planning authorities wish to ensure that the exempted development provisions of the Planning and Development Regulations, 2001, do not apply to a particular development, that is the subject of a planning application, the relevant planning condition will generally provide for this in express terms. Express wording would be necessary if the intention had been to remove a statutory entitlement. Furthermore, the planning authority would have no power to impose conditions on lands which might not be in the control of the applicant. Condition 42 cannot be interpreted as removing the statutory entitlement to rely on the exemption under Class 26 of Part 1 of Schedule 2.
- None of the conditions of the permission require the grid connection for the wind farm to be the same as the grid connection for which a prior grant of permission was obtained.
- The Glenlara sub-station to Ballynahulla sub-station cable works are not a grid connection for the Knockacummer wind farm – these works will facilitate other wind farms in the area.
- The works, the subject of this referral, do not require environmental impact assessment in their own right. Permission has already been granted for the wind farms, prior to the Ó Grianna judgement.
- Cumulative impact, for environmental impact assessment purposes, can only apply in relation to developments in place or permitted at the time the works were carried out for the relevant underground cabling sections.
- In-combination impacts for appropriate assessment purposes can only apply in relation to developments in place or permitted at the time the works were carried out for the relevant underground cabling sections.

Appendix B

Comprises an Environmental Impact Assessment Screening Report (undated); for 20kV underground cable linking Glentanemacelligot wind farm to Knockacummer wind farm.

Appendix C

Comprises a Natura Impact Statement for Proposed Underground Cable at Glentanemacelligot wind farm (dated June 2011). This Natura Impact Statement

indicates two options for the cable route exiting the wind farm onto the public road. [It is not clear just which route was ultimately selected].

Appendix D

Assessment of environmental impact assessment classes of development, and the application to the subject underground cables.

Appendix E

Environmental Impact Assessment Screening Report for 110kV Knockacummer wind farm to Glenlara sub-station underground cable works (undated).

Appendix F

Article 6 Appropriate Assessment for Proposed Underground Grid Connection Route Knockacummer Wind Farm Development, Co. Cork Report (dated August 2010).

This Report contains a large number of appendices which include Site synopses of European sites; Ecological importance and impact significance assessment; List of plant species; List of protected mammal species; Screening matrix for route and Blackwater River SAC; Screening matrix for route and Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA; Correspondence from Cork County Council, National Parks & Wildlife Service and Southern Regional Fisheries Board; Cumulative impact assessment; Historical avifauna surveys at Knockacummer wind farm (including bank vole reports); Underground cable trench detailed drawing; Register of mitigation measures; Habitat mitigation map. The document is a Stage 1 Screening Report and a Stage 2 Appropriate Assessment.

Appendix G

Appropriate Assessment Screening Report for Knockacummer wind farm grid connection (June 2015). This grid connection is from Glenlara sub-station to Ballynahulla sub-station. [It should be noted that this report was produced prior to the installation of this underground connection: the connection was laid between June 2016 and April 2017]. Seven watercourse crossings are identified – forming part of, or draining to, the Blackwater River SAC. No instream works were proposed. The 19.5km route is located entirely within public roads and short stretches of track at either end. A method statement is outlined, with measures to protect the environment during construction works – particularly in relation to siltation of

watercourses and dealing with Japanese knotweed and Himalayan balsam (invasive species). Arising from proximity to, and works within, the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA, pre-construction breeding season surveys for Hen harrier were to be conducted, with works halted if a breeding site is encountered within 500m of works, and National Parks & Wildlife Service consulted. Approximately 4.8km of the route traverses, or is immediately adjacent to, the SPA.

Appendix H

Environmental Impact Assessment Screening Report for Knockacummer wind farm grid connection (June 2015). The 19.5km route will have approximately 24 no. joint bays. The trench will be 1.5m deep and will be located entirely within the road or the roadside margin. Crews will work approximately 2-3km apart, so as to lessen impact on traffic flows. Estimated completion time is 45 weeks. At bridges (five identified), cables will be laid within the structures. No instream works are required and there will be no directional drilling. Road Opening Licences, under Section 254 of the Planning and Development Act, 2000 (as amended), will be required from Cork County Council and Kerry County Council. A Construction Method Report and a Construction Traffic Management Plan will be prepared. Waste materials are to be removed off-site and disposed of at a licensed waste facility. Pre-construction surveys for breeding Hen harrier, Otter, Badger and bat species will be undertaken. Schedule 5 of the Planning & Development Act, 2000 (as amended), does not include any class of development within which the laying of underground cables of 110kV would fall. Discretionary EIA for sub-threshold developments is set down at Schedule 7 of the Planning and Development Act, 2000. Based on the characteristics of the proposed development, location of the proposed development, and the characteristics of the potential impacts, it is concluded that sub-threshold environmental impact assessment is not applicable to the laying of these cables.

Appendix I

This Appendix considers potential cumulative impacts with other developments in the area – including wind farms, grid connections and clear-felling. The Appendix lists all of the permissions and section 5 determinations, and clear-felling, associated with both the Glentanemacelligot and the Knockacummer wind farms.

7.6. Further Responses to the Brookfield Renewable Response & the ESB International Response

The responses of Brookfield Renewable, received by An Bord Pleanála on 8th March 2017; and from ESB International, received by An Bord Pleanála on 27th March 2017; were referred for comment to the other parties – with responses required on or before 19th April 2017.

7.6.1. Response of Cork County Council

The response, received by An Bord Pleanála on 12th April 2017, indicated that Cork County Council had no further comment to make.

7.6.2. Response of Patrick Cremins

The response of the Planning Partnership, agent on behalf of Patrick Cremins, received by An Bord Pleanála on 19th April 2017, can be summarised in bullet point format as follows-

- The referral question posed by Cork County Council is clear and unambiguous.
- The works are located within and proximate to three European sites.
- The laying of the cables was in direct contravention of conditions attached to grants of planning permission for the parent wind farms.
- Recent precedent decisions of An Bord Pleanála indicate that permission should have been obtained for the underground grid connection cables.
- Article 9(1)(a)(i) is clear; that exempted development provisions cannot override a condition attached to a planning permission.
- Article 9(1)(a)(vi) is clear; that exempted development provisions are set aside, if the development would interfere with the character of a landscape or a view or prospect.
- Article 9(1)(a)(vii) is clear; that exempted development provisions are set aside, if development would have an impact on sites of scientific/ecological interest.

- Article 9(1)(a)(viiB) is clear; that exempted development provisions are set aside, if the development would have an impact on European sites.
- Section 5 of the Planning and Development Act, 2000 (as amended), does not facilitate 3rd Party involvement in the exempted development declaration and referral process, unless specifically requested. There cannot, therefore, be the same level of public scrutiny there would be, if public notice was given by way of site notices and newspaper notices. It is left to the discretion of planning authorities to consult 3rd Parties. Mr. Cremins was not informed, nor offered the opportunity, to partake in any of the Section 5 declarations to which Brookfield Renewable now refers in its submission.
- “Decisions on exempted development does not involve a professional planning appraisal of the merits of the development and its acceptability in the context of the proper planning and sustainable development of the area. They are the result of the application of legal definitions and principles to the facts of the case in question. They do not give any indication that planning permission would be granted if an application were to be made”. [Grist B.].
- From a review of An Bord Pleanála’s decision ref. RL2789, it is clear that the assessment focussed on the impact on European sites.
- The laying of these cables is development and is not exempted development.

8.0 Statutory Provisions

8.1. 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.

Section 182A

This section of the Act relates to Strategic Infrastructure Development and electricity transmission lines. Sub-section (9) states-

In this section 'transmission', in relation to electricity, shall be construed in accordance with section 2(1) of the Electricity Regulation Act 1999 but, for the purposes of this section, the foregoing expression, in relation to electricity, shall also be construed as meaning the transport of electricity by means of-

- (a) a high voltage line where the voltage would be 110 kilovolts or more, or
- (b) an interconnector, whether ownership of the interconnector will be vested in the undertaker or not.

8.2. 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—
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
 - (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,
 - (vi) interfere with the character of a landscape, or a view or a prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
 - (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.

Schedule 2, Part 1

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.

Schedule 5

Development for the Purposes of Part 10.

Part 1

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

Part 2

13. *Changes, extensions, development and testing*
- (a) Any change or extension of development which would:-
- (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and
 - (ii) result in an increase in size greater than –
 - 25 per cent, or
 - an amount equal to 50 per cent of the appropriate threshold,whichever is the greater.

Schedule 7

Criteria for determining whether a development would or would not be likely to have significant effects on the environment (*Articles 103, 109 and 120*). [Old Schedule 7 criteria – not the new ones relative to Directive 2014/52/EU – in consideration that underground cables were laid prior to coming into effect of the new Directive].

1. Characteristics of proposed development

The characteristics of proposed development, in particular:

- the size and design of the whole of the proposed development,
- the cumulation with other proposed development,
- the nature of any associated demolition works,

- the use of natural resources,
- the production of waste,
- pollution and nuisances,
- the risk of accidents having regard to substances or technologies used.

2. *Location of proposed development*

The environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to:

- the existing land use,
- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (a) wetlands,
 - (b) coastal zones,
 - (c) mountain and forest areas,
 - (d) nature reserves and parks,
 - (e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC,
 - (f) areas in which the environmental quality standards laid down in legislation of the EU, have already been exceeded,
 - (g) densely populated areas,
 - (h) landscapes of historical, cultural or archaeological significance.

3. *Characteristics of potential impacts*

The potential significant effects of proposed development in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population),
- the transfrontier nature of the impact,

- the magnitude and complexity of the impact,
- the probability of the impact,
- duration, frequency and reversibility of the impact.

9.0 Assessment

Cork County Council and An Bord Pleanála have already made declarations/decisions in relation to the three sections of underground cable, the subject of this current referral to An Bord Pleanála. There is no need to revisit the section 5 declarations/decisions. There is no sense to the claim, that somehow the three elements of the underground cabling, when added together, would result in a greater impact on the environment or on European sites – than the three individual sections would, when looked at in isolation. No evidence or argument to substantiate the claim for an aggregated impact has been submitted. The works for each section of underground cable were carried out at different times. Once completed, there were/are no on-going or continuing impacts – any likely significant impacts would have been during the construction phases. Cumulative impacts could only be considered for what was already in place, and could not anticipate what might happen in the future – to the extent that the laying of the section of cable from Glenlara sub-station to Ballynahulla sub-station might have had to have regard to possible cumulative impacts with earlier laid sections of cable, and I argue that there were none such. To allow this referral to question already determined referral cases (notwithstanding ongoing interpretation of the law) would set an undesirable precedent, and could lead to a continuous stream of similar-type referral cases – particularly those arguing in relation to different sub-articles of Article 9 of the Planning and Development Regulations, 2001 (as amended) – which places restrictions on exemptions. A section 5 declaration has already been issued by Cork County Council in relation to the Glentanemacelligot wind farm to Knockacummer wind farm section of this underground cable. A section 5 decision has already been issued by the Board in relation to the Knockacummer wind farm to Glenlara sub-station section of this underground cable. A section 5 declaration has already been issued by Cork County Council in relation to the Glenlara sub-station to Kingwilliamstown Bridge, Ballydesmond underground cable. Reliance was placed

on Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), and the memorandum of the Board: where it was stated- “At a meeting held on 12th October, 2007, the Strategic Infrastructure Division of the Board decided that the laying of underground electricity cables should continue to be regarded as exempted development by virtue of Class 26 of the 2001 Regulations, and that such works need not be subject to Section 182A of the Planning and Development Act 2000”. I would contend that the decisions/declaration should not be revisited.

However, if the Board is minded to deal with the referral (encompassing the three sections of underground cable), then the following comments (under bullet point headings) may be of some assistance in coming to a decision.

- General comments on the nature of this referral.
- Status of existing underground connections- (a) Glentanemacelligot wind farm to Knockacummer wind farm; (b) Knockacummer wind farm to Glenlara sub-station; (c) Glenlara sub-station to Kingwilliamstown Bridge, Ballydesmond.
- Comment in relation to the nature of the underground cables, and the likely principal impacts on the environment.
- The need for Environmental Impact Assessment.
- Implications of recent legal judgements.
- Some precedent referral cases.
- Legislative context.
- Appropriate assessment.

9.1. General Comments on this Referral

9.1.1. Area to which this Referral relates

The 110kV underground cable which links Glenlara sub-station with Ballynahulla sub-station is partly located within Co. Kerry (some 2.4km of the 19.5km length). This referral from Cork County Council obviously relates only to lands within the Co. Cork administrative area – as far as Kingwilliamstown Bridge, Ballydesmond. The map submitted by the original referrer to Cork County Council shows a line stopping

short of the county boundary. My comments relate only to the underground cables within Co. Cork. European sites cross county boundaries, and it is possible for development within one county to have an impact on an European site within another – particularly where there is a surface water connection. Regard has been had to this possibility when commenting on the impact of development on the environment and on European sites, both within and without Co. Cork.

9.1.2. Section 182A

This section of the Act relates to electricity transmission, which may be considered to be Strategic Infrastructure Development. Section 182A(9) refers to the transmission of electricity at 110 kilovolts or more. It is not specified if this is over-ground or underground transmission. Those sections of underground cable from Knockacummer wind farm to Glenlara sub-station, and from Glenlara sub-station to the county boundary at Kingwilliamstown Bridge, Ballydesmond, are stated to be 110kV. At a meeting held on 12th October 2007, the Strategic Infrastructure Division of the Board, decided that the laying of underground electricity cables should continue to be regarded as exempted development by virtue of Class 26 of the 2001 Regulations, and that such works need not be subject to section 182A. There was no voltage limitation indicated in the Board's decision. The agent for the operator of the wind farms argues that, as there is no voltage limitation, section 182A does not apply in this instance. I would be satisfied that the underground cables do not constitute Strategic Infrastructure Development.

9.1.3. Composition of a Grid Connection

The agent for the wind farm operators argues that the underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm is not a grid connection – rather an underground cable linking one wind farm with another.

Glentanemacelligot wind farm is stated not to have a sub-station of its own – the connection to the national grid being via the sub-station at Knockacummer wind farm. I would consider that whilst the 20kV underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm is not an entire grid connection, it does form part of a grid connection – connecting the wind farm at Glentanemacelligot to Glenlara sub-station, via Knockacummer wind farm sub-station. Similarly, it is argued that the 110kV underground connection between

Glenlara sub-station and Ballynahulla sub-station serves other developments, and so cannot be specifically regarded as part of a grid connection serving a wind farm. Whilst this is undoubtedly true, it would appear to be partly necessitated to handle and distribute the electricity generated at Glentanemacelligot and Knockacummer wind farms, and could, therefore, be seen as part of the grid connection of these wind farms. I note that prior to its construction, the connection of the two wind farms to the national grid was at Glenlara sub-station; and it could plausibly be argued that Glenlara sub-station was the point of connection for both wind farms. It could plausibly be argued that prior to completion of 110kV underground cable link between Glenlara sub-station and Ballynahulla sub-station – all power generated by the wind farms was transmitted by way of 110kV underground cable to Glenlara sub-station, and from there exported to the national grid.

9.2. Status of Existing Underground Cables

9.2.1. Glentanemacelligot Wind Farm to Knockacummer Wind Farm

Cork County Council states in its submission to An Bord Pleanála, that the 20kV underground cable between Glentanemacelligot and Knockacummer wind farms, was referenced in a compliance submission to the planning authority, in relation to permission ref. 06/4077 – on 14th July 2011; and was subsequently laid between June 2013 and July 2014. I note that this work was carried out prior to the issuing of the Ó Grianna judgement on 12th December 2014. It runs within public roads between the two wind farms, with sections within forest tracks/commercial coniferous plantation within the wind farm sites at either end. The length of the cable is stated to be approximately 8.0km – some 1.9km of which (within the Knockacummer wind farm), is along the same route as the Knockacummer wind farm to Glenlara sub-station route. Cork County Council issued a section 5 declaration on 27th December 2016, to the effect that this underground cable was development and was exempted development (ref. D/247/16). This declaration of Cork County Council was not referred to An Bord Pleanála, and was not judicially reviewed. Condition 14 of permission ref. 02/4283 stated- “Commissioning of the wind farm shall be subject to an approved connection to the national electricity grid and shall be subject to the prior grant of planning permission of the Planning Authority”. The wording of this condition would appear unambiguous. It was likely attached, as the planning

application for the wind farm would not have contained any details of the proposed grid connection – as was the practice prior to the Ó Grianna judgement. Attaching such a condition would have allowed the planning authority to assess the impact of the grid connection – particularly in relation to likely impacts on the environment and on European sites; notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 (as amended). The provisions of Class 26 of Part 1 of Schedule 2 of the Regulations, were in place at the time of the grant of planning permission, but the planning authority, nonetheless, saw fit to attach this condition. Permission ref. 06/4077, related to modifications to permission ref. 02/4283, and re-stated condition 14 of the original permission at new condition no. 42, albeit with slightly different wording- “Commissioning of the wind farm shall be subject to an approved connection to the national electricity transmission grid and shall be subject to the prior grant of permission of the Planning Authority”. Again, this restated condition would appear unambiguous. Permission ref. 08/10248 related to an additional eight turbines at the Glentanemacelligot wind farm site. The decision was appealed to An Bord Pleanála by 3rd Parties (ref. PL 04.235930), and permission was granted on 19th August 2010, for five additional turbines. Condition 7 of this permission stated- “This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection”. This condition made no reference to necessary prior grant of planning permission for a grid connection and, I would contend, was a more reasonable wording for such a condition, where the route of the grid connection was unknown. The laying of an underground grid connection to Knockacummer wind farm would not contravene this condition 7. Notwithstanding the existence of condition 14, and subsequent condition 42; on 27th September 2016, Cork County Council issued a section 5 declaration that the underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm was development and was exempted development – this declaration issued after the cable had been laid on foot of a compliance submission to the planning authority.

The crux of the issue is, whether a condition attached to a planning permission can remove or cancel the provisions made for exempted development in the Planning and Development Regulations, 2001 (as amended). It is generally the case, where a planning authority, or the Board, intend that a development will not be able to benefit

from the exempted development provisions of the aforementioned Regulations, that a condition would be attached specifically removing such exemption, using wording such as- “Notwithstanding the exempted development provisions of class...of Part ... of Schedule...”. Where the Regulations specifically provide for classes of development to be exempted development, it would seem unreasonable to remove such exemptions without specific reference/justification; and to give reasons for the removal of such exemption within the reasons and considerations, which form part of the decision of a planning authority or the Board. The reasons given for attaching conditions 14 & 42 baldly state- “In the interest of orderly development”. I have already contended, that the reason for attaching such conditions as no.s 14 & 42, was that the impacts of possible grid connections on the environment and European sites were unknown at the time of the making of the decisions, as the line of the possible grid connection(s) was not indicated, and the planning authority would not have been able to assess the impacts on the environment, for the purposes of environmental impact assessment or the impact on European sites, for the purposes of appropriate assessment. This underground cable was the subject of a referral under section 5 to Cork County Council. This referral to Cork County Council included an Environmental Impact Assessment Screening Report and a Natura Impact Statement (which had earlier been submitted by way of compliance submission). The Natura Impact Statement identified European sites which could be affected by the cable-laying – particularly the Stack’s to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA, the Blackwater River (Cork/Waterford) SAC, and the Lower River Shannon SAC – either through disturbance of Hen harrier and its habitat, or by way of possible siltation/contamination of streams which flow into the Blackwater River (Cork Waterford) SAC or the Lower River Shannon SAC. Such a referral afforded the planning authority the opportunity to screen the development for environmental impact assessment and to screen the development for appropriate assessment/carry out a Stage 2 Appropriate Assessment – regard being had to the status of permissions in the area and likely future developments, in order to assess the cumulative impact of such developments/proposals on the environment and the in-combination impacts on European sites. I would contend that this opportunity afforded to the planning authority to examine the impact of the cable on the environment and on European sites by way of section 5 referral, distinguishes this particular case from other cases which might be regarded as

establishing a precedent, and would satisfy the spirit of conditions 14 & 42 of the relevant wind farm permissions, and more importantly the purposive effect of the Environmental Impact Assessment Directive and the Habitats and Birds Directives.

9.2.2. Knockacummer Wind Farm to Glenlara Sub-station

It is stated that this 110kV underground cable was laid between November 2012 and October 2013. I note that this work was carried out prior to the issuing of the Ó Grianna judgement on 12th December 2014. This underground cable also serves the Glentanemacelligot wind farm. It runs mostly within public roads or within forest tracks/commercial coniferous plantation within the wind farm itself, and through a farm track to the north of the L5039 county road. The length of the cable is stated to be approximately 11.4km – some 2.0km of which is within the same road as the Glenlara sub-station to Kingwilliamstown, Ballydesmond underground cable route. Cork County Council issued a section 5 declaration on 13th September 2010, to the effect that this cable was development and was not exempted development (ref. D/257/10). The reason for this declaration centred around possible impact on European sites, and did not make any reference to a condition attached to a parent wind farm development permission. This declaration of Cork County Council was referred to An Bord Pleanála by the wind farm operator (ref. RL 04.RL2789). By order dated 23rd February 2011, the Board decided that the laying of the cables was exempted development. This decision was not subject to judicial review. The referral case was almost entirely based on the possible impact on European sites, and in particular the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle proposed SPA; where approximately 3.7km of the route was through the SPA. No reference was made to condition 19 of permission ref. PL 04.210685 (the parent wind farm development permission), within the documentation submitted. Cork County Council had granted planning permission to construct a wind farm at Knockacummer – ref. 04/8354. This decision was the subject of 3rd Party appeals to An Bord Pleanála (ref. PL 04.210685) with permission granted subject to conditions on 23rd December 2005 – no. 19 of which stated- "This permission shall not in any way be constructed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection. Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the national grid".

ESB was subsequently granted planning permission for a 110kV overhead line, which would have linked this wind farm to the national grid at Glenlara sub-station – ref. 06/7114 (ref. PL 04.218815). However, this permission was never implemented. Notwithstanding this, the agent for the wind farm operator argues that this grant of planning permission satisfies condition 19. On the face of it, the grant of permission would seem to satisfy the condition. The condition does not stipulate that this must be ‘the’ grid connection, or ‘the only’ grid connection, for the wind farm. However, I would consider it unreasonable to rely on such an interpretation of the intention behind condition 19.

The wording of condition 19 would appear unambiguous. It was likely attached as the planning application for the wind farm would not have contained any details of the proposed grid connection – as was the practice prior to the Ó Grianna judgement. Attaching such a condition would have allowed the planning authority to assess the impact of the grid connection – particularly in relation to likely impacts on the environment and on European sites, notwithstanding the exempted development provisions contained in the Planning and Development Regulations, 2001 (as amended). The provisions of Class 26 of Part 1 of Schedule 2 of the Regulations were in place at the time of the grant of planning permission, but the Board saw fit to attach this condition. Notwithstanding condition 19, on 13th September 2010, the Board issued a section 5 decision that the 110kV underground cable linking Knockacummer wind farm with Glenlara sub-station, was development and was exempted development; and the cable was subsequently laid.

As argued in the previous section of this Inspector’s Report, the crux of the issue is whether a condition attached to a planning permission can remove or cancel the provisions made for exempted development in the Planning and Development Regulations, 2001 (as amended); and it is not proposed to re-state those arguments here. The reason given for attaching condition 19 baldly states- “In the interest of clarity and the proper planning and sustainable development of the area”. I have already contended, that the reason for attaching such a condition as no. 19, was that the impacts of a possible grid connection on the environment and European sites was unknown at the time of the making of the decision, as the line of the possible grid connection was not indicated; and the Board would not have been able to assess the impacts on the environment for the purposes of environmental impact

assessment or the impact on European sites for the purposes of appropriate assessment. This underground cable was the subject of a referral under section 5 to Cork County Council, and subsequently referred to An Bord Pleanála. This referral included a detailed Natura Impact Statement and an Ecological assessment. The NIS identified the European sites which could be impacted by the cable route – particularly the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA and the Blackwater River (Cork/Waterford) SAC – either through disturbance of Hen harrier and its habitat, or by way of possible siltation/contamination of streams which flow into the Blackwater River (Cork/Waterford) SAC. The referral afforded the planning authority, and the Board, the opportunity to screen the development for environmental impact assessment and to screen the development for appropriate assessment/carry out a Stage 2 Appropriate Assessment – regard being had to the status of permissions in the area and likely future developments, in order to assess the cumulative impact of such developments/proposals on the environment, and the in-combination impacts on European sites. The Board's decision of 23rd February 2011, clearly indicated that it did have regard to the location of the site partially within an SPA, and adjacent to an SAC, and had regard to the ecological report submitted by the wind farm operator. I would contend that this opportunity afforded to the planning authority, and to the Board, to examine the impact of the cable on the environment and on European sites, by way of section 5 referral, distinguishes this particular case from other similar-type cases which might be regarded as establishing a precedent, and would satisfy the spirit of condition 19 of the relevant wind farm permission.

9.2.3. Glenlara Sub-station to Kingwilliamstown Bridge, Ballydesmond

The status of this section of underground cable (19.5km), of which 17.4km is located within Co. Cork, is slightly different to the two preceding cable lengths, in that it straddles a county boundary, and is only recently completed – carried out over the period mid-2016 to April 2017. I note that this was subsequent to the issuing of the Ó Grianna judgement on 12th December 2014, but prior to the issuing of the Daly & Kilronan judgement on 11th May 2017. I have elsewhere argued that the substance of this referral relates only to that section within Co. Cork. The 110kV underground cable is also distinguished by the fact that it does not exclusively serve the wind farms at Glentanemacelligot and Knockacummer, but is stated to serve other wind

farms, and a consumer 38kV distribution network. It connects two Eirgrid sub-stations; and as such, could be regarded as part of the national grid. It would appear that the cable was laid by the wind farms operator, and was necessitated by the fact that the sub-station at Glenlara could not deal with the load imposed by Glentanemacelligot and Knockacummer wind farms (amongst others) operating at full output. The section 5 declaration report of Cork County Council in relation to this underground cable (ref. D/238/15) refers to the connection offer from Eirgrid to the wind farm operator at Glenlara sub-station, but following the completion of the Ballynahulla sub-station, the preferred connection route is to that sub-station, to allow for a secure level of supply; where the Glenlara sub-station could not handle the full output of the operational wind farm at Knockacummer.

It is contended that this cable does not contravene any condition attached to a planning permission, as the connection for the wind farms to the national grid is at Glenlara sub-station. This would appear to be reasonable, if ESB Networks was undertaking the connection works between Glenlara sub-station and Ballynahulla sub-station; but in this instance, it appears to be a wind farm operator. So, it could be argued that the 110kV underground cable is principally to facilitate the wind farms (and others) – although mention is made to servicing a consumer 38kV network also.

The proposal to lay this 110kV underground cable, was the subject of a referral to Cork County Council ref. D/238/15 (and separately to Kerry County Council – ref. EX408). The Declaration of Cork County Council of 21st July 2015, that the cable was development and was exempted development, was not subject to referral onwards to An Bord Pleanála or of judicial review. Arising from this, it could be argued that the declaration is out of time for legal challenge. The referral was accompanied by screening reports for environmental impact assessment and appropriate assessment. A Construction Environmental Management Plan is referred to in the Cork County Council Planner's Report, and reference is made to comments of the Heritage Officer of Cork County Council in relation to appropriate assessment. Regard was had to the fact that the line of the route traversed the Blackwater River SAC and the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA. The route is entirely within public roads/verges. If it is accepted that this cable forms part of the grid connection for Glentanemacelligot and

Knockacummer wind farms to the national grid, then the following comments are of relevance – particularly in relation to Article 9(1)(a)(i) of the Regulations.

The arguments made, in relation to de-exemption, as applied to the two other sections of underground cable, the subject of this referral, would apply in this instance also. Conditions 14 & 42 of the Glentanemacelligot wind farm permissions, and condition 19 of the Knockacummer wind farm permission, did not specifically de-exempt grid connections. It is not proposed to repeat the arguments here – other than to state that the same arguments apply in this instance.

9.3. General Comments in Relation to Construction of Underground Cables

The three elements of underground cable, to which this referral relates, have all been laid within the past six years plus. Works for the Glenlara sub-station to Ballynahulla sub-station cable consisted of excavating a trench approximately 1.5m deep and 0.75m wide. A number of junction bays (approximately every 750m) were excavated to allow for cables to be pulled through the ducts. A similar number of inspection chambers/manholes are provided within the public road surface. It is stated that no in-stream works were required to lay the cables, and neither was directional drilling used. All bridges and culverts (of which seven were identified at watercourses) within public roads were suitable to accommodate the cables, with appropriate modifications, depending on the particular bridge/culvert structure. Details of cable-laying for the 110kv underground cable from Knockacummer windfarm to Glenlara sub-station, are outlined at Appendix 10 of Appendix F (August 2010), of the submission of RPS to An Bord Pleanála; submitted on 8th March 2017. Appendix 11 of the same submission, outlined the register of mitigation measures, which included, amongst others, the following-

- Appointment of Ecological Clerk of Works to supervise all elements of work.
- Management of surface water monitoring and measures to control sediment and accidental spillages of hydrocarbons, using silt traps, check dams, settlement ponds, and bunds.
- Construction outside of periods of heavy rainfall.
- Measures to ensure that invasive species are not spread by machinery.

- Construction works outside Hen harrier breeding season.
- Measures to deal with a badger sett within 30m of the route.
- Waste materials removed from site for disposal to a licensed waste facility.

It should be noted that these submissions were made in relation to the section 5 application to Cork County Council for the 110kV underground cable between Knockacummer wind farm and Glenlara sub-station (ref. D/257/10) – which was subject to onward referral to An Bord Pleanála (ref. RL 04.RL2789).

9.4. Screening for Environmental Impact Assessment

- 9.4.1. Section 4(4) of the Planning and Development Act, 2000 (as amended), effectively de-exempts development which would require environmental impact assessment or appropriate assessment.
- 9.4.2. Schedule 5, Part 1 of the Planning and Development Regulations, 2001 (as amended), sets out specified development for which EIA is mandatory. Paragraph 20 refers to overhead electrical power lines of 220kV or more with an overall length of more than 15km. The power lines in this instant referral are of 20kV and 110kV; and all are underground. Paragraph 22 refers to changes or extension of projects listed in Part 1, where such a change or extension in itself meets the thresholds, if any, set out in this Annex. An underground cable does not comprise a development specified in Part 1. Part 2 specifies sub-threshold development which may require environmental impact assessment. There is no class of development referenced within the relevant Part of Schedule 5, which approximates to underground power cables – other than perhaps Part 2, Paragraph 3.(b) “Industrial installations for carrying gas, steam and hot water with a potential heat output of 300 megawatts or more, or transmissions of electrical cables not included in Part 1 of this Schedule, where the voltage would be 200 kilovolts or more”.
- 9.4.3. I note that Paragraph 13 of Part 2 of Schedule 5 allows for change or extension of development already authorised, executed, or in the process of being executed; which would result in an increase in size of greater than 25% or an amount equal to 50% of the appropriate threshold, without the need for EIA. The wind farms which these underground cables serve, are already authorised. The creation of the underground cable link from Glentanemacelligot and Knockacummer wind farms to

Ballynahulla sub-station, via Glenlara sub-station, could possibly be regarded as an extension to the wind farms – and one which certainly would not result in a 25% increase in the combined site areas of these wind farms, and where the reference to 50% of the appropriate threshold is not applicable – as there is no class of development to which a 20/110kV underground cable would approximate. If this reasoning is followed, then there is no need for EIA. I note that the agent for the wind farm operators does not consider that the underground cables can be regarded as an extension to the wind farm developments, and I would be inclined to agree with this contention – the extension relating to the principal activity of the development – which is the generation of electricity from wind turbines. If the Board agrees that this Paragraph 13 line of argument is not of relevance, the following screening for EIA may be of assistance.

- 9.4.4. The likely significant impacts of the wind farms at Glentanemacelligot and Knockacummer were considered by Cork County Council and An Bord Pleanála, as appropriate (ref. PL 04.210685 & ref. PL 04.235930 in the case of An Bord Pleanála) – which files are travelling with this current referral case. Significant impacts identified were visual & landscape, peat stability, residential amenity (noise and shadow flicker), traffic and ecology (Hen harrier in particular). Mitigation measures were outlined in documentation submitted with the applications and appeals, and conditions attached to permissions to minimise impacts. It is acknowledged by the wind farm operators that there was a lack of environmental screening reporting submitted with the section 5 referral for the 110kV underground cable between Knockacummer wind farm and Glenlara sub-station: therefore, a summary of the residual impacts of the Knockacummer wind farm and associated development is presented for the consideration of the Board, within Table 2 of Appendix I of the RPS submission of 8th March 2017. It is further acknowledged that there may have been a lack of environmental screening reporting submitted with the section 5 referral for the 20kV underground cable between Glentanemacelligot wind farm and Knockacummer wind farm and, therefore, a summary of the residual impacts of the Glentanemacelligot wind farm and associated development is presented for the consideration of the Board within Table 3 of the same Appendix.
- 9.4.5. The wind farm operator, in response to the referral of Cork County Council in the current instance, has submitted an Environmental Impact Assessment Screening

Report for the Knockacummer Wind Farm Permanent Grid Connection, prepared by RPS (June 2015), which was submitted to both Cork and Kerry County Councils, in association with the section 5 referral cases, relating to the Glenlara sub-station to Ballynahulla sub-station 110kV underground cable route. The short report concludes that the project does not require EIA. Reference is made to the preparation of a Traffic Management Plan, Construction & Environmental Management Plan, and Construction Method Report by Malachy Walsh & Partners on behalf of the wind farm operators, for the laying of this cable – none of which documents are included in submissions to An Bord Pleanála. Such documentation would have set down arrangements for managing traffic during the construction phase, details of cable-laying, good management principals to be put in place for construction works, handling of materials, and silt prevention in relation to watercourses.

- 9.4.6. For the purposes of screening for EIA, I have had regard to Schedule 7 of the Planning and Development Regulations, 2001 (as amended). As the referral to the Board was made, and the works in question carried out, prior to the coming into effect of the new EIA Directive 2014/52/EU, in May 2017, I have had regard to the provisions of the original Schedule 7 criteria. This Schedule contains criteria for determining whether a development would or would not be likely to have significant effects on the environment. Considerations relative to the old Schedule 7 criteria, are as follows-

1. Characteristics of the Proposed Development

The size of the proposed development

General Comment

The 20/110kV underground cables run almost entirely within public roads/verges between Glentanemacelligot wind farm and Kingwilliamstown Bridge in Ballydesmond village (and onwards from there to the 220kV sub-station at Ballynahulla in Co. Kerry). The length of underground cable within Co. Cork is 8.0km + 11.4km + 17.4km = 36.8km. Of this total, approximately 1.9km within Knockacummer wind farm facilitates the cable coming in from the Glentanemacelligot wind farm and the cable going out to Glenlara sub-station. In the vicinity of Glenlara sub-station, approximately 2.0km of the L5039 county road accommodates the cable coming in from Knockacummer wind farm and the cable

going out to Ballynahulla sub-station. Most of the underground cable route is within public roads/verges. The aforementioned 1.9km stretch within Knockacummer wind farm runs through commercial coniferous plantation and forest tracks. A length of 1.2km/0.6km within Glentanemacelligot wind farm, is located within forest tracks, serving commercial coniferous plantation and the wind farm itself. Apart from these two stretches, just one further short stretch in Ballyduane West townland, is off-road – located within an agricultural track (0.2km) off the L5039 county road.

Glentanemacelligot Wind Farm to Knockacummer Wind Farm

This 20kV cable is laid within county roads/verges – except for those sections within the wind farms at either end. The trench was stated to be 1.4m deep and 1.2m wide. Three bridge crossings were identified on the route – all of which watercourses ultimately discharge to European sites. All cables were accommodated within/attached to the bridge structures – there being no requirement for directional drilling or trenches through watercourses. The estimated construction period was 10-12 weeks, with a further 8-10 weeks for cable pulling through the ducts.

Knockacummer Wind Farm to Glenlara Sub-station

The 110kV underground cable route between Knockacummer wind farm and Glenlara sub-station is 11.4km in length, and is located mostly within county roads/verges. A 1.9km length, at the Knockacummer end, is located within wind farm tracks and commercial coniferous plantation. The trench is stated to have been 1.25m deep and 0.6m wide. The cable is laid within three identified bridge structures which span watercourses. Some 3.7km of the route lies within the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA. The estimated time for the duct-laying works was 12 weeks, with an additional 15 weeks for cable-pulling through the ducts.

Glenlara Sub-station to Kingwilliamstown Bridge, Ballydesmond

The 19.5km length of 110kV underground cable between Glenlara sub-station and Ballynahulla sub-station, is stated to be entirely within roads/tracks. It contains 24 joint bays (measuring 6.0m x 2.5m and 2.5m deep) – for pulling cables through ducting. Joint bays were back-filled following cable pulling. In addition, inspection chambers (measuring 1.1m x 1.5m and 1.5m deep) were installed at each joint bay. The trenches were typically 1.5m deep and 0.75m wide. Marker posts and marker

plates (within areas of shallow excavation) are in place. Work teams would have worked simultaneously 2-3km apart; and estimated time for completion of works was 45 weeks. Five bridge crossings were undertaken, with a further two watercourse crossings undertaken at culverts. It is stated that construction compounds would not have been located within European sites.

The size of the development – though extensive in linear terms, is not large; regard being had to the co-use of existing roads/tracks and for the underground cables. Trenches would have been filled and the ground made good when the cables were laid.

The cumulation with other proposed development

There are no known relevant projects in the vicinity of the three elements of this underground cable; aside from the Glentanemacelligot and Knockacummer wind farms which the underground cable serves; and which could have a cumulative impact with it. Appendix I of the wind farm operator's submission to An Bord Pleanála of 8th March 2017, lists the potential for cumulative impacts – including developments for which permission was obtained, section 5 referral cases to Cork County Council and An Bord Pleanála, and clear-felling/replanting. Table 2 lists all relevant permissions/authorisations/licences, and presents the findings of residual impacts identified in the documentation submitted with each application/declaration/compliance submission. I note that the new Ballynahulla sub-station in Co. Kerry is completed and operational. Therefore, there are no other proposed developments which could be seen to potentially have significant cumulative impacts with the underground cable. Cork County Council and An Bord Pleanála carried out environmental impact assessment for various aspects of the wind farm developments, and permitted those developments (now operational), noting the acceptability of the mitigation measures proposed, and the residual impacts. I would be satisfied that the three elements of this underground cable would not have any cumulative impact with other developments in the vicinity, regard being had to the periods over which the elements were constructed/laid and the nature of development in the vicinity.

The nature of any associated demolition works

There were no known demolition works associated with the three elements of this underground cable route.

The use of natural resources

There were no known natural resources used in the development of the three elements of this underground cabling route, apart from stone/gravel/sand bedding/fill for trenches, and whatever wiring is comprised in the cables.

The production of waste

The laying of the underground cables would not have produced any significant waste at the construction or operational phases. Material excavated would primarily have been used to reinstate affected areas after the laying of the underground cable. Any other waste was to be removed off-site for disposal at an authorised waste facility or else deposited within the borrow pits of the two wind farms – in the case of the first two sections of the underground cable. There is no evidence of mounds of spoil anywhere along the route.

Pollution and nuisances

No known significant pollution or nuisance was likely to have arisen from the laying of the underground cables. The principal threat to the environment would have been the release of silted run-off to watercourses. Having regard to the location of most of the underground cable route within public roads/verges, the measures outlined to control siltation of watercourses within the documentation presented (particularly in relation to construction methodology at water crossings), and the absence of in-stream crossings; it is unlikely that any significant siltation of watercourses occurred.

The risk of accidents, having regard to substances or technologies used

There was no directional drilling undertaken in the laying of the 20/110kV underground cables. It was accepted that concrete-contaminated material could potentially enter watercourses in the vicinity of the corridor, or accidental spills of hydrocarbons. No likely significant effect would have arisen with any reasonable application of conventional drainage management procedures for dewatering of trenches, storage and handling of any excavated/fill material, potential downstream discharge to watercourses, and refuelling of machinery.

2. Location of proposed development

The existing land use

Land uses have been retained, as the affected areas have been reinstated after the laying down of the underground cables. Any impact on land use was negligible and of limited duration. The presence of stands of Japanese knotweed and Himalayan balsam along the R578 was noted in reports submitted by the agent for the wind farm operators. Excavation within verges would have had the potential to spread these species, either through movement of affected soil or through soil caught on the wheels of vehicles involved with excavation. There was no evidence of extensive spread of invasive species along the route, and such spread has not been referred to by the referrer, or by Cork County Council.

The relative abundance, quality and regenerative capacity of natural resources in the area

Potential impact on European sites has been addressed in the Appropriate Assessment section of this Inspector's Report, and it is not proposed to repeat it here. The nature of the terrain through which the underground cables have been laid, comprises mostly roads and verges, with a limited area within forest/agricultural tracks and commercial coniferous plantation. Affected areas were reinstated, and recolonisation of vegetation would have resulted. There would have been no notable changes in soils and geology. Biodiversity is not likely have been affected in any significant manner and, where any minor change may have resulted, it is reasonable to determine that the laying of the underground cables along any potentially affected area would be temporary, due the nature of the works proposed. Overall, the environment through which the underground cables has been laid would have had the capacity to regenerate rapidly, arising from any likely minor environmental changes.

The absorption capacity of the natural environment, paying particular attention to the following areas:

- (a) wetlands,**
- (b) coastal zones,**
- (c) mountain and forest areas,**
- (d) nature reserves and parks,**

(e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC,

(f) areas in which the environmental quality standards laid down in legislation of the EU have already been exceeded,

(g) densely populated areas,

(h) landscapes of historical, cultural or archaeological significance.

The underground cables have been laid almost entirely within roads/verges; and beyond any wetlands, coastal zones, densely populated areas, or landscapes of historical, cultural or archaeological significance. I have elsewhere in this Inspector's Report commented on any likely significant impacts on European sites; and it is not proposed to repeat that assessment here. Pre-construction surveys were proposed for Hen harrier, Badger, Otter and bats. No site compound was to have been located within any European site. An Ecological Clerk of Works was to have been appointed, and works carried out under an archaeological watching brief. The roads/verges, where the cable has been laid, would have readily absorbed such development. Any subsequent reinstatement of affected lands would have been such that the natural environment would not have been subject to any significant environmental impacts. The section of cable within the Knockacummer wind farm was laid partly through existing commercial coniferous plantation and wind farm tracks. The suitability of these lands for breeding and foraging Hen harrier was assessed, having regard to surveys carried out – the area to be disturbed representing less than 0.001% of the SPA – and it was determined that Hen harrier was not breeding or foraging within 500m. The closest Natural Heritage Area is the Mount Eagle Bogs – located approximately 6.5km west of the closest point of the Glentanemacelligot wind farm underground cable route, and approximately 5.4km northwest of the closest point of the Glenlara sub-station to Ballynahulla sub-station route at Kingwilliamstown Bridge, Ballydesmond. The NHA is located within a different drainage catchment. The laying of the underground cables would have had no impact on this NHA.

3. Characteristics of potential impacts

The extent of the impact (geographical area and size of the affected population)

The three elements of the underground cable route are not visible to the affected population, and no operational impacts on the resident population, in the vicinity of the route corridor, were likely to have arisen. The principal potential effects on the area through which the cable has been laid, relate to the construction phase: to the potential effects on watercourses, traffic and Hen harrier. The character of the terrain through which the underground cable has been laid is of relevance. The application of conventional drainage methodologies to avoid sedimentation of open watercourses should have ensured that there was no likely significant impact on water quality. With regard to traffic impacts, there would have been some short-term disruptions to traffic. There would be no cumulative impact with the wind farms which the cables serve; having regard to the linear nature of the route, the different periods over which the wind farms were constructed, the access points to the wind farms, and to the fact that once constructed, the wind farms generate minimal traffic. In traffic volume terms, and in terms of arrival/dispersion of HGV movements over the length of the cable route, together with the short timeframe for the laying of the cable, I would be satisfied that there would have been only minor increases in traffic volumes affecting the area, and the minor impact would have been very much localised. Reference is made to submission of Traffic Management Plans in association with the application for Road Opening Licences from Cork County Council. The construction phase of the underground cables would not have had any significant impact on traffic in the area. The impact on invasive species along road verges was to be dealt with through adherence to the 'Guidelines for the Management of Noxious Weeds and Non-Native Invasive Species on National Roads (Revision of December 2010)', and this is a reasonable approach to dealing with such an issue. Impact on Hen harrier was to be mitigated through carrying out of clearance works outside of the breeding season, pre-work surveys for presence of this species, and restriction of works to the confined area of the cable route.

In terms of operational phase impact, it should be noted that exposure to electromagnetic fields (EMF) is common – even within houses. Underground cables are common throughout the country. Houses flanking the underground cable route are generally set back from the edge of the carriageway – with the exception of the broad main street in Ballydesmond village. There is no evidence to indicate that 20/110kV cables, buried 1.0m below the road surface, would have a deleterious

impact on human health. The magnetic field associated with underground cables decreases rapidly with distance, as the ground absorbs the magnetic field. The underground cables would have been laid in accordance with the international guidelines for ELF-EMF of the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

The transfrontier nature of the impact

The underground cables have had and will have no transfrontier effects.

The magnitude and complexity of the impact

There are no known complexities or significant environmental impacts likely to have arisen from the laying of the three sections of underground cable, and from their ongoing operation. As stated elsewhere within this report, almost all are laid within roads/verges and tracks.

The probability of the impact

The probable impact of the three elements of the underground cable, can reasonably be determined to be minor/negligible.

The duration, frequency and reversibility of the impact

Timelines have been indicated for the installation of the three elements of the underground cable. The construction phases were not likely to have resulted in any significant environmental impacts. The operational phase will not result in any significant environmental impacts. When, and if, the wind farm developments, which these underground cables serve, cease to operate; the cables could, if required, be removed and the affected lands readily reinstated, without any significant impact on the environment.

- 9.4.7. Having regard to the above screening for EIA, if it is determined that the cable route is viewed as an integral part of the wind farm developments which it serves, it can reasonably be concluded that the laying of the three elements of the underground cable would not have resulted in any likely significant effects on the environment.
- 9.4.8. As this screening exercise concludes that the underground cables would not have had any likely significant impacts on the environment, it may reasonably be concluded that likely significant cumulative impacts with the permitted Glentanemacelligot and Knockacummer wind farm developments cannot arise. I

note that none of the principal likely significant impacts considered by the Board, that related to the wind farm developments, are applicable to the three elements of the underground cable in terms of cumulative impacts – given that the three elements were laid over a number of years; the period of development of the wind farms and the traffic access points to such; and that likely effects would have been during the construction phase only.

- 9.4.9. Where the Board has previously determined, that the mitigation measures proposed and the residual effects from the Glentanemacelligot and Knockacummer wind farm developments themselves were acceptable, and where it has been determined that the three elements of the underground cable would not be likely have had any significant environmental impacts or significant cumulative impacts with the wind farm developments they serve, then it is reasonable to conclude that the overall project (wind farms and underground cables) were not likely to have had, and are not likely to have, any significant impacts on the environment.

9.5. Legal Cases

9.5.1. Ó Grianna Judgement

The above screening assessment, and in particular the references to the cumulative impacts of the three elements of underground cable route and the wind farms which they serve, are considered to satisfy and requirements emanating at this time from the Ó Grianna judgements [1 & 2]. In this regard, the Board will also note the Sweetman and An Bord Pleanála judgements of February and March 2017 [Haughton J], and the comments made therein in relation to the Ó Grianna judgement.

9.5.2. Kilross Properties Ltd. and ESB Judgement

In this judgement [IECA 207 of 2016], Hogan J stated that the “High Court cannot go behind an otherwise valid section 5 declaration... to the effect that the development in question represents exempted development in the course of a section 160 application”.

9.5.3. Daly and Kilronan Judgement

This judgement of the High Court was issued on 11th May 2017 – resulting from a section 160 injunction, which sought to prohibit Kilronan Windfarm Ltd/Derrysallagh Windfarm Ltd, from carrying out underground grid connection works (38kV) to connect a permitted wind farm at Kilronan in Co. Sligo to a 110kV sub-station at Garvagh Glebe in Co. Leitrim. The case related only to that 2.8km section of underground cable within Co. Leitrim, and the applicant sought an order that the respondents should remove part of cable already laid at or near his lands. The judgement relied on the findings in the Ó Grianna judgement (No. 1) – in as much as a grid connection must be considered an integral part of the wind farm development it served. It indicates that the cumulative effect of both must be assessed in order to comply with the Directive, although the Ó Grianna case did not decide that the grid works required planning permission or a separate environmental impact assessment or appropriate assessment. Subject, perhaps, to further legal advice, the net effect of the judgement, at this time, appears to be that grid connections for wind farms at Glentanemacelligot and Knockacummer (both of which required environmental impact assessment), cannot be considered to be exempted development as a matter of principle. I have noted elsewhere in this report that the sections of underground cable connecting Glentanemacelligot wind farm with Knockacummer wind farm and connecting Knockacummer wind farm with Glenlara sub-station, were carried out prior to issuing of the Ó Grianna judgement. Notwithstanding the environmental impact assessment screening carried out, and the conclusions as set out in this Inspector's Report, the Board may be constrained, and required to conclude that, under article 9(1)(c) of the Planning and Development Regulations, 2001 (as amended), that the underground cable from Glentanemacelligot wind farm to Knockacummer wind farm; from Knockacummer wind farm to Glenlara sub-station; and from Glenlara sub-station to Kingwilliamstown Bridge, Ballydesmond; is development and is not exempted development, as it is development to which Part 10 of the Planning and Development Regulations (i.e. Environmental Impact Assessment) applies. With due regard to these findings, it may have to be concluded that the grid connection comes within the provisions of section 4(4) of the Planning and Development Act 2000, (as amended).

9.6. Some Precedent Board Referral Cases

I have elsewhere in this report referred to the specific details of **RL2789**, which directly relates to this current referral case (section of underground cable from Knockacummer wind farm to Glenlara sub-station). Reference is made in documentation on this current referral case, to a number of precedent Board decisions. 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; the option for over-ground and/or underground cables; whether they have been laid, partially laid or are proposed to be laid: the circumstances of each case can, and do, vary widely. This is particularly so in relation to visual amenity; impact on sensitive ecology; interaction with other planning permissions, and conditions attached thereto; interaction with other referral declarations/decisions; whether wind farm applications included Environmental Impact Statements/Environmental Impact Assessment Reports and/or Natura Impact Statements; whether wind farm/grid connection elements were constructed (and when); and potential impact on European sites. For these reasons, I would adopt a cautious approach in quoting precedent declarations of the Board in relation to the three elements of the underground cable, the subject of this referral. There is also the added consideration of the implications of the Ó Grianna judgement and the Daly & Kilronan judgement; when examining grid connections for wind farm developments.

RL3234

By order dated 22nd January 2015, the Board determined that the provision of 10kV overhead cable (length unstated) to connect a small wind farm in Co. Clare to the national grid, was development and was exempted development. Permission had been granted on appeal to An Bord Pleanála for two wind turbines – ref. PL 03.131382. Condition 4 stated- “Work on the proposed windfarm shall not proceed until full permission has been granted for the electricity connection to the national grid. *Reason:* In the interest of orderly development”. The Planning Inspector in his Report stated- “It is reasonable to conclude from the reading of this condition that it does not expressly prohibit the developer of the wind farm from availing of the exempted development provisions under the Planning and Development Act. In

other words, such associated works, when seeking to avail of the exempted development provisions under the Act, have not been expressly de-exempted by this condition". The Board, in coming to its decision that the overhead cable was development and was exempted development, did not specifically refer to the Inspector's conclusion in relation to condition 4, but it did, nonetheless form part of the Inspector's assessment of the issues before the Board in relation to the referral.

RL3369 & RL3375

These joined referral cases related to construction of 5.5km of 38kV underground cable, to connect a permitted wind farm in Co. Cavan to a sub-station within Co. Meath. The Board determined on 3rd May 2016, that the underground cable was development and was exempted development. The determination of the Board in relation to that section of the underground cable within Co. Cavan (02.RL3369) was judicially reviewed to the High Court – Val Martin and An Bord Pleanála (2016 No. 460 J.R.). An Order of *Certiorari* issued on 14th October 2016, quashing the decision of the Board in relation to the Co. Cavan element (ABP legal ref. GL0772).

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 associated cases relate 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 decisions of the Board are subject to Judicial Review by the wind farm operators – two separate Judicial Reviews. I note that considerable reliance is placed on these precedent

declarations/decisions in relation to the original referral question to Cork County Council by Patrick Cremins (in the instance of the current referral before the Board).

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.

RL3503

By Order dated 18th April 2017, the Board determined that an underground cable to connect the proposed Yellow River wind farm in Co. Offaly to the existing 110kV sub-station at Derryiron, Rhode, Co. Offaly, was development and was exempted development, by reference to Class 26, Part 1 of Schedule 2 of the Regulations and to the fact that it did not come within the scope of section 4(4) of the Act – the Board having adopted the EIA and AA carried out by its Inspector in relation to the referral.

9.7. Legislative Context

Is or is not Development

- 9.7.1. Having regard to the nature of the underground cables, namely the construction of c.8.0km of 20kV underground cable, c.11.4km of 110kV underground cable, and c.19.5km of 110kV underground cable (only 17.4km of which latter is within Co. Cork), it is clear, by reference to Section 2(1) and 3(1) of the Act, that such construction does constitute development for planning purposes. The focus, therefore, is on whether or not the development constitutes exempted development.
- 9.7.2. 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”. The submission of ESB International to An Bord Pleanála on 27th March 2017; refers to Class 27, Part 1, Schedule 2, of the aforementioned

Regulations: but I am satisfied that this class relates to over-ground electricity cables; and is of no relevance in the referral now before the Board.

- 9.7.3. 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”.

- 9.7.4. 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 SWS would appear to fall within this category on foot of its authorisation under the Planning Act to construct/operate wind farms at Glentanemacelligot and Knockacummer, 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 development falls within the scope of the said Class 26.

- 9.7.5. Class 16 of Part 1 of Schedule 2 is also of relevance to this referral. This class refers to 'temporary structures and uses' – which the underground cables themselves could not be considered to come under. The reference to this class can be related to the temporary nature of the construction works which were necessary to facilitate the laying of the underground cables.

Is or is not exempted development

- 9.7.6. The final step is to consider the relevant provisions of article 9(1) of the Planning and Development Regulations, 2001 (as amended); to establish if any of the 'de-exemptions' apply in this instance.

In relation to sub-article 9(1)(a)(i), I have already argued why it is considered that conditions attached to parent wind farm developments can or should be discounted. In relation to sub-article 9(1)(a)(v), I have already concluded that the underground cables fall within the scope of Class 26 of Part 1 of Schedule 2: so that this sub-article does not apply. Sub-article 9(1)(a)(vi) refers to impact on the landscape and views and prospects. Underground cables, or the works necessary to lay them will not have had any lasting impact on the landscape or views and prospects. Sub-articles 9(1)(a)(vii) and (viiA) refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives. None have been identified along the three underground cable routes. A Cultural Heritage Assessment Report is stated to have been submitted for the Glenlara sub-station to Ballynahulla sub-station cable works. All works were carried out within public roads/verges. On this basis, I am satisfied that the proposed development does not fall within the scope of sub-articles 9(1)(a)(vii) or (viiA). Sub-article 9(1)(a)(viiB) refers to the issue of appropriate assessment and, as such, the conclusion reached in the Appropriate Assessment section of this Inspector's Report is of relevance. Similarly, sub-article 9(1)(c) refers to the issue of environmental impact assessment and, as such, the conclusion reached elsewhere in this Inspector's Report is of relevance.

9.8. Appropriate Assessment

- 9.8.1. The three separate elements of this underground cable referral were all subject to past referrals to Cork County Council; and in the case of one of the three elements, to An Bord Pleanála. In the case of the Glentanemacelligot wind farm to

Knockacummer wind farm underground cable, it is noted that it was laid following compliance submission to Cork County Council, in relation to permission ref. 06/4077 – on 14th July 2011. That compliance submission was accompanied by a Natura Impact Statement. The underground cable was subsequently laid between June 2013 and July 2014. The same underground cable was subject to a subsequent referral to Cork County Council (ref. D/247/16). In the case of the Knockacummer wind farm to Glenlara sub-station underground cable – the referral to Cork County Council (ref. D257/10) and onward referral to An Bord Pleanála (ref. RL 04.RL2789) included a Natura Impact Statement (dated August 2010) – referred to as an ‘Article 6 Appropriate Assessment for Proposed Underground Grid Connection Route Knockacummer Wind Farm Development, Co. Cork’. I note that the submission of Brookfield Renewable to An Bord Pleanála, of 6th March 2017, refers to this document as an ‘An Appropriate Assessment Screening Report’: and whilst it contains a Stage 1 Screening Report, it also contains a Stage 2 Appropriate Assessment. These two referrals were subject to appropriate assessment by Cork County Council and, in the case of the latter, by An Bord Pleanála. On the face of this alone, it could be considered that that these two elements of the underground cable have been subject to relevant consideration in relation to appropriate assessment. The referral to Cork County Council, for the section of underground cable linking Glenlara sub-station and Kingwilliamstown Bridge, Ballydesmond (and onward to Ballynahulla, Co. Kerry) (ref. D/238/15), was accompanied by an Appropriate Assessment Screening Report (dated June 2015). A Natura Impact Statement for this section of the underground cable has not been prepared.

- 9.8.2. The three sections of cable were laid over a period of four-and-a-half years. There is no sense in which the linking of these three cable routes could be considered to have in-combination impacts on European sites, over and above what impacts there might have been for each section laid singly; regard being had to the limited extent of works involved in excavation of a single trench; the time over which trenches were excavated; the separation distance between them; the variety of watercourses to which the cable routes drain; and the conservation interests of the relevant SACs and SPA. However, if the Board is minded to consider that all three elements of the underground cable must be looked at as part of one single project; then it may wish to take the following into consideration.

9.8.3. In accordance with the requirements of section 177U(9) of the Planning and Development Act, 2000 (as amended), what follows is an appropriate assessment screening for all three elements of the underground cable route. The agent for the wind farm operator has submitted an Appropriate Assessment Screening Report (June 2015), for the Glenlara sub-station to Ballynahulla sub-station cable route [including sections both within Co. Cork and Co. Kerry] – Appendix G of the submission to An Bord Pleanála of 8th March 2017; and I have had regard to this document, amongst others, in carrying out my screening assessment. For the purpose of screening – six steps will be followed.

9.8.4. Step 1 – *Identify European sites which could potentially be affected by the underground cable (source-pathway-receptor model)*

European sites in the vicinity are identified as follows-

- Blackwater River (Cork/Waterford) Special Area of Conservation (Site code 002170).
- Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site code 004161).
- Lower River Shannon Special Area of Conservation (Site code 002165).

9.8.5. Step 2 – *Identify the Conservation Objectives of the relevant site(s)*

The bird species of Special Conservation Interest of the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA are as follows-

- Hen harrier (*Circus cyaneus*).

There are no specific conservation objectives in for this 56,649ha site – generic conservation objectives being in place – to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. Some 45 pairs were recorded in 2005. Merlin and Short-eared owl (Annex I species) have been recorded on the site also.

The habitats and species of community interest of the Blackwater River (Cork/Waterford) SAC are as follows-

- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.

- Perennial vegetation of stony banks.
- *Salicornia* and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation.
- 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*). [Annex I habitat]
- *Taxus baccata* woods of the British Isles. [Annex I habitat]
- *Margaritifera margaritifera* (Freshwater pearl mussel).
- *Austropotamobius pallipes* (White-clawed crayfish).
- *Petromyzon marinus* (Sea lamprey).
- *Lampetra planeri* (Brook lamprey).
- *Lampetra fluviatilis* (River lamprey).
- *Alosa fallax* (Twaite shad).
- *Salmo salar* (Atlantic salmon).
- *Lutra lutra* (Otter).
- *Trichomanes speciosum* (Killarney fern).

The Conservation Objectives for this 10,145ha site, are to restore the favourable conservation condition of Freshwater pearl mussel, Sea lamprey, Twaite shad, Atlantic salt meadows, Otter, Old sessile oak woods, and Alluvial forests; and to maintain the favourable conservation condition of the other habitats and species of community interest within the SAC – with the exception of *Taxus baccata* woods, the status of which is stated to be under review.

The habitats and species of community interest of the Lower River Shannon SAC are as follows-

- Sandbanks which are slightly covered by seawater all the time.
- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Coastal lagoons [Annex I habitat].
- Large shallow inlets and bays.
- Reefs.
- Perennial vegetation of stony banks.
- Vegetated sea cliffs of the Atlantic and Baltic coasts.
- Salicornia and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- Molina meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*).
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, *Alnion incanae*, *Salicion albae*). [Annex I habitat]
- *Margaritifera margaritifera* (Freshwater pearl mussel).
- *Petromyzon marinus* (Sea lamprey).
- *Lampetra planeri* (Brook lamprey).
- *Lampetra fluviatilis* (River lamprey).
- *Salmo salar* (Atlantic salmon).
- *Tursiops truncatus* (Common bottlenose dolphin).
- *Lutra lutra* (Otter).

The Conservation Objectives for this 68,300ha site (87% of which comprises marine area), are to restore the favourable conservation condition of Freshwater pearl mussel, Sea lamprey, Atlantic salmon, Coastal lagoons, Atlantic salt meadows,

Otter, Mediterranean salt meadows, and Alluvial forests; and to maintain the favourable conservation condition of the other habitats and species of community interest within the SAC.

9.8.6. Step 3 – *Identify the potential- a) likely, and b) significant, effects of the project with reference to the sites' Conservation Objectives, in light of best scientific knowledge*

Potential impacts identified are-

- Impairment of surface water quality during the cable-laying phase.
- Disturbance of Hen harrier during the cable-laying phase.

Only a small portion of the Glentanemacelligot wind farm to Knockacummer wind farm cable route drains to the Lower Shannon River SAC – this located in the vicinity of Glentanemacelligot wind farm itself. The closest part of the SAC is located approximately 6.0km downstream of the cable route. Standard, best construction management measures, to control release of silt and for management of any accidental spillages of hydrocarbons, would have protected water quality during the excavation/back-filling of the trench-work and cable-laying. Arising from this separation distance, there will have been no impact on this SAC.

The remainder of the cable routes drain to the Blackwater River (Cork/Waterford) SAC. The only section of cable route to intrude on an SAC, is the Glenlara sub-station to Ballynahulla sub-station section – where two watercourses are crossed – the Airglinn River and the Blackwater River. The likely principal impact of the cable-laying would have been on water quality and water-dependent species. Some 1.25km length of the 17.4km Glenlara sub-station to Ballynahulla sub-station grid link within Co. Cork is either within or immediately adjacent to the Blackwater River (Cork/Waterford) SAC; with a further 0.65km flanking the route within adjoining Co. Kerry. Because of the location of trenches, almost entirely within public roads/verges, there would have been no significant impact on any of the habitats or species listed as conservation interests of this SAC. Standard, best construction management measures, to control release of silt and for management of any accidental spillages of hydrocarbons, would have protected water quality during the excavation/back-filling of the trench-work and cable-laying.

In relation to Hen harrier, significant lengths of the underground cable route are either within or immediately adjacent to the Stack's to Mullagharierk Mountains, West Limerick Hills and Mount Eagle SPA – Glentanemacelligot wind farm to Knockacummer wind farm (approximately 3.5km); Knockacummer wind farm to Glenlara sub-station (approximately 4.0km); Glenlara sub-station to Ballynahulla sub-station (approximately 4.0km within Co. Cork, with a further 1.25km within Co. Kerry). These lengths are almost entirely within public roads – with the exception of 0.6km/1.1km within forest/wind farm tracks at Glentanemacelligot wind farm and 1.9km within commercial coniferous plantation and wind farm tracks at Knockacummer wind farm. I again note that the sections of cable connecting Glentanemacelligot wind farm with Knockacummer wind farm; and linking Knockacummer wind farm with Glenlara sub-station were already subject to referrals to Cork County Council – and in the latter case to An Bord Pleanála also; and which were accompanied by Natura Impact Statements – wherein it was concluded that the cable-laying would not be likely to have significant effects, individually or in combination with other plans or projects on European sites.

9.8.7. Step 4 – *As above, but considering in-combination effects with other plans or projects*

There would have been no likely significant in-combination impacts, when considered in association with wind farm operations at Knockacummer and Glentanemacelligot – arising from the nature of the wind farm developments, the separation distances involved between the wind farms and the cable routes and the time periods over which the developments were carried out.

9.8.8. Step 5 – *Identify any measures in place to reduce/lessen likely significant impacts on European sites*

The Natura Impact Statements submitted with the referral cases for the underground cables linking Glentanemacelligot wind farm with Knockacummer wind farm, and linking Knockacummer wind farm with Glenlara sub-station, identified measures put in place to reduce/lessen likely significant impacts on European sites.

The Appropriate Assessment Screening Report submitted with the referral in relation to the underground cable linking Glenlara sub-station with Kingwilliamstown Bridge, Ballydesmond, (and onwards to Ballynahulla sub-station in Co. Kerry), specified

general measures included within Method Statements relating to appointment of an Ecological Clerk of works; materials storage; waste; refuelling; dust suppression; and hedgerow cutting. Additional measures to protect water quality were specified, relating to watercourse crossings; concrete works; and use of silt traps/check dams. Proposals for avoiding the spread of identified Japanese knotweed stands along the cable route were indicated. The Report indicated that- materials would not be stored within the SPA or within proximity of watercourses which drained to the SAC; washout of concrete trucks would not be carried out within the SPA or within proximity of watercourses which drained to the SAC; roadside drains that drained towards the SAC would be intercepted and diverted away from the designated works area into silt traps and check dams; and surveys for Hen harrier nests within 500m of any section of the cable route within the SPA would determine if works could proceed during the breeding season.

Whilst reference is made to mitigation measures to be observed during the construction phase (particularly in relation to Hen harrier), such was submitted prior to the judgement of the CJEU in case C-323/17 (People Over Wind & Peter Sweetman and Coillte Teoranta) of 12th April 2018: which found- “Article 6(3) of Council directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site”. This CJEU case related to a proposal for a grid connection to connect a permitted wind farm to the national grid. It can be distinguished from the current referral before the Board, in that the underground cables referred to were already in place prior to the judgement of the CJEU – on foot of decisions/declarations of exempted development from Cork County Council/An Bord Pleanála, and where Natura Impact Statements had been submitted in relation to the underground cable linking Glentanemacelligot wind farm with Knockacummer wind farm, and the underground cable linking Knockacummer wind farm with Glenlara sub-station. In relation to the underground cable linking Glenlara sub-station within Ballynahulla sub-station, which did not have a Natura Impact Statement for the referral submission to Cork County Council or, in the

present instance to An Bord Pleanála, if would consider that the reference to 'mitigation measures' arose from an 'excess of caution' on the part of the developer; and whilst they may have been observed during the construction phase, I would consider that they were unnecessary. As observed elsewhere, the route of the underground cable linking Glenlara sub-station with Kingwilliamstown Bridge, Ballydesmond (and onwards to Ballynahulla sub-station, Co. Kerry); where it intersects with the SPA, is entirely within public roads within Co. Cork – the R578 Regional Road. The area is not a remote one; and contains farmland, houses, and commercial coniferous plantation – regularly traversed by humans and vehicles. The choice of an on-road route for the underground cable, rather than an off-road one, or an overhead route, would have been taken; having regard to minimising the impact of the development on the environment. Stage 1 screening for appropriate assessment for this section of the underground cable route can screen out the need for a Stage 2 appropriate assessment – and submission of a Natura Impact Statement.

- 9.8.9. Step 6 – *Determine whether likely significant effects, either individually or in combination with other plans or projects, on European sites, can reasonably be discounted, on the basis of objective scientific information*

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, that the laying of the three elements of underground cable, individually or in combination with other plans or projects would not have been likely to have had a significant effect on European site no.s 002170, 004161 and 002165, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment would not, therefore, have been required for the Glenlara sub-station to Kingwilliamstown Bridge, Ballydesmond (*en route* to Ballynahulla sub-station, Co. Kerry) element of the underground cable (where Natura Impact Statements had been submitted for the other two elements of the underground cable route, as part of previous referrals).

10.0 Recommendation

Having regard to the High Court judgments set out in *O'Grianna & Ors. v An Bord Pleanála* and *Daly v Kilronan Windfarm Ltd. and, by Order, Derrysallagh Windfarm*

Ltd, the 12th April 2018 judgement of the CJEU in Case C-323/17 (People Over Wind & Others), and recent Board decisions in relation to underground grid connections for wind farm developments, I recommend an Order as follows-

WHEREAS a question has arisen as to whether a 20kV underground electrical connection, between Glentanemacelligot wind farm and Knockacummer wind farm; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station; and a 110kV underground electrical connection between Glenlara sub-station and Ballynahulla sub-station (that portion within Co. Cork); is development and, if it is, whether it is exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Cork County Council on the 23rd day of December 2016:

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

- (a) sections 2(1), 3(1), 4(4), 172(1), 177U(9) and 182A of the Planning and Development Act, 2000, as amended,
- (b) Articles 3, 6 & 9, of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 16 & 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) Schedules 5 & 7 of the Planning and Development Regulations, 2001, as amended,
- (e) the decision of the High Court in *Ó Grianna & Ors. v. An Bord Pleanála*, Record Number: 2014 No. IEHC 632,
- (f) the decision of the High Court in *Daly v Kilronan Windfarm Ltd. and, by Order, Derrysallagh Windfarm Ltd.*, Record Number: 2016 No. 372 MCA,
- (g) the decision of the CJEU in *People Over Wind, Peter Sweetman and Coillte Teoranta*, Case C-323/17, and
- (h) the documentation on file and the reports of the Planning Inspector, which included screening for environmental impact assessment and appropriate assessment:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the works carried out come within the scope of sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended, and constitute development;
- (b) all three elements of the underground cable the subject of this referral, had the benefit of section 5 declarations/decisions from Cork County Council, and in the case of the 110kV underground cable linking Knockacummer wind farm and Glenlara sub-station, from An Bord Pleanála – none of which declarations/decisions were subject to judicial review to the High Court;
- (c) the laying of the 20kV underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm, and the 110kV underground cable linking Knockacummer wind farm and Glenlara sub-station, were carried out prior to the delivery of the Ó Grianna judgement, with the benefit of section 5 declarations from Cork County Council/An Bord Pleanála; and so, can be regarded as being in compliance with the legislation, as it was then understood/interpreted, and constituted exempted development;
- (d) even if the underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm, and the 110kV underground cable linking Knockacummer wind farm and Glenlara sub-station, were considered to have had the potential to impact on the environment; screening for environmental impact assessment could conclude beyond reasonable scientific doubt, that neither underground cable would have had a significant impact on the environment;
- (e) even if the underground cable linking Glentanemacelligot wind farm with Knockacummer wind farm, and the 110kV underground cable linking Knockacummer wind farm and Glenlara sub-station were considered to have had the potential to impact on European sites; appropriate assessment, based on the submission of Natura Impact Statements, could conclude beyond reasonable scientific doubt, that neither underground cable had a significant impact on European site no.s 002170, 004161 and 002165, or any other European site, in view of the sites' Conservation Objectives;

- (f) the 110kV underground cable linking Glenlara sub-station and Kingwilliamstown Bridge, Ballydesmond (*en route* to the Ballynahulla sub-station in Co. Kerry), was carried out subsequent to the delivery of the Ó Grianna judgement, but before the delivery of the Daly and Kilronan judgement, and formed part of an upgrade of the wider national grid, which provided for improved supply/transmission between two existing sub-stations within the national grid, and which served other development, and could not be considered to exclusively serve the Glentanemacelligot and Knockacummer wind farm developments – where both were already connected to the national grid at Glenlara sub-station;
- (g) the laying of the 110kV underground cable linking Knockacummer wind farm and Glenlara sub-station, and linking Glenlara sub-station and Kingwilliamstown Bridge, Ballydesmond did not constitute strategic infrastructure development by reference to section 182A of the Planning and Development Act, 2000, as amended – regard being had to the Board’s memorandum which states- “At a meeting held on 12th October, 2007, the Strategic Infrastructure Division of the Board decided that the laying of underground electricity cables should continue to be regarded as exempted development by virtue of Class 26 of the 2001 Regulations, and that such works need not be subject to Section 182A of the Planning and Development Act 2000”;
- (h) even if the 110kV underground cable linking Glenlara sub-station and Kingwilliamstown Bridge, Ballydesmond (*en route* to the Ballynahulla sub-station in Co. Kerry) was considered to have had the potential to impact on the environment; screening for environmental impact assessment could conclude beyond reasonable scientific doubt, that the underground cable would not have had a significant impact on the environment;
- (i) even if the 110kV underground cable linking Glenlara sub-station and Kingwilliamstown Bridge, Ballydesmond (*en route* to the Ballynahulla sub-station in Co. Kerry) was considered to have had the potential to impact on European sites; screening for appropriate assessment could conclude beyond reasonable scientific doubt, that the underground cable would not have had a

significant impact on European site no.s 002170 and 004161, or any other European site, in view of the sites' Conservation Objectives;

- (j) the three sections of underground cable identified, would not have any cumulative and/or in-combination impacts when considered together, regard being had to the different times at which they were constructed, and to the nature of the construction elements involved; and so, would not have had any significant impact on the environment or on European sites in the area.

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 20kV/110kV sections of underground cable linking Glentanemacelligot wind farm and Knockacummer wind farm; linking Knockacummer wind farm and Glenlara sub-station; and linking Glenlara sub-station and Kingwilliamstown Bridge, Ballydesmond; are development and are exempted development.

Michael Dillon,
Planning Inspectorate.

8th March 2019.