

From: Bord
Sent: Friday 30 July 2021 13:00
To: Appeals2
Subject: FW: ABP Reference 306909-20 Application for Substitute Consent relating to Crory Wind Farm, County Wexford
Attachments: Cover Letter re ESB Submission re Exceptional Circumstances 30072021.pdf; Final ESB Submission re Exceptional Circumstances 30072021.pdf

From: Allen. Brendan (Engineering and Major Projects) <brendan.allen@esb.ie>
Sent: Friday 30 July 2021 12:43
To: Bord <bord@pleanala.ie>
Subject: ABP Reference 306909-20 Application for Substitute Consent relating to Crory Wind Farm, County Wexford

Dear Sir/Madam

Please find attached a submission as requested.

Regards,

Brendan Allen | Planning Team Leader Civil Environmental & Renewable Engineering | Engineering & Major Projects | ESB T: +353 1 703 8195 M: 086 8336990 | www.esb.ie
One Dublin Airport Central, Dublin Airport, Cloghran, Co. Dublin, K67 XF72.

An t-impeallacht? - Smaoinigh air sula bpriontáileann tú an r-phost seo.
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* * * * *

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Scanann ESB ríomhphoist agus ceangaltáin le haghaidh víreas, ach ní ráthaíonn sé go bhfuil ceachtar díobh saor ó víreas agus ní glacann dliteanas ar bith as aon damáiste de dhroim víreas.

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**The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01V902.**

By email: bord@pleanala.ie and post.

30th July 2021

**Re: ABP Reference 306909-20
Application for Substitute Consent relating to Crory Wind Farm, County
Wexford**

Applicant: The Electricity Supply Board (ESB)

Dear Sir/Madam,

I refer to your letter dated 6th July 2021 in relation to the above case, in which you invited the applicant to submit to the Board such information as we consider material for the purposes of the Board's satisfying itself on the question of the existence or not of exceptional circumstances that would justify a grant of substitute consent by the Board.

In that regard, please find attached to this letter information that we consider material for the Board's decision.

I trust this information will assist the Board in reaching a decision, if you have any further queries please contact me at Brendan.allen@esbi.ie and 0868336990.

Yours faithfully,

**Brendan Allen MIPI
Planning Team Leader**

IN THE MATTER OF AN APPLICATION FOR SUBSTITUTE CONSENT RELATING TO CRORY WIND FARM GROUP, CO. WEXFORD

An Bord Pleanála Case Number ABP-306909-20

Details of Exceptional Circumstances

30 July 2021

1. Introduction

On 26th June 2019 An Bord Pleanála (the **Board**) granted leave to apply for substitute consent in respect of an application relating to Crory Wind Farm Group, An Bord Pleanála Case Number ABP-306909-20 (the **Application**). In granting leave, the Board determined, in accordance with Section 177D(1)(b) of the Planning and Development Act 2000, as amended (the **PDA**) that exceptional circumstances existed at that time such that the Board considered it appropriate to permit the opportunity for regularisation of the grid connections works by permitting an application for substitute consent. Following the granting of leave, an application for substitute consent was submitted to the Board in March 2020. A decision on this application is pending.

Following the enactment and commencement of the provisions of the Planning and Development, and Residential Tenancies Act 2020 (the **2020 Act**), and in particular Section 177K(1A)(a) of the PDA, the Board is required to re-examine the question of whether exceptional circumstances exist. The Board cannot grant substitute consent unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board.

Accordingly, the purpose of this memo is to re-analyses the criteria as set out in Section 177D(2) of the PDA, in order to enable to the Board to make a decision in accordance with Section 177K of the PDA. Each of the Section 177D(2) criteria are set out below in turn with an explanation as to how they apply to the grid connection, which is the subject of the Application. The purpose of this memo is to demonstrate that exceptional circumstances still exist, thereby allowing the Board to grant the Application.

2. Exceptional Circumstances under the Section 177D(2) Criteria

2.1. *Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive*

The purpose of the Environmental Impact Assessment (EIA) and Habitats Directives are to determine if a proposed development is likely to have significant effects on the environment or on a European site designated under the Habitats Directive.

2.1.1. EIA Directive

The objective of the EIA Directive is to determine if the project is likely to have significant effects on the environment. The on-site operational turbines at each of the wind farms have already gone through the EIA process. However, following two High Court rulings (see below) it was established that the grid connections linking the wind farms to the national grid must go through a similar process, so as to allow for the entire projects to be assessed in the context of the EIA Directive.

a) **Daly v Kilronan Windfarm Ltd.**

In *Daly v. Kilronan Windfarm Ltd.* the judge stated that:

"as a matter of European law the assessment of whether the grid connection works can be treated as exempted development is one that must be considered in the context of a reading that best achieves the aims and objectives of the EIA Directive. I consider that on account of the fact that

the grid works cannot be lawfully separated from the project as a whole, that to treat the grid works as exempt fails to give effect to this principle."

Paragraph 57 of the judgment states that:

"The decision in O'Grianna & Ors. v An Bord Pleanála does not mean that Peart J. was of the view that planning permission was required for the grid connection merely on account of the fact that it was part of a larger project. However, his judgment, it seems to me, carries a necessary implication that because the grid connection is part of the larger project, and if one identified part of that project requires an EIA, the grid connection works cannot be considered to be exempt development, as they are part of a larger development which requires EIA."

b) O'Grianna v. An Bord Pleanála

Arising from court judgment in *O'Grianna vs. An Bord Pleanála* the grid connection that is the subject to the Application is an integral part of the operation of the four wind farms. Collectively the wind farms consist of 21 turbines, which have been all operational since 2013. Whilst the wind farms are separate entities, the grid connection is common and integral to the operation of all the wind farms and it is in this context the judgment in the *O'Grianna* case becomes relevant. As a consequence of the judgment, new applications for permissions for wind farm developments, and which require EIA, now include relevant information on proposed grid connections.

However, the grid connection subject of the Application was constructed in 2012 and 2013 and the permissions for the wind farms were originally granted between 2004 and 2011, all predating the *O'Grianna* judgment. The decisions of the planning authority and the actions of the Crory Wind Farm Group and ESNB were in accordance with common practice and both acted in good faith. The wind farms were constructed in accordance with their individual planning permissions and the grid connections were subsequently constructed as exempt development. The wind farm applications, where relevant, were subject to EIA. The planning permissions relating to the wind farms are valid and beyond challenge under the PDA.

As the wind farms and grid connection have been constructed and operational for over eight years, a significant amount of information is available in relation to the actual impacts on the environment, as opposed to the potential for impacts which would have been anticipated in the Environmental Impact Statement (as it was referred to at that time) and associated documents, for all of the wind farms. It is in that context that there is a significant body of information available to the Board to determine whether the works which have already taken place in relation to the grid connection have had a significant impact on the environment.

A remedial EIAR was submitted with the Application. This provided an environmental assessment of the development in accordance with the EIA Directive.

2.1.2. Habitats Directive

The Habitats Directive is focussed on determining if a proposed development is likely to have significant effects European site designated under the Habitats Directive.

In ecological terms, the grid connection the subject of the Application should be considered in the following context:

- It is located primarily in public roads and does not cross any Natura 2000 site and there was no removal of or interference with habitat within any European site;
- The ecological impact assessments undertaken between 2009 and 2011 for Gibbet Hill, Knocknalour Wind Farm and Ballycadden Wind Farm, together with the Appropriate Assessment (AA) Screenings undertaken for Knocknalour and Ballycadden wind farms, concluded that the wind farm developments would not have significant effects on the Slaney River Valley Special Area of Conservation (SAC). Whilst there does not appear to have been

an ecological assessment undertaken for Ballynancoran Wind Farm (where permission was granted in 2004), given the scale of this two turbine development, the absence of any significant watercourses on the wind farm site and the distance from the SAC boundary (8.5 km) it is considered unlikely that this wind farm would have resulted in significant adverse effects on the Slaney River Valley SAC.

- There was no interference with protected species and there is no known rare or protected flora or habitat along the route of the grid connection;
- A specific ecological assessment was carried out on the as constructed grid connection in 2016 - see Appendix 2 - Review of Ecological Assessment Reports for Wexford Referrals (prepared by ESBI in January 2016). This document provides an assessment of the actual effects on the environment arising from the grid connection. The report concludes as follows:

"Based on the selected underground cable routes for each of the wind farm connections, which utilise the existing road network, and the methods adopted at watercourse crossings, it is reasonable to conclude that the installation of the UGCs could not have been considered prior to their construction (nor can they now be considered) to be likely to have significant effects on the Slaney River Valley SAC; this is based solely on the information provided in the planning applications for the respective developments. It can therefore be concluded that the construction of the four grid connections whether considered separately or cumulatively, were not developments that required Appropriate Assessment."

Given that there were no environmental and ecological impacts arising from the grid connection works over and above those impacts properly evaluated in the EIS for each windfarm, and that a remedial EIAR was submitted as part of the application for substitute consent, demonstrating the lack of any such additional environmental impacts from the grid connection works, it is clear that there was no intention to circumvent the purpose and objectives of the EIA and/or Habitats Directive.

2.2. Whether the applicant had or could reasonably have had a belief that the development was not unauthorised

2.2.1. Historic reliance on Section Declarations

Declarations under Section 5 of the PDA are often sought to confirm the exempted development status of a given development; however, the absence of a Section 5 declaration does not necessarily mean that the development is not exempt. It is common for developments to presume exemptions based on the various exemptions available in the PDA and the Planning and Development Regulations 2001, as amended (the Regulations).

Planning exemptions for the installation of underground cables and erection of 20 kV overhead lines were widely utilised by both developers, considered authorised undertakers and ESNB, for the purposes of connecting wind farms to the national electricity grid for many years. This position was supported by the considerable number of Section 5 Declarations issued by planning authorities, including the Board, during previous years. As recently as April 2017, ABP issued Section 5 Declarations declaring that the laying of underground electricity cables between consented wind farms and the national electricity grid constituted exempted development (ABP Reg. Ref.: PL19 .RL3503).

2.2.2. Issues arising from ABP Refs: RL 3408/09/10/11

During the processing of the Section 5 referrals by the Board during 2015/2016, all members of the Crory Wind Farm Group and ESNB made separate submissions to the Board setting out why it was their belief that the grid connection should be considered exempted development. These beliefs remain unchanged notwithstanding the decisions that issued from the Board indicating that the Board did not share those opinions.

In reaching their determination, the Board decided that the subject works (namely the construction of the grid connections) did not constitute exempt works under Classes 26 (underground cables) and 27 (20 kV overhead lines) of the Regulations because:

"the said grid connections come within the scope of article 9(1)(a)(i), Planning and Development Regulations, 2001, as amended, as their construction contravened Conditions 7, 7, 8 and 10 of planning permissions PA Refs 20091730; 20090266; 20110504; and 20033444 respectively, being the planning permissions for the relevant wind farms (Ballycadden; Gibbet Hill; Knocknalour; Ballynancoran)."

The beliefs of the Crory Wind Farm Group and ESNB at the time the grid connection was constructed and commissioned during 2012 and 2013, which still remain unchanged at this time, is that the grid connections do not come within the scope of article 9(1)(a)(i) of the Regulations for the following reasons:

a) Confirmation of exemptions through compliance approved by Wexford County Council

We would draw the Board's attention to letters from Wexford County Council (WCC), in relation to compliance submissions from the developers of the four wind farms where the issue of compliance with the relevant conditions relating to planning permission for the grid connections is confirmed. Please see Appendix 3 of the application for leave document dated 20th June 2018, which is enclosed for ease of reference.

- **Ballynancoran Wind Farm** - In relation to Ballynancoran Wind Farm (Ref. 20033444, Condition 10), a letter from WCC dated 19 February 2013 confirms that this condition is considered to be in compliance with the permission, as granted.
- **Knocknalour Wind Farm** – In relation to Knocknalour Wind Farm (Ref. 20110504, Condition 8), a letter from WCC dated 31 December 2012 confirms that Condition 8 is considered to be in compliance with the permission, as granted.
- **Ballycadden Wind Farm** – In relation to Ballycadden Wind Farm (Ref. 20091730, Condition 7), a letter from WCC dated 18 August 2011 confirms that Condition 7 is considered to be in compliance with the permission, as granted.
- **Gibbet Hill Wind Farm** - In relation to Gibbet Hill wind farm (Ref. 20090266, Condition 7), an email dated 12 June 2012 confirms compliance with Condition 7.

Having regard to the above, it is submitted that, having received written confirmation from WCC that they were satisfied with compliance proposals in relation to relevant planning conditions, it was reasonable for the Crory Wind Farm Group and ESNB to proceed in the belief that all planning conditions had been discharged to the satisfaction of WCC.

b) Requirement for planning permission only if works do not already fall within planning exemptions

The purpose of the conditions imposed by the various planning permissions was not to de-exempt works which were already clearly exempt – or to (as a consequence) require that planning permission must be obtained for any and all grid connection works. Rather, the purpose of those conditions, as it is understood, was to explicitly state that planning permission must be obtained for such works if they were not already exempted development, having regard to the Planning Acts and Regulations. This was based on the belief that it appears highly unlikely that the conditions were intended to cut across exemptions specifically provided for in planning legislation. This is supported by the willingness of the planning authority to issue written confirmation to the developers stating that compliance with planning conditions had been achieved.

c) Legal limitations of the planning conditions

By reference to Section 34 of the PDA, the relevant planning permission conditions referred to in the Board Inspector's Report Condition 7 of WCC20091730 – Ballycadden Wind Farm, Condition 7 of WCC20090266 – Gibbet Hill Wind Farm, Condition 8 of WCC20110504 – Knocknalour Wind Farm and Condition 10 of WCC20033444 – Ballynancoran Wind Farm, exceeded the limitations of the legislation as the condition is not related to land which is under the control of any specific wind farm and is not, as such, connected with the development permitted on the land to which the relevant planning application relates.

Having regard to the beliefs of the Crory Wind Farm Group and ESNB and their subsequent actions, the parties have reasonable grounds to believe the development was not unauthorised at the time it was carried out. Whilst these beliefs remain unchanged, the Application is made without prejudice to those beliefs.

2.3. Whether the ability to carry out an EIA or an AA or public participation has been substantially impaired

An assessment of the environmental impacts of the operational turbines and electricity infrastructure has already been carried out by the competent authority as part of the planning application process for the wind farms. This resulted in a decision to grant planning permission, subject to conditions. The assessment process was open to public consultation in accordance with the relevant parts of the PDA and Regulations, and there is evidence in terms of submissions from the public and other consultees that they participated in the planning process. The purpose of the Application is to allow for an environmental assessment of the grid connection, so as to allow the Competent Authority to carry out an EIA of the entire project.

The substitute consent procedures detailed in Section 177K provides for public participation. Accordingly, having regard to this process it is clear that public participation was not and will not be substantially impaired. On the contrary, public participation is an integral part of the process.

It should be noted that despite public notices published when the application for substitute consent was lodged with the Board in March 2020, in both in the newspaper (Irish Examiner 2nd March 2020) and at eight locations along the route of the grid connection, no submissions were made by members of the public.

2.4. The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development

The underground cable was installed primarily in public roads having obtained all necessary road opening licences and does not cross any Natura 2000 site and there was no removal of or interference with habitat within any European site. The remaining underground and overhead line sections were installed in improved grassland and/or existing tracks.

Any environmental impacts during the construction phase were temporary in nature. Construction works took place under the terms of the road opening licence and were managed accordingly. At this point in time (over 8 years since completion of the grid connection) the environment has re-established to its pre-existing condition prior the construction of the grid connection. There is no evidence that there have been significant environmental or adverse effects on the integrity of a European site resulting from the continuation of the development. The remedial EIAR submitted with Application demonstrates that no such significant effects have arisen.

2.5. The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated

The development has not caused significant impacts on the environment or the integrity of a European site, therefore no remedial measures are required for the completed development. As previously stated, the environment has re-established to its pre-existing condition prior the construction of the grid connection. The remedial EIAR submitted with Application demonstrates that no such significant effects have arisen.

2.6. Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development

It is the practice of ESN to carry out all developments in accordance with planning legislation. ESN is not aware of any unauthorised development carried out by or on its behalf in relation to the subject matter of the Application.

An Enforcement Notice, dated 29th November 2017 (WCC Ref: 0103/2017), was served by WCC on Gibbet Hill Wind Farm in relation to alleged non-compliance with noise limits. Gibbet Hill Wind Farm has contested and continues to contest the grounds on which the Enforcement Notice was served. The remaining three wind farms are in substantial compliance with the planning permissions, as granted.

2.7. Such other matters as the Board considers relevant

The Crory Wind Farm Group and ESN are unaware of any other matters that the Board would need to consider in determining the Application. In the event the Board identify any other matters, ESN will endeavour to address such issues.

3. Conclusion

Accordingly, it has been demonstrated that the Section 177D(2) criteria have been satisfied, such that the Board can determine, in accordance with Section 177K(1A)(a) of the PDA, that exceptional circumstances exist.



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The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01V902.
By email: bord@pleanala.ie and post.

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
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Time: _____	By: <u>Hand</u>

30th July 2021

Re: ABP Reference 306909-20
Application for Substitute Consent relating to Crory Wind Farm, County Wexford

Applicant: The Electricity Supply Board (ESB)

Dear Sir/Madam,

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Yours faithfully,

Brendan Allen MIPI
Planning Team Leader

**IN THE MATTER OF AN APPLICATION FOR SUBSTITUTE CONSENT RELATING TO CRORY WIND FARM
GROUP, CO. WEXFORD**

An Bord Pleanála Case Number ABP-306909-20

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30 July 2021

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The purpose of the Environmental Impact Assessment (**EIA**) and Habitats Directives are to determine if a proposed development is likely to have significant effects on the environment or on a European site designated under the Habitats Directive.

2.1.1. EIA Directive

The objective of the EIA Directive is to determine if the project is likely to have significant effects on the environment. The on-site operational turbines at each of the wind farms have already gone through the EIA process. However, following two High Court rulings (see below) it was established that the grid connections linking the wind farms to the national grid must go through a similar process, so as to allow for the entire projects to be assessed in the context of the EIA Directive.

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In *Daly v. Kilronan Windfarm Ltd.* the judge stated that:

“as a matter of European law the assessment of whether the grid connection works can be treated as exempted development is one that must be considered in the context of a reading that best achieves the aims and objectives of the EIA Directive. I consider that on account of the fact that

the grid works cannot be lawfully separated from the project as a whole, that to treat the grid as exempt fails to give effect to this principle.”

Paragraph 57 of the judgment states that:

“The decision in O’Grianna & Ors. v An Bord Pleanála does not mean that Peart J. was of the view that planning permission was required for the grid connection merely on account of the fact that it was part of a larger project. However, his judgment, it seems to me, carries a necessary implication that because the grid connection is part of the larger project, and if one identified part of that project requires an EIA, the grid connection works cannot be considered to be exempt development, as they are part of a larger development which requires EIA.”

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However, the grid connection subject of the Application was constructed in 2012 and 2013 and the permissions for the wind farms were originally granted between 2004 and 2011, all predating the *O’Grianna* judgment. The decisions of the planning authority and the actions of the Crory Wind Farm Group and ESBN were in accordance with common practice and both acted in good faith. The wind farms were constructed in accordance with their individual planning permissions and the grid connections were subsequently constructed as exempt development. The wind farm applications, where relevant, were subject to EIA. The planning permissions relating to the wind farms are valid and beyond challenge under the PDA.

As the wind farms and grid connection have been constructed and operational for over eight years, a significant amount of information is available in relation to the actual impacts on the environment, as opposed to the potential for impacts which would have been anticipated in the Environmental Impact Statement (as it was referred to at that time) and associated documents, for all of the wind farms. It is in that context that there is a significant body of information available to the Board to determine whether the works which have already taken place in relation to the grid connection have had a significant impact on the environment.

A remedial EIAR was submitted with the Application. This provided an environmental assessment of the development in accordance with the EIA Directive.

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The Habitats Directive is focussed on determining if a proposed development is likely to have significant effects European site designated under the Habitats Directive.

In ecological terms, the grid connection the subject of the Application should be considered in the following context:

- It is located primarily in public roads and does not cross any Natura 2000 site and there was no removal of or interference with habitat within any European site;
- The ecological impact assessments undertaken between 2009 and 2011 for Gibbet Hill, Knocknalour Wind Farm and Ballycadden Wind Farm, together with the Appropriate Assessment (AA) Screenings undertaken for Knocknalour and Ballycadden wind farms, concluded that the wind farm developments would not have significant effects on the Slaney River Valley Special Area of Conservation (SAC). Whilst there does not appear to have been

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In reaching their determination, the Board decided that the subject works (namely the construction of the grid connections) did not constitute exempt works under Classes 26 (underground cables) and 27 (20 kV overhead lines) of the Regulations because:

"the said grid connections come within the scope of article 9(1)(a)(i), Planning and Development Regulations, 2001, as amended, as their construction contravened Conditions 7, 7, 8 and 10 of planning permissions PA Refs 20091730; 20090266; 20110504; and 20033444 respectively, being the planning permissions for the relevant wind farms (Ballycadden; Gibbet Hill; Knocknalour; Ballynancoran)."

The beliefs of the Crory Wind Farm Group and ESBN at the time the grid connection was constructed and commissioned during 2012 and 2013, which still remain unchanged at this time, is that the grid connections do not come within the scope of article 9(1)(a)(i) of the Regulations for the following reasons:

a) Confirmation of exemptions through compliance approved by Wexford County Council

We would draw the Board's attention to letters from Wexford County Council (WCC), in relation to compliance submissions from the developers of the four wind farms where the issue of compliance with the relevant conditions relating to planning permission for the grid connections is confirmed. Please see Appendix 3 of the application for leave document dated 20th June 2018, which is enclosed for ease of reference.

- **Ballynancoran Wind Farm** - In relation to Ballynancoran Wind Farm (Ref. 20033444, Condition 10), a letter from WCC dated 19 February 2013 confirms that this condition is considered to be in compliance with the permission, as granted.
- **Knocknalour Wind Farm** - In relation to Knocknalour Wind Farm (Ref. 20110504, Condition 8), a letter from WCC dated 31 December 2012 confirms that Condition 8 is considered to be in compliance with the permission, as granted.
- **Ballycadden Wind Farm** - In relation to Ballycadden Wind Farm (Ref. 20091730, Condition 7), a letter from WCC dated 18 August 2011 confirms that Condition 7 is considered to be in compliance with the permission, as granted.
- **Gibbet Hill Wind Farm** - In relation to Gibbet Hill wind farm (Ref. 20090266, Condition 7), an email dated 12 June 2012 confirms compliance with Condition 7.

Having regard to the above, it is submitted that, having received written confirmation from WCC that they were satisfied with compliance proposals in relation to relevant planning conditions, it was reasonable for the Crory Wind Farm Group and ESBN to proceed in the belief that all planning conditions had been discharged to the satisfaction of WCC.

b) Requirement for planning permission only if works do not already fall within planning exemptions

The purpose of the conditions imposed by the various planning permissions was not to de-exempt works which were already clearly exempt – or to (as a consequence) require that planning permission must be obtained for any and all grid connection works. Rather, the purpose of those conditions, as it is understood, was to explicitly state that planning permission must be obtained for such works if they were not already exempted development, having regard to the Planning Acts and Regulations. This was based on the belief that it appears highly unlikely that the conditions were intended to cut across exemptions specifically provided for in planning legislation. This is supported by the willingness of the planning authority to issue written confirmation to the developers stating that compliance with planning conditions had been achieved.

c) Legal limitations of the planning conditions

By reference to Section 34 of the PDA, the relevant planning permission conditions referred to in the Board Inspector's Report Condition 7 of WCC20091730 – Ballycadden Wind Farm, Condition 7 of WCC20090266 - Gibbet Hill Wind Farm, Condition 8 of WCC20110504 – Knocknalour Wind Farm and Condition 10 of WCC20033444 - Ballynancoran Wind Farm, exceeded the limitations of the legislation as the condition is not related to land which is under the control of any specific wind farm and is not, as such, connected with the development permitted on the land to which the relevant planning application relates.

Having regard to the beliefs of the Crory Wind Farm Group and ESNB and their subsequent actions, the parties have reasonable grounds to believe the development was not unauthorised at the time it was carried out. Whilst these beliefs remain unchanged, the Application is made without prejudice to those beliefs.

2.3. Whether the ability to carry out an EIA or an AA or public participation has been substantially impaired

An assessment of the environmental impacts of the operational turbines and electricity infrastructure has already been carried out by the competent authority as part of the planning application process for the wind farms. This resulted in a decision to grant planning permission, subject to conditions. The assessment process was open to public consultation in accordance with the relevant parts of the PDA and Regulations, and there is evidence in terms of submissions from the public and other consultees that they participated in the planning process. The purpose of the Application is to allow for an environmental assessment of the grid connection, so as to allow the Competent Authority to carry out an EIA of the entire project.

The substitute consent procedures detailed in Section 177K provides for public participation. Accordingly, having regard to this process it is clear that public participation was not and will not be substantially impaired. On the contrary, public participation is an integral part of the process.

It should be noted that despite public notices published when the application for substitute consent was lodged with the Board in March 2020, in both in the newspaper (Irish Examiner 2nd March 2020) and at eight locations along the route of the grid connection, no submissions were made by members of the public.

2.4. The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development

The underground cable was installed primarily in public roads having obtained all necessary road opening licences and does not cross any Natura 2000 site and there was no removal of or interference with habitat within any European site. The remaining underground and overhead line sections were installed in improved grassland and/or existing tracks.

Any environmental impacts during the construction phase were temporary in nature. Construction works took place under the terms of the road opening licence and were managed accordingly. At this point in time (over 8 years since completion of the grid connection) the environment has re-established to its pre-existing condition prior the construction of the grid connection. There is no evidence that there have been significant environmental or adverse effects on the integrity of a European site resulting from the continuation of the development. The remedial EIAR submitted with Application demonstrates that no such significant effects have arisen.

2.5. The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated

The development has not caused significant impacts on the environment or the integrity of a European site, therefore no remedial measures are required for the completed development. As previously stated, the environment has re-established to its pre-existing condition prior the construction of the grid connection. The remedial EIAR submitted with Application demonstrates that no such significant effects have arisen.

2.6. Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development

It is the practice of ESNB to carry out all developments in accordance with planning legislation. ESNB is not aware of any unauthorised development carried out by or on its behalf in relation to the subject matter of the Application.

An Enforcement Notice, dated 29th November 2017 (WCC Ref: 0103/2017), was served by WCC on Gibbet Hill Wind Farm in relation to alleged non-compliance with noise limits. Gibbet Hill Wind Farm has contested and continues to contest the grounds on which the Enforcement Notice was served. The remaining three wind farms are in substantial compliance with the planning permissions, as granted.

2.7. *Such other matters as the Board considers relevant*

The Crory Wind Farm Group and ESNB are unaware of any other matters that the Board would need to consider in determining the Application. In the event the Board identify any other matters, ESNB will endeavour to address such issues.

3. Conclusion

Accordingly, it has been demonstrated that the Section 177D(2) criteria have been satisfied, such that the Board can determine, in accordance with Section 177K(1A)(a) of the PDA, that exceptional circumstances exist.