



The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	<u>034187-21</u>
ABP-	_____
19 JAN 2021	
Fee: €	<u>220</u> Type: <u>cheque</u>
Time: _____	By: <u>post</u>

Monday, 18th January 2021
[By Registered Post]

Dear Sir/Madam

- Section 5 Referral -

RE: SECTION 5 DECLARATION APPLICATION IN RELATION TO THE UNDERGROUND ELECTRICITY CABLE GRID CONNECTION LINKS FROM LIMERICK COUNTY BORDER TO THE GLENLARA 110KV SUBSTATION, ASSOCIATED WITH THE ELECTRICITY CABLE GRID CONNECTION BETWEEN THE TULLYLEASE 38KV SUBSTATION (CO. LIMERICK) TO THE ELECTRICITY CABLE GRID CONNECTION WHICH RUNS FROM THE DROMDEEVEEN WIND FARM 38KV SUBSTATION (CO. LIMERICK) TO THE GLENLARA 110KV SUBSTATION IN COUNTY CORK, AND BETWEEN THE DROMDEEVEEN WIND FARM AND THE GLENLARA 110KV SUBSTATION IN COUNTY CORK

Cork County Council Reg. Ref. No.: D/285/20

1.0 INTRODUCTION

The Planning Partnership, The Coach House, Dundanion, Blackrock Road, Cork has been retained by Patrick Cremins, Meenganaire, Knocknagoshel, Co. Kerry, to prepare this Section 5 Referral to An Bord Pleanála in response to Cork County Council's failure to issue declarations on the questions that has arisen as required under section 5(2)(a) of the *Planning and Development Act 2000 - 2020*, as detailed under the Section 5 Declaration Application dated Friday, 13th November 2020 (full copy enclosed under separate cover) which was received by Cork County Council on Wednesday, 18th November 2020, by Registered Post under An Post Ref. No.: LI 168149396 IE.

Acknowledgement of Receipt of the above referenced Section 5 Declaration Application payment in the amount of €80.00 was received from Cork County Council (Receipt Ref. PL20002018), including a request for Further Information dated 18th December 2020, detailing:

1. Advised to seek the opinion of Limerick City and County Council in relation to the question of any developments located within County Limerick.
2. Confirmation to be provided to Cork County Council clarifying if any grid lines referenced in Co. Cork have been subject of Section 5 Applications.
3. Outline when the Newmarket grid line connection development/developments were constructed.
4. Detail the following:
 - Route of the cable and its length.
 - Methods of grid cable construction.

- Methods used to achieve watercourse crossings.
 - Outline habitats within footprint of terrain over which it was constructed.
5. Submit and Archaeological Assessment..

In response to the above, an Application for a Section 5 Declaration has been submitted to Limerick City and County Council, and this application is also being Referred to An Bord Pleanála under separate cover.

No detail is available to the Referrer regarding any section 5 declarations issued by Cork County Council on grid lines referenced in Co. Cork, apart from that as detailed with the *Section 5 Declaration Application* Report prepared by The Planning Partnership and of which a full copy has been enclosed to this *Referral*.

Details and Timings, including Construction Methodologies and Ecological Assessments undertaken by the developers is not known to the Referrer.

The route of the Grid Connection Cable is as outlined in The Planning Partnership's Drawing No.: S5-005 Location and Works, and Drawing No.: S5-006 Locations and Works which has been enclosed under Appendix A and Appendix B respectively detailed with the *Section 5 Declaration Application* Report prepared by The Planning Partnership as follows:

Appendix A: Mauricetown Wind Farm, Dromdeeven Wind Farm, associated Substations and underground electricity cable grid connections and associated works to the Glanlara 110kV Substation.

Appendix B: *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area (Site Code 004161), and the Blackwater River (Cork/Waterford) SAC Special Area of Conservation (Site Code 002170).*

Please find enclosed a cheque for the appropriate Referral Fee of €220.00.

1.1 Background to the lodgement of this Section 5 Declaration Application

This Section 5 Referral has now been made to An Bord Pleanála in response to the Cork County Council's failure to issue declarations on the questions that has arisen as required under section 5(2)(a) of the *Planning and Development Act 2000 - 2020* within the Statutory 4 Week period.

Cork County Council request for Further Information dated 18th December 2020, should have been dated 15th December 2020, and is thus considered to be made outside the Statutory 4 Week period.

Key Dates and Timeframes in this instance are as follows:

- Receipt of Section 5 Declaration Application by Planning Authority: Wednesday, 18th November 2020.
- Date on which Declaration due from Planning Authority (within 4 weeks): Tuesday, 15th December 2020.
- Date Applicant can Refer Questions to An Bord Pleanála (within 4 weeks): 20th January 2021, disregarding the 'Planning Clock Stop' time period over the Christmas and New Year Holidays.

1.2 Confirmation of the Question Posed

The nature of the specific question to be determined is detailed below along with our planning opinion regarding the status of same, supported by the detail as presented under the Section 5 Declaration Application dated Friday, 13th November 2020 (full copy enclosed under separate cover) which was received by Cork County Council on Wednesday, 18th November 2020, by Registered Post under An Post Ref. No.: LI 168149396 IE.

Section 5(3)(b) of the *Planning and Development Act 2000 - 2020* provides that, if a question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person who made a request for a Declaration, may on payment to the Board of the prescribed fee, refer the question for decision to the Board "within 4 weeks of the date that a declaration was due to be issued".

The purpose of this request for a declaration is to confirm:

Whether the provision of:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation,

is or is not development, and is or is not exempted development?

As such, it is a requirement as to established whether planning permission is or is not required to undertake these works located within the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170)

having regard particularly to:

- (a) sections 2(1), 3(1), 4(4), 172(1) and 177U(g) and 182A of the *Planning and Development Act 2000-2020*;
- (b) articles 3, 6 and 9 of the *Planning and Development Regulations 2000-2020*;
- (c) Classes 26 of Part 1 of Schedule 2 of the *Planning and Development Regulations 2000-2020*;
- (d) confirmation under paragraph 4.3 of the *Ashford Wind Farm Environmental Impact Statement Non-Technical Summary May 2012* associated with the Mauricetown Wind Farm that "an electrical connection from the site to the 38kV electricity distribution network (Any elements of the connection that require planning consent would be subject to a separate planning application, currently the responsibility of Electricity Supply Board (ESB));
- (e) confirmation under paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012* associated with the Mauricetown Wind Farm that "connection works are currently the responsibility of ESB Networks and any elements of the connection works that require planning permission will be subject to a separate planning application";
- (f) Cork County Council Planning Reg. Ref. No.: 06/7096 (erection of 7.4kms of 38kV overhead network), An Bord Pleanála Reg. Ref. No.: PL04.218821;
- (g) recent precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18);

- (h) precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 26.RL.3408; 26.RL.3409; 26.RL.3410; and 26.RL.3411) as referred to An Bord Pleanála by Wexford County Council on 29th September 2015;
- (i) the judgement of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632;
- (j) the judgement of the High Court in *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308;
- (k) the decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244; and
- (l) the documentation and details presented in this Application for a Section 5 Declaration from Limerick City and County Council, Cork County Council and An Bord Pleanála.

2.0 THE QUESTIONS POSED IS NOT A MATTER OF COMPLIANCE WITH CONDITION, but a matter of development and whether such development is considered exempted development or not

It should be noted that the question posed to the Planning Authority is not whether development is in compliance with any relevant condition or not?

Having regard to the development works undertaken, and in the process of being undertaken as presented in The Planning Partnership’s *Section 5 Declaration Application Report* enclosed, the Grid Connection described as follows:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation,

is development and is not exempted development.

It is further our opinion that this question is wholly within the remit of section 5 of the *Planning and Development Act 2000 - 2020* and we request An Bord Pleanála to decide on the Questions as posed.

3.0 CONCLUSION

Section 5(3)(b) of the *Planning and Development Act 2000 - 2020* provides that, if a question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person who made a request for a Declaration, may on payment to the Board of the prescribed fee, refer the question for decision to the Board.

In making its decision, An Bord Pleanála is required to have regard to those matters to which, by virtue of the *Planning and Development Act 2000-2020* and the *Planning and Development Regulations 2001-2020* made thereunder.

Such matters included any submissions and observations received by it in accordance with statutory provisions.

Based on the details presented, it is our Professional Planning Opinion that:

- (a) the said underground electricity cable grid connection works **come within the scope** of Sections 2(1) and 3(1) of the *Planning and Development Act 2000-2020* and constitute development;
- (b) the said underground electricity cable grid connection works **come within the scope** of Section 4(4) of the *Planning and Development Act 2000-2020*, confirming that development requiring an appropriate assessment shall not be exempted development, and in this instance being underground electricity cable grid connection works located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170), for which appropriate assessment is required under Section 177U of the *Planning and Development Act 2000-2020*;
- (c) the said underground electricity cable grid connection works **does not come within the scope** of Section 172(1) of the *Planning and Development Act 2000-2020*, being of a class not specified in Part 1 of Schedule 5 of the *Planning and Development Regulations 2001-2020*;
- (d) the said underground electricity cable grid connection works **come within the scope** of Section 177U of the *Planning and Development Act 2000-2020*, and the requirements as specifically outlined under Section 177U(9) of the *Planning and Development Act 2000-2020* requiring the Screening for Appropriate Assessment being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);
- (e) the said underground electricity cable grid connection works **come within the scope** of Section 182A of the *Planning and Development Act 2000-2020*, constitute development of electricity transmission lines being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);
- (f) the said underground electricity cable grid connection works **come within the scope** of Article 3 of the *Planning and Development Regulations 2000-2020* as references to relevant definitions and terminologies;
- (g) the said underground electricity cable grid connection works **does not come within the scope** of Article 6(1) of the *Planning and Development Regulations 2000-2020* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2000-2020*;
- (h) the said underground electricity cable grid connection works **come within the scope** of Article 9(1) of the *Planning and Development Regulations 2000-2020* and specifically (viiB) being development 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, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);

- (i) the said underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, come within the scope of Article 9(1)(a)(i) of the *Planning and Development Regulations 2000-2020* by contravening Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 (Dromdeeveen Wind Farm with totalling 18 no. turbines);
- (j) the said underground electricity cable grid connection works **does not come within the scope** of Class 26 of Part 1 of Schedule 2 of the *Planning and Development Regulations 2000-2020* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2000-2020*;
- (k) where the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, were constructed after the judgements of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilonan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308, the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions;
- (l) where the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, were constructed before the judgements of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilonan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308, and An Bord Pleanála recent Declaration issued under Reg. Ref. No.: 04.RL.3531 referencing that judgements by the European Court of Justice is declaratory of the law as it always had been and does not solely apply to the period subsequent to the making of that judgement (i.e. since the enactment of the Habitats and Birds Directives) the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions.

NOW THEREFORE Cork County Council as relevant Planning Authority, in exercise of the powers conferred on it by section 5 (1) of the *Planning and Development Act 2000-2020*, should declare that the said underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, **is development and is not exempted development.**

We trust that we have provided adequate information in this regard and should further information be required we are in a position to assist. We look forward to an early determination in respect of those items herein listed.

Yours faithfully

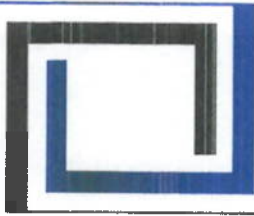


Wessel Vosloo
Principal
The Planning Partnership

Encl.

Appendix

- Copy of the Section 5 Declaration Application Cover Letter dated Friday, 13th November 2020, prepared by The Planning Partnership.
- Copy of Completed *Cork County Council Application for Section 5 Declaration of Exemption Form*.
- Copy of comprehensive *Section 5 Declaration Application* document, dated Friday, 13th November 2020, prepared by The Planning Partnership



Principal Planning Officer
Planning Department
Cork County Council
County Hall
Carrigrohane Road
Cork
T12 R2NC

Friday, 13th November 2020
[By Registered Post]

Dear Sir / Madam

RE: SECTION 5 DECLARATION APPLICATION IN RELATION TO THE UNDERGROUND ELECTRICITY CABLE GRID CONNECTION LINKS FROM LIMERICK COUNTY BORDER TO THE GLENLARA 110KV SUBSTATION, ASSOCIATED WITH THE ELECTRICITY CABLE GRID CONNECTION BETWEEN THE TULLYLEASE 38KV SUBSTATION (CO. LIMERICK) TO THE ELECTRICITY CABLE GRID CONNECTION WHICH RUNS FROM THE DROMDEEVEEN WIND FARM 38KV SUBSTATION (CO. LIMERICK) TO THE GLENLARA 110KV SUBSTATION IN COUNTY CORK, AND BETWEEN THE DROMDEEVEEN WIND FARM AND THE GLENLARA 110KV SUBSTATION IN COUNTY CORK

1.0 INTRODUCTION AND SUMMARY OF THE REFERRAL PROPOSALS

The Planning Partnership, The Coach House, Dundanion, Blackrock Road, Cork has been retained by Patrick Cremins, Meenganaire, Knocknagoshel, Co. Kerry to hereby seek a declaration from Cork County Council under Section 5 of the *Planning and Development Act 2000-2020*.

Nature of Development: Whether the provision of:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation,

is or is not development, and is or is not exempted development?

Location of Development:

Dromdeeveen Wind Farm
Ballagh
Co. Limerick

Rowls Langsford (North)
Rowls Langsford (South)
Rowls Allen
Rowls Shaddock

Meenkearagh
Commons North
Means

Rowls Daunt
Tooreennaguppoge
Coolagh

Tooreen Donnell
Meengorman
Curraduff

1.1 Background to the lodgement of this Section 5 Declaration Application

The following specific references are made to recent declarations as issued by An Bord Pleanála:

An Bord Pleanála Ref No:	04.RL.3531
Referral Lodged:	23 rd December 2016
Question:	Whether the provision of a 20kV underground electrical connection, between Glentanemacelligot wind farm at Glennakeel South, Newmarket, County Cork and Knockacummer wind farm at Meentiny West and Meentiny East, Rockchapel, Kanturk, County Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station at Curraduff, County Cork; and a 110kV underground electrical connection between Glenlara sub-station and Ballynahulla sub-station, Ballynahulla, County Kerry is or is not development or is or is not exempted development.
Decision Date:	27 th July 2020
Outcome:	Is development and is <u>not</u> exempted development.

An Bord Pleanála Ref No:	ABP-300536-18
Referral Lodged:	19 th December 2017
Question:	Whether the provision of an underground electricity cable grid connection from the substation within the Raheenleagh Wind Farm to the Arklow 220kV substation at Coolboy, Arklow, County Wicklow, is or is not development or is or is not exempted development.
Decision Date:	21 st July 2020
Outcome:	Is development and is <u>not</u> exempted development.

Other precedent decisions by An Bord Pleanála include Reg. Ref. No.: 26.RL.3408; 26.RL.3409; 26.RL.3410; and 26.RL.3411.

Other relevant Case Law:

- The judgement of the High Court in O’Grianna (and others) v. An Bord Pleanála (and others) [2014] IEHC 632.
- The judgement of the High Court in Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited [2017] IEHC 308.
- The decision of the European Court of Justice in Case C-323/17 People over Wind v Coillte, ECLI:EU:C:2018:244

2.0 ITEMS ENCLOSED AS PART OF THIS APPLICATION

2.1 Planning Fees

The Section 5 Declaration Application fee of €80.00 payable to Cork County Council in compliance with the Statutory Fee payable set out within Schedule 10 of the *Planning and Development Regulations 2001 - 2020*.

2.2 Planning Application Form

4 no. copies of duly Completed *Cork County Council Application for Section 5 Declaration of Exemption Form*.

2.3 4 no. copies of the following Specialist Documents Enclosed Under Separate Cover

Section 5 Declaration Application Report prepared by The Planning Partnership, dated Friday, 13th November 2020, incl.

Appendix:	Drawing No.:	Title:
A	S5-005	Locations and Works: Mauricetown Wind Farm, Dromdeeveen Wind Farm, associated Substations and underground electricity cable grid connections and associated works to the Glanlara 110kV Substation.
B	S5-006	Locations and Works: <i>Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area (Site Code 004161), and the Blackwater River (Cork/Waterford) SAC Special Area of Conservation (Site Code 002170).</i>
C	-	Extract of Compliance Submission by the Developer, Wind Prospect Ireland Limited, on behalf of John McCarthy (Reirk Energy Limited) to Limerick City and County Council, dated 22 nd September 2010

3.0 CONCLUSION

Having regard to the development works undertaken, and in the process of being undertaken as presented in The Planning Partnership's Section 5 Declaration Application Report enclosed, the Grid Connection described as follows:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glanlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glanlara 110kV, and between the Dromdeeveen Wind Farm and the Glanlara 110kV Substation, along a route which traverses the designated Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area (Site Code 004161) and the Blackwater River (Cork/Waterford) SAC Special Area of Conservation (Site Code 002170) at various locations.

is development and is not exempted development.

I trust that the comments outlined in this Application for Section 5 Declaration will provide guidance on the pertinent planning issues that may arise in the determination process, facilitated by the *Planning and Development Act 2000-2020*.

Please revert to us should you require further information in relation to any aspect of this application and we look forward to an early decision.

Yours faithfully



Wessel Vosloo
Principal
The Planning Partnership

Encl.



CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

(Please tick ✓)

- 4 No. Copies of Application Form:**
- 1 No. Copy of Contact Details:**
- 4 No. Copies 6" O.S. Maps:**
- 4 No. Copies 25" O.S. Maps:**
- 4 No. Copies of Site Layout Plan:**
- 4 No. Copies Scaled Drawings of Development:**
- €80 Application Fee:**

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

See Detailed Submission Enclosed

FOR OFFICE USE ONLY

Receipt No.	
Cash/Cheque/ Credit Card	
Date	
Declaration Ref. No.	

DATE STAMP HERE

You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3rd parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required:

- A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit
- Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.

DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at <http://www.corkcoco.ie/Privacy-Policy> or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to dpo@corkcoco.ie or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A – CONTACT DETAILS)

Patrick Cremins

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION OF EXEMPTION IS SOUGHT:

County Cork in the Townlands of:

Meenkeareagh, Rowls Daunt, Commons North, Tooreenaguppoge, Means Coolagh, Rowls Langsford (North), Rowls Langsford (South), Rowls Allen, Rowles Shaddock, Tooreen Donnell, Meengorman, and Curraduff

3. QUESTION/DECLARATION DETAILS:

Please state the specific question for which a Declaration of Exemption is sought

Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

Whether the provision of:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeven Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeven Wind Farm and the Glenlara 110kV Substation, is or is not development, and is or is not exempted development?

4. APPLICATION DETAILS:

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres (m²)

(a) Floor area of existing/proposed structure(s):	
(b) If a domestic extension is proposed, have any previous extensions/structures been erected at this location after 1 st October, 1964 (including those for which planning permission has been obtained):	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas (m ²) and previous planning reference(s) where applicable:
(c) If a change of use of land and/or building(s) is proposed, please state the following: Existing/previous use _____ _____ Proposed use _____ _____	
(d) Are you aware of any enforcement proceedings connected to this site?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please state relevant reference number(s):

5. LEGAL INTEREST OF APPLICANT IN THE LAND/STRUCTURE:

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner <input type="checkbox"/>	B. Other <input checked="" type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:	3rd Party Interest	
If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):	See Detailed Submission Enclosed	

6. PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA:

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority: Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please state relevant reference No. _____
Is this site located within an Architectural Conservation Area (ACA), as designated in the County Development Plan? Yes <input type="checkbox"/> No <input type="checkbox"/>

7. APPROPRIATE ASSESSMENT:


Would the proposed development require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes No

8. DATA PROTECTION DECLARATION:

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <http://www.corkcoco.ie/privacy-statement-cork-county-council> or in hardcopy from any Council office; and to having your information processed for the following purposes:

Processing of your Declaration of Exemption application by the Planning Authority

I give permission for my personal information to be processed for the purpose stated above

Signed (By Applicant Only)	 Wessel Volsoo [Agent] The Planning Partnership The Coach House, Dundanion, Blackrock Road, Cork, T12 T6YC Duly Authorised by Applicant
Date	Friday, 13th November 2020

GDPR Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, **explicit consent** to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life
- Sexual orientation

In order for the Planning Authority to process the sensitive personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <https://www.corkcoco.ie/privacy-statement-cork-county-council> or in hardcopy from any Council office; and to having your information processed for the following purposes:

Sensitive personal data being submitted in support of Declaration of Exemption Application

I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.

Signed	 Wessel Volsoo [Agent] The Planning Partnership The Coach House, Dundanion, Blackrock Road, Cork, T12 T6YC Duly Authorised by Applicant
Date	Friday, 13th November 2020

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: planninginfo@corkcoco.ie or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: westcorkplanninginfo@corkcoco.ie However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent, as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest.

Please note that all information / supporting documentation submitted will be available publicly to view at the Planning Authority offices.

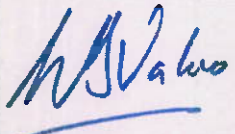
ADVISORY NOTES:

The application must be accompanied by the required fee of €80
 The application must be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.
 Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.
 The application should be sent to the following address:
 The Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and on which the Declaration of Exemption is sought.
- Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption decision.
- In the event that no Declaration of Exemption is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a Declaration of Exemption was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations, 2001, as amended.

9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the Planning and Development Acts 2000, as amended and the Regulations made thereunder:

<p><i>Signed (Applicant or Agent as appropriate)</i></p>	 <p>Wessel Volsoo [Agent] The Planning Partnership The Coach House, Dundanion, Blackrock Road, Cork, T12 T6YC Duly Authorised by Applicant</p>
<p>Date</p>	<p align="center">Friday, 13th November 2020</p>

ADDITIONAL CONTACT INFORMATION TO BE SUBMITTED WITH APPLICATION

- The applicant(s) address **must** be submitted on this page.
- **Only one copy of this section of the application form needs to be submitted**

(A) Applicant: (From Question 1 of Application Form)

Address (Required):	Meenganaire Knocknagoshel Co. Kerry
Telephone No./Mobile No. (if any):	-
Email Address (if any):	-

(B) Person/Agent acting on behalf of the Applicant (if any):

Name:	Wessel Vosloo [Agent]
Address:	The Planning Partnership The Coach House Dundanion Blackrock Road Cork T12 T6YC
Telephone No./Mobile No. (if any):	021 601 0778
Email Address (if any):	info@theplanningpartnership.ie
Should all correspondence be sent to the above address? Please tick <input checked="" type="checkbox"/> appropriate box. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	

(C) Owner/s (required where applicant is not the owner):

Name:	
Address:	See Detailed Submission Enclosed
Telephone No./Mobile No. (if any)	-
Email Address (if any)	-

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application. These details will not be made available to any third party with the exception of An Bord Pleanala for the purpose of administering the appeal.

Fully completed application forms should be submitted to the relevant planning office.

CORK COUNTY COUNCIL

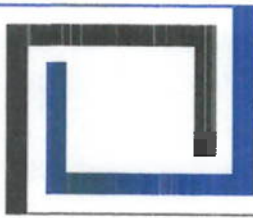
County Hall Office

Planning Dept. TEL: (021) 4276891
County Hall, FAX: (021) 4867007
Carrigrohane Road,
Cork, T12 R2NC

West Cork Planning Office

Norton House, TEL: (028) 40340
Cork Road, FAX: (028) 21660
Skibbereen,
Co.Cork, P81 AT28

WEB ADDRESS: www.corkcoco.ie



Principal Planning Officer
Planning Department
Cork County Council
County Hall
Carrigrohane Road
Cork

Friday, 13th November 2020
[By Registered Post]

Dear Sir / Madam

RE: SECTION 5 DECLARATION APPLICATION IN RELATION TO THE UNDERGROUND ELECTRICITY CABLE GRID CONNECTION LINKS FROM LIMERICK COUNTY BORDER TO THE GLENLARA 110KV SUBSTATION, ASSOCIATED WITH THE ELECTRICITY CABLE GRID CONNECTION BETWEEN THE TULLYLEASE 38KV SUBSTATION (CO. LIMERICK) TO THE ELECTRICITY CABLE GRID CONNECTION WHICH RUNS FROM THE DROMDEEVEEN WIND FARM 38KV SUBSTATION (CO. LIMERICK) TO THE GLENLARA 110KV SUBSTATION IN COUNTY CORK, AND BETWEEN THE DROMDEEVEEN WIND FARM AND THE GLENLARA 110KV SUBSTATION IN COUNTY CORK

1.0 INTRODUCTION AND SUMMARY OF THE REFERRAL PROPOSALS

The Planning Partnership acting on behalf of Patrick Cremins, Meenganaire, Knocknagoshel, Co. Kerry hereby seeks a declaration from Cork County Council under Section 5 of the *Planning and Development Act 2000-2020*.

Applicant: Patrick Cremins
Meenganaire
Knocknagoshel
Co. Kerry

Correspondence Address: Wessel Vosloo [Agent]
The Planning Partnership
The Coach House
Dundanion
Blackrock Road
Cork
T12 T6YC

Location of Development:

Dromdeeveen Wind Farm	Rowls Langsford (North)
Ballagh	Rowls Langsford (South)
Co. Limerick	Rowls Allen
	Rowls Shaddock
Meenkearagh	Tooreen Donnell
Commons North	Meengorman
Means	Curraduff
	Rowls Daunt
	Tooreennaguppoge
	Coolagh

Nature of Development: See details outlined below under 1.2 Question Posed.

Owners / Occupiers:
(s. 5(2)(b) of PDA 2000-2020)

Mauricetown Wind Farm
Glenduff, Darrery and Coolnanoglash
Ballagh
Co. Limerick

Mauricetown Wind Farm Ltd.
Design Studio 7
Old Castle View
Kilgobbin Road
Dublin 18
D18 X7H5

NSH Nordbank Ag
Gerhart-Hauptmann-Platz 50
20095 Hamburg
Germany

SSE Airtricity Ltd.
Mauricetown Wind Farm
Red Oak South
South County Business Park
Leopardstown
Dublin 18
D18 W688

Dromdeeveen Wind Farm
Ballagh
Co. Limerick

Reirk Energy Ltd.
Dromdeeveen Wind Farm
Lissarda Business Park
Lissarda
Co. Cork
P14 YN56

Energia Power
Viridian Energy Ltd.
Dromdeeveen Wind Farm
Mill House Block A
Ashtown Gate
Navan Road
Dublin 15
D15 H70K

Energia Customer Solutions Ltd.
Dromdeeveen Wind Farm
The Liberty Centre
Blanchardstown Retail Park
Dublin 15
D15 YT2H

Owners / Occupiers:
(s. 5(2)(b) of PDA 2000-2020)
(continue...)

Energia Group Roi Holdings Designated Activity Company
Dromdeeveen Wind Farm
The Liberty Centre
Blanchardstown Retail Park
Dublin 15, D15 YT2H

Coillte
Dublin Road
Kilmacullagh
Newtownmountkennedy
Co. Wicklow, A63 DN25

Coillte Fermoy
Corrin
Fermoy
Co. Cork

Coillte Macroom
Hartnetts Cross
Macroom
Co. Cork

ESB International
Stephens Court
18-21 St. Stephen's Green
Dublin 2

ESB International
6 Eastgate Avenue
East Gate Park
Little Island
Co. Cork

Road Management Office
Head Office
Donegal County Council
Milford PSC
Milford
Co. Donegal, F92 TDoP

Cork County Council
Roads Department
Kanturk/Mallow Municipal Engineering Area
Kanturk Area Office
Mallow Road
Kanturk
Co. Cork

Cork County Council
Kanturk/Mallow Municipal Engineering Area
Mallow Area Office
Annabella
Mallow
Co. Cork

Cork County Council
Kanturk/Mallow Municipal Engineering Area
Newmarket Area Office
West End
Newmarket
Co. Cork

Cork County Council
Kanturk/Mallow Municipal Engineering Area
Millstreet Area office
Carnegie Hall
Millstreet
Co. Cork

Cork County Council
County Hall
Carrigrohane Road
Cork
Cork

1.1 Background to the lodgement of this Section 5 Declaration Application

The following specific references are made to recent declarations as issued by An Bord Pleanála:

An Bord Pleanála Ref No:	04.RL.3531
Referral Lodged:	23 rd December 2016
Question:	Whether the provision of a 20kV underground electrical connection, between Glentanemacelligot wind farm at Glennakeel South, Newmarket, County Cork and Knockacummer wind farm at Meentinnny West and Meentinnny East, Rockchapel, Kanturk, County Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station at Curraduff, County Cork; and a 110kV underground electrical connection between Glenlara sub-station and Ballynahulla sub-station, Ballynahulla, County Kerry is or is not development or is or is not exempted development.
Decision Date:	27 th July 2020
Outcome:	Is development and is <u>not</u> exempted development.

An Bord Pleanála Ref No:	ABP-300536-18
Referral Lodged:	19 th December 2017
Question:	Whether the provision of an underground electricity cable grid connection from the substation within the Raheenleagh Wind Farm to the Arklow 220kV substation at Coolboy, Arklow, County Wicklow, is or is not development or is or is not exempted development.
Decision Date:	21 st July 2020
Outcome:	Is development and is <u>not</u> exempted development.

Other precedent decisions by An Bord Pleanála include Reg. Ref. No.: 26.RL.3408; 26.RL.3409; 26.RL.3410; and 26.RL.3411.

Other relevant Case Law:

- The judgement of the High Court in O’Grianna (and others) v. An Bord Pleanála (and others) [2014] IEHC 632.
- The judgement of the High Court in Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited [2017] IEHC 308.
- The decision of the European Court of Justice in Case C-323/17 People over Wind v Coillte, ECLI:EU:C:2018:244

1.2 Question Posed

The nature of the specific question to be determined is detailed below along with our planning opinion regarding the status of same, supported by the provision of the considered requisite information, including associated site location mapping. The appropriate Statutory Fee of €80 is attached hereto.

The purpose of this request for a declaration is to confirm:

Whether the provision of:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeven Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeven Wind Farm and the Glenlara 110kV Substation,

is or is not development, and is or is not exempted development?

As such, it is a requirement as to established whether planning permission is or is not required to undertake these works located within the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170)

having regard particularly to:

- sections 2(1), 3(1), 4(4), 172(1) and 177U(9) and 182A of the *Planning and Development Act 2000-2020*;
- articles 3, 6 and 9 of the *Planning and Development Regulations 2000-2020*;
- Classes 26 of Part 1 of Schedule 2 of the *Planning and Development Regulations 2000-2020*;
- confirmation under paragraph 4.3 of the *Ashford Wind Farm Environmental Impact Statement Non-Technical Summary May 2012* associated with the Mauricetown Wind Farm that “an electrical connection from the site to the 38kV electricity distribution network (Any elements of the connection that require planning consent would be subject to a separate planning application, currently the responsibility of Electricity Supply Board (ESB)”;
- confirmation under paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012* associated with the Mauricetown Wind Farm that “connection works are currently the responsibility of ESB Networks and any elements of the connection works that require planning permission will be subject to a separate planning application”;

- (f) Cork County Council Planning Reg. Ref. No.: 06/7096 (erection of 7.4kms of 38kV overhead network), An Bord Pleanála Reg. Ref. No.: PLO4.218821;
- (g) recent precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18);
- (h) precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 26.RL.3408; 26.RL.3409; 26.RL.3410; and 26.RL.3411) as referred to An Bord Pleanála by Wexford County Council on 29th September 2015;
- (i) the judgement of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632;
- (j) the judgement of the High Court in *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308;
- (k) the decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244; and
- (l) the documentation and details presented in this Application for a Section 5 Declaration from Limerick City and County Council, Cork County Council and An Bord Pleanála.

1.3 **The Questions posed is not a matter of compliance with Condition, but a matter of development and whether such development is considered exempted development or not**

It should be noted that the question posed to the Planning Authority is not whether development is in compliance with any relevant condition or not?

The question relates to whether any Planning Permission exists for the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, along a route which traverses the designated *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations.

Section 5 of the *Planning and Development Act 2000 - 2020* provides that, if a question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, can request in writing from the relevant Planning Authority a declaration on that question. The Act further states that a Planning Authority shall, within a specified period, issue a declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request.

The question posed to the Planning Authority is whether the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, along a route which traverses the designated *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC*

Special Area of Conservation (Site Code 002170) at various locations, having regards to the relevant planning permissions, are considered development or not, and if it is considered development, is it considered excepted development or not.

We request Cork County Council as Planning Authority to decide on the Questions as posed.

It is further our opinion that this question is wholly within the remit of section 5 of the *Planning and Development Act 2000 - 2020* as confirmed by:

- Recent precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18);
- Precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 26.RL.3408; 26.RL.3409; 26.RL.3410; and 26.RL.3411) as referred to An Bord Pleanála by Wexford County Council;
- The judgement of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632
- The judgement of the High Court in *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308; and
- The decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244.

It should further be noted that a significant part of the underground electricity cable grid connection works, the subject of this *Application for Section 5 Declaration*, is located **outside** the site development boundaries of both the Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379), Dromdeeven Wind Farm (Limerick City and County Council Plan. Reg. Ref. Nos.: 04/2722 and EOD 10/7007), the Tullylease 38kV Substation (Limerick City and County Council Plan. Reg. Ref. Nos.: 17/338) and does not follow the route of a 7.4 km of 38kV overhead network as permitted by An Bord Pleanála under Reg. Ref. No.: PLo4.218821 (Cork County Council Planning Reg. Ref. No.: 06/7096), being located within and adjacent to the European Site *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170).

The wording associated with:

1. Paragraph 4.3 of the *Ashford Wind Farm Environmental Impact Statement Non-Technical Summary May 2012* (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379) associated with the Mauricetown Wind Farm that “*an electrical connection from the site to the 38kV electricity distribution network (Any elements of the connection that require planning consent would be subject to a separate planning application, currently the responsibility of Electricity Supply Board (ESB))*”;
2. Paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012* (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379) associated with the Mauricetown Wind Farm that “*connection works are currently the responsibility of ESB Networks and any elements of the connection works that require planning permission will be subject to a separate planning application*”; and

is clear and unambiguous in that it requires, in each case, that separate planning permission be obtained for grid connections.

Whether or not it was the intention of An Bord Pleanála, Limerick City and County Council, Cork County Council or the Applicant himself, to thereby disallow the possibility of exempted

development, is not relevant as the text presented within the *Ashford Wind Farm Environmental Impact Statement May 2012* (An Bord Pleanála Reg. Ref. No.: PL13.240910; Limerick City and County Council Plan. Reg. Ref. No.: 12/379 - Mauricetown Wind Farm) as drafted is clear as to what is required, i.e. separate Planning Permission.

In addition, the current route of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, does not align/follow the 7.4 km of 38kV overhead network as permitted by An Bord Pleanála under Reg. Ref. No.: PL04.218821 (Cork County Council Planning Reg. Ref. No.: 06/7096).

This matter is of specific significance as the underground electricity cable grid connections and associated works are located within and adjacent to the European Site *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170).

1.4 Conclusion to be reached by the Planning Authority – works is development and is not exempted development

In making its decision, Cork County Council is required to have regard to those matters to which, by virtue of the *Planning and Development Act 2000-2020* and the *Planning and Development Regulations 2001-2020* made thereunder. Such matters included any submissions and observations received by it in accordance with statutory provisions. Based on the details presented below, it is our Professional Planning Opinion that:

- (a) the said underground electricity cable grid connection works come within the scope of Sections 2(1) and 3(1) of the *Planning and Development Act 2000-2020* and constitute development;
- (b) the said underground electricity cable grid connection works come within the scope of Section 4(4) of the *Planning and Development Act 2000-2020*, confirming that development requiring an appropriate assessment shall not be exempted development, and in this instance being underground electricity cable grid connection works located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170), for which appropriate assessment is required under Section 177U of the *Planning and Development Act 2000-2020*;
- (c) the said underground electricity cable grid connection works does not come within the scope of Section 172(1) of the *Planning and Development Act 2000-2020*, being of a class not specified in Part 1 of Schedule 5 of the *Planning and Development Regulations 2001-2020*;
- (d) the said underground electricity cable grid connection works come within the scope of Section 177U of the *Planning and Development Act 2000-2020*, and the requirements as specifically outlined under Section 177U(9) of the *Planning and Development Act 2000-2020* requiring the Screening for Appropriate Assessment being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);
- (e) the said underground electricity cable grid connection works come within the scope of Section 182A of the *Planning and Development Act 2000-2020*, constitute development of electricity transmission lines being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site

Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);

- (f) the said underground electricity cable grid connection works **come within the scope** of Article 3 of the *Planning and Development Regulations 2000-2020* as references to relevant definitions and terminologies;
- (g) the said underground electricity cable grid connection works **does not come within the scope** of Article 6(1) of the *Planning and Development Regulations 2000-2020* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2000-2020*;
- (h) the said underground electricity cable grid connection works **come within the scope** of Article 9(1) of the *Planning and Development Regulations 2000-2020* and specifically (viiB) being development 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, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);
- (i) the said underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, **come within the scope** of Article 9(1)(a)(i) of the *Planning and Development Regulations 2000-2020* by contravening Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 (Dromdeeveen Wind Farm with totalling 18 no. turbines);
- (j) the said underground electricity cable grid connection works **does not come within the scope** of Class 26 of Part 1 of Schedule 2 of the *Planning and Development Regulations 2000-2020* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2000-2020*;
- (k) where the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, were constructed after the judgements of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308, the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions;
- (l) where the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, were constructed before the judgements of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by*

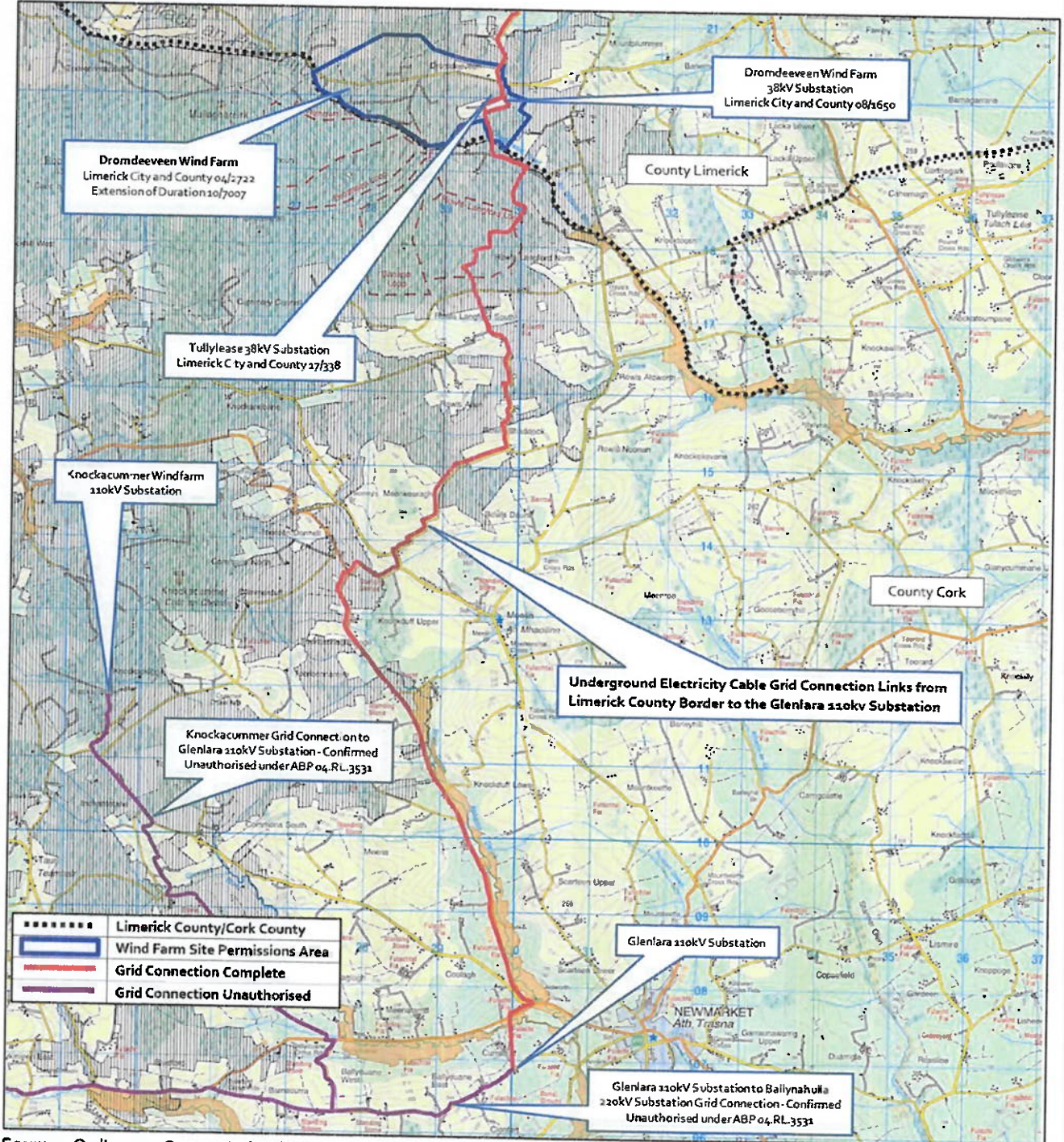
order, Derrysallagh Wind Farm Limited [2017] IEHC 308, and An Bord Pleanála recent Declaration issued under Reg. Ref. No.: 04.RL.3531 referencing that judgements by the European Court of Justice is declaratory of the law as it always had been and does not solely apply to the period subsequent to the making of that judgement (i.e. since the enactment of the Habitats and Birds Directives) the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions.

NOW THEREFORE Cork County Council as relevant Planning Authority, in exercise of the powers conferred on it by section 5 (1) of the *Planning and Development Act 2000-2020*, should declare that the said underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, **is development and is not exempted development.**

2.0 SITE LOCATION AND ASSOCIATED DETAILS

The focus area associated with this request for Declaration is associated with the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeven Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeven Wind Farm and the Glenlara 110kV Substation.

Figure 2.1: Focus Area of Declaration



Source: Ordnance Survey Ireland Discovery Series, annotated and reproduced by The Planning Partnership under OS Licence No. AR0114720

The Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379) is located in the townlands of Glenduff, Darrery and Coolnanoglah, Ballagh, Co. Limerick. The Planning Permission includes permission for the development of the Mauricetown Wind Farm 38kV Substation in the townland of Glenduff, Ballagh, Co. Limerick.

The Tullylease 38kV Substation (Limerick City and County Council Plan. Reg. Ref. No.: 17/338) is located in the townland of Dromdeeveen, Ballagh, Co. Limerick, and is link with an electricity cable grid connection Mauricetown Wind Farm 38kV Substation.

The Dromdeeveen Wind Farm (Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 and EOD Plan. Reg. Ref. No.: 10/7007) is located in the townlands of Dromdeeveen and Glenduff, Ballagh, Co. Limerick. The Dromdeeveen Wind Farm 38kV Substation (Limerick City and County Council Plan. Reg. Ref. No.: 08/1650) is located in the townland of Dromdeeveen, Ballagh, Co. Limerick.

Electricity cable grid connection from the Dromdeeveen Wind Farm 38kV Substation and Tullylease 38kV Substation follows a route to the Glenlara 110kV Substation in County Cork, crossing the Crossing the Cork County / Limerick County border at the at the Glashawee River.

The current route of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, does not align/follow the 7.4 km of 38kV overhead network as permitted by An Bord Pleanála under Reg. Ref. No.: PLo4.218821 (Cork County Council Planning Reg. Ref. No.: 06/7096).

Works associated with this electricity cable link are subject to the *O’Grianna (and others) v. An Bord Pleanála (and others)* and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited*, cases.

Further details are as presented on The Planning Partnership’s Drawing No.: S5-005 enclosed under Appendix A to this *Application for Section 5 Declaration*.

The area is generally in a visually attractive landscape, with the underground electricity cable grid connection works being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170).

Further details are as presented on The Planning Partnership’s Drawing No.: S5-006 enclosed under Appendix B to this *Application for Section 5 Declaration*.

2.1 Relevant Planning History

The following represents the relevant Planning History associated with:

- The Mauricetown Wind Farm and Dromdeeveen Wind Farm;
- The Mauricetown Wind Farm 38kV Substation, Dromdeeveen Wind Farm 38kV Substation and the Tullylease 38kV Substation; and
- The provision of an 38 kV overhead electricity transmission line from Dromdeeveen Wind Farm to Cumerduff townland, west of Meelin village in Co. Cork.

2.1.1 Relevant Mauricetown Wind Farm and Tullylease 38kV Substation Planning History

Planning Authority:	Limerick City and County Council	Development Description : Mauricetown Wind Farm 10 year planning permission for retention and completion for the construction, operation and decommissioning of up to six number wind turbine generators with a blade tip height of up to 132 metres (hub height of up to 85 metres and rotor diameter of up to 93 metres) and crane hardstandings for each turbine, meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services. EIS and NIS accompanies application.
File Ref. No.:	12/379	
An Bord Pleanála	PL13.240910	
Applicant:	Mauricetown Wind Farm Ltd.	
Outcome:	Permission Refused by Limerick City and County Council by Order dated 4 th July 2012, with a Grant of Permission issued on Appeal by An Bord Pleanála 17 th April 2013.	

Key Issues to be Noted:

Key wording associated with the Mauricetown Wind Farm is outlined in the Environmental Impact Statement document, *Ashford Wind Farm Environmental Impact Statement May 2012*, detailing:

- Paragraph 4.3 of the *Ashford Wind Farm Environmental Impact Statement Non-Technical Summary May 2012* - "an electrical connection from the site to the 38kV electricity distribution network (Any elements of the connection that require planning consent would be subject to a separate planning application, currently the responsibility of Electricity Supply Board (ESB)"; and
- Paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012* - "connection works are currently the responsibility of ESB Networks and any elements of the connection works that require planning permission will be subject to a separate planning application";

is clear and unambiguous in that the Mauricetown Wind Farm requires, in each case, that separate planning permission be obtained for grid connections.

It is further noted that the Mauricetown Wind Farm 38kV Substation forms part of the permitted (An Bord Pleanála Reg. Ref. No.: PL13.240910; Limerick City and County Council Plan. Reg. Ref. No.: 12/379) Mauricetown Wind Farm.

Planning Authority:	Limerick City and County Council	Development Description : Tullylease 38kV Substation The construction of a single storey control building and an electrical switching station compound, including electrical equipment plinths, access track, underground cable works and ancillary infrastructure.
File Ref. No.:	17/338	
Applicant:	Highfield Energy Limited	
Outcome:	Permission Granted by Limerick City and County Council by Order dated 27 th July 2017.	

Key Issues to be Noted:

No underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV Substation and Tullylease 38kV Substation forms party of the Permitted Tullylease 38kV Substation under Limerick City and County Council Plan. Reg. Ref. No.: 17/338.

Neither does the Permitted Tullylease 38kV Substation under Limerick City and County Council Plan. Reg. Ref. No.: 17/338 detail any electricity cable grid connection from the Tullylease 38kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Cork County / Limerick County border at the at the Glashawee River.

2.1.2 Relevant Dromdeeveen Wind Farm Planning History

Planning Authority:	Limerick City and County Council	Development Description
File Ref. No.:	04/2722	
Applicant:	John McCarthy	Windfarm comprising increase dimensions for 7 permitted wind turbines and additional 11 wind turbines, anemometer mast and access tracks. EIS accompanies application
Outcome:	Permission Granted by Limerick City and County Council by Order dated 16 th February 2005.	

Key Restrictive Condition No.: 17

"No development shall take place until permission has been granted for a transmission line onto the national grid. This grant of permission shall not infer that planning permission shall necessarily be granted for same.

Reason: In the interests of defining the permission and to ensure that the development is not carried out in the absence of a suitable electricity connection."

[Our emphasis]

The wording associated with Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 (Dromdeeveen Wind Farm with totalling 18 no. turbines) is clear and unambiguous in that it requires that planning permission be obtained for grid connections.

It is further note that that the Developer, Wind Prospect Ireland Limited, on behalf of John McCarthy (Reirk Energy Limited) confirmed in a Compliance Submission to Limerick City and County Council dated 22nd September 2010 (extract enclosed under Appendix C of the Section 5 Declaration Application), the following:

"Reirk Response of 23rd December 2009; Reirk Energy Ltd. confirms that a transmission overhead line connection is not being used for connection to the National Grid. An underground 38kV line has been agreed with ESB Networks from the development.

Additional Response; Drawings of the 38kV underground line as requested in Limerick Co. Co. letter of 28th January 2010 are included in Enclosure no. 5.

[Our emphasis]

It is worthy to note that the 38kV underground line as referenced in the Reirk Energy Ltd. compliance submission which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Cork County / Limerick County border at the at the Glashawee River, does not correspond with the route as permitted by An Bord Pleanála under Ref. No.: PLo4.218821 (Cork County Council Plan. Reg. Ref. No.: 06/7096), which reference a 38kV overhead line (see 2.1.3 below).

2.1.3 Electricity Transmission Lines History - 38 kV overhead electricity transmission line from Dromdeeveen Wind Farm to Cumberduff townland, west of Meelin village in Co. Cork

Planning Authority:	Cork County Council	Planning Application Development Description Erection of 7.4 kilometres of 38 kV overhead line in the townlands of Cumberduff, Commons North, Tooreen Donnell, Meentiny East, Meenkearagh, Rowls Shaddock, Rowls Allen, Cummery Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. The proposed line will consist of three conductors at two metres apart supported by double woodpoles to a maximum height of 20 metres and approximately 150 metres apart. Angle structures will consist of lattice steel towers to a maximum height of 12 metres.
File Ref. No.:	06/7096	
An Bord Pleanála	PL04.218821	
Applicant:	Electricity Supply Board.	
Outcome:	Permission Granted by Cork County Council by Order dated 5 th July 2006, with the Grant issued on Appeal by An Bord Pleanála 5 th December 2006.	

Key Issue to be Noted:

This 38 kV overhead electricity transmission line from Dromdeeveen Wind Farm to Cumberduff townland, west of Meelin village in Co. Cork line, was to connect to a further proposed section of 110 kV transmission line of some 8Km leading from Cumberduff to the existing Glenlara 110kV Station south west of Newmarket.

An Bord Pleanála recently confirmed by Declaration issued under Reg. Ref. No.: 04.RL.3531:

"... that the provision of a 20kV underground electrical connection, between Glentanemacelligot wind farm at Glennakeel South, Newmarket, County Cork and Knockacummer wind farm at Meentiny West and Meentiny East, Rockchapel, Kanturk, County Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station at Curraduff, County Cork; and a 110kV underground electrical connection between Glenlara sub-station and Ballynahulla sub-station, Ballynahulla, County Kerry is development and is not exempted development."

[Our emphasis]

The Board further noted that the three sections of the grid connection to which this referral refers were the subject of previous determinations by the planning authority and, in one case, also on appeal by An Bord Pleanála. In all of these cases, the submissions included Appropriate Assessment Screening reports or Natura Impact Statements, which took into account the provision of mitigation measures which were intended to avoid or reduce the impacts of the development on a number of European sites - that is, the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (site code 004161), the Lower River Shannon Special Area of Conservation (site code 002165) and the Blackwater River (Cork/Waterford) Special Area of Conservation (site code 002170).

These determinations were based on, and took into account, the submitted measures. Accordingly, these determinations must be considered to be in breach of the judgement of the European Court of Justice, which judgement is declaratory of the law as it always had been, since the enactment of the Habitats and Birds Directives, and does not solely apply to the period subsequent to the making of that judgement. Accordingly, the Inspector's conclusion that the grid connections did not require Appropriate Assessment, as they were carried out prior to the ECJ judgement in question, is incorrect.

Furthermore, as the previous exempted development declarations were similarly incorrect, the Board is not bound by them in reaching a different conclusion in the current case.

An Bord Pleanála recently confirmed by Declaration issued under Reg. Ref. No.: ABP-300536-18:

"... that the provision of an underground electricity cable grid connection from the substation within the Raheenleagh Wind Farm to the Arklow 220kV substation at Coolboy, Arklow, County Wicklow is development and is not exempted development."

[Our emphasis]

The Board concluded that:

- a) The underground electricity cable grid connection constitutes development;
- b) The underground electricity cable grid connection comes within the scope of Class 26 of Part 1 of the Second Schedule to the *Planning and Development Regulations 2001-2020*; and
- c) The provision of the underground electricity cable grid connection would contravene condition of Wicklow County Council Plan. Reg. Ref. No.: 10/2140 and would, therefore, come within the restrictions on exemption, as set out in article 9(1)(a)(i) of the *Planning and Development Regulations 2001-2020* contravening a condition.

2.1.4 Concluding comments on relevant Planning History as outlined

From the above associated Planning History, the authorised status of the underground electricity cable grid connection and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, are questionable, especially referencing:

1. Key wording associated with the Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379) as outlined in the Environmental Impact Statement document, *Ashford Wind Farm Environmental Impact Statement May 2012*, detailing:
 - Paragraph 4.3 of the *Ashford Wind Farm Environmental Impact Statement Non-Technical Summary May 2012* - "an electrical connection from the site to the 38kV electricity distribution network (Any elements of the connection that require planning consent would be subject to a separate planning application, currently the responsibility of Electricity Supply Board (ESB)); and
 - Paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012* - "connection works are currently the responsibility of ESB Networks and any elements of the connection works that require planning permission will be subject to a separate planning application";

which is clear and unambiguous in that the Mauricetown Wind Farm requires, in each case, that separate planning permission be obtained for grid connections.

2. Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 (Dromdeeveen Wind Farm with totalling 18 no. turbines) which does not facilitate/permit any underground electricity cable grid connection works to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Cork County / Limerick County border at the Glashawee River;
3. Tullylease 38kV Substation Permitted under Limerick City and County Council Plan. Reg. Ref. No.: 17/338 which does not facilitate/permit any underground electricity cable grid connection works to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the crossing the Cork County / Limerick County border at the at the Glashawee River; and
4. The 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Crossing the Cork County / Limerick County border at the at the Glashawee River, which does not correspond with the route as permitted by An Bord Pleanála under Ref. No.: PLo4.218821 (Cork County Council Plan. Reg. Ref. No.: 06/7096).

It is clear that any Grid Connection to the Glenlara 110kV Substation in County Cork associated with the Mauricetown Wind Farm or Dromdeeveen Wind Farm, does not form part of their respective Planning Permissions.

These Planning Permissions, their associated key text presented within the Planning Application Documentation and relevant conditions subject to which permissions have been granted, are not subject to much interpretation as to their meaning. The wording is clear and unambiguous in that they require, in each case, that planning permission be obtained for grid connections.

The following was recently put to An Bord Pleanála as 4 no. separate Referrals in terms of section 5 of the *Planning and Development Act 2000-2015*, and represents a similar scenario to that as found the subject of this *Application for Section 5 Declaration*.

The question put to the Board under Ref. Nos.: 26.RL.3408/09/10/11 was:

"Whether the provision of grid connections from the Crory 110kV/Lodgewood 220kV substation to the Ballycadden, Gibbet Hill, Knocknalour and Ballynancoran wind farms in County Wexford is or is not development and is or is not exempted development".

The windfarms and connections were approved by the Commission for Energy Regulation (CER) through the issuing of Authorisation to Construct Consents and Generating Licenses. As in each of the planning permissions for the windfarms, the grid connections were separated out. As such any assessment of the Grid Connections associated with Environmental Impacts under European Environmental Impact Assessment and Habitats Directives were not undertaken.

It is however noted that the *Wind Energy Development Guidance* indicated the necessity for separate planning applications for grid connections.

It is acknowledged that the practice in the past was that grid connections form part of a development which comes within the provisions of Section 4 of the *Planning and Development Act 2000-2020* considered as 'Exempted development'.

Such interpretation has now been somewhat clouded with the High Court Judgement on Judicial Review associated with *O'Grianna (and others) v. An Bord Pleanála (and others), Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited, and People over Wind v Coillte*.

An Bord Pleanála concluded *inter alia* per An Bord Pleanála Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18 that 'grid connections' constitutes development and is not 'exempted development' due to the **restriction imposed by associated condition** attached to the Windfarm Planning Permissions, and where the judgement of the European Court of Justice, which judgement is declaratory of the law as it always had been, since the enactment of the Habitats and Birds Directives, and **does not solely apply to the period subsequent to the making of that judgement**. Planning Permission for required Grid Connection is required.

2.4 A 'Section 5 Declaration' by a Planning Authority cannot alter the scope of a planning permission

It is our experience that written assurance from a Planning Authority, or any Declaration issued incorrectly under the provisions of section 5 of the *Planning and Development Act 2000-2020* by a Planning Authority, or An Bord Pleanála, **cannot alter the scope of a planning permission**. This is taking into consideration the limitations imposed by article 9(1)(a)(i) of the *Planning and Development Regulations 2001-2020*, where development would contravene a condition associated with a planning permission.

As stated above, An Bord Pleanála recently confirmed by Declaration issued under Reg. Ref. No.: 04.RL.3531, that grid connections which were the subject of previous Declaration determinations by planning authorities and An Bord Pleanála which included Appropriate Assessment Screening reports which took into account the provision of mitigation measures which were intended to avoid or reduce the impacts of the development on a number of European sites, must be considered to be in breach of the judgement of the European Court of Justice, which judgement is declaratory of the law as it always had been, since the enactment of the Habitats and Birds Directives, and does not solely apply to the period subsequent to the making of that judgement.

It is our experience that the Board are not bound by previous exempted development declarations, which were incorrect, in reaching a different conclusion in the current case.

3.0 KEY PLANNING PRINCIPLES RELEVANT

Part III, section 32 of the *Planning and Development Act 2000 - 2020*, deals with the general obligation to obtain permission for development and, in the case of development which is unauthorised, for the retention of that unauthorised development. To do otherwise, represents a criminal offence.

3.1 The issue of 'Development' in terms of the *Planning and Development Act 2000 - 2020*

Section 3 (1) of the *Planning and Development Act 2000 – 2015* defines 'development' as:

"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."

David Keane, Barrister-at-Law¹, draws the conclusion that 'Development' therefore, is either 'works' or a 'material change of use', and requires permission unless it is exempt from the requirement of planning permission.

'Works' are defined under **section 2 (1)** of the *Planning and Development Act 2000 – 2015*, as "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and...".

The laying of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, is development.

Section 3 (1) of the *Planning and Development Act 2000-2020* defines 'statutory undertaker' as:

".. 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."

It is unclear in relation to the documentation available as part of this *Application for Section 5 Declaration* whether the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, have been approved by the CER through the issuing of Authorisation to Construct Consents and Generating Licences.

¹ Keane, D. (2003) *Building and the Law: 4th Revised and Expanded Edition*, RIAI, Dublin.

Taken that both the Mauricetown Wind Farm and the Dromdeeveen Wind Farm are operational and the connections energised, it is assumed that the grid connection works were undertaken either by the windfarm developers, and/or their agents, under the supervision of ESB Networks, or by ESB Networks. The entire grid connection infrastructure, including the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, is now likely under the ownership of ESB Networks.

Taken these assumptions, the developers would clearly fall under the terms of this definition of 'statutory undertaker'.

3.2 The Issue of 'Development' in terms of the *Planning and Development Regulations 2000-2020*

Article 9(1) of the *Planning and Development Regulations 2001-2020*:

"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,

(ii)

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv)

(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 view or 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)

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000,

.....

(b) in an area to which a special amenity area order relates, if such development would be development:—

(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or

.....

(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."

3.2.1 Article 9(1) of the *Planning and Development Regulations 2001-2020* - Assessment

The laying of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation:

- i. Does not from part of either the Mauricetown Wind Farm, or the Dromdeeveen Wind Farm and requires the benefit from Planning Permission and in the absence of any such permissions and as such would "contravene a condition attached to a permission" (9(1)(a)(i) of PDR) as:
 1. Key wording associated with the Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379) as outlined in the Environmental Impact Statement document, *Ashford Wind Farm Environmental Impact Statement May 2012*, detailing:
 - Paragraph 4.3 of the *Ashford Wind Farm Environmental Impact Statement Non-Technical Summary May 2012* - "an electrical connection from the site to the 38kV electricity distribution network (Any elements of the connection that require planning consent would be subject to a separate planning application, currently the responsibility of Electricity Supply Board (ESB)"; and
 - Paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012* - "connection works are currently the responsibility of ESB Networks and any elements of the connection works that require planning permission will be subject to a separate planning application";

which is clear and unambiguous in that the Mauricetown Wind Farm requires, in each case, that separate planning permission be obtained for grid connections.

2. Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 (Dromdeeveen Wind Farm with totalling 18 no. turbines) which does not facilitate/permit any underground electricity cable grid connection works to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Cork County / Limerick County border at the Glashawee River;
 3. Tullylease 38kV Substation Permitted under Limerick City and County Council Plan. Reg. Ref. No.: 17/338 which does not facilitate/permit any underground electricity cable grid connection works to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the crossing the Cork County / Limerick County border at the at the Glashawee River; and
 4. The 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Crossing the Cork County / Limerick County border at the at the Glashawee River, which does not correspond with the route as permitted by An Bord Pleanála under Ref. No.: PL04.218821 (Cork County Council Plan. Reg. Ref. No.: 06/7096).
- ii. Would in our opinion not endanger public safety by reason of traffic hazard or obstruction of road users as such can be addressed by means of best practice construction methodologies and practices (g(1)(a)(iii) of PDR).
 - iii. Does not consists of or comprises of 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 (g(1)(a)(v) of PDR).
 - iv. Is located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170), however due to the nature of the cabling's 'underground status' is unlikely to interfere (g(1)(a)(vi) of PDR).
 - v. Is located within an area where objects of archaeological, geological, historical, scientific or ecological interest may be prevalent due to being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170).
 - vi. Is likely to have a significant effect on the integrity of a European Site due to the construction works associated with the underground electricity cable grid connection link which are located parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170).
 - vii. Would unlikely have an adverse impact on an area designated as a natural heritage area in that that the grid connection cables are located underground with the public road (g(1)(a)(viiC) of PDR).
 - viii. Is not located in an area to which a special amenity area order relates (g(1)(b)(i) of PDR).
 - ix. Is not considered development to which Part 10 of the *Planning and Development Regulations 2001-2020* applies having regard to (g(1)(c) of PDR).

As stated above, the underground electricity cable grid connections do not form part of either the Mauricetown Wind Farm, or the Dromdeeveen Wind Farm and requires the benefit from Planning Permission. Key wording associated with the Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379) as outlined in the Environmental Impact Statement document, *Ashford Wind Farm Environmental Impact Statement May 2012*, and Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 (Dromdeeveen Wind Farm with totalling 18 no. turbines) and Condition Number 7 of An Bord Pleanála Reg. Ref. No.: PLo4.235930 (Cork County Council Plan. Reg. Ref. No.: 08/10248) being the planning permissions for the relevant windfarms, confirm that any Grid Connection requires Planning Permission and as such does not form part of the Permitted Development Permissions.

The 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Crossing the Cork County / Limerick County border at the at the Glashawee River, which does not correspond with the route as permitted by An Bord Pleanála under Ref. No.: PLo4.218821 (Cork County Council Plan. Reg. Ref. No.: 06/7096).

3.2.2 Sections 4 and 172 of the *Planning and Development Act 2000-2020* - Assessment

Section 4(2)(a)(i) of the *Planning and Development Act 2000-2020* details that:

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

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

In this instance, reference should be made to **Class 26** as presented in Schedule 2, Part 1 of the *Planning and Development Regulations 2001-2020*, further addressed under 3.3 below.

Section 4(4) of the *Planning and Development Act 2000-2020* details that:

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

[Our emphasis]

Section 172(1) of the *Planning and Development Act 2000-2020* details that:

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

(a) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which exceeds a quantity, area or other limited specified in that Schedule, and

(b) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule but which the planning authority or the Board determines would be likely to have significant effects on the environment".

In this instance, reference should be made to 3. Energy Industry (i) presented in Schedule 5, Part 2 of the *Planning and Development Regulations 2001-2020*, detailing the requirement for Environmental Impact Assessment for installations "for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or".

It should be noted that the Environmental Impact Assessment carried out for the Dromdeeveen Wind Farm, does not extent do the works associated with the laying of underground electricity cable grid connections due to the restrictive condition presented by Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722. Condition No.: 17 confirms that the benefit of Planning Permission, and as such environmental assessments which were conducted, does not extend to any grid connections required.

The Environmental Impact Assessment carried out for the Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379), do extent to the works associated with the laying of underground electricity cable grid connection from the Mauricetown Wind Farm 38kV Substation to the Dromdeeveen Wind Farm 38kV Substation (Figure 2.11 of the of the *Ashford Wind Farm Environmental Impact Statement May 2012*). However, paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012* - "connection works are currently the responsibility of ESB Networks and any elements of the connection works that require planning permission will be subject to a separate planning application. The environmental aspects of a suggested national grid connection route are covered in this EIS, to meet the requirements of the EIA Directive, but may be subject to change. Should these details change further environmental studies shall be carried out to ensure the choice of an alternative grid connection will not have significant environmental impacts."

Grid Connection works facilitating the underground electricity cable grid connection links between the Mauricetown Wind Farm 38kV Substation and Tullylease 38kV Substation, between the Tullylease 38kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation in County Cork, are complete with both the Mauricetown Wind Farm and the Dromdeeveen Wind Farm operational and the connections energised.

The laying of an underground electricity cable grid connection link between the Mauricetown Wind Farm 38kV Substation and the Dromdeeveen Wind Farm 38kV Substation, has been subject to Environmental Impact Assessment and Appropriate Assessment.

Key wording associated with the Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No.: PL13.240910 - Limerick City and County Council Plan. Reg. Ref. No.: 12/379) as outlined in paragraph 4.3 of the *Ashford Wind Farm Environmental Impact Statement Non-Technical Summary May 2012*, and paragraph 2.9.4 of the *Ashford Wind Farm Environmental Impact Statement May 2012*, is clear and unambiguous in that the Mauricetown Wind Farm requires separate planning permission be obtained for grid connections.

The laying of an underground electricity cable grid connection link between the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, has not been subject to Environmental Impact Assessment, Appropriate Assessment nor considered part of any Permitted Development.

The 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Cork County / Limerick County border at the at the Glashawee River, does not correspond with the route as permitted by An Bord Pleanála under Ref. No.: PLo4.218821 (Cork County Council Plan. Reg. Ref. No.: 06/7096).

Section 177U(9) of the *Planning and Development Act 2000-2020* details that:

"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".

In this instance, it cannot conclusively be determined that the works associated with the underground electricity cable grid connections will not have a significant effect on the integrity of a European Site, being located in parts within, and adjacent the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170).

3-3 **The Issue of 'Development by Statutory Undertakers' in terms of the *Planning and Development Regulations 2001-2020***

Article 3(3) of the *Planning and Development Regulations 2001-2020*: "electricity undertaking" means an undertaker authorised to provide an electricity service".

Article 6(1) of the *Planning and Development Regulations 2001-2020*: "Subject to article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1".

Schedule 2, Part 1 of the *Planning and Development Regulations 2001-2020* - 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".

Section 2(1) of the *Electricity Regulation Act 1999*, defines 'transmission' in relation to electricity as meaning "the transport of electricity by means of a transmission system, that is to say a system which consists, wholly or mainly, of high voltage lines and electric plant and what is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers but shall not include any such lines which the Board, may from time to time, with the approval of the Commission, specify as being part of the distribution system but shall include any interconnector owned by the Board."

Section 182A of the *Planning and Development Act 2000-2020* refers to electricity transmission. Under sub-section 1 where an undertaker intends to carry out development comprising or for the purposes of electricity transmission, the "undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182 and shall apply to the Board for such approval accordingly".

Under sub-section 2, where development referred to in sub-section 1 "which belongs to a class of development identified for the purposes of section 176, the undertaker shall prepare, or cause to be prepared, an environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, in respect of the development".

Under sub-section 9, it is confirmed that '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 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."

The 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Cork County / Limerick County border at the at the Glashawee River, which does not correspond with the route as permitted by An Bord Pleanála under Ref. No.: PL04.218821 (Cork County Council Plan. Reg. Ref. No.: 06/7096).

Section 182A of the *Planning and Development Act 2000-2020* requires that the "undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182 and shall apply to the Board for such approval accordingly.

In section 2(1) of the *Electricity Regulation Act, 1999*, "transmission" is defined in relation to electricity as meaning:

"the transport of electricity by means of a transmission system, that is to say a system which consists, wholly or mainly, of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers but shall not include any such lines which the Board may, from time to time, with the approval of the Commission, specify as being part of the distribution system but shall include any interconnector owned by the Board."

The laying of an underground electricity cable grid connection link is considered to be 'transmission' lines used for "the transport of electricity by means of a transmission system, ... and what is used for conveying electricity from a generating station to a substation" (Section 2(1) of the *Electricity Regulation Act 1999*).

1. The laying of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, could be considered works presented per Class 26 of Schedule 2, Part 1 of the *Planning and Development Regulations 2001-2020* and as such considered exempted development as facilitated by Article 6(1) of the *Planning and Development Regulations 2001-2020*.
2. The laying of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, is development to which section 182A of the *Planning and Development Act 2000 - 2015* requires that the "undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182 and shall apply to the Board for such approval accordingly".

3. The laying of the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, along a route which traverses the designated *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, is development to which section 182A of the *Planning and Development Act 2000-2020* requires that the "undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182 and shall apply to the Board for such approval accordingly".

4.0 CONCLUSION - ANSWERING THE KEY QUESTIONS

4.1 Identifying the nature and scope of 'works'

Having regard to the development works undertaken, and in the process of being undertaken as presented on The Planning Partnership's Drawing No.: S5-005 enclosed under Appendix A, the Grid Connection Development can be described as follows:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, along a route which traverses the designated Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area (Site Code 004161) and the Blackwater River (Cork/Waterford) SAC Special Area of Conservation (Site Code 002170) at various locations.

The grid connection works were likely undertaken either by the wind farm developers, and/or their agents, under the supervision of ESB Networks, or by ESB Networks. It is anticipated that the entire grid connection infrastructure is now likely under the ownership of ESB Networks.

4.2 Question at hand

Whether the provision of:

The underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation,

is or is not development, and is or is not exempted development?

It is however considered that the underground electricity cable grid connections and associated works is development and is not exempted development in this instance having regard to:

- (a) the said underground electricity cable grid connection works **come within the scope** of Sections 2(1) and 3(1) of the *Planning and Development Act 2000-2020* and constitute development;
- (b) the said underground electricity cable grid connection works **come within the scope** of Section 4(4) of the *Planning and Development Act 2000-2020*, confirming that development requiring an appropriate assessment shall not be exempted development, and in this instance being underground electricity cable grid connection works located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170), for which appropriate assessment is required under Section 177U of the *Planning and Development Act 2000-2020*;
- (c) the said underground electricity cable grid connection works **does not come within the scope** of Section 172(1) of the *Planning and Development Act 2000-2020*, being of a class not specified in Part 1 of Schedule 5 of the *Planning and Development Regulations 2001-2020*;

- (d) the said underground electricity cable grid connection works **come within the scope** of Section 177U of the *Planning and Development Act 2000-2020*, and the requirements as specifically outlined under Section 177U(g) of the *Planning and Development Act 2000-2020* requiring the Screening for Appropriate Assessment being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);
- (e) the said underground electricity cable grid connection works **come within the scope** of Section 182A of the *Planning and Development Act 2000-2020*, constitute development of electricity transmission lines being located in parts within, and adjacent, a European Site, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);
- (f) the said underground electricity cable grid connection works **come within the scope** of Article 3 of the *Planning and Development Regulations 2000-2020* as references to relevant definitions and terminologies;
- (g) the said underground electricity cable grid connection works **does not come within the scope** of Article 6(1) of the *Planning and Development Regulations 2000-2020* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2000-2020*;
- (h) the said underground electricity cable grid connection works **come within the scope** of Article 9(1) of the *Planning and Development Regulations 2000-2020* and specifically (viiB) being development 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, i.e. *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161) and the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170);
- (i) the said underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, **come within the scope** of Article 9(1)(a)(i) of the *Planning and Development Regulations 2000-2020* by contravening Condition No.: 17 of Limerick City and County Council Plan. Reg. Ref. No.: 04/2722 (Dromdeeveen Wind Farm with totalling 18 no. turbines);
- (j) the said underground electricity cable grid connection works **does not come within the scope** of Class 26 of Part 1 of Schedule 2 of the *Planning and Development Regulations 2000-2020* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2000-2020*;
- (k) where the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, were constructed after the judgements of the High Court in *O'Gianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by*

order, *Derrysallagh Wind Farm Limited* [2017] IEHC 308, the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions;

- (l) where the underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, were constructed before the judgements of the High Court in *O'Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308, and An Bord Pleanála recent Declaration issued under Reg. Ref. No.: 04.RL.3531 referencing that judgements by the European Court of Justice is declaratory of the law as it always had been and does not solely apply to the period subsequent to the making of that judgement (i.e. since the enactment of the Habitats and Birds Directives) the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions.

As such, Cork County Council as relevant Planning Authority, in exercise of the powers conferred on it by section 5 (1) of the *Planning and Development Act 2000-2020*, should declare that the said underground electricity cable grid connections and associated works from the Cork County / Limerick County border at the Glashawee River to the Glenlara 110kV Substation in County Cork, associated with the underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation (Co. Limerick) to the Glenlara 110kV, and between the Dromdeeveen Wind Farm and the Glenlara 110kV Substation, **is development and is not exempted development.**

I trust that the comments outlined in this Application for Section 5 Declaration will provide guidance on the pertinent planning issues that may arise in the determination process, facilitated by the *Planning and Development Act 2000-2020*.

Yours faithfully



Wessel Vosloo
Principal
The Planning Partnership

Appendix C

Extract of Compliance Submission by the Developer, Wind Prospect Ireland Limited,
on behalf of John McCarthy (Reirk Energy Limited) to
Limerick City and County Council, dated 22nd September 2010

WIND
PROSPECT



Planning Dept.
Limerick County Council,
County Hall,
Dooradoyle,
Limerick

22nd Sept 2010

Dromdeeveen Wind Farm: Planning Consent 04/2722

Our ref: DROM pl056

Your ref: 04/2722

Dear Sir/Madam,

On behalf of John McCarthy (Reirk Energy Ltd.), Wind Prospect Ireland Ltd. write to you regarding the planning conditions for Dromdeeveen Wind Farm, Ballagh, Co. Limerick for Planning Register Number 04/2722. Further to previous submissions of 11th November 2009 and 23rd December 2009, and Limerick County Council responses on 26th January 2010 and 28th January 2010, and in the interest of clarity we now submit updated and completed responses to all conditions set out under this planning permission.

Listed below are the planning conditions imposed on Reirk Energy Ltd. by Limerick County Council and how Reirk Energy Ltd. intend to satisfy these conditions.

Condition 1 - This permission is Subject to the submission of 15th December, 2004.

Response: Reirk Energy Ltd. confirms compliance with this condition.

Condition 2 – Prior to commencement of development, a contribution of €22,000 shall be paid to Limerick County Council in accordance with the provisions of the Development Contribution Scheme made by Limerick County Council on the 19th December, 2003 in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority and that is provided or, that is intended will be provided, by or on behalf of Limerick County Council. At the time of payment, the amount of contribution stated above, shall be in accordance with the Wholesale Price Index – Building and Construction. The amount of contribution shall be adjusted annually in January in line with the Index.

Wind Prospect Ireland Ltd • Unit 1 Listowel Business Centre • Cleveragh Industrial Estate • Listowel • Co. Kerry • Ireland

Tel: +353 (68) 53433; Fax +353 (68) 57891

Company Registered in Ireland Number: 404893

Response: Reirk Energy Ltd. Response: Reirk Energy Ltd. have agreed with Ms. Margaret Keating the contribution to be paid and enclose a cheque for €19,690.20 (based on 9 turbines) –Enclosure no.1.

Condition 3 - Transformers associated with each individual turbine and mast shall be located either within turbine each mast structure or underground beside mast. Cables from the turbines to Substation shall be located underground.

Response: Reirk Energy Ltd. confirms that transformers associated with the turbines will be located within the turbines. All cables from the turbines to the substation will be located underground.

Condition 4 - The wind turbines, including masts, blades and anemometer mast, shall be finished in a semi-matt pale grey colour coated finish. Any alternative colour scheme shall be agreed with the Planning Authority prior to the commencement of development and shall not be white.

Response: Reirk Energy Ltd. confirms that the turbines will be finished in a semi-matt light grey colour coated finish.

Condition 5 - All wind turbines shall be geared to ensure that the blades rotate in the same direction.

Response: Reirk Energy Ltd. confirms compliance with this condition.

Condition 6 - The specification for the access roads to the turbines shall be as per details on the Environmental Impact Statement Sections 1.5 and 8.3. Maximum use shall be made of existing tracks during construction. Details of the treatment of excavated rock, soil and peat shall be agreed with the Planning Authority prior to the start of development. During the construction of the access tracks all necessary care shall be exercised to prevent the deposition of inert materials (settable and suspended solids) in any water body, flowing or static

Response: Attached Enclosure no.2. drawing DROM c063.2 with details, as requested on 28th Jan 2010, providing further clarification in relation to the storage areas.

Condition 7 – A traffic Management Plan shall be prepared and agreed with the Planning Authority prior to the commencement of the development for the proposed route for traffic during the construction works as outlined in the submitted Environmental Impact Statement (Section 9.1.3). The Traffic Management Plan shall include comprehensive details of the proposed route and in particular proposals to upgrade the road network to accommodate the volume of traffic estimated during the construction phase.

Response: We can confirm that a detailed Traffic Management Plan has been discussed and agreed with the LCC Area Engineer, Padraig Vallely.

Condition 8 - On decommissioning or any partial decommissioning of the windfarm, masts and turbines shall be dismantled and removed from site. Prior to the start of development the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company or other security to secure the satisfactory reinstatement of the site upon cessation of the project, coupled with an agreement empowering the Planning Authority to apply such security or part thereof to the satisfactory reinstatement of the site. The form and amount of the security shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Response: Reirk Energy Ltd. confirms compliance with this condition. The bond has been agreed with Limerick County Council and is currently being executed by Reirk Energy Ltd's bank. The executed bond will be submitted within the next two weeks.

Condition 9 – Facilities shall be installed at the developer's expense to ensure that radio or television transmissions in the area are not interfered with by the proposed development. Details of such facilities shall be submitted to and agreed with the Planning Authority following consultation with the relevant authorities prior to the wind turbines being commissioned.

Response: Reirk Energy Ltd. confirms compliance with this condition and has signed an RTE Protocol, which is enclosed in Enclosure no.3.

Condition 10 – (a) The turbine with the highest elevation shall be lighted with a layer of fixed red medium intensity lighting in accordance with IAA specifications. These lights should be fitted as close to the top of the turbine as practicable and should be visible from every angle in azimuth.

Response: Reirk Energy Ltd. confirms compliance with this condition and attach copy of correspondence with IAA confirming the IAA specifications- Enclosure no.4.

(b) The co-ordinates in WGS-84 of the as-constructed position and elevation of the highest points of each turbine (to the top of blade spin) shall be provided to the IAA. The survey work shall be carried out in accordance with the IAA specifications for the survey of en-route obstacles.

Response: Reirk Energy Ltd. confirms that the co-ordinates in WGS-84 of the as-constructed position and elevation of the highest points of each turbine (to the top of blade spin) shall be provided to the IAA.

Reirk Energy Ltd. will contact the IAA with regard to survey specifications for the survey of en-route obstacles and carry out the survey accordingly.

Condition 11 – The developer shall pay a sum of money to the Planning Authority as a contribution towards expenditure that is proposed to be incurred by the Planning Authority in respect of roadwork's facilitating the proposed development. The

amount of the contribution and the arrangements for payment shall be agreed between the Planning Authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reirk Energy Ltd. have agreed with the Area Engineer, Padraig Vallyely, a contribution of € 48,000 to cover both this condition and Condition 11 of Planning no. 02_1871. It has been agreed that this contribution will be made four weeks in advance of the public road surfacing works being done at Dromdeeven.

Condition 12 – Materials excavated during the construction of all foundations shall in the first instance, be stored on site in an environmentally safe manner that will not result in the pollution of waters. No spoil material shall be stored within 30m of the river on the southern boundary of the site. Upon completion of the construction phase of the project, the said materials shall be disposed of in a manner and place to be agreed with the Planning Authority.

Response: Reirk Energy Ltd. confirms compliance with this Condition. Proposed permanent storage areas are submitted within details supplied in response to Condition No.6. above.

Condition 13 – Used oils for turbine lubrication shall be recycled.

Response: Reirk Energy Ltd. confirms compliance with this condition.

Condition 14 – A shadow flicker programme shall be carried out during the first twelve months of operation of the turbines. Independent consultants approved by the Planning Authority shall carry out this monitoring programme. A detailed landscaping scheme shall be submitted to the Planning Authority and agreed on completion of the monitoring programme. Planting shall be carried out during the following three months. Any trees or plants that fail during the first three years after planting shall be replaced by the operator.

Response: Reirk Energy Ltd. confirms compliance with this condition.

Condition 15 – An archaeologist, licensed under the National Monument Acts, 1930-1994, shall be engaged to carry out an archaeological assessment of the site before any sub surface work is undertaken. The archaeologist shall carry out any relevant documentary research, inspect the site and have test trenches excavated, as required, on the site of the proposed development. A written report from the archaeologist shall be submitted to the Planning Authority prior to commencement of development. Where archaeological features/material are present, they shall be preserved in situ or by record (excavation), as appropriate.

Response: Reirk Energy Ltd. confirms compliance with this condition.

Condition 16 –

(a) No construction works shall take place between and inclusive of the months of March and July, to avoid disturbance of local wildlife during the bird nesting season.

Response: Reirk Energy Ltd. confirms compliance with this condition.

(b) Existing agricultural activities shall be maintained on the grassland portion of the site.

Response: Reirk Energy Ltd. confirms compliance with this condition.

(c) Sediment traps shall be installed on all watercourses at point of discharge of surface water drainage.

Response: Reirk Energy Ltd. confirms compliance with this condition.

Condition 17 – *No development shall take place until permission has been granted for a transmission line onto the national grid. This grant of permission shall not infer that planning permission shall necessarily be granted for same.*

Reirk Response of 23rd December, 2009; Reirk Energy Ltd. confirms that a transmission overhead line connection is not being used for connection to the National Grid. An underground 38kV line has been agreed with ESB Networks from the development.

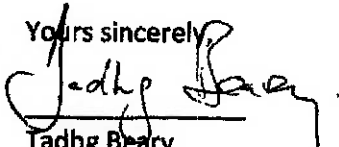
Additional Response; Drawings of the 38kV underground line as requested in Limerick Co. Co. letter of 28th January 2010 are included in Enclosure no.5.

In order to demonstrate full planning compliance for the purpose of the project investors due diligence process we request a response from Limerick County Council confirming your acceptance or otherwise of Reirk Energy Ltd. proposed compliance of the planning conditions.

Should you have any queries on any of the above information please do not hesitate in contacting me.

We remain at your disposal.

Yours sincerely,



**Tadhg Beary
Project Manager**

Wind Prospect Ireland Ltd • Unit 1 Listowel Business Centre • Clieveragh Industrial Estate • Listowel • Co. Kerry • Ireland

**Tel: +353 (68) 53433; Fax +353 (68) 57891
Company Registered in Ireland Number: 404893**

- Enclosure no.1. – Cheque for €19,690.20 in relation to Condition 2
- Enclosure no.2. – Drawing DROM c063.2 Storage areas
- Enclosure No.3. – RTE protocol correspondence
- Enclosure No.4. – IAA correspondence
- Enclosure No.5. – 38kV cable route drawings

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LISTOWEL TOWN COUNCIL

Enclosure no.1. – Cheque for €19,690.20 in relation to Condition 2

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COUNCIL

Enclosure No.3. – RTE protocol correspondence

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PROTOCOL

between:

Reirk Energy Limited

and

RTE/Network.

concerning the wind-farm at

Dromdeeven, Ballagh, Co Limerick

'Developer'

Reirk Energy Limited

RTE

The statutory body currently known as **Radio Telefís Éireann** and its assignees and successors in title in respect of its transmission network

'Development'

Proposed development by way of initial construction or intensification of use of a Windfarm at **Dromdeeveen, Ballagh, Co Limerick**

'Viewer(s)'

Proprietor (or agent of proprietor) of a private residence or business premises in existence at the time of construction of the wind-farm or the date of signing of the protocol (whichever is the earlier) where a television set, for which a current television licence is held and/or a broadcast radio receiver is used

Local Dealer

Sean Hannessy (Newcastlewest, Co Limerick) being a television engineer/dealer carrying on business in the vicinity of the Development and nominated by agreement of both the Developer and RTE

Interference on Viewers' Television Sets and/or Broadcast Radio Receivers

1. When RTE is put on notice, whether by telephone or written communication, that a Viewer is having problems with their reception, RTE will undertake a preliminary assessment, over the telephone or by other means of communication, and ascertain whether or not the Windfarm is a likely cause of the interference complained of.

The developer is responsible only for restoration of the quality of reception available to the Viewer prior to the construction of the windfarm.

Both parties to this Protocol note that the type of interference caused by electro magnetic disturbance emanating from Windfarms manifests itself in very specific ways on television sets and broadcast radio receivers.
2. The customer will be requested to contact the Local Dealer
- 2.1 The Local Dealer will arrange directly with the Viewer to make a visit to the Viewer's house and assess the cause of the interference. The Local Dealer will take whatever steps are necessary to remedy the interference.
3. The Local Dealer will prepare a brief report in writing which will be sent to the Developer and to RTE. If the Local Dealer is of the view that the interference is due to interference from the Development, the dealer will send an invoice in respect of the site visit and remedial work to the Developer (up to a maximum of Eur 400.00) (such figure to be index linked - upwards only - by reference to the Consumer Price Index published by the Central Statistics Office, calculated on the basis of the average increase over the 12 month period preceding demand for reimbursement by RTE.). If the invoice in respect of the site visit and remedial work is likely to be in excess of Eur 400.00 (as adjusted), the Local Dealer must be required to contact both RTE and the Developer prior to carrying out the remedial work. The Developer, however, is the party primarily liable for the discharge of any amounts due in respect of any such site visit and remedial work, whether these amounts exceed Eur 400.00 (as adjusted) or not. If the Local Dealer identifies that the problem is due to some other cause, the Local Dealer will invoice the Viewer in the usual way.
4. In the following paragraph the term "transposer site" shall mean one or more transposer sites if applicable
5. Where the reception interference problem affects a number of Viewers in the same vicinity, and this is identified by the Local Dealer and/or RTE, it may be that it will be necessary for RTE to develop an alternative or additional transposer site within that locality
- 5.1 The Developer, in this instance, will be responsible for all the costs associated with the development of the new transposer site, where this transposer site is necessitated exclusively and wholly by the presence of the Development;
- 5.2 The maximum expenditure incurred by RTE in the provision of the new transposer site (arising from sections 5 and 5.1) will be Eur 125,000 (such figure

to be index linked - upwards only - by reference to the Consumer Price Index published by the Central Statistics Office, calculated on the basis of the average increase over the 12 month period preceding demand for reimbursement by RTE). A detailed estimate to be submitted to the Developer in advance for comment.

- 5.3 If the cost of acquiring and developing a new transposer site exceeds the sum of Eur 125,000, or if the alternative transposer(s) is/are necessitated only partially by interference caused by the Development, then the Developer and RTE will enter into negotiations to ascertain how the cost of remedying the problem being experienced by Viewers in the locality might most equitably be met. The Developer, however, shall be the party primarily liable for the discharge of any amounts due in respect of the acquisition and development of a new transposer site to the extent that such an acquisition and development is attributable to the presence of the Development.
- 5.4 Where the acquisition and development of a transposer site is additional to the transposer(s) serving the locality prior to the commencement of operation of the Development, the Developer shall be liable to reimburse to RTE the ongoing operational costs of the said additional transposer for so long as same shall be necessary to counteract the interference with Viewers' reception caused by the Development, up to a maximum of Eur 12,500 per annum (such figure to be index linked — upwards only — by reference to the Consumer Price Index published by the Central Statistics Office, calculated on the basis of the average increase over the 12 month period preceding demand for reimbursement by RTE).
- 5.5 Developer will be entitled to see copies of operational costs to the extent that company confidentiality is not breached.
- 5.6 The Developer shall be entitled to retain its own engineer to inspect and report on the source of interference and if a transposer site is built, RTE undertakes to facilitate access to the installation in question for the purposes of carrying out any such inspection and/or tests necessary.
- 5.7 The Developer will indemnify RTE fully in respect of damage to the person or property of any such engineer or inspector as retained by the Developer, or any other agent or licensee of the Developer involved in or associated with such inspection and/or tests. The Developer will ensure that competent personnel only are deployed onto RTE property under the terms of this Clause and hereby indemnifies RTE in respect of any damage to RTE's property or personnel caused by the negligence of such engineer, inspector or other agent or licensee.

Interference with RTE installations (to include transmitter stations, transposers and, if applicable, link stations).

6. Where RTE detects interference with the reception of a Receive and/or transmission signal at a transposer site, RTE will investigate the cause of the interference and report in writing to the Developer if RTE determines that the interference is attributable in whole or in part to the Development.
- 6.1 The Developer shall be entitled to retain its own engineer to inspect and report on the source of interference and RTE undertakes to facilitate access to the installation in question for the purposes of carrying out any such inspection and/or tests necessary
- 6.2 The Developer will indemnify RTE fully in respect of damage to the person or property of any such engineer or inspector as retained by the Developer, or any other agent or licensee of the Developer involved in or associated with such inspection and/or tests. The Developer will ensure that competent personnel only are deployed onto RTE property under the terms of this Clause and hereby indemnifies RTE in respect of any damage to RTE's property or personnel caused by the negligence of such engineer, inspector or other agent or licensee.
- 6.3 Engineers representing both RTE and (if applicable) the Developer, will agree on remedial works (e.g. reorientation of reception antennae) and the cost of same. RTE shall carry out the necessary remedial works and the cost of same shall be discharged/reimbursed to RTE by the Developer (subject to the provisions of Clause 7 below)
- 7 In the following paragraph, the term "installation" shall mean one or more installation sites if applicable
 - 7.1 In the event that an additional or alternative installation is required in order to overcome Reception or Transmission problems caused exclusively or partially by the Development, RTE shall identify a new location for such installation
 - 7.2 The Developer shall be responsible for all costs associated with the development of the new installation (e.g. repeat broadcasting station), where the new installation is necessitated exclusively by interference caused by the Development, up to a maximum of Eur 125,000 (such figure to be index linked - upwards only - by reference to the Consumer Price Index published by the Central Statistics Office, calculated on the basis of the average increase over the 12 month period preceding demand for reimbursement by RTE). The projected costs are to be submitted to and agreed with the Developer prior to development of the new installation
 - 7.3 Where the likely costs of such additional or alternative installation exceed Eur 125,000 (as adjusted), or if the interference is to a link site, or where the additional or alternative installation is necessitated only partially by interference caused by the Development RTE and the Developer shall negotiate and determine between them how the costs of this new development might most equitably be met. Both parties note that the primary liability to discharge such additional costs whether less than or more than Eur 125,000 (as adjusted) shall rest with the Developer under this Protocol

- 7.4 Where the acquisition and development of a transposer site is additional to the transposer(s) serving the locality prior to the operation of the Development, the Developer shall be liable to reimburse to RTE the ongoing operational costs of the said additional transposer for so long as same shall be necessary to counteract the interference with Viewers' reception caused by the Development, up to a maximum of Eur 12,500 per annum (such figure to be index linked - upwards only - by reference to the Consumer Price Index published by the Central Statistics Office, calculated on the basis of the average increase over the 12 month period preceding demand for reimbursement by RTE.
- 7.5 Developer will be entitled to see copies of operational costs to the extent that company confidentiality is not breached
- 8 In the event of RTE and the Developer failing to come to agreement on any of the matters referred to above, both RTE and the Developer agree to jointly retain the services of a suitable conciliator (to be nominated by the President for the time being of the Institution of Engineers of Ireland in default of agreement between RTE and the Developer on this point) to assess the issues and assist them in, if possible, arriving at a satisfactory conclusion to their negotiations on the disputed point.
- 8.1 RTE and the Developer shall jointly share the costs incurred in such a conciliation process, up to a maximum of Eur 2,500 (excluding VAT) each. In the event that the total costs of a conciliation process shall exceed Eur 5,000 (excluding VAT), then the costs of the conciliation shall also be a matter to be discussed and agreed by both parties with the assistance of the conciliator, if necessary.
- 8 Both RTE and the Developer agree that neither of them will resort to legal proceedings unless and until such time as this conciliation process shall have been undertaken by both of them, save in the event of a particular emergency where injunctive relief is sought by either party.

Dated this 7th day of July 2003

Signed for and on behalf of RTE

[Signature]

(authorised signatory)

Signed for and on behalf of the Developer

[Signature]

(authorised signatory)

Enclosure No.4. – IAA correspondence

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Company Registered in Ireland Number: 404993**



ÚDARÁS EITLÍOCHTA NA hÉIREANN
IRISH AVIATION AUTHORITY

16 June 2009

Mr. John O'Connor
Wind Prospect Ireland Ltd.
Headland House
1-3 The Green
Malahide, Co. Dublin

Re: Aviation lighting requirements for approved wind farms, totalling 14 turbines, at Dromdeeveen, Co. Limerick (Planning Ref. Nos. 02/1871, 04/2722 and 08/1650)

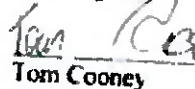
Dear John

I refer to your post-planning query on 9 June, 2009, to the Irish Aviation Authority concerning aviation requirements for approved wind farms at the above site location.

I wish to advise that low intensity fixed red warning lights are required for turbines designated T5, F10 and T13.

When the turbines have been put in place, please confirm to us the elevations and coordinates of each turbine. We need this information for our aeronautical charts.

Kind regards,


Tom Cooney
Corporate Affairs

AN BORD PLEANÁ

19 JAN 2021

DATED _____ FROM _____

