

An
Bord
Pleanála

Board Direction
BD-014733-23
ABP-309283-21

The submissions on this file were considered at a Board meeting held on 29/11/2023.

The Board decided to dismiss this referral under subsection (1) (b) (i) of section 138 of the Planning and Development Act, 2000, based on the reasons and considerations set out below.

Reasons and Considerations

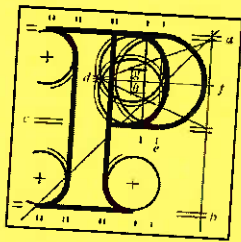
Having regard to the nature of the questions raised in the referral, which collectively pertain to part of underground grid infrastructure/ electricity cable grid connections that appears to have been completed a significant period ago, and taking into account the referral history whereby part of the underground grid infrastructure/electricity cable grid connections that are the subject matter of the current referral has been previously determined under Board Order reference ABP-308071-20, as constituting development that is exempted development, and also taking into account the planning history including planning application reference 17/338 (Limerick City and County Council) which permitted underground cable works of relevance, and noting that the questions raised in the referral are lacking relevant detail on the context and purpose, the Board concluded that the questions cannot be properly addressed or decided in isolation within the meaning of Section 5 of the Planning and Development Act 2000, as amended. Accordingly, the Board decided to exercise its absolute discretion to dismiss this referral under Section 138(1)(b)(i) (nature of the questions raised) of the Planning and Development Act 2000, as amended.

In arriving at its decision, the Board took into account the content of the inspector's reports and the inspector's recommendation as well as the wider information on file, however, the Board did not follow the inspector's recommendation in this instance as it concluded that the questions raised could not be properly addressed or decided for the reasons outlined.

Board Member:

Patricia Calleary
Patricia Calleary.

Date: 29/11/2023



An
Bord
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Board Direction
BD-014527-23
ABP-309283-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/11/2023.

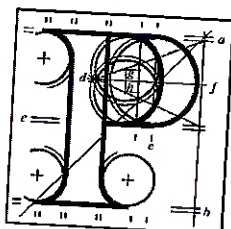
The Board decided to defer this case for consideration at a further Board meeting.

Board Member:

Patricia Calleary
Patricia Calleary

Date: 09/11/2023





An
Bord
Pleanála

Inspector's Report ABP-309223/231/233/-21

Question

Whether the following is or is not development and is or is not exempted development:

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and

(3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

Planning Authority

Limerick City & County Council &
Cork County Council

Planning Authority Ref.

EC60/20

Referral

Referred by

Limerick City & County Council (ABP-309231-21)

Patrick Cremins (ABP-309223-21 &
ABP-309283-21)

Respondents

Limerick City & County Council
Patrick Cremins

Date of Inspection

13th July, 2021

Inspector

Kevin Moore

1.0 The Question

1.1. Three separate section 5 referrals have been made to the Board in relation to underground electricity cable grid connections and associated works relating to wind farm development within the administrative areas of Limerick City & County Council and Cork County Council.

1.2. The question put to the Board is:

Whether the following is or is not development and is or is not exempted development:

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

1.3. ABP Ref. 309223-21 relates for the most part to connections and works that fall within County Cork and the other two parts fall within County Limerick to which ABP Ref. 309231-21 and ABP-309283-21 refer. The same question referring to all of the connections and works was originally posed to Limerick City & County Council while the connections and works within County Cork were highlighted in the section 5 referral to Cork County Council.

2.0 Site Location / Description

- 2.1 The route of the underground cable runs from Mauricetown Wind Farm in south County Limerick in a westward direction and then southwards along the edge of local roads. It then enters Dromdeeveen Wind Farm north of the county border with County Cork, the location in which Tullylease 38kV switching station is sited, and continues southwards through the wind farm lands, across the county border with Cork, and south-westwards through adjoining lands in the townland of Rowls Langford North before the routing once again follows local roads in a southwards and south-westwards direction. The underground cable is then routed south-eastwards along the edge of the R576 regional road and then westwards for a short section along edge of the R578. The route then traverses lands to the south of the regional road as far as Glenlara 110kV substation.

3.0 Limerick City & County Council Considerations

- 3.1. Limerick City and County Council referred the same question to the Board (ABP-309231-21) as that of Patrick Cremins. The planning authority noted relevant planning history. It was acknowledged that a declaration had been issued under reference EC34/20 that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection was development and was exempted development. It was further noted that this declaration was appealed to An Bord Pleanála and was being processed under reference ABP-308071-20.

4.0 Cork County Council Considerations

- 4.1. Cork County Council sought further information from the referrer and that this request was outside of the statutory period for making such a request. The planning report leading to that request and the Archaeologist's report were

forwarded to the Board. The latter requested an archaeological assessment. The Planner noted that there was no history of a section 5 application for a grid line from Glenlara in County Cork to County Limerick and that there appears to have been no planning application made in respect of a cable along the route shown in the section 5 application drawings. Reference is made to a wide range of planning history, section 5 cases, precedent and case law. The Archaeologist's report was noted. Reference was made to an Ecologist's report which referred to exempted development provisions under the Planning and Development Act and the Regulations and the likely need for Appropriate Assessment as the cable had been laid within a Special Area of Conservation.

5.0 Submission by Patrick Cremins

5.1. The following is submitted from Patrick Cremins:

Planning History

- PL 13.240910 (P.A. Ref. 12/379) – Permission for retention and completion of up to six turbines relating to Mauricetown Wind Farm.
 - From the submitted EIS it is seen that separate permissions were required to be obtained for grid connections.
 - Mauricetown Wind Farm 38kV substation formed part of the permitted wind farm development.
 - No underground electricity cable grid connection works between Mauricetown Wind Farm 38kV substation and Tullylease 38kV substation formed part of the permitted Tullylease 38kV substation in Planning Permission P.A. Ref. 17/388.
 - The permitted Tullylease 38kV substation under Planning Permission P.A. Ref. 17/388 does not detail any electricity cable grid connection from the Tullylease 38kV substation to the electricity cable grid connection running from the Dromdeeveen Wind Farm 38kV

substation to the Glenlara 110kV substation in County Cork, crossing the county border at the Glashawee River.

- P.A. Ref. 04/2722 – Permission granted by Limerick County Council for increased dimensions for 7 turbines and an additional 11 turbines, anemometer mast and access tracks. This relates to Dromdeeveen Wind Farm.

- Condition 17 stated:

"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."

The wording is clear and unambiguous. Planning permission is required for grid connections.

- The developer confirmed with Limerick County Council in a Compliance Submission on 22nd September 2010 that a transmission overhead line connection is not being used for connection to the national grid and that an underground 38kV line had been agreed with ESB Networks for the development.
- The 38kV underground line runs from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork, crossing the county border at the Glashawee River. This route does not correspond with the route permitted by An Bord Pleanála under PL 04.218821 (P.A. Ref. 06/7096), which referenced a 38kV overhead line.

- PL 04.218821 (P.A. Ref. 06/7096) – Permission granted by the Board for erection of 7.4km of 38kV overhead line in the townlands of Cummerduff, Commons North, Tooreen Donnell, Meentinnny East, Meenkearagh, Rowls, Shaddock, Rowls Allen, Cummerduff Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. This relates to an overhead line from Dromdeeveen Wind Farm to Cummerduff townland and was to connect to a further proposed section of 110kV transmission line of some 8km leading from Cummerduff to the existing Glenlara 110kV station.
- Under ABP Ref. 04.RL.3531, the Board confirmed by Declaration that 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 substation at Curraduff, County Cork; and a 110kV underground electrical connection between Glenlara substation and Ballynahulla substation, Ballynahulla, County Kerry is development and is not exempted development.
- In all of the above cases, the submissions included Appropriate Assessment Screening Reports or Natura Impact Statements. These determinations were based on submitted measures and were in breach of the judgement of the ECJ. The Inspector's conclusion that the grid connections did not require AA as they were carried out prior to the ECJ judgement was incorrect. As the previous exempted development declarations were similarly incorrect, the Board is not bound by them.
- Under ABP-300536-18, the Board confirmed by Declaration 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. The Board concluded that the connection

constituted development, the connection comes within the scope of Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, and the connection would contravene a condition of Planning Permission 10/2140 and would, therefore, come within the restrictions on exemption as set out in article 9(1)(a)(i).

From the above planning history, it is submitted:

- The authorised status of the underground electricity cable grid connection works is questionable between:
 - (a) Mauricetown Wind Farm 38kV substation and Tullylease 38kV substation,
 - (b) Tullylease 38kV substation to the electricity cable grid connection running from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation, and
 - (c) The Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation.
- This is given that:
 - The Mauricetown Wind Farm requires in each case that separate planning permissions be obtained for grid connections,
 - Condition 17 of P.A. 04/2722 relating to Dromdeeveen Wind Farm does not facilitate/permit underground electricity cable grid connection works to the grid connection which runs from the Dromdeeveen Wind Farm 38kV substation to the Glenlara substation,
 - The Mauricetown Wind Farm 38kV substation (permitted under PL 13.240910) does not facilitate/permit any underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV substation and Tullylease 38kV substation,

- The Tullylease 38kV substation (permitted under P.A. Ref. 17/338) does not facilitate/permit any underground electricity cable grid connection works between the Tullylease 38kV substation and the Mauricetown Wind Farm 38kV substation permitted under PL 13.240910,
- The Tullylease 38kV substation (permitted under P.A. Ref. 17/338) 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, and
- The 38kV underground line running from Dromdeeveen Wind Farm 38kV substation to Glenlara 110kV substation does not correspond with the route as permitted by An Bord Pleanála under PL 04.218821.
- Any grid connection associated with the Mauricetown Wind Farm or Dromdeeveen Wind Farm does not form part of their respective planning permissions.
- The *Wind Energy Development Guidance* indicated the necessity for separate planning applications for grid connections.

Patrick Cremins concludes by submitting that the underground cable connection works come within the scope of sections 2(1), 3(1), 4(4), 177U, and 182A of the Planning and Development Act and Articles 3, 9(1)(viiB), and 9(1)(a)(i) of the Planning and Development Regulations.

It is further submitted that the planning authority can proceed to decide the part of the underground electricity cable grid connection works between Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation and from Tullylease substation to the Glenlara 110kV substation, subject to consideration of EIA and AA to the extent necessary, because the works were constructed after the judgements of the High Court in *O'Grianna (and others) v. An Bord Pleanála (and others)* and *Patrick Daly v. Kilronan Wind Farm Limited*.

It is additionally submitted that the planning authority can proceed to decide the part of the underground electricity cable grid connection works from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation, subject to consideration of EIA and AA to the extent necessary, because the works were constructed before the judgements of the High Court in *O'Grianna (and others) v. An Bord Pleanála (and others)* and *Patrick Daly v. Kilronan Wind Farm Limited*, and An Bord Pleanála's recent Declaration under 04.RL.3531, which referenced judgements of the ECJ as being declaratory of the law. Patrick Cremins concluded by requesting that the grid connection works constitute development that is not exempted development.

6.0 Responses to the Referral

6.1. Reirk Energy Limited

The following is submitted;

- Regarding whether the provision of:
 - (a) the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick is or is not development and is or is not exempted development, and
 - (b) the underground electricity cable grid connections and associated works 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, as far as the County border at Glashawee River is or is not development and is or is not exempted development,these works are not a matter for Reirk Energy Limited.
- The underground electricity cable connecting the Dromdeeveen 38kV substation to the Glenlara 110kV substation has been in situ and

energised since 2011. It is an ESB Networks asset and is an integral part of the ESB distribution network.

- These underground works were classed as exempted development under Class 26 Schedule 2 Part 1 of the Planning and Development Regulations. The works were carried out in consultation with Limerick County Council as part of the planning compliance for Planning Permission 04/2722.
- Condition 17 of Planning Permission 04/2722 related to a 'transmission line'. Reirk Energy Limited confirmed to Limerick County Council by letter of 23rd December 2009 that a transmission line is not being used and that an underground 38kV line had been agreed with ESB Networks. As a transmission line was not being used, the requirement in Condition 17 was no longer relevant as the works were exempted in accordance with Class 26.
- Limerick County Council requested Reirk Energy Limited to provide them with drawings of the underground cable route. A compliance submission was made to the Council dated 22nd September 2010 and included a drawing detailing the route of the underground cable.

6.2. Mauricetown Wind Farm

The following is submitted:

- Regarding the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick:
 - The matter was dealt with in a decision from 31st March 2021 by An Bord Pleanála under ABP-308071-20 with a decision that the development in question is development and is exempted development.

- The existing section 5 Declaration cannot be the subject of a further declaration at any variance to the existing declaration when the underlying facts and circumstances remain as they were at the time the original declaration was made. Reference is made to the High Court decision *Narconon Trust v An Bord Pleanála* (2000) IEHC 25.
- The Board does not have jurisdiction to determine this appeal, given the absence of any change in relevant facts or planning circumstances.
- Regarding the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River:
 - The matter of the cable works associated with the connection of the Tullylease 38kV switching station to the existing distribution network is included within Planning Permission 17/338 issued by Limerick City and County Council in 2017.
- Regarding the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River:
 - The matter of the 38kV cable that forms part of the pre-existing electricity distribution network is not a matter related to Mauricetown Wind Farm. It is the understanding of Mauricetown Wind Farm that the cable that is referred to has formed a part of the electricity distribution network and has been in continuous operation since 2011.

7.0 Statutory Provisions

7.1 Planning and Development Act 2000 (as amended)

PART I – Preliminary and General

Section 2(1)

In this Act, except where the context otherwise requires—

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

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

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4

4. (2) (a) 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

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described) ...

(4) Notwithstanding *paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2)*, development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

PART XAB – Appropriate Assessment

Section 177U

(9) In deciding upon a declaration or a referral under *section 5* of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

7.2. Planning and Development Regulations, 2001 (as amended)

PART 2 - Exempted Development

Article 3(3)

In these Regulations, except where the context otherwise requires -

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

Article 6(1)

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

Article 9(1)

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

- (a) if the carrying out of such development would – ...
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, ...
 - (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, ...

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

(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 ...

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

Schedule 2

Part 1 Exempted Development – General

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| <p><i>Development by statutory undertakers</i> Class 26</p> <p>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.</p> | |

8.0. Relevant Case Law

8.1. I note the following judgements:

- *Narconon Trust v An Bord Pleanála* (2019/16/JR)
- *O’Grianna v. An Bord Pleanala* [2014] IEHC 632
- *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308
- *ECJ Case C-323/17 People over Wind v Coillte*, ECLI:EU:C:2018:244

9.0 Other Referrals

9.1. ABP Ref. RL3531

The Board determined that 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 was development and was not exempted development.

The Board 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.

The Board concluded:

- (a) The laying of the subject underground cables constituted the carrying out of works, and therefore constitute development as defined in the Planning and Development Act 2000, as amended;
- (b) The documentation submitted on file (including the submission by RPS Group Limited, on behalf of Brookfield Renewables) confirmed that the content of the previous submissions seeking Section 5 declarations in relation to the subject grid connections, under planning authority file reference numbers D238/15, D257/10 (An Bord Pleanála reference number 04.RL.2789) and D247/16, had included Appropriate Assessment Screening Reports (also cited in the documentation submitted as Natura Impact Statements) that concluded, on the basis of the implementation of mitigation measures, that the development in question would not have significant effects on certain European sites;
- (c) Having regard to the judgement of the European Court of Justice in case C-323/17, such measures appear to the Board to be measures that were intended to avoid or reduce the harmful effects of the development on the European sites concerned, and accordingly could not be taken into account in screening for Appropriate Assessment, and in so far as they had been taken into account in previous referral determinations, were incorrectly so taken into account;
- (d) In the absence of these measures, An Bord Pleanála cannot be satisfied, beyond reasonable scientific doubt, that the development that is the subject matter of this referral would not have had significant effects on 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), in the light of the conservation objectives and qualifying interests of these European sites, and accordingly considers that appropriate assessment is required in relation to the development the subject of this referral. Therefore, the provisions of section 4(4) of the Planning and Development Act, 2000, as amended, apply, and the development is not exempted development.

9.2. ABP-300536-18

The Board determined that the provision of an underground electrical cable connection from the substation within Raheenleagh Wind Farm to the Arklow 22kV substation at Coolboy, Arklow, Co. Wicklow, was development and was not exempted development.

This decision was quashed. 2020 No 622 JR refers.

WHY WAS THIS QUASHED? WAS IT NARCONON?

10.0 Planning History

10.1 I note the following planning history:

Mauricetown Wind Farm

ABP Ref. PL 13.240910 (P.A. Ref. 12/379)

A 10 year planning permission was granted by the Board for retention and completion of the construction, operation and decommissioning of up to six number wind turbine generators, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, in Ballagh, County Limerick. An EIS and NIS accompanied this application.

EC16/59 Section 5 Referral

Limerick County Council determined that the laying of an underground MV ducting and cabling linking existing and proposed substations at Glenduff, Dromdeeveen and Mountplummer Co. Limerick is development and is exempted development.

ABP-308071-20 - Referral

The Board determined that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection is development and is exempted development. The Board concluded that the works specifically come within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended, and, therefore, constitute exempted development.

Tullylease Switching Station

P.A. Ref. 17/338

Planning permission was granted by Limerick County Council for 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 at Dromdeeveen, Ballagh, County Limerick. The substation is located within the Dromdeeveen Wind Farm site area and the drawings refer to the development as an ESN switching station.

Dromdeeveen Wind Farm

P.A. Ref. 04/2722

Permission was granted by Limerick County Council for increased dimensions for 7 turbines and an additional 11 turbines, anemometer mast and access tracks relating to Dromdeeveen Wind Farm. An EIS accompanied this application.

Condition 17 stated:

"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."*

I note a letter dated 22nd September 2010 was submitted to Limerick County Council relating to the planning conditions imposed by the Council and how Reirk Energy Ltd. intended to satisfy the conditions. In relation to Condition 17, the following was submitted:

"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 the connection to the National Grid. An underground 38kV line has been agreed with ESB Networks from this 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."

Overhead Transmission Line

PL 04.218821 (P.A. Ref. 06/7096)

Permission granted by the Board for erection of 7.4km of 38kV overhead line in the townlands of Cummerduff, Commons North, Tooreen Donnell, Meentinny East, Meenkearagh, Rowls, Shaddock, Rowls Allen, Cummerduff Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. This relates to an overhead line from Dromdeeveen Wind Farm to Cummerduff townland and

was to connect to a further proposed section of 110kV transmission line leading from Cummerduff to the existing Glenlara 110kV station.

11.0 Assessment

11.1. The Question of Development

11.1.1 The question before the Board relates to the laying of underground electricity cables under lands. Such works would include acts of construction and excavation in accordance with the definition of 'works' as set out in section 2 of the Planning and Development Act. The carrying out of these works would occur on, in, and over land and would, therefore, constitute 'development' in accordance with the meaning of 'development' as set out in section 3 of the Planning and Development Act.

11.2. The Question of Exempted Development

11.2.1 *The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick*

I first note the section 5 Declaration by Limerick County Council under Ref. No. EC16/59. The planning authority issued its decision on 2nd February 2016. This related to the laying of an underground MV ducting and cabling linking existing and proposed substations at Glenduff, Dromdeeveen and Mountplummer Co. Limerick. The application included an Appropriate Assessment Screening Report. It was determined by the planning authority that this constituted development which was exempted development. It was concluded that the proposed works came within the scope of Class 26 of Part 1 of Schedule 2 of the Planning and

Development Regulations. This Declaration went unchallenged and the underground ducting and cabling were laid.

I then acknowledge the relatively recent decision of the Board under Ref. ABP-308071-20. The Inspector noted that the referrer at that time was seeking a determination in relation to the same works that were identical in substance to those outlined in EC16/59. The Board determined that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection is development and is exempted development. It was concluded that the works came within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001.

I note the submissions by Patrick Cremins and Limerick City & County Council in the current referrals. The drawings in these submissions showing the grid connection routing for this section of the grid connections and works present as identical in substance to those previously considered by Limerick County Council under EC16/59 and by the Board under ABP Ref. 308071-20. Both the planning authority and An Bord Pleanála had determined that these works constitute development that is exempted development.

Further to the above, I draw the attention of the Board to 2019/16/JR – *Narconon Trust v An Bord Pleanála*, in which a determination by the Board of a section 5 of identical substance to a previous unchallenged section 5 determination was quashed. In this judgement, it was considered that to permit a challenge to a previously unchallenged section 5 declaration via the route of questions, identical in substance, despite no change in planning facts or circumstances is unreasonable and would set at naught the requirements of section 50 of the Planning and Development Act 2000, as amended. It was determined that to permit such practice would undermine the concept of legal certainty.

I note for the Board that I have reviewed the details of both the current section 5 referral and those of the previously determined section 5 Ref. EC16/59 to the planning authority and to An Bord Pleanála under ABP Ref. 308071-20. I am satisfied that no change in planning facts or circumstances have arisen since the determination of EC16/59 or ABP Ref. 308071-20. It is apparent that this is a section of grid connection which has previously been considered by the planning authority and by the Board. Revisiting this section of grid connection, where circumstances have not altered in any material manner and where the routing remains the same, is entirely unreasonable. It is reasonable, therefore, to conclude that this section of the grid connection and the associated works constitute development that is exempted development.

11.2.2. *The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation*

I note Planning Permission 17/338 granted by Limerick County Council for an electrical switching station compound at Dromdeeveen, Ballagh, County Limerick. This is understood to be the Tullylease substation to which Patrick Cremins refers, which is sited within the Dromdeeveen Wind Farm site area and is an ESB Networks switching station. From the details provided in Planning Application 17/338, it is apparent that the proposed development included underground cable works, including those connecting to an existing underground 38kV export cable within the wind farm lands. This clearly relates to the laying of underground cable within the Dromdeeveen Wind Farm site. This application was subject to a screening for appropriate assessment by the planning authority and the underground cables the subject of this planning application formed part of the development the subject of the grant of planning permission. The applicant's response to a request for further information clarified that the proposed development was not a substation but was a switching station required to

facilitate the connection of a separate wind farm substation to be located in the townland of Glenduff to the national grid.

The applicant's AA Screening description of the project clarified that the proposal included the installation of underground grid connection cables to connect substations in the townlands of Dromdeeveen and Glenduff to the national grid through an existing on-site underground cable. This screening concluded that there were not likely to be any significant effects on the Natura 2000 network of sites and appropriate assessment was not required. The planning authority granted permission for the proposed development and did not require the submission of a Natura Impact Statement. It may reasonably be concluded that this switching station and associated underground cabling has been subject to planning permission and the issues relating to appropriate assessment were considered accordingly by the planning authority. The decision of the planning authority was not appealed to An Bord Pleanála.

It is apparent that the laying of underground cables clearly formed part of the development proposal for the switching station in the vicinity of Dromdeeveen wind farm site. Planning permission was granted and due consideration was given in that application to effects on Natura 2000 sites. It is reasonable, therefore, to conclude that this section of the grid connection and the associated works have been the subject of a planning application and a permission was subsequently issued.

11.2.3. *The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation.*

Exempted Development Provisions

Article 6(1) of the Planning and Development Regulations, 2001, as amended, states that 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. I draw the attention of the Board to Column 1 of Class 26 of Part 1 of Schedule 2: *'Exempted Development – General'* of the Regulations. This refers to *'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'*. There are no conditions or limitations within Column 2 of that class. I am satisfied that the laying of the underground cabling relating to this section of the grid connection from Dromdeeveen Wind Farm to Glenlara substation comprises *'development consisting of the laying underground of...cables...for the purposes of the undertaking'*.

I acknowledge that it is a requirement of this class that the development be carried out by an *"undertaker authorised to provide an electricity service"*. I note Article 3(3) of the Regulations. It states that an electricity undertaking means *"an undertaker authorised to provide an electricity service"*. I further note there is no statutory definition to clarify what is meant by this. The Electricity Regulation Act 1999, at Section 2(1), provides the following definition:

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

I acknowledge that this definition refers to holders of a licence or authorisation. Notwithstanding this, it is clear that the term *"electricity undertaking"* can apply to *"any person"* engaged in generation, transmission, distribution or supply of electricity.

The definition of "Statutory Undertaker" as provided in section 2 of the Planning and Development Act includes "...a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity". This can reasonably be understood to include the developers of Dromdeeveen Wind Farm as the developer / owner of a wind farm that comprises a project for the provision of electricity as authorised under the Planning Act.

Restrictions on Exempted Development

Article 9(1)(a)(i) of the Planning and Development Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would contravene a condition attached to a permission issued under the Act or be inconsistent with any use specified in a permission under the Act.

I note Planning Permission 04/2722 issued for Dromdeeveen Wind Farm. This was a permission granted by Limerick County Council for increased dimensions for 7 turbines and an additional 11 turbines, anemometer mast and access tracks relating to Dromdeeveen Wind Farm. Condition 17 stated:

"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."*

This condition is clear and unambiguous. It is understood from it that the wind farm was to be connected to the national grid by way of a transmission line.

I note the permission issued under ABP Ref. PL 04.218821 (P.A. Ref. 06/7096). This related to the erection of 7.4km of 38kV overhead line in the townlands of Cummerduff, Commons North, Tooreen Donnell, Meentinny East, Meenkearagh, Rowls, Shaddock, Rowls Allen, Cummerduff Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. It was an overhead line from Dromdeeveen Wind Farm to Cummerduff townland and it was to connect to a further proposed section of 110kV transmission line leading from Cummerduff to the existing Glenlara 110kV station. This was a permission issued for a transmission line that was intended to serve as the connection for the wind farm to the national grid.

Having regard to the understanding of Condition 17 of Planning Permission 04/2722, it is clear that permission was required to be granted for the grid connection for this wind farm and this was required to be a transmission line. This condition did not allow for any other approval, agreement or other consent procedure to be employed. The Board will note that section 2(1) of the Planning and Development Act states: *'permission' means a permission granted under section 34, 37G or 37N, as appropriate.* This condition removed the opportunity for the grid connection and associated works to be undertaken as exempted development pursuant to Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations.

Having regard to the above considerations, I am satisfied to conclude that the provision of underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation would materially contravene Condition 17 of Planning Permission 04/2722 and, therefore, could not be considered to constitute exempted

development by reference to Article 9(1)(a)(i) of the Planning and Development Regulations.

11.2.4. Appropriate Assessment

I note that the route of the grid connections the subject of the referrals traverses both the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and the Blackwater River (Cork/Waterford) Special Area of Conservation.

The conclusions drawn from the above assessment are as follows:

- (a) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick were subject to two referrals, to Limerick County Council and An Bord Pleanála. In both instances, it was determined that the connections and works were development and were exempted development.
- (b) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation were subject to a grant of planning permission under planning authority reference 17/338.
- (c) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation come within the scope of Class 26, Part 1 of Schedule 2 of the Planning and Development Regulations, as amended. However, these connections and works contravened condition number 17 of planning register reference number 04/2722 and, therefore, such connections and

works come within the restrictions on exemption set out in article 9(1)(a)(i) of the Planning and Development Regulations

With regard to (a), an Appropriate Assessment Screening Report was included with the first referral which was to the planning authority. The revisiting of this section of the grid connection and associated works, where circumstances have not altered in any material manner and where the routing remains the same, is unreasonable. The matter of the removal of exempted development status of this section of the grid connection, based upon a need for appropriate assessment, where an appropriate assessment screening was undertaken, and where decisions have previously been made which determined the grid connection constituted exempted development, cannot reasonably be revisited.

With regard to (b), it is apparent that the permitted development under Planning Permission 17/338 included underground cable works, including those connecting to an existing underground 38kV export cable within the wind farm lands, which relates to the laying of underground cable within the Dromdeeveen Wind Farm site. This is understood to be the underground cable and associated works the subject of the current referrals. Planning Application 17/338 was subject to a screening for appropriate assessment by the planning authority and it is understood that the underground cables the subject of this planning application formed part of the development subject to the grant of planning permission. It may reasonably be concluded that planning permission has been granted for this section of underground cabling the subject of the referrals. It did not seek to, and did not avail of, any exempted development provisions under the Planning and Development Act.

With regard to (c), I note that the grid connection and associated works from Dromdeeveen Wind Farm to Glenlara substation were constructed in 2011 and prior to 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, as well as being prior to the decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244. The grid connection works took place within the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and the Blackwater River (Cork/Waterford) Special Area of Conservation. Therefore, the works would have had direct effects on these European sites, with proposed works including the digging of trenches, the laying of cables, the crossing of watercourses, etc. There is no understanding if mitigation measures were required and employed, such as avoiding works within waterbodies, preventing substances entering watercourses, and avoiding known locations of invasive plant species. Furthermore, there is no knowledge that the laying of the grid connection for this section was subject to a Stage 2 appropriate assessment. I consider that it can reasonably be concluded that the Board could not be satisfied, beyond reasonable scientific doubt, that the development that is the subject matter of this section of the referrals would not have had significant effects on the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code:004161) and the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code:002170), in the light of the conservation objectives and qualifying interests of these European sites. Accordingly, it can be considered that appropriate assessment would be required in relation to the development the subject of this section of the referrals. Therefore, the provisions of section 4(4) of the Planning and Development Act, 2000, as amended, apply, and this section of the grid connection would not be exempted development.

Note: I acknowledge the Board's decision in relation to Ref. RL3531 and its reference to C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244. The Board noted that the three sections of the grid connection to which that referral referred 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. I note the following:

- The Board's decision in ABP-308071-20 post-dated the ECJ judgement;
- The Tullylease switching station was carried out having acquired planning permission; and
- The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation have not been subject to any appropriate assessment screening or appropriate assessment.

11.2.5. Environmental Impact Assessment

With regard to the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick, I note again that these were subject to two previous referrals and the connections and works were determined to be developments that were exempted development. I acknowledge the case law referenced by Patrick Cremins in his submissions to the Board and I particularly note that the Board's decision under ABP-308071-20 came after the decisions 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. Further to this, I acknowledge once again the decision in *Narconon Trust v An Bord Pleanála* 2019/16/JR. There has been no determination which required this section of the grid connection and associated works to be subject to EIA. There have been no material changes in the circumstances relating to this section of grid connection and the routing remains the same. It is reasonable, therefore, to conclude that this section of the grid connection and associated works would not require

environmental impact assessment, leading to de-exempting the works and requiring the seeking of planning permission.

With regard to the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation, I again note that this development was subject to planning permission (Ref. 17/338). Furthermore, it is noted that the development of that electrical switching station compound was not found to be a class of development for the purposes of Part 10 of the Planning and Development Regulations. It may reasonably be determined that environmental impact assessment was not required for that previously permitted development.

With regard to the underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation, I note that this grid connection would form an integral part of the Dromdeeven Wind Farm development. This wind farm development was a project for which Environmental Impact Assessment was required and for which EIA of the full extent of the grid connection was not carried out as part of the assessment of that project, with Condition 17 of Planning Permission 04/2722 requiring permission to be granted for a transmission line onto the national grid. Therefore, the grant of permission did not include these grid connection works the subject of the current referrals and EIA for these works was not carried out as part of that planning application.

In the context of the above, I note the judgements of the High Court in respect of *O'Grianna v. An Bord Pleanála* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308 as follows:

In *O'Grianna v. An Bord Pleanála*, delivered on 12th December, 2014 (after this grid connection was laid), the High Court quashed the decision of the Board in granting planning permission for a wind farm in County Cork on the grounds of 'project-splitting' and held that the Board had failed to ensure that the grid connection had been considered as part of the Environmental Impact Assessment process prior to the granting of permission for the wind farm. This judgement effectively held that the wind farm and the grid connection constituted a single project, and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Environmental Impact Assessment Directive. As the grant of permission for Dromdeeveen Wind Farm required a separate permission for the grid connection, it is reasonable to ascertain that the cumulative impact of the wind farm in conjunction with the grid connection was not assessed as part of the wind farm planning application.

The judgement of the High Court delivered on 11th May, 2017 in respect of *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* provides further and greater clarity on the matter and can be considered to be an authoritative statement of the law as it applies. The judgement includes:

'In the light of the decision of Peart J. in O'Grianna & Ors. v. An Bord Pleanála, the grid works must be regarded as an integral part of the project as a whole and the assessment of the grid works is to be made in the context of the entire project, as must the assessment of the application for the turbines and works associated with them. That is not to say that a separate EIA will always be required with regard to the grid works and I adopt the dicta of Haughton J. in his judgment in Sweetman v. An Bord Pleanála & Ors. in that regard.

However, as the grid works are part of an overall project, and an EIA is required for the overall project, an environmental assessment must be carried out of the entire project, and, therefore, no part of the project, and

ipso facto no individual part treated as a standalone element, can be exempt from planning. This emerges from the European jurisprudence . . .'

The judgement further states:

'As a matter of European law the assessment of whether the grid connection works can be treated as exempted development is one that must be considered in the context of a reading that best achieved the aims and objectives of the EIA Directive. I consider that on account of the fact that the grid works cannot be lawfully separated from the project as a whole, that to treat the grid works as exempt fails to give effect to this principle'.

I conclude that, having considered the available information, including the judgements of the High Court in *O'Grianna v. An Bord Pleanála* and *Patrick Daly v. Kilronan Wind Farm Limited* and, by order, *Derrysallagh Wind Farm Limited*, in order to give proper effect to the requirements of the EIA Directive in this instance, given that Dromdeeveen Wind Farm was previously subject to EIA and as the relevant planning application made no provision for an EIA of the subject grid connection / cabling works, the works relating to this section of the referrals constitute development which necessitates EIA or environmental assessment. This is premised upon the determination in *Patrick Daly v. Kilronan Wind Farm Limited* "*that the grid works cannot be lawfully separated from the project as a whole, that to treat the grid works as exempt fails to give effect to this principle*". Therefore, they cannot be considered to comprise exempted development given the provisions of section 4(4) of the Planning and Development Act.

12.0 CONCLUSION AND RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to whether:

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

is or is not development and is or is not exempted development:

AND WHEREAS the said questions were referred to An Bord Pleanála by Limerick City & County Council on the 14th day of January, 2021 and by Patrick Cremins on the 19th day of January, 2021:

AND WHEREAS An Bord Pleanála, in considering these referrals, had particular regard to:

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

(d) the planning history of the site, in particular Planning Permissions PL 13.240910, 04/2722, and 17/338, the declaration of Limerick County Council under section 5 of the Planning and Development Act relating to Planning Authority Reference EC 16/59, and the decision of An Bord Pleanála relating to ABP-308071-20, and

(i) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the laying of an underground electricity cable under lands constitutes 'development' for the purposes of the Planning and Development Act, and
- (b) the laying of underground cables from Mauricetown Wind Farm to the substation at Dromdeeveen for grid connection comes within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,
- (c) the laying of the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation was subject to planning permission under P.A. Ref. 17/338,
- (d) The laying of the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border comes within the scope of Class 26, Part 1 of Schedule 2 of the Planning and Development Regulations, as amended,
- (e) The provision of the said underground electricity cable grid connection and associated works relating to the connection from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation would contravene condition number 17 of planning register reference number 04/2722 and

- would, therefore, come within the restrictions on exemption set out in article 9(1)(a)(i) of the Planning and Development Regulations, and
- (f) The provision of the said underground electricity cable grid connection and associated works relating to the connection from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation would come within the scope of section 4(4) of the Planning and Development Act 2000, as amended, in that it requires an appropriate assessment and an Environmental Impact Assessment:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that

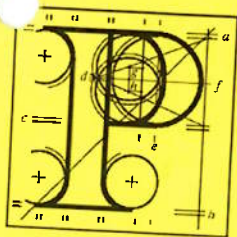
- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick are development and are exempted development,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River are development and are exempted development, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River are development and are not exempted development:



Kevin Moore

Senior Planning Inspector

2nd September, 2022



An
Bord
Pleanála

Board Direction
BD-011153-22
ABP-309283-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 28/04/2022.

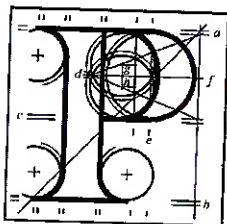
The Board decided to defer this case for consideration at a further Board meeting.

Board Member:

Terry Ó Niadh

Date: 25/08/2022





An
Bord
Pleanála

Inspector's Report ABP-309283-21

Question

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 38kV substation (Co. Limerick) to the electricity cable grid connection which runs from the Dromdeeven Wind Farm and the Glenlara 110kV substation is or is not development and is or is not exempted development.

Planning Authority

Limerick City & County Council

Planning Authority Ref.

EC/60

Referral

Referred by

Patrick Cremins

Date of Inspection

13th July, 2021

Inspector

Kevin Moore

1.0 Introduction

- 1.1 On 19th January 2021, Patrick Cremins referred a question to the Board in accordance with section 5(3)(b) of the Planning and Development Act 2000 (as amended) after no declaration was made by Limerick City & County Council as to whether specified underground electricity cable grid connections and associated works constitute development that is or is not exempted development.

2.0 Site Location / Description

- 2.1 The route of the underground cable runs from Mauricetown Wind Farm in south County Limerick in a westward direction and then southwards along the edge of local roads. It then enters Dromdeeveen Wind Farm north of the county border with County Cork, the location in which Tullylease 38kV substation is sited, and continues southwards through the wind farm lands and south-westwards through adjoining lands in the townland of Rowls Langford North before the routing once again follows local roads in a southwards and south-westwards direction. The underground cable is then routed south-eastwards along the edge of the R576 regional road and then westwards for a short section along edge of the R578. The route then traverses lands to the south of the regional road as far as Glenlara 110kV substation.

3.0 The Question

- 3.1 The question before the Board is:

Whether the following is or is not development and is or is not exempted development:

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick,

- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

4.0 Submission by Patrick Cremins

- 4.1 Patrick Cremins submits that the underground cable connection works come within the scope of sections 2(1), 3(1), 4(4), 177U, and 182A of the Planning and Development Act and Articles 3, 9(1)(a)(i) of the Planning and Development Regulations. It is further submitted that they do not come within the scope of sections 172(1) of the Act and Article 6(1) and Class 26 of Part 1 of Schedule 2 of the Regulations. It is submitted that the grid connections and associated works constitute development and are not exempted development.
- 4.2. The referral to the Board included the section 5 application letter to Limerick City & County Council, the completed section 5 application form, and a section 5 Declaration application document.

5.0 Responses to the Referral

5.1. Limerick City & County Council

The planning authority submitted that the referral is a duplicate of ABP-309231-20 (P.A. Ref. EC60/20) and that all information had been submitted on that referral.

5.2. Reirk Energy Limited

The following is submitted;

- Regarding whether the provision of:
 - (a) the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substation in County Limerick is or is not development and is or is not exempted development, and
 - (b) the underground electricity cable grid connections and associated works from the Tullylease 38kV substation to the electricity cable grid connection which runs from the Dromdeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork, as far as the County border at Glashawee River is or is not development and is or is not exempted development,

these works are not a matter for Reirk Energy Limited.

- The underground electricity cable connecting the Dromdeveen 38kV substation to the Glenlara 110kV substation has been in situ and energised since 2011. It is an ESB Networks asset and is an integral part of the ESB distribution network.
- These underground works were classed as exempted development under Class 26 Schedule 2 Part 1 of the Planning and Development Regulations. The works were carried out in consultation with Limerick County Council as part of the planning compliance for Planning Permission 04/2722.
- Condition 17 of Planning Permission 04/2722 related to a 'transmission line'. Reirk Energy Limited confirmed to Limerick County Council by letter of 23rd December 2009 that a transmission line is not being used and that an underground 38kV line had been agreed with ESB Networks. As a transmission line was not being used, the requirement in Condition 17 was

no longer relevant as the works were exempted in accordance with Class 26.

- Limerick County Council requested Reirk Energy Limited to provide them with drawings of the underground cable route. A compliance submission was made to the Council dated 22nd September 2010 and included a drawing detailing the route of the underground cable.

5.2. Mauricetown Wind Farm

The following is submitted:

- Regarding the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick:
 - The matter was dealt with in a decision from 31st March 2021 by An Bord Pleanála under ABP-308071-20 with a decision that the development in question is development and is exempted development.
 - The existing section 5 Declaration cannot be the subject of a further declaration at any variance to the existing declaration when the underlying facts and circumstances remain as they were at the time the original declaration was made. Reference is made to the High Court decision *Narconon Trust v An Bord Pleanála (2000) IEHC 25*.
 - The Board does not have jurisdiction to determine this appeal, given the absence of any change in relevant facts or planning circumstances.
- Regarding the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River:

- The matter of the cable works associated with the connection of the Tullylease 38kV switching station to the existing distribution network is included within Planning Permission 17/338 issued by Limerick City and County Council in 2017.
- Regarding the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River:
 - The matter of the 38kV cable that forms part of the pre-existing electricity distribution network is not a matter related to Mauricetown Wind Farm. It is the understanding of Mauricetown Wind Farm that the cable that is referred to has formed a part of the electricity distribution network and has been in continuous operation since 2011.
- The 38kV cable from the Tullylease 38kV substation to the Glenlara 110kV substation had formed part of the electricity distribution network since 2011.
- Reference is made to texts derived from the Environmental Impact Statement associated with P.A. Ref. 12/379 (ABP Ref. PL 13.240910). It is submitted that:
 - It is clear and unambiguous that planning consent had been put in place for any elements of the connection works that require planning permission.
 - The notional grid connection route assessed and recorded in the EIS is the constructed grid connection route.
 - None of the conditions attached to Mauricetown Wind Farm permission require planning permission to be obtained for grid connection.
 - The EIS stated that where permission was required it would be applied for. It did not state that planning permission was required and would be

sought. The Board did not impose an express planning condition requiring planning permission to be obtained for grid connection.

- Mauricetown Wind Farm and its grid connection to Tullylease substation is entirely distinguishable from the precedents sought by the referrer where relevant wind farm permissions required planning permission to be obtained for grid connections by way of express planning condition.

5.3. ESB Networks

ESB Networks submitted:

- Two of the three sections of grid connections the subject of the referral, while operated by ESB as part of the distribution system, were developed by Mauricetown Wind Farm and are currently in their ownership. These relate to the 38kV connection from Mauricetown Wind Farm to Tullylease substation and the 38kV underground connections of Tullylease substation to the Dromdeeveen-Glenlara 38kV underground cable.
- Regarding each section of the grid connection, the following is submitted:
 - The underground connection and associated works from Mauricetown Wind Farm to Tullylease substation was developed by Mauricetown Wind Farm and is not an ESB asset. ESB are aware of the Board's recent decision under ABP-308071-20.
 - The underground connections and associated works from Tullylease substation to the grid connection which runs from Dromdeeveen Wind Farm to Glenlara 38kV underground cable were developed by Mauricetown Wind Farm and are not an ESB asset. The connection of these works was included in Mauricetown Wind Farm's grant of permission under P.A. Ref. 17/338.

- Regarding the underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork, Dromdeeven Wind Farm was granted permission under Planning Ref. 04/2722. Condition 17 is referenced. ESB was granted permissions for the associated overhead transmission line connecting the wind farm to Glenlara 110kV substation (ABP Refs. PL 04.218821 and PL 04.218815). Subsequent to these grants of permission, it was decided on technical and commercial grounds that the transmission line connection would not be constructed and that a Medium Voltage 38kV underground cable would connect the wind farm to the substation. ESB carried out the connection works in 2010 and 2011 under its statutory authority and in accordance with the exemption set out in Class 26 of Part 1 Schedule 2 of the Planning and Development Regulations. The construction of the circuit was completed prior to the commencement of section 17(1)(b) of the Environment (Miscellaneous Provisions) Act 2011 and prior to the High Court decision in *O’Grianna v An Bord Pleanála* (2014) IEHC 632 in December 2014. The planning authority was advised by the Dromadeeven Wind Farm developer of the revised connection method and was furnished with the route. ESB has operated the cable since its commissioning in 2011.

6.0 Statutory Provisions

6.1 Planning and Development Act 2000 (as amended)

PART I – Preliminary and General

Section 2(1)

In this Act, except where the context otherwise requires—

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4

4. (2) (a) 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

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described) ...

(4) Notwithstanding *paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2)*, development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 5

5.—(1) If any 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, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(2) (a) Subject to paragraphs (b) and (ba), a planning authority shall issue the 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 under *subsection (1)*, and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request ...

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under *subsection (2)(a)* may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

PART XAB – Appropriate Assessment

Section 177U

(9) In deciding upon a declaration or a referral under *section 5* of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

6.2. **Planning and Development Regulations, 2001 (as amended)**

PART 2 - Exempted Development

Article 6(1)

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

Article 9(1)

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

- (a) if the carrying out of such development would – ...
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, ...
 - (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, ...
 - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
 - (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 ...

- (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

Schedule 2

Part 1 Exempted Development – General

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| <i>Development by statutory undertakers</i> 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. | |

7.0. Case Law

- 7.1. I note the judgement in relation to *Narconon Trust v An Bord Pleanála* (2019/16/JR). In this judicial review it was determined that the developer had acted on the decision of an unchallenged section 5 determination and an Order of certiorari was granted. The Court of Appeal upheld this judgement.

8.0 Planning History

- 8.1 I note the following planning history:

ABP Ref. PL 13.240910 (P.A. Ref. 12/379)

A 10 year planning permission was granted by the Board for retention and completion of the construction, operation and decommissioning of up to six number wind turbine generators, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, in Ballagh, County Limerick.

EC16/59 Section 5 Referral

Limerick County Council determined that the laying of an underground MV ducting and cabling linking existing and proposed substations at Glenduff, Dromdeeveen and Mountplummer Co. Limerick is development and is exempted development.

ABP-308071-20

The Board determined that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection is development and is exempted development. The Board concluded that the works specifically come within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended, and, therefore, constitute exempted development.

P.A. Ref. 04/2722

Permission was granted by Limerick County Council for increased dimensions for 7 turbines and an additional 11 turbines, anemometer mast and access tracks relating to Dromdeeveen Wind Farm.

Condition 17 stated:

"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."*

I note a letter dated 22nd September 2010 was submitted to Limerick County Council relating to the planning conditions imposed by the Council and how Reirk Energy Ltd. intended to satisfy the conditions. In relation to Condition 17, the following was submitted:

"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 the connection to the National Grid. An underground 38kV line has been agreed with ESB Networks from this 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."

P.A. Ref. 17/338

Planning permission was granted by Limerick County Council for 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 at Dromdeeveen, Ballagh, County Limerick. The substation is located within the Dromdeeveen Wind Farm site area and the drawings refer to the development as an ESN switching station.

PL 04.218821 (P.A. Ref. 06/7096)

Permission granted by the Board for erection of 7.4km of 38kV overhead line in the townlands of Cummerduff, Commons North, Tooreen Donnell, Meentinny East, Meenkearagh, Rowls, Shaddock, Rowls Allen, Cummary Connell, Rowls Langford South, Rowls Langford North and Banane, County Cork. This relates to an overhead line from Dromdeeveen Wind Farm to Cummerduff townland and was to connect to a further proposed section of 110kV transmission line leading from Cummerduff to the existing Glenlara 110kV station.

9.0 Assessment

9.1 The Question of Development

- 9.1.1 The question before the Board relates to the laying of an underground electricity cable under lands. Such works would include acts of construction and excavation in accordance with the definition of 'works' as set out in section 2 of the Planning and Development Act. The carrying out of these works would occur on, in, and over land and would, therefore, constitute 'development' in accordance with the meaning of 'development' as set out in section 3 of the Planning and Development Act.

9.2 The Question of Exempted Development

9.2.1 *The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick*

I first note the section 5 Declaration by Limerick County Council under Ref. No. EC16/59. This related to the laying of an underground MV ducting and cabling linking existing and proposed substations at Glenduff, Dromdeeveen and Mountplummer Co. Limerick. The application included an Appropriate Assessment Screening Report. It was determined by the planning authority that this constituted development which was exempted development. It was concluded that the proposed works came within the scope of Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations. This Declaration went unchallenged and the underground ducting and cabling was laid. I then acknowledge the relatively recent decision of the Board under Ref. ABP-308071-20. The Board determined that the laying of underground cables in an area designated as a Special Protection Area, from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, County Limerick to the substation at Dromdeeveen for grid connection is development and is exempted development. It was concluded that the works came within the scope of Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001.

The Board will note that this section of the grid connection route relates to the first section of the connection the subject of the referral now before the Board, namely the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the vicinity of the Tullylease 38kV substation. I do not propose to revisit the issue of whether this does or does not constitute exempted development. The Board's decision is clear on this. There are no material changes that have arisen since this previous decision. It is

reasonable, therefore, to conclude that this section of the grid connection and the associated works constitute exempted development.

I note the judgement in relation to *Narconon Trust v An Bord Pleanála* (2019/16/JR) where it was determined that the developer had acted on the decision of an unchallenged section 5 determination and an Order of certiorari was granted. I repeat that this is a section of grid connection which has previously been considered by the planning authority under section 5 of the Planning and Development Act and had been acted on following that decision. It was further considered by the Board. Revisiting this section of route, where circumstances have not altered in any material manner and where the routing remains the same, is entirely unreasonable.

9.2.2. *The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation*

I note Planning Permission 17/338 granted by Limerick County Council for an electrical switching station compound at Dromdeeveen, Ballagh, County Limerick. This substation is understood to be Tullylease switching station sited within the Dromdeeveen Wind Farm site area and to be an ESB Networks switching station. I note that the Patrick Cremins submission refers to this as the Tullylease 38kV substation. From the details provided in the planning application it is apparent that the proposed development included underground cable works, including those connecting to existing underground 38kV export cable within the wind farm lands. This clearly relates to the laying of underground cable within the Dromadeeveen Wind Farm site. This application was subject to a screening for appropriate assessment by the planning authority and the underground cables the subject of this planning application formed part of the grant of planning permission. The applicant's response to a request for further information clarified that the proposed development was not a substation but was a switching station

required to facilitate the connection of a separate wind farm substation to be located in the townland of Glenduff to the national grid.

The applicant's AA Screening description of the project clarified that the proposal included the installation of underground grid connection cables to connect substations in the townlands of Dromdeeeveen and Glenduff to the national grid through an existing on-site underground cable. This screening concluded that there were not likely to be any significant effects on the Natura 2000 network of sites and appropriate assessment was not required. The planning authority granted permission for the proposed development and did not require the submission of a Natura Impact Statement. This switching station and associated underground cabling has been subject to planning permission and the issues relating to appropriate assessment were considered accordingly by the planning authority.

It is apparent that the laying of underground cables associated with the switching station in the vicinity of Dromadeeeveen wind farm site have previously been subject to planning permission and consideration was given to effects on Natura 2000 sites.

9.2.3. *The underground electricity cable grid connections and associated works from the Dromdeeeveen Wind Farm 38kV substation to the Glenlara 110kV substation.*

I first note the submission from Reirk Energy Limited. Therein, it is submitted that the underground electricity cable grid connection from the Dromdeeeveen Wind Farm 38kV substation to the Glenlara 110kV substation has been in situ and energized since 2011 and is an ESB Networks asset. It is further submitted that the works were classed as exempted development under Class 26 Schedule 2 Part 1 of the Planning and Development Regulations and the works were carried

out in consultation with Limerick County Council as part of the planning compliance for Planning Permission 04/2722. Reirk Energy Limited notes Condition 17 of that permission prohibiting development until permission has been granted for a transmission line onto the national grid. I note that it submitted a letter, dated 23rd December 2009, to the Council confirming that a transmission line is not being used for connection to the national grid. It was further submitted to the Council that an underground 38kV line had been agreed with ESB Networks. Reirk Energy Limited submits that, as a transmission line was not being used, the requirement contained in Condition 17 was no longer relevant as the works were exempted development in accordance with Class 26. It is further submitted that the Council requested Reirk Energy Limited to provide drawings of the underground cable route and that a planning compliance submission, dated 22nd September 2010, included a drawing detailing the route of the underground cable.

I note that the submission from ESB confirms the submission from Reirk Energy Limited. Furthermore, it is clarified that ESB carried out the connection works in 2010 and 2011 under its statutory authority and in accordance with the exemption set out in Class 26 of Part 1 Schedule 2 of the Planning and Development Regulations. Furthermore, it is noted that the construction of the circuit was completed prior to the commencement of section 17(1)(b) of the Environment (Miscellaneous Provisions) Act 2011 and prior to the High Court decision in *O'Grianna v An Bord Pleanála* (2014) IEHC 632 in December 2014.

I have no record of any determination from the planning authority that the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation constituted exempted development under Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations. I acknowledge that from the Glashawee River to Glenlara substation the route would lie within County Cork and not within the administrative area of Limerick City & County. I further acknowledge the

range of planning compliance submissions to the planning authority following the issuing of Planning Permission 04/2722 and the account of ESB of how the grid connection was developed. It is apparent that the planning authority requested a drawing detailing the route of the underground cable after Reirk Energy Limited set out its proposals in its letter dated 23rd December, 2009 and Reirk Energy Limited, in its submission dated 22nd September 2010, met its obligations to provide a drawing detailing the route of the underground cable. It is apparent the grid connection is in situ, has been energized since 2011, and is operated by ESB.

I submit that it appears that Limerick County Council requested the routing of the proposed underground cable and did not oppose the grid connection proposal. It is reasonable to determine, based on the submissions received by Limerick County Council from Reirk Energy Limited and the planning authority's requests and determinations, that the underground grid connection works were undertaken in good faith. I am not aware that this grid connection routing proposal was previously the subject of any challenge. Furthermore, it is apparent that the planning authority was clearly aware of the proposals for the grid connection and accepted that a transmission line was not being provided. It also knew that an underground line had been agreed with ESB Networks. It solely requested routing details in response to the applicant's submission that it was not providing a transmission line. I submit that Reirk Energy Limited could reasonably have understood from the planning authority that its proposals within County Limerick were acceptable and these works were carried out accordingly. The planning authority, in submitting the section 5 referral to the Board, has not provided any details to contest this issue.

Having regard to the above, I conclude that Reirk Energy Limited, in addressing the conditions attached with Planning Permission 04/2722, did so with regard to Condition 17 by way of its submission of 23rd December 2009 and that it met with the planning authority compliance requirements by submitting a drawing showing

the routing and explaining how it was providing a grid connection. I, therefore, consider that it has been determined that this component of the wind farm development within County Limerick was understood to have been met in accordance with the requirements set out in Planning Permission 04/2722.

10.0 CONCLUSION AND RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to whether:

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River.

is or is not development and is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Limerick City & County Council on the 14th day of January, 2021:

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- (a) section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) section 3(1) of the Planning and Development Act, 2000,
- (c) section 4(2) of the Planning and Development Act, 2000,
- (d) section 4(4) of the Planning and Development Act, 2000, as amended,
- (e) section 5(3)(a) of the Planning and Development Act, 2000, as amended,
- (f) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (h) the planning history of the site, in particular Planning Permissions PL 13.240910, 04/2722, and 17/338, the declaration of Limerick County Council under section 5 of the Planning and Development Act relating to Planning Authority Reference EC 16/59 and the decision of An Bord Pleanála relating to ABP-308071-20, and
- (i) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the laying of an underground electricity cable under lands constitutes 'development' for the purposes of the Planning and Development Act, and
- (b) the laying of underground cables from Mauricetown Wind Farm to the substation at Dromdeeveen for grid connection comes within the scope of


Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,

- (c) the laying of the underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation was subject to planning permission under P.A. Ref. 17/338, and
- (d) The laying of the underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border was carried out in compliance with the requirements of Limerick County Council in accordance with Planning Permission 04/2722:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that

- (1) The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV substation to the Tullylease 38kV substations in County Limerick,
- (2) The underground electricity cable grid connections and associated works from Tullylease 38kV substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at Glashawee River, and
- (3) The underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV substation in County Cork as far as the Limerick County / Cork County border at the Glashawee River

is development and is exempted development:



Kevin Moore

Senior Planning Inspector

18th January, 2022

Handwritten marks or scribbles in the top right corner.

Mark Lawlor

SK
G.D

From: Charles Hazelwood <charles.hazelwood@aip-am.co.uk>
Sent: Tuesday 15 June 2021 10:30
To: Appeals2
Cc: Gavin Jones; Julian Skinner; Adam Delaney; Dmitry Sarin
Subject: Mauricetown Windfarm
Attachments: ABP 30928321 Mauricetown EC 60 20.pdf; ~~ABP 30928321 Mauricetown EC60 20.pdf~~; ~~ABP 30928321 Mauricetown D285 20.pdf~~

I attach our submissions re Mauricetown Windfarm
Regards

Charles Hazelwood
Director
Mauricetown Windfarm Limited

Charles Hazelwood, Partner
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Mauricetown
Wind Farm

Ms Siorcha Skelly
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

8 June 2021

Our ref: MAUR
Your ref: ABP-309283-21
LCCC ref: EC60/20

Re: Section 5 Declaration whether the underground electricity cable grid connections is or is not development and is or is not exempted development. Mauricetown Wind Farm, Glenduff, Darrery, Coolnanoglagh, Ballagh, Co. Limerick

Dear Ms Skelly,

I acknowledge receipt of your correspondence dated 4 June 2021 and note that Mauricetown Wind Farm Limited (Mauricetown) wishes to make a submission to An Bord Pleanála in relation to the above matter.

The submission by The Planning Partnership on behalf of Mr Patrick Cremins to An Bord Pleanála sets out the following query:

Whether the provision of:

- 1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;*
- 2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County/Cork County border at Glashawee River; and*
- 3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110 kV Substation in County Cork as far as the Limerick County/Cork County border at the Glashawee River*

Is or is not development and is or is not exempted development

Given the lengthy and repetitive nature of the appeal the multitude of questions raised have not been addressed individually. This should not be taken as agreement or acceptance of any point. For the avoidance of doubt, every point is wholly refuted. We address these points in turn as follows:

1. The underground electricity cable grid connections and associated works from the

Mauricetown Wind Farm Limited | Directors | C Hazelwood | J Skinner | P Cross | B Gavin
1st Floor | 118 Lower Baggot Street | Dublin D02 AW89 | Ireland
Company registered in Ireland | No. 492860 | Email | info@highfieldenergy.com

Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;

This precise matter has been dealt with by An Bord Pleanála, case reference RL91.308071 and a decision that the development in question is development and is exempted development was made on 31 March 2021.

We are advised that, consistent with recent case law on this matter, the existing Section 5 Declaration cannot be the subject of a further declaration at any variance to the existing declaration when the underlying facts and circumstances remain as they were at the time the original declaration was made.

More specifically, we refer to the High Court decision in *Narconon Trust v An Bord Pleanála* [2020] IEHC 25 (*Narconon*) in which the High Court held that, by seeking section 5 declarations on a question which had already been the subject of a separate prior section 5 declaration, the relevant parties were "questioning the validity" of the decision made by the relevant planning authority in the prior section 5 declaration.

We are advised that this judgment is clear authority for the position that the effect of section 50 of the Planning and Development Acts 2000 (as amended) (the Planning Acts) is such that, when performing its functions in accordance with Section 5, An Bord Pleanála lacks the jurisdiction to decide a question if that question is, in fact, an attempt to challenge the validity of a prior decision by a local authority made by it in the performance of a function under the Planning Acts, other than in accordance with the mandatory requirements of section 50.

As such, subject to our advice, it is our respectful submission that An Bord Pleanála does not have jurisdiction to determine this appeal, given the absence of any change in relevant facts or planning circumstances.

2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County/Cork County border at Glashawee River;

The matter of the cable works associated with the connection of the Tullylease 38 kV switching station to the existing electricity distribution network is included within planning consent 17/338 issued by Limerick City and County Council (LCCC) on 31 August 2017.

3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110 kV Substation in County Cork as far as the Limerick County/Cork County border at the Glashawee River

The matter of the 38 kV cable that forms part of the pre-existing electricity distribution network is not a matter related to Mauricetown Wind Farm. It is the understanding of Mauricetown Wind Farm that the cable that is referred to has formed a part of the electricity distribution network and been in continuous operation since 2011.

In addition to the above we note the following:

- Section 3.0 paragraph k of the referral dated 18 January 2021 (and elsewhere in the submission) states that the underground electricity cable from the Tullylease 38 kV Substation to the Glenlara 110 kV Substation was constructed after 2017, this is not correct. It is the understanding of Mauricetown Wind Farm that this 38 kV cable has formed part of the electricity distribution network since 2011 and was constructed before that time.

- Section 1.3 paragraph 1. and 2. of the Section 5 Declaration application dated 13 November 2020 (and elsewhere in the submission) reproduce selected text transposed from the Environmental Impact Statement (EIS) and EIS Non-technical Summary submitted with the planning application for Mauricetown Wind Farm, LCCC Ref: 12/379, ABP Ref: PL13.240910. The full text of each of the paragraphs referenced is reproduced below:

4.3 *The principal components of the wind farm comprise the following:*

- up to 6 wind turbine generators;
- crane hardstandings;
- permanent access tracks to gain access to the site and between the turbines;
- an 85m meteorological mast;
- a temporary construction compound;
- buried electrical and fibre optic cabling;
- 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
- a combined substation, site office and store.

2.9.4 *The electricity will be exported from the sub-station to the electricity grid subject to the technical details specified by the connection offer that will be issued by ESB Networks. These 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 notional grid connection route are covered in this EIS, to meet the requirements of the ELA 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.*

It is clear and unambiguous, planning consent has been put in place for any elements of the connection works that require planning permission.

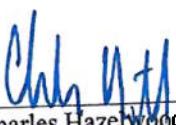
The notional grid connection route assessed and recorded in the EIS is the constructed grid connection route.

There are 25 conditions attached to the Mauricetown Wind Farm permission. None require planning permission to be obtained for grid connection.

The EIS submitted in respect of the Mauricetown Wind Farm permission stated that where permission was required it would be applied for. It did not state that planning permission was required and would be sought. As per the Lannigan Case, An Bord Pleanála could have imposed an express planning condition requiring planning permission to be obtained for grid connection. It did not, however and therefore no such obligation exists.

Therefore Mauricetown Wind Farm, and its grid connection to Tullylease substation, is entirely distinguishable from the precedents cited by the applicant where the relevant wind farm permissions required planning permission to be obtained for grid connections, by way of express planning condition (including, for example, the planning permission the subject of An Bord Pleanála's section 5 declaration Reg Ref. RL3531 cited).

Yours sincerely,


Charles Hazelwood
Director, Mauricetown Wind Farm Limited

Aisling Reilly

From: O'Connell. Andrew (ESB Networks) <andrew.oconnell2@esb.ie>
Sent: Thursday 3 June 2021 17:05
To: Aisling Reilly
Subject: FW: ESB submission to ABP Case Number 309283-21 – Section 5 Referral Limerick
Attachments: ESB Submission Section 5 Limerick_ABP-309283-21.pdf; Diagram of Underground 38kV cables at Mauricetown and Dromdeeveen.pdf

From: O'Connell. Andrew (ESB Networks)
Sent: Thursday 3 June 2021 16:45
To: 'bord@pleanala.ie' <bord@pleanala.ie>
Cc: Allen. Brendan (Engineering and Major Projects) <brendan.allen@esb.ie>; Hanafin. Kevin (ESB Networks) <Kevin.Hanafin@esb.ie>; Hanna. Greg (ESB Networks) <greg.hanna@esb.ie>
Subject: ESB submission to ABP Case Number 309283-21 – Section 5 Referral Limerick

Dear Sir/Madam,

Please find attached ESB's response to ABP case 309283-21

If you can please confirm receipt of the two attachments (Letter and diagram) for our files also.

If you have any queries, please feel free to contact me on 087-6504370 or by email.

Yours sincerely,

Andrew

Andrew O'Connell | Delivery Specialist, Renewables and Major Load | Project Delivery | ESB Networks DAC | Desk : (01) 8582242 | Mob: +353 87 6504370 | andrew.oconnell2@esb.ie | www.esbnetworks.ie

Andrew O'Connell | Delivery Specialist, Renewables and Major Load | Project Delivery | ESB Networks DAC | Desk : (01) 8582242 | Mob: +353 87 6504370 | andrew.oconnell2@esb.ie | www.esbnetworks.ie

An timpeallacht? - Smaoinigh air sula bpriontáileann tú an r-phost seo.
Please consider the Environment before printing this email.

* * * * *

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Is tuairimí nó dearcthaí an údair amháin aon tuairimí nó dearcthaí ann, agus ní gá gurb ionann iad agus tuairimí nó dearcthaí ESB.

Má bhfuair tú an ríomhphost seo trí earráid, ar mhiste leat é sin a chur in iúl don seoltóir.

Scanann ESB ríomhphoist agus ceangaltáin le haghaidh víreas, ach ní ráthaíonn sé go bhfuil ceachtar díobh saor ó

víreas agus ní glacann dliteanas ar bith as aon damáiste de dhroim víreas.
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NETWORKS

Gréasáin BSL CGA
Rialachán Tráchtála agus Giniúint In-athnuaíte
Bóthar Baile na Lobhar
Carraig an tSionnaig, D18 XN80, Éire

esbnetworks.ie

ESB Networks DAC
Commercial & Renewable Regulation
Leopardstown Road
Foxrock, D18 XN80, Ireland

3rd June 2021

Re: Section 5 Declaration whether the underground electricity grid connections is or is not development and is or is not exempted development. Mauricetown Windfarm, Glenduff, Darrerey and Coolnanoglash, Ballagh, Co. Limerick.

Case Number ABP-309283-21

Dear Sir/Madam,

I refer to your recent correspondence to ESB on the above matter.

ESB wish to make the following observations with respect to the above case.

ESB wish to advise that two of the three sections of grid connections which are the subject of this Section 5 declaration referral, while operated by ESB as part of the Distribution system, were developed by Mauricetown Windfarm and currently are in their ownership.

These two sections of grid connection are

- 38kV underground cable connection from Mauricetown Windfarm to Tullylease Substation
- 38kV underground grid connections of Tullylease Substation to the Dromdeeveen-Glenlara 38kV underground cable

ESB can confirm to the Board that the Dromdeeveen - Glenlara 38kV underground cable is owned and operated by ESB. Please see diagram enclosed with this letter which shows the cables and lines in question.

The Board has been requested to determine if:

- 1) **The underground electricity cable connections and associated works from the Mauricetown Windfarm to the Tullylease 38kV station in county Limerick is or is not development and is or is not exempted development.**

ESB Response:

This grid connection was developed by Mauricetown Windfarm and is not an ESB asset.

ESB are aware of the Board's recent decision, reference ABP-308071-20 which determined the grid connection as development and is exempted development.



- 2) The underground electricity cable connections and associated works from the Tullylease 38kV substation to the electricity cable grid connection which runs from the Dromdeeveen Windfarm 38kV substation to the Glenlara 110kV substation in county Cork, as far as the Limerick County/Cork County border at the Glashawee river is or is not development, and is or is not exempted development.

ESB Response:

These grid connection works were developed by Mauricetown Windfarm and are not ESB assets.

The connection of these works to the ESB Dromdeeveen-Glenlara 38kV underground cable were included in Mauricetown Windfarm's planning grant for the works. Limerick County Council reference 17/388.

- 3) The underground electricity cable connections and associated works from the Dromdeeveen Windfarm 38kV substation to the Glenlara 110kV substation in county Cork, as far as the Limerick County/Cork County border at the Glashawee river is or is not development, and is or is not exempted development.

ESB Response:

Dromdeeveen Windfarm's was granted planning by Limerick County Council under planning reference 04/2722.

Condition 17 of the associated grant of planning stated *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.*

ESB applied for and were granted planning permission for the associated overhead transmission line connecting Dromdeeveen Windfarm to ESB Glenlara 110kV substation by the Board in cases PL04.218821 & PL04.218815. It should be noted that PL04.218821 was a 38kV overhead line starting ~750 metres from Dromdeeveen Windfarm and connecting to the 110kV Transmission line proposed in PL04.218815. The Board's inspector noted that the 750m section of 38kV grid connection to Dromdeeveen Windfarm was to be underground and exempted development.

Subsequent to these grants of planning, it was decided on technical and commercial grounds that the transmission line connection would not be constructed and that a Medium Voltage 38kV underground cable rather than a transmission line would connect Dromdeeveen Windfarm to ESB Glenlara 110kV substation.

Section 182A(9) of the Planning and Development Act 2000, as amended defines "transmission" as-

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

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

ESB carried out the connection works in 2010 and 2011 under its statutory authority and in accordance with the exemption set out in Class 26 Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended which states as follows:

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.

Construction of the circuit was completed prior to the commencement of section 17(1)(b) of the Environment (Miscellaneous Provisions) Act 2011 in September 2011, (which introduced limitations in relation to exempted development on projects which were subject to an environmental impact assessment or an appropriate assessment), and also prior to the High Court decision in O'Grianna v An Bord Pleanála [2014] IEHC 632 in December 2014.

ESB can confirm that the planning authority were advised by the Dromdeeven Windfarm developer of the revised connection method and were also furnished with the 38kV underground cable route as requested.

ESB has operated the underground cable safely and securely since its commissioning in 2011.

Yours sincerely,

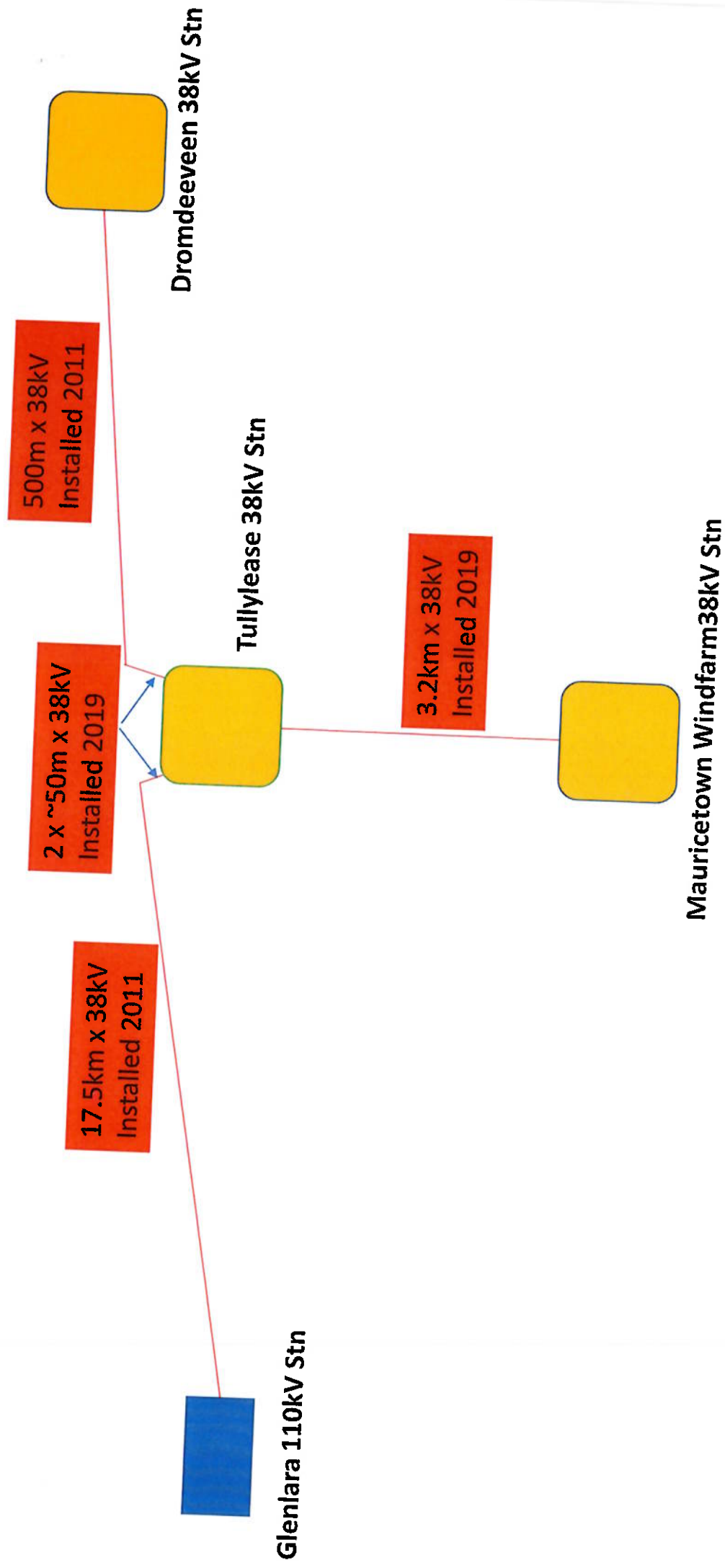
Andrew O'Connell

Email: andrew.oconnell2@esb.ie

For and on behalf of ESB

Encl.

38kV Underground Cables at Mauricetown & Dromdeeveen



Lisa Quinn

From: Bord
Sent: Wednesday 5 May 2021 18:04
To: Appeals2
Subject: FW: ABP 309283-21, ABP 309231-21, ABP309223-21
Attachments: Submisison on ABP 309231-21.pdf; Submission on ABP - 309223-21.pdf; Submission on ABP 309283-21.pdf

From: Anne Foley <annefoley@turnkeydev.com>
Sent: Wednesday 5 May 2021 17:27
To: Bord <bord@pleanala.ie>
Subject: ABP 309283-21, ABP 309231-21, ABP309223-21

Dear Sirs,

Please see attaches Submissions on the above matters on behalf of Reirk Energy Limited.

Kind regards,

Anne Foley
021 2066906

Reirk Energy Limited

Lissarda Business Park, Lissarda, Co. Cork

Mary Ledwith
An Board Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Case Number: ABP-309283-21
Planning Authority Reference: EC60/20

5th May 2021

Re: Section 5 Declaration whether the underground electricity cable grid connections is or is not development and is or is not exempted development. Mauricetown Windfarm, Glenduff, Darrery, Coolnanoglagh, Ballagh, Co. Limerick

Dear Ms. Ledwith,

I refer to the above matter and to your letter dated the 8th April 2021 to Reirk Energy Limited.

Please see below our submissions on the points raised in the referral enclosed with your letter.

Whether the provision of:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kv Substation to the Tullylease 38Kv Substation in County Limerick is or is not development and is or is not exempted development.

Reirk Submission:

These works are not a matter for Reirk Energy Limited.

2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeveen Windfarm 38kV substation to the Glenlara 110kv Substation in County Cork, as far as the Limerick County/Cork County border at Glashawee River is or is not exempted development.

Reirk Submission:

Reirk Energy Limited, Lissarda Business Park, Lissarda, Co Cork, Ireland
Tel: +353 (0) 21-7336034 Email: info@enercoenergy.ie Reg. No. 377272

These works are not a matter for Reirk Energy Limited.

3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kv Substation to the Glenlara 110kv Substation in County Cork as far as the Limerick County/Cork County border at the Glashawee River is or is not development and is or is not exempted development.

Reirk Submission

The underground electricity cable connecting the Dromdeeveen 38kV Substation to the Glenlara 110kv Substation been in situ and energised since 2011. It is an ESB Networks asset and is an integral part of the ESB distribution network.

The underground cabling works were classed as exempted development under Class 26 Schedule 2 Part I of the Planning and Development Regulations 2001, as amended. The works were carried out in consultation with Limerick County Council as part of the planning compliance for planning permission 04/2722.

Planning condition 17 of planning permission 04/2722 provides as follows:

"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."

By letter dated the 23rd December 2009 Reirk Energy Limited confirmed to Limerick County Council that:

"a **transmission line is not being used** for connection to the National Grid. An underground 38kv line has been agreed with ESB Networks from the development".

As a **transmission line** was not being used, the planning requirement contained in Condition 17 of planning permission 04/2722 was no longer relevant as the works were exempted development in accordance with Class 26 Schedule 2 Part I of the Planning and Development Regulations 2001, as amended.

By letter dated the 28th January 2010 Limerick County Council requested that Reirk Energy Limited provide them with drawings of the underground cable route. Reirk Energy Limited's planning compliance submission to Limerick County Council dated 22nd September 2010 included a drawing detailing the route of the underground cable.

Yours sincerely,


MICHAEL MURNANE



Comhairle Cathrach
& Contae **Luimnigh**

Limerick City
& County Council

Seirbhísí Pleanála agus Comhshaoil,
Comhairle Cathrach agus Contae Luimnigh,
Tuar an Daill,
Luimneach

Planning and Environmental Services,
Limerick City and County Council,
Dooradoyle,
Limerick

EIRCODE V94 WV78

t: +353 (0) 61 556 000
f: +353 (0) 61 556 001

9th February, 2021.

Your Ref: ABP-309283-21
Our Ref: EC60/20

Mary Ledwith,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

| | |
|------------------|-------------------|
| AN BORD PLEANÁLA | |
| LDG- | _____ |
| ABP- | _____ |
| 10 FEB 2021 | |
| Fee: € | _____ |
| Time: | _____ <i>post</i> |

Re: Whether the underground electricity cable grid connections is or is not development and is or is not exempted development at Mauricetown Wind Farm, Glenduff, Darrery and Coolnanoglash, Ballagh, Co. Limerick.

Dear Madam,

I refer to your letter dated 26th January, 2021 in respect of the above referral.

This referral is a duplicate of EC60/20 Your Ref: ABP-309231-21 and all the information has been submitted on this referral.

Yours faithfully,

Veronica Ronan,
Planning and Environmental Services.

20

Report on application under Section 5 of the Planning and Development Act 2000 (as amended)

Reference no.

EC34/20

Name and Address of Applicant:

Liam Lenihan, Glenduff, Ashford, Ballagh, Co. Limerick.

Agent:

WHEREAS a question has arisen as to whether the laying underground of cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh to the substation at Dromdeeveen, Co. Limerick for grid connection purposes is or is not development and is or is not exempted development.

A 10 year planning permission for retention and completion for the construction, operation and decommissioning of up to six number wind turbine generator with a blade tip height of up to 132 metres (hub height of up to 85metres and rotor diameter of up to 93 metres) and crane hardstanding for each turbine, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, and in Ballagh, Co. Limerick. An Environmental Impact Statement (EIS) and Natura Impact Statement (NIS) have been submitted was granted by An Bord Pleanála in 2012.

The question the subject matter of this application is whether or not the laying of underground electrical cables along the side of the local road L-790982 from the windfarm to the Dromdeeveen substation is or is not development or is or is not exempt development.

The site map submitted with the application showed the site (circa 22.8h) of the proposed development outline in red.

The proposed grid connection (the subject of this application) from the substation in the windfarm to the substation in Dromdeeveen is outside the site outlined in the site layout map and is in place running through an SPA.

An EIS & NIS were submitted with the planning application and both of these deal with the grid connection, the planner's report dated 03rd July 2012 also refers to the grid connections.

Having examined the planning file and the relevant EIS, NIS and planner's report I am satisfied that the said grid connection formed part of the Planning application which was granted by An Bord Pleanála under reference 12/379 ABO reference PL 13.240910

I have considered this question and I have had regard particularly to –

(a) Planning permission reference 12/379 ABP reference PL13.240910

(b) Plans and particulars submitted with the application on 29th June and 13th July 2020.

RECOMMENDATIONS:

I therefore consider the said works to be development and to be permitted development under planning permission reference 12/349 ABP PL 13.240910.

Signed:

Michael O' Brien
Development Inspector.



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

AN BORD PLEANÁLA
LDG- 034184-21
ABP- _____
19 JAN 2021
Fee: € 220 Type: cheque
Time: _____ By: post

Monday, 18th January 2021
[By Registered Post]

Dear Sir/Madam

- Section 5 Referral -

RE: SECTION 5 REFERRAL TO AN BORD PLEANÁLA IN RELATION TO 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, AS FAR AS THE LIMERICK COUNTY BORDER WITH CORK COUNTY

Limerick City and County Council

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 the Limerick City and 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 Limerick City and Council on Wednesday, 18th November 2020, by Registered Post under An Post Ref. No.: LI 168149382 IE.

No *Acknowledging Receipt* of the above referenced Section 5 Declaration Application, irrespective of the Section 5 Application Fee cheque of €80.00 being presented for payment, or any other related correspondence have been received by The Planning Partnership, or Patrick Cremins, from Limerick City and County Council.

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 Limerick City and 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*.



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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 Limerick City and Council on Wednesday, 18th November 2020, by Registered Post under An Post Ref. No.: LI 168149382 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:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River;

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), having regard particularly to:

- (a) sections 2(1), 3(1), 4(4), 172(1) and 177U(9) 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*;

10

The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles. The second part of the paper is devoted to a discussion of the experimental results obtained in the study of the structure of the atom. It is shown that the experimental results are in good agreement with the theoretical predictions of quantum mechanics.

The third part of the paper is devoted to a discussion of the application of the theory of the structure of the atom to the study of the properties of matter. It is shown that the theory of the structure of the atom can be used to calculate the properties of matter, such as the density, the refractive index, and the specific heat. The fourth part of the paper is devoted to a discussion of the application of the theory of the structure of the atom to the study of the properties of the radiation. It is shown that the theory of the structure of the atom can be used to calculate the properties of the radiation, such as the intensity, the frequency, and the polarization.

- (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) recent precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18);
- (g) 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;
- (h) the judgement of the High Court in *O'Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632;
- (i) the judgement of the High Court in *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308;
- (j) the decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244; and
- (k) the documentation and details presented in this Application for a Section 5 Declaration from Limerick City and County Council.

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:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River;

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) 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);
- (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);
- (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);
- (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, as far as the Limerick County / Cork County border at the Glashawee River, 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) as the underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, and from the Tullylease 38 kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, 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) underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, 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 Limerick City and 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 connection works between the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, the said underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, and 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, as far as the Limerick County / Cork County border at the Glashawee River, 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 Limerick City and County Council Planning and
 - Environmental Services *Section 5 Application* Form.
- Copy of comprehensive *Section 5 Declaration Application* document, dated Friday, 13th November 2020, prepared by The Planning Partnership



Principal Planning Officer
Planning and Environmental Services
Limerick City and County Council
City and County Council Offices
Dooradoyle Road
Limerick
V94 WV78
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 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, AS FAR AS THE LIMERICK COUNTY BORDER WITH CORK COUNTY

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 Limerick City and County Council under Section 5 of the *Planning and Development Act 2000-2020*.

Nature of Development: Whether the provision of:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River;

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

| | | |
|---------------------------------|-----------------------------------------------------------------------------------------|-------------------------------------------------|
| Location of Development: | Mauricetown Wind Farm Glenduff, Darrery and Coolnanoglash Ballagh Co. Limerick | Dromdeeven Wind Farm Ballagh Co. Limerick |
|---------------------------------|-----------------------------------------------------------------------------------------|-------------------------------------------------|

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

2.0 ITEMS ENCLOSED AS PART OF THIS APPLICATION

1. The Section 5 Declaration Application fee of €80.00 payable to Limerick City and County Council as set out within Schedule 10 of the *Planning and Development Regulations 2001 - 2020*.
2. A duly Completed *Limerick City and County Council Application for Section 5 Application Form*.

3. *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. |
| B | S5-006 | Locations and Works: <i>Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area (Site Code 004161).</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:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River;

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.



LIMERICK CITY & COUNTY COUNCIL
PLANNING AND ENVIRONMENTAL SERVICES
SECTION 5 APPLICATION

DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

Applicant's Name: Patrick Cremins

Applicant's Address: Meenganaire

Knocknagoshel

Co. Kerry

Telephone No. -

Name of Agent (if any): Wessel Vosloo [Agent]

Address: The Planning Partnership

The Coach House, Dundanion

Blackrock Road, Cork, T12 T6YC

Telephone No. 021 601 0778

Address for Correspondence:

The Planning Partnership

The Coach House, Dundanion

Blackrock Road

Cork T12 T6YC

Location of Proposed development:

Mauricetown Wind Farm

Dromdeeveen Wind Farm

Glenduff, Darrery and Coolnanoglash

Ballagh

Ballagh, Co. Limerick

Co. Limerick

Description of Proposed development:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River.

Is this a Protected Structure or within the curtilage of a Protected Structure.

YES/NO

Applicant's interest in site: 3rd Party Interest

List of plans, drawings, etc. submitted with this application:

See Detailed Submission Enclosed.

Have any previous extensions/structures been erected at this location YES/NO

If Yes please provide floor areas of all existing structures:

Limerick City and County Council File Ref. No. 17/338: Tullylease 38kV Substation.

Limerick City and County Council File Ref. No. 12/379 (An Bord Pleanála File Ref. No. PL13.240910): Mauricetown Wind Farm.

Limerick City and County Council File Ref. No. 04/2722: Dromdeeveen Wind Farm.

Cork County Council File Ref. No.: 06/7096 (An Bord Pleanála File Ref. No.: PLo4.218821): 38 kV overhead electricity transmission line from Dromdeeveen Wind Farm to Cummerduff townland, west of Meelin village in Co. Cork

Signature of Applicant (or Agent)



Wessel Vosloo [Agent]

The Planning Partnership
The Coach House, Dundanion
Blackrock Road, Cork City, T12 T6YC

NOTES: Application must be accompanied by:

- (a) Fee of €80
- (b) Site location map
- (c) Site layout plan
- (d) Dimensioned plans and elevations of the structure and any existing structures.
- (e) Where the declaration is in respect of a farm building, a layout identifying the use of each existing building together with floor area of each building.

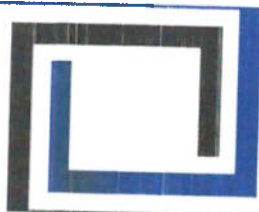
Application to be forwarded to:

Limerick City & County Council,
Planning and Environmental Services,
City & County Council Offices,
Dooradoyle Road,
Limerick.

OFFICE USE ONLY

Ref. No. _____ Date Received _____
Fee Received _____ Date Due _____

11



Principal Planning Officer
Planning and Environmental Services
Limerick City and County Council
City and County Council Offices
Dooradoyle Road
Limerick
V94 WV78
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 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, AS FAR AS THE LIMERICK COUNTY BORDER WITH CORK COUNTY

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 Limerick City and 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: | Mauricetown Wind Farm | Dromdeeveen Wind Farm |
| | Glenduff, Darrery and Coolnanoglash | Ballagh |
| | Ballagh | Co. Limerick |
| | Co. Limerick | |

Nature of Development: See details outlined below under 1.2 Question Posed.
Owners / Occupiers: Mauricetown Wind Farm

(s. 5(2)(b) of PDA 2000-2020) 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 Limerick
Unit 5
Castletroy Business Park
Castletroy
Limerick
V94 C780

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

ESB Networks
Rosbrien Road
Limerick
V94 A5D2

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

Travel and Transportation
Limerick City and County Council
City and County Council Offices
Dooradoyle Road
Limerick
V94 WV78
Cork

Limerick City and County Council
City and County Council Offices
Dooradoyle Road
Limerick
V94 WV78
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:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River;

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), having regard particularly to:

- (a) sections 2(1), 3(1), 4(4), 172(1) and 177U(9) 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) recent precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18);
- (g) 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;
- (h) the judgement of the High Court in *O'Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632;
- (i) the judgement of the High Court in *Patrick Daly v. Kilonan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308;
- (j) the decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244; and
- (k) the documentation and details presented in this Application for a Section 5 Declaration from Limerick City and County Council.

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 Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, then from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, and the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, 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 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 Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, and from the Tullylease 38 kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, and the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, 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 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 Limerick City and 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), Dromdeeveen Wind Farm (Limerick City and County Council Plan. Reg. Ref. Nos.: 04/2722 and EOD 10/7007), and the Tullylease 38kV Substation (Limerick City and County Council Plan. Reg. Ref. Nos.: 17/338) and 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).

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, 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.

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

In making its decision, Limerick City and 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) 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);
- (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);
- (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);
- (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, as far as the Limerick County / Cork County border at the Glashawee River, 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) as the underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, and from the Tullylease 38 kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, 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;

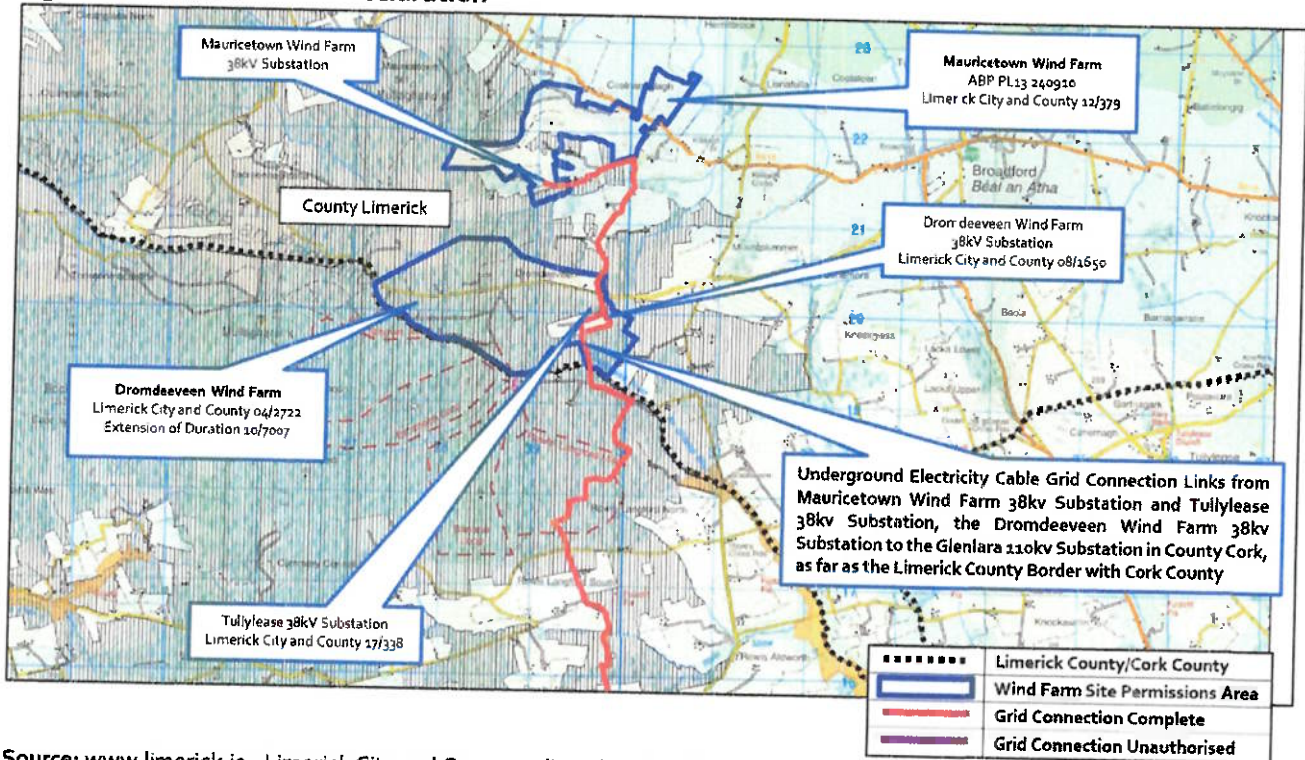
- (l) underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, were constructed before the judgements of the High Court 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 Limerick City and 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 connection works between the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, the said underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, and 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, as far as the Limerick County / Cork County border at the Glashawee River, **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 connection works between the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, and from the Tullylease 38 kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick / Cork County border at the Glashawee River.

Figure 2.1: Focus Area of Declaration



Source: www.limerick.ie - Limerick City and County online Planning File System and Ordnance Survey Ireland Discovery Series, extracted, 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 Limerick County / Cork County border at the at the Glashawee River. 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 underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV Substation and Tullylease 38kV Substation follows the Local Public Roads to the Dromdeeveen Wind Farm area. Works associated with this electricity cable link occurred after 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.

Works associated with the underground electricity cable grid connection works between the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation at Curraduff, Co. Cork, occurred before 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.

Works associated with the underground electricity cable grid connection works between the Tullylease 38kV Substation, and the electricity cable between Dromdeeveen Wind Farm 38kV Substation and the Glenlara 110kV Substation, occurred after 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.

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). 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 Cumberduff 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 |
| File Ref. No.: | 12/379 | 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. |
| 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. | |

The first part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state. The second part of the paper discusses the development of the English language from its roots in Old English to its present state. It is argued that the English language has developed through a process of continuous change, and that this change has been influenced by a number of factors, including the influence of other languages, the influence of social and cultural changes, and the influence of technological changes. The third part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state. The fourth part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state. The fifth part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state. The sixth part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state. The seventh part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state. The eighth part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state. The ninth part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state. The tenth part of the paper discusses the importance of the study of the history of the English language for the study of the English language in its present state. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state, and that this knowledge is essential for the study of the English language in its present state.

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 |
| File Ref. No.: | 17/338 | 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. |
| 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 Limerick County / Cork 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 | Windfarm comprising increase dimensions for 7 permitted wind turbines and additional 11 wind turbines, anemometer mast and access tracks. EIS accompanies application |
| Applicant: | John McCarthy | |
| 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 Limerick County / Cork County border at the at the Glashawee River, 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), 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 |
| File Ref. No.: | 06/7096 | Erection of 7.4 kilometres of 38 kV overhead line in the townlands of Cumberduff, Commons North, Tooreen Donnell, Meentinn East, Meenkearagh, Rows Shaddock, Rows Allen, Cummerly Connell, Rows Langford South, Rows 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. |
| 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 Cummerduff 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 Cummerduff 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 works between:

- a) the Mauricetown Wind Farm 38kV Substation and Tullylease 38kV Substation;
- b) 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
- c) the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork;

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 Limerick / Cork County border at the Glashawee River;
3. The Mauricetown Wind Farm 38kV Substation which 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 which does not facilitate/permit any underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV Substation and Tullylease 38kV Substation;
4. The 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 between the Tullylease 38kV Substation and the Mauricetown Wind Farm 38kV Substation permitted under An Bord Pleanála Reg. Ref. No.: PL13.240910 (Limerick City and County Council Plan. Reg. Ref. No.: 12/379);

5. 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 Limerick County / Cork County border at the at the Glashawee River; and
6. The 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Limerick / Cork 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 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 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 38kV Substation to the Glenlara 110kV Substation in County Cork, 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 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 38kV Substation to the Glenlara 110kV Substation in County Cork, 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 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 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 38kV Substation to the Glenlara 110kV Substation in County Cork:

i. Does not form 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 Limerick County / Cork County border at the Glashawee River;
3. The Mauricetown Wind Farm 38kV Substation which 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 which does not facilitate/permit any underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV Substation and Tullylease 38kV Substation;

4. The 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 between the Mauricetown Wind Farm 38kV Substation permitted under An Bord Pleanála Reg. Ref. No.: PL13.240910 (Limerick City and County Council Plan. Reg. Ref. No.: 12/379);
 5. 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 Limerick County / Cork County border at the at the Glashawee River; and
 6. The 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Limerick County / Cork 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), 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) (g(1)(a)(vii) of PDR).
 - 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) (g(1)(a)(viiB) of PDR).
 - 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 2022*, 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.: PL04.235930 (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.

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 38kV Substation to 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 Limerick County / Cork 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 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).

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."

It is at this juncture that we again make reference to the 38kV underground line which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, crossing the Limerick County / Cork 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 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, 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 connection links between the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River 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 Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, and from the Tullylease 38 kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, and the underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, 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 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:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River;

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:

1. The underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation in County Limerick;
2. The underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River; and
3. The underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River;

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) 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);
- (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);
- (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);
- (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, as far as the Limerick County / Cork County border at the Glashawee River, **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) as the underground electricity cable grid connection works between the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, and from the Tullylease 38 kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, 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) underground electricity cable grid connections and associated works from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, were constructed before the judgements of the High Court in *O'Granna (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, Limerick City and 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 connection works between the Mauricetown Wind Farm 38kV Substation to the Tullylease 38 kV Substation, the said underground electricity cable grid connections and associated works from the Tullylease 38 kV Substation to the electricity cable grid connection which runs from the Dromdeeveen Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork, as far as the Limerick County / Cork County border at the Glashawee River, and 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, as far as the Limerick County / Cork County border at the Glashawee River, **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 A

Mauricetown Wind Farm, Dromdeeveen Wind Farm, associated Substations and
underground electricity cable grid connections and associated works

The Planning Partnership's Drawing No.: S5-005



Appendix B

Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area
(Site Code 004161)

The Planning Partnership's Drawing No.: S5-006

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 • Clieveragh 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, Pdraig 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 Vallely, 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 Dromdeeveen.

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 fall 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.

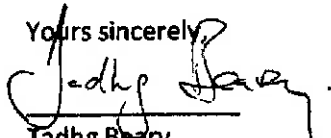
Additional Response; Drawings of the 38kV underground line as requested in Limerick Co. Co. letter of 28th January 2010 are included in Enclosure no.5.

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

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

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**Wind Prospect Ireland Ltd • Unit 1 Listowel Business Centre • Clieveragh Industrial Estate • Listowel • Co.
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Company Registered in Ireland Number: 404893**

Enclosure no.2. – Drawing DROM c063.2 Storage areas

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Enclosure No.3. - RTE protocol correspondence

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PROTOCOL

between:

Reirk Energy Limited

and

RTE/Network.

concerning the wind-farm at

Dromdesveen, 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 Dromdeaveen, 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 Hennessy (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 electromagnetic 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 or 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

David Shuckhouse

(authorised signatory)

Signed for and on behalf
of the Developer

John M. Conboy

(authorised signatory)

Enclosure No.4. – IAA correspondence

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ÚDARÁS EITLÍOCHTA NA HÉIREANN
IRISH AVIATION AUTHORITY

COMARCAIL NA HÉIREANN, 100, RUA NA HÉIREANN, DUBLIN 15
TELEFÓN: 01 406 1000 FAX: 01 406 1001
E-MAIL: info@iaa.ie www.iaa.ie

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, T10 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

Enclosure No.5. – 38kV cable route drawings

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