



DOB/ML

22<sup>nd</sup> April 2021

An Bord Pleanála,  
64 Marlborough Street,  
Dublin

AN BORD PLEANÁLA	
LDG-	039039-21
ABP-	
27 APR 2021 SA	
Fee: €	110
Type:	
Time:	
By:	REG POST

**Planning and Development Acts 2000 – 2020**  
**Declaration on Development and Exempted Development**  
**(Section 5 of the Planning and Development Act 2000 – 2020**  
**Planning Register EX 910**

Dear Sir/Madam

I refer to the above mentioned request for a Section 5 Declaration which was submitted to this Planning Authority on 7<sup>th</sup> April 2021 on behalf of Patrick Cummins.

On behalf of this Planning Authority I now wish to refer the question as to whether the underground electricity grid connections and associated works from the Ballynahulla 220kv substation to the Gneevies 38kv substation (Gneevies Wind farm in Co. Cork) along the local Tureencahill to Rathmore Road, adjoining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into Co Cork ( a tributary of the Blackwater River) in the townland of Shinnagh is or is not development or is or is not exempted development to An Bord Pleanála (ABP) for a decision as provided for under Section 5(4) of the Planning and Development Act 2000 – 2020..

Please note as details of the landowners were not specified on the application we were unable to inform same of the referral.

Attached please find a copy of file register no. EX910 and a paying order in the amount of €110 being the prescribed fee as relayed to me by your office on 19<sup>th</sup> April 2021.

Yours Faithfully,

David O' Brien  
Administrative Officer

pp





COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL

An Bord Pleanála  
64 Marlborough Street Dublin 1 Co Dublin  
Ireland

REMITTANCE ADVICE / FAISNÉIS ÍOCAÍOCHTA

Cheque No. 815506  
Supp ID / Uimh. Aitheantais 171690  
Date / Dáta 22/04/2021  
Page / Leathanach 1/1

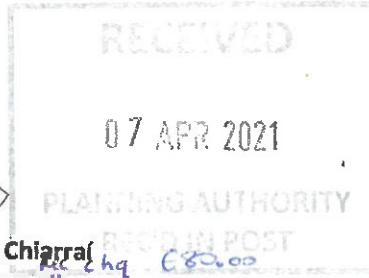
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EX 910	19/04/2021	31031169	110.00	110.00
<b>PAGE TOTAL / IOMLÁN AN LEATHANAIGH</b>			<b>EUR</b>	
<b>GRAND TOTAL / MÓRIOMLÁN</b>			<b>EUR</b>	
			<b>110.00</b>	<b>110.00</b>
			<b>110.00</b>	<b>110.00</b>

WH = Withholding Tax CT = Subcontractors Tax RA = Non Resident Landlord  
INT = Late Payment Interest, Rate = 8.00% CMP = Late Payment Compensation





Comhairle Contae Chiarraí  
Kerry County Council



CC-P27  
09-2013\_BG

## FOIRM IARRATAIS ALT 5 SECTION 5 APPLICATION FORM

IARRATAS MAIDIR LE DEARBHÚ AR FHORBAIRT AGUS  
AR DÍOLÚINE FORBARTHA (Alt 5 den Acht um Pleanáil  
agus Forbairt leasaithe)

REQUEST FOR A DECLARATION ON DEVELOPMENT  
AND EXEMPTED DEVELOPMENT (Section 5 of the  
Planning & Development Act 2000 as amended)

**TÁILLE €80 FEE**

All personal data collected is in compliance with the requirements of the General Data Protection Regulation (GDPR) 2016, and Data Protection Acts 1988 to 2003. Individual privacy notices for each section/service are available at [www.kerrycoco.ie](http://www.kerrycoco.ie)

<u>Ainm</u> Patrick Gremins	<b>Name</b>
<u>Seoladh</u> Meenganaire	<b>Address</b>
Knocknagoshel	
Co. Kerry	
<b>Tel.</b> -	<b>Tel:</b>
<b>R-phost</b> -	<b>Email</b>

<b>Ainm/Seoladh Gníomhaire</b>	Wessel Vosloo [Agent] The Planning Partnership The Coach House Dundinion Blackrock Road Cork T12 T6YC	<b>Name/Address of Agent</b>
<b>Tel.</b>	+353 (0) 21 601 0778	<b>Tel:</b>

<b>Láthair an Suímh Ábhartha</b>	<u>See Detailed Submission Enclosed</u>	<b>Location of Subject Site</b>
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An Struchtúr Cosanta é nó 'bhfuil sé laistigh de chúirtealáiste Struchtúir Chosanta? No

Is this a Protected Structure or within the cartilage of a Protected Structure?

Más é, 'bhfuil Dearbhú faoi Alt 57 den Acht um Pleanáil agus Forbairt 2000 i bhfeidhm?

If yes, has a Declaration under Section 57 of the Planning and Development 2000 been submitted to the Planning Authority?



Luaigh leas an iarratasóra sa suíomh le do thoil

Please state applicants interest in this site

Third Party Interest

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Luaigh ainm agus seoladh an úinéara murar é/í an t-iarratasóir See Detailed Submission Enclosed

If applicant is not the owner please provide owner's name and address

Tabhair faoi deara go n-eiseofar cóip den Dearbhú ar Fhorbairt agus ar Díolúine Forbartha de réir Alt 5(2a) den Acht um Pleanáil agus Forbairt 2000 don úinéir/áititheoir.

Please note that in accordance with section 5(2a) of the Planning & Development Act 2000 the owner/ occupier of the site will be issued with a copy of the Declaration on Development and Exempted Development.

Liosta pleananna, líníochtaí srl curtha ar fáil leis an iarratas seo.

List of plans, drawings, etc submitted with this application

See Detailed Submission Enclosed

Tabhair tuairisc ar na h-oibreacha (má bhaineann) nó ar an bhforbairt beartaithe.

(Tabhair faoi deara: Is iad na h-oibreacha atá liostaithe agus sonraithe, agus sin amháin, a dheinfear measúnú orthu fé Alt 5. Úsáid leathanaigh breise más gá)

Please provide details of works (where applicable) or proposed development.

(Note: only works listed and described under this section will be assessed under this Section 5 application. Use additional sheets if required)

Underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to teh Gneeves 38kV Substation (Gneeves Wind Farm in County Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh.





An eol duit aon imeachtaí  
forfheidhmithe ar an suíomh seo?  
*Má tá, tabhair sonraí le do thoil*

Are you aware of any enforcement  
proceedings connected to this site?  
*If yes, please supply details*

No

An raibh iarrata(i)s pleanála ar an suíomh seo  
cheana? *Má bhí, tabhair sonraí led' thoil*

Were there previous planning application(s)  
on this site? *If yes, please supply details*

See Detailed Submission Enclosed

Sínte:  
Signed



Dáta: Friday, 2nd April 2021  
Date

**NÓTAÍ:**

Ní mór 4 chóip de léarscáil den láthair shuíomh leis an suíomh imlínithe go soiléir i ndearg a chur ar fáil agus táille €80 leis. Cuir 2 chóip de phleananna/tuairiscí breise srl. a theastaíonn uait bheith mar chuid den iarratais.

**NOTES:**

Application shall include 4 copies of the Site Location Map with the site clearly outlined in red and a fee of €80. Please submit 2 copies of any additional plans/reports etc you may wish to be included as part of the application.

Seol na h-iarratais líonta go 'n seoladh thíos:

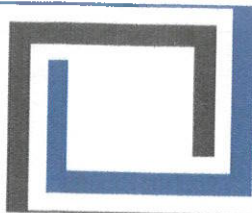
Send your completed applications to:

An Roinn Pleanála,  
Comhairle Contae Chiarraí,  
Ráth Teas, Trá Lí, Co. Chiarraí.

T. (066)7183582  
F. (066) 7120328  
[www.kerrycoco.ie](http://www.kerrycoco.ie)

Planning Department,  
Kerry County Council,  
Rathass, Tralee, Co. Kerry.





Principal Planning Officer  
Planning Department  
Kerry County Council  
County Buildings  
Rathass  
Tralee  
Co. Kerry  
V92 H7VT



Friday, 2<sup>nd</sup> April 2021  
[By Registered Post]

Dear Sir / Madam

**RE: SECTION 5 DECLARATION APPLICATION IN RELATION TO THE UNDERGROUND ELECTRICITY CABLE GRID CONNECTIONS AND ASSOCIATED WORKS FROM THE BALLYNAHULLA 220KV SUBSTATION TO THE GNEEVES 38KV SUBSTATION (GNEEVES WIND FARM IN CO. CORK), ALONG THE LOCAL TUREENCAHILL TO RATHMORE ROAD, JOINING THE R582 AND ALONG THE REGIONAL ROAD TO A POINT CROSSING THE AWNASKIRTAUN RIVER INTO COUNTY CORK (A TRIBUTARY OF THE BLACKWATER RIVER) IN THE TOWNLAND OF SHINNAGH, ALL IN COUNTY KERRY**

**1.0 INTRODUCTION AND SUMMARY OF THE REFERRAL PROPOSALS**

The Planning Partnership acting on behalf of Patrick Cremins, Meenganaire, Knocknagoshel, Co. Kerry hereby seeks a declaration from Cork County Council under Section 5 of the *Planning and Development Act 2000-2021*.

**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:**

Ballynahulla 220kV Substation  
Ballynahulla  
Ballydesmond  
Co. Kerry

Ballynahulla  
Barna  
Tooreenahill  
Reanasup  
Lisheen  
Lissyconnor

Bawnard  
Cloonts  
Knocknaseed  
Shinnagh



<b>Location of Development:</b>	Underground electricity cable grid connections to the Ballynahulla 220kV Substation from a point crossing the Awnaskirtaun River into County Kerry (a tributary of the Blackwater River) in the townland of Shinnagh, following a route along the R582 Regional Road and then along the Local Rathmore to Tureenahill Road to the Ballynahulla 220kV Substation.
<b>Nature of Development:</b>	See details outlined below under 1.2 Question Posed.
<b>Owners / Occupiers:</b> (s. 5(2)(b) of PDA 2000-2021)	<p>Gneevs Wind Farm Gneevs Near Millstreet Co. Cork</p> <p>Gneevs Wind Farm Ltd. Floor Five City Quarter Lapp's Quay Cork T12 Y05K</p> <p>Brookfield Renewable Ireland 5<sup>th</sup> Floor City Quarter Lapps Quay Cork T12 Y05K</p> <p>ESB International Stephens Court 18-21 St. Stephen's Green Dublin 2</p> <p>ESB International 6 Eastgate Avenue East Gate Park Little Island Co. Cork</p> <p>Road Management Office Head Office Donegal County Council Milford PSC Milford Co. Donegal, F92 TDoP</p>
<b>Affected Parties:</b>	<p>Kerry County Council Roads, Transportation and Marine Department County Buildings Room 115 Rathass, Tralee Co. Kerry V92 H7VT</p>



### 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:

<b>An Bord Pleanála Ref No:</b>	04.RL.3531
<b>Referral Lodged:</b>	23 <sup>rd</sup> December 2016
<b>Question:</b>	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.
<b>Decision Date:</b>	27 <sup>th</sup> July 2020
<b>Outcome:</b>	Is development and is <u>not</u> exempted development.

<b>An Bord Pleanála Ref No:</b>	ABP-300536-18
<b>Referral Lodged:</b>	19 <sup>th</sup> December 2017
<b>Question:</b>	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.
<b>Decision Date:</b>	21 <sup>st</sup> July 2020
<b>Outcome:</b>	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. Kilonan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited [2017] IEHC 308.
- The decision of the European Court of Justice in Case C-323/17 People over Wind v Coillte, ECLI:EU:C:2018:244

### 1.2 Question Posed

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

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





Whether the provision of:

The underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh,

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 traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to 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(2), 4(4), 172(1) and 177U(9) and 182A of the *Planning and Development Act 2000-2021*;
- (b) articles 3, 6 and 9 of the *Planning and Development Regulations 2001-2021*;
- (c) Classes 26 of Part 1 of Schedule 2 of the *Planning and Development Regulations 2001-2021*;
- (d) confirmation on page 4 of the Environmental Impact Statement associated with the Gneeves Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) that the "study boundary used for the EIA process encloses an area of approximately 138 ha within which the proposed development is located";
- (e) confirmation of the Environmental Impact Statement associated with the Gneeves Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) detailing that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneeves 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line;
- (f) Condition No. 1 attached to Cork County Council Plan. Reg. Ref. No.: 13/5717 which details: "The proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein."
- (g) Condition No. 2 details: "The proposed development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on 04/09/2013, and the submissions on 30/01/2014 and 11/6/14, including the measures set out in the Environmental Impact Statement, the revised Construction and Environmental Management Plan, the Natura Impact Statement, the Bog Restoration Plan and the Red Grouse Management Plan, save where amended by the terms and conditions herein."
- (h) Kerry County Council Plan. Reg. Ref. No.: 04/10 (38kV line from an existing 38kV line in the townland of Knocknaseed to a point crossing the Blackwater River in the townland of Lisheen);
- (i) precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18);
- (j) 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 29<sup>th</sup> September 2015;
- (k) the judgement of the High Court in *O'Granna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632;



- (l) the judgement of the High Court in *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308;
- (m) the decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244; and
- (n) the documentation and details presented in this Application for a Section 5 Declaration from Kerry County Council, Cork County Council and An Bord Pleanála.

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

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

The question relates to whether any Planning Permission exists for the underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneevies 38kV substation (Gneevies Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh.

The route traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161).

Section 5 of the *Planning and Development Act 2000-2021* 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 Ballynahulla 220kV Substation to the Gneevies 38kV substation (Gneevies Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, along a route which traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161), 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 Kerry 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 2000-2021* 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. Kilonan 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 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 boundary of the Gneevies Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) which details that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevies 38kV Substation and connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line, and does not follow the route of the 38kV line from an existing 38kV line in the townland of Knocknaseed to a point crossing the Blackwater River in the townland of Lisheen as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10).

It should further be noted that the underground electricity cable grid connection works, the subject of this *Application for Section 5 Declaration*, traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161).

The wording associated with the Gneevies Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) as outlined in the Grant of Planning Permission and the Environmental Impact Statement document, details:

- Condition No. 1: *"The proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein."*
- Condition No. 2: *"The proposed development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on 04/09/2013, and the submissions on 30/01/2014 and 11/6/14, including the measures set out in the Environmental Impact Statement, the revised Construction and Environmental Management Plan, the Natura Impact Statement, the Bog Restoration Plan and the Red Grouse Management Plan, save where amended by the terms and conditions herein."*
- The proposal include for a minor extension to the existing substation (45 sq m). The Environmental Impact Statement further outlines that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevies 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line;
- The Environmental Impact Statement further confirms on page 4 that the *"study boundary used for the EIA process encloses an area of approximately 138 ha within which the proposed development is located"*; and

is clear and unambiguous in that the Gneevies Wind Farm is intended to connect to the grid via the existing onsite Gneevies 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line. Any deviation from such requires that separate planning permission be obtained for grid connections.

Whether or not it was the intention by the Applicant/Developer, Kerry County Council or Cork County Council, to thereby disallow the possibility of exempted development, is not relevant as the text presented within the Gneevies Wind Farm Environmental Impact Statement document (Cork



County Council Plan. Reg. Ref. No.: 13/5717) as drafted is clear as to what is required, i.e. separate Planning Permission.

In addition, the 38kV electricity cable grid connection which runs from the Gneeves Wind Farm 38kV Substation in County Cork to the Ballynahulla 220kV Substation along the Local Tureencahill to Rathmore Road in County Kerry, crossing the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh, does not correspond with the route as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10.

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

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

In making its decision, Kerry County Council is required to have regard to those matters to which, by virtue of the *Planning and Development Act 2000-2021* and the *Planning and Development Regulations 2001-2021* 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 2000-2021* 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 2000-2021*, confirming that development requiring an appropriate assessment shall not be exempted development, and in this instance being underground electricity cable grid connection works which traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 2000-2021*;
- (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 2000-2021*, being of a class not specified in Part 1 of Schedule 5 of the *Planning and Development Regulations 2001-2021*;
- (d) the said underground electricity cable grid connection works come within the scope of Section 177U of the *Planning and Development Act 2000-2021*, and the requirements as specifically outlined under Section 177U(9) of the *Planning and Development Act 2000-2021* requiring the Screening for Appropriate Assessment being works which traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 2000-2021*, constitute development of electricity transmission lines traversing the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 2001-2021* 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 2001-2021* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2001-2021*;
- (h) the said underground electricity cable grid connection works **come within the scope** of Article 9(1) of the *Planning and Development Regulations 2001-2021* 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. the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation (Site Code 002170)* at various locations, and is proximate to the *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 Gneevess Wind Farm 38kV Substation (County Cork) to the Ballynahulla 220kV Substation in County Kerry, from the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh, following a route along the R582 Regional Road and then along the Local Rathmore to Tureencahill Road to the Ballynahulla 220kV Substation in County Kerry, **come within the scope** of Article 9(1)(a)(i) of the *Planning and Development Regulations 2001-2021* by:
- Contravening Condition No. 1 attached to Cork County Council Plan. Reg. Ref. No.: 13/5717 which details: *"The proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein"*;
  - Contravening Condition No. 2 attached to Cork County Council Plan. Reg. Ref. No.: 13/5717 which details: *"The proposed development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on 04/09/2013, and the submissions on 30/01/2014 and 11/6/14, including the measures set out in the Environmental Impact Statement, the revised Construction and Environmental Management Plan, the Natura Impact Statement, the Bog Restoration Plan and the Red Grouse Management Plan, save where amended by the terms and conditions herein"*;
  - Being contrary to the Environmental Impact Statement associated with the Gneevess Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) detailing that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevess 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line; and
  - Not corresponding with the route as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10.
- (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 2001-2021*



having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2001-2021*;

- (k) where the underground electricity cable grid connections and associated works of the Gneevs Wind Farm 38kV Substation (County Cork), from the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh to the Ballynahulla 220kV Substation in County Kerry, following a route along the R582 Regional Road and then along the Local Rathmore to Tureencahill Road to the Ballynahulla 220kV Substation in County Kerry, were constructed **after the judgements** of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308, the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions;
- (l) where the underground electricity cable grid connections and associated works of the Gneevs Wind Farm 38kV Substation (County Cork), from the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh to the Ballynahulla 220kV Substation in County Kerry, following a route along the R582 Regional Road and then along the Local Rathmore to Tureencahill Road to the Ballynahulla 220kV Substation in County Kerry, 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, and An Bord Pleanála 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** Kerry County Council as relevant Planning Authority, in exercise of the powers conferred on it by section 5 (1) of the *Planning and Development Act 2000-2021*, should declare that the said underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneevs 38kV substation (Gneevs Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, along a route which traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161), **is development and is not exempted development.**

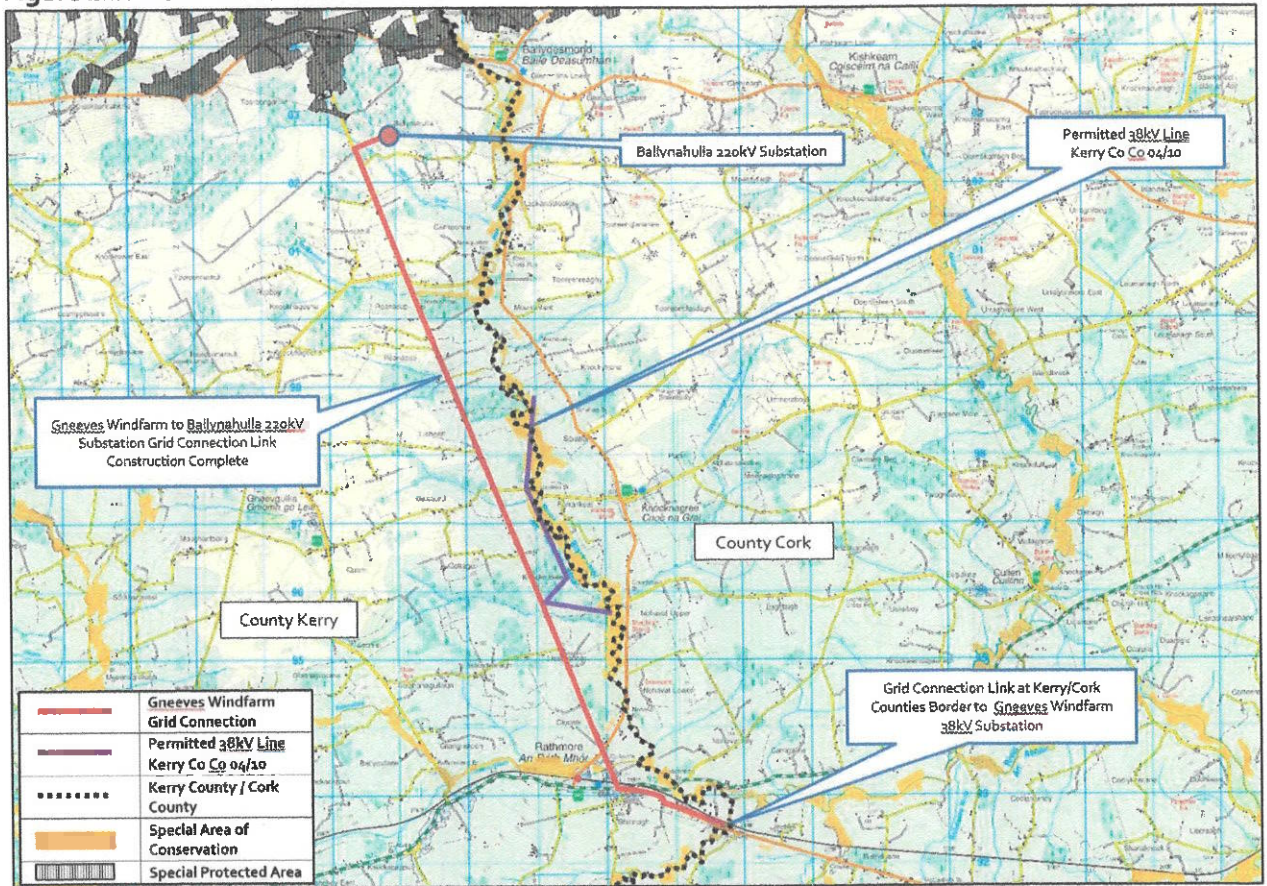




2.0 SITE LOCATION AND ASSOCIATED DETAILS

The focus area associated with this request for Declaration is associated with the underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneevess 38kV substation (Gneevess Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh.

Figure 2.1: Focus Area of Declaration



Source: Ordnance Survey Ireland Discovery Series, annotated and reproduced by The Planning Partnership under OS Licence No. AR0114721

The Gneevess Wind Farm (An Bord Pleanála Reg. Ref. No.: PL04.111211 and a variety of subsequent permission and ultimately Cork County Council 13/5717) is located in the townlands of Gneevess, near Millstreet, Co. Cork. The Planning Permissions do include for a 38kV Gneevess Substation; however do not include for the development of any Grid Connection.

The Ballinahulla 220kV Substation is located in the townland of Ballynahulla, at Ballydesmond, Co. Kerry. The Planning Permissions do not include for the development of any Grid Connection to the Gneevess Windfarm or Gneevess 38kV Substation.

The electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneevess 38kV substation (Gneevess Wind Farm in Co. Cork), follows a route along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh.



Works associated with this electricity cable link of which the route is as presented in Figure 2.1 above, are subject to the *O’Grianna (and others) v. An Bord Pleanála (and others)* and *Patrick Daly v. Kilonan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited*, cases.

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

The area is generally in a visually attractive landscape, with the underground electricity cable grid connection works route traversing the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 Gneeves Windfarm and 38kV Substation (County Cork);
- Permitted 38kV Line along Kerry/Cork County Border; and
- The Ballynahulla 220kV Substation.

### 2.1.1 Relevant Gneeves Wind Farm and 38kV Substation Planning History

<b>Planning Authority:</b>	<b>Cork County Council</b>	<b>Development Description : Gneeves Wind Farm</b> Ten year planning permission for an extension to existing Gneeves Wind Farm (Planning Refs. 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566). The proposed extension will comprise of 3 no. turbines (each with a maximum tip height of 91m), a borrow pit, new internal access roads, upgrading of existing internal access roads, underground cables, an extension to the existing substation building with a wastewater holding tank and ancillary works. The Planning Application was accompanied by an Environmental Impact Statement and Natura Impact Statement.
<b>File Ref. No.:</b>	<b>13/5717</b>	
<b>Applicant:</b>	SWS Energy Ltd.	
<b>Outcome:</b>	Permission Granted by Cork County Council by Order dated 29 <sup>th</sup> July 2014, with the Final Grant of Permission issued on 3 <sup>rd</sup> September 2014.	

#### Key Issues to be Noted:

- Condition No. 1 details: *"The proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein."*
- Condition No. 2 details: *"The proposed development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on 04/09/2013, and the submissions on*

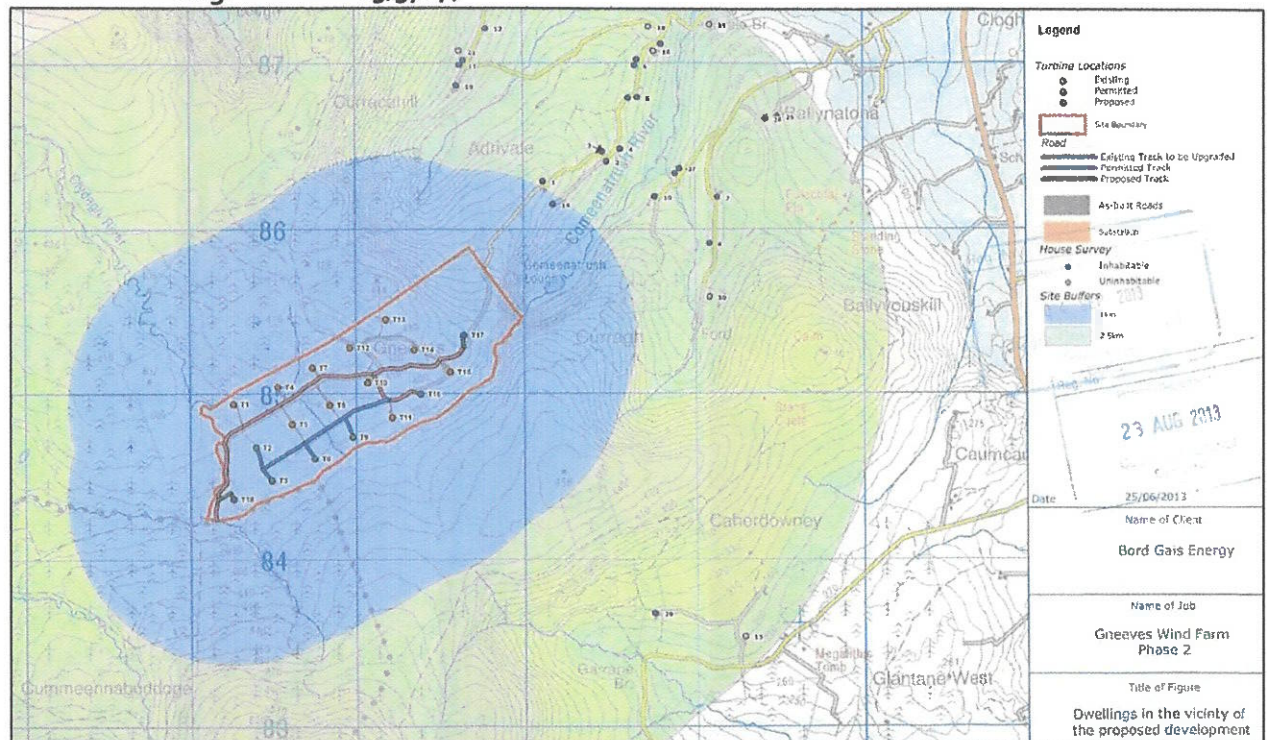




30/01/2014 and 11/6/14, including the measures set out in the Environmental Impact Statement, the revised Construction and Environmental Management Plan, the Natura Impact Statement, the Bog Restoration Plan and the Red Grouse Management Plan, save where amended by the terms and conditions herein."

- The proposal include for a minor extension to the existing substation (45 sq m). The Environmental Impact Statement further outlines that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevs 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line.
- The Environmental Impact Statement further confirms on page 4 that the "study boundary used for the EIA process encloses an area of approximately 138 ha within which the proposed development is located".

**Figure 2.2: Study boundary used for the EIA process of Gneevs Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717)**



**Source:** Extract Figure No. 2.2 of Environmental Impact Statement for proposed Extension to Gneevs Wind Farm, Co. Cork (Cork County Council Plan. Reg. Ref. No.: 13/5717), reproduced by The Planning Partnership under OS Licence No. AR0114721.

The above is clear and unambiguous in that the Gneevs Wind Farm and 38kV Substation does not include for the Grid Connection to the Ballynahulla 220kV Substation at Ballydesmond, Co. Kerry.

No Planning History is associated with the electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneevs 38kV substation (Gneevs Wind Farm in Co. Cork), following a route along the Local Tureenahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh.



<b>Planning Authority:</b>	<b>Cork County Council</b>	<b>Development Description : Further Extension of Duration under s. 42 of the <i>Planning and Development Act 2000</i> (as amended) Gneeves Wind Farm</b>
<b>File Ref. No.:</b>	<b>13/4566</b>	10 year planning permission for retention and Completion of windfarm (13 no. turbines), extension of duration to permission granted under Planning Reg. No. N/99/0616, modified under Planning Reg. No 03/6585 and which received an extension of duration under Planning Reg. No. 08/5636.
<b>Applicant:</b>	SWS Energy Ltd.	
<b>Outcome:</b>	Extension of Duration Granted by Order dated 24 <sup>th</sup> May 2013. The permission cease to have effect on 28 <sup>th</sup> March 2019	

**Key Issue to be Noted:**

- No further/additional environmental protection conditions were attached to the Extension of Duration Granted.

<b>Planning Authority:</b>	<b>Cork County Council</b>	<b>Development Description : Extension of Duration under s. 42 of the <i>Planning and Development Act 2000</i> (as amended) Gneeves Wind Farm</b>
<b>File Ref. No.:</b>	<b>08/5636</b>	Completion of wind farm (13 no. turbines) granted under pl. reg. no. 99/0616 and modified under pl. reg. no. 03/6585.
<b>Applicant:</b>	SWS Natural Resources Ltd.	
<b>Outcome:</b>	Extension of Duration Granted by Order dated 1 <sup>st</sup> July 2008.	

**Key Issue to be Noted:**

- No further/additional environmental protection conditions were attached to the Extension of Duration Granted.

<b>Planning Authority:</b>	<b>Cork County Council</b>	<b>Development Description : Gneeves Wind Farm</b>
<b>File Ref. No.:</b>	<b>04/1355</b>	Change in access route for windfarm permitted under Reg. No. N/99/0616.
<b>Applicant:</b>	SWS Energy Services	
<b>Outcome:</b>	Permission Granted by Cork County Council by Order dated 27 <sup>th</sup> April 2004, with the Final Grant of Permission issued on 2 <sup>nd</sup> June 2004.	

<b>Planning Authority:</b>	<b>Cork County Council</b>	<b>Development Description : Gneeves Wind Farm</b>
<b>File Ref. No.:</b>	<b>04/188</b>	Extension to windfarm permitted under reg. no. N/99/0616 to consist of 4 no. wind turbines (hub height 65m, blade tip 91m), construction of and extension of internal site tracks and associated works.
<b>Applicant:</b>	SWS Group	
<b>Outcome:</b>	Permission Granted by Cork County Council by Order dated 9 <sup>th</sup> July 2004, with the Final Grant of Permission issued on 16 <sup>th</sup> August 2004.	



<b>Planning Authority:</b>	<b>Cork County Council</b>	<b>Development Description : Gneeves Wind Farm</b> Modifications to windfarm permitted under Reg. No. N/99/0616 to include increase of the turbine height from 44m to 65m.
<b>File Ref. No.:</b>	<b>03/6585</b>	
<b>Applicant:</b>	SWS Energy Services	
<b>Outcome:</b>	Permission Granted by Cork County Council by Order dated 20 <sup>th</sup> February 2004, with the Final Grant of Permission issued on 29 <sup>th</sup> March 2004.	

<b>Planning Authority:</b>	<b>Cork County Council</b>	<b>Development Description : Gneeves Wind Farm</b> 15.6 MW windfarm to incl. 13 turbines, 45m high measuring mast, control building, hard standing areas, compound, access roads, signs & anc. site works.
<b>File Ref. No.:</b>	<b>99/616</b>	
<b>An Bord Pleanála</b>	<b>PL04.111211 (Appeal Withdrawn)</b>	
<b>Applicant:</b>	Gillian Kelly	
<b>Outcome:</b>	Permission Granted by Cork County Council by Order dated 8 <sup>th</sup> April 1999, with the Final Grant of Permission issued on 15 <sup>th</sup> September 1999.	

<b>Planning Authority:</b>	<b>Kerry County Council</b>	<b>Development Description : Ballynahulla Substation</b> For proposed modifications to the previously permitted development (Kerry County Council Planning Ref: 18/964) granted by An Bord Pleanála (Ref.: ABP303329-18) on 7th May 2019 within the existing ESB Ballynahulla 220/110kv substation located in the townland of Ballynahulla, Ballydesmond, Co. Kerry. The modifications will comprise the additional construction of one (1) harmonic filter, one (1) HV circuit breaker (including CT and VT), one (1) MV disconnecter and earth switch, two (2) additional lightning masts approximately 25m high and additional lamppost lighting. It further includes a retaining wall approximately 2.5m high, asphalt (non-permeable) surfacing, a 2m high mesh fence and ancillary site development works. The development will remain an extension to the existing substation and this extension will have an overall site area (within the planning application boundary) of 1.1ha. Access will continue to be provided via an existing access on to church road, accessed via the R577.  A Natura Impact Statement (NIS) accompanies this application; this NIS comprises a revision and update to the NIS submitted with the previous planning application per Planning Ref. 18/964.
<b>File Ref. No.:</b>	<b>20/689</b>	
<b>Applicant:</b>	EirGrid PLC	
<b>Outcome:</b>	Permission Granted by Kerry County Council by Order dated 24 <sup>th</sup> September 2020, with the Final Grant of Permission issued on 29 <sup>th</sup> October 2020.	



<b>Planning Authority:</b>	<b>Kerry County Council</b>	<b>Development Description : Ballynahulla Substation</b>
<b>File Ref. No.:</b>	<b>18/964</b>	<p>The proposed development will compromise the construction of one number +100 Mvar STATCOM transformer, one number auxiliary transformer, three number reactors, and one number outdoor cooling bank, control and valve building (268 square metres), underground connection to existing Electricity Supply Board substation. It further includes security fencing, security gate, four number 24.2 metres high lightning masts, permeable surfacing and an internal access road. A temporary contractors' compound is also proposed. The development is an extension to the existing substation and this extension has an overall site area (within the planning application boundary) of 1.1 hectares. Access is provided via an existing access onto Church Road, accessed via the R577.</p> <p>A Natura impact statement. has been prepared as part of this application.</p>
<b>An Bord Pleanála</b>	<b>PLo8.303329</b>	
<b>Applicant:</b>	EirGrid PLC	
<b>Outcome:</b>	<p>Permission Granted by Kerry County Council by Order dated 29<sup>th</sup> November 2018.</p> <p>Permission Granted by An Bord Pleanála Order dated 7<sup>th</sup> May 2019.</p>	

<b>Planning Authority:</b>	<b>Kerry County Council</b>	<b>Development Description : Ballynahulla Substation</b>
<b>File Ref. No.:</b>	<b>18/339</b>	<p>For the construction of a battery storage compound. The proposed works for which planning permission is sought will involve the construction of new palisade fencing, site access track and entrance, bunded concrete plinths, up to 40 no. battery storage units and associated equipment, transformers and all ancillary site works. A Natura Impact Statement (NIS) accompanies this application.</p>
<b>Applicant:</b>	Redfaze Ltd.	
<b>Outcome:</b>	<p>Permission Granted by Kerry County Council by Order dated 17<sup>th</sup> April 2019, with the Final Grant of Permission issued on 21<sup>st</sup> May 2019.</p>	

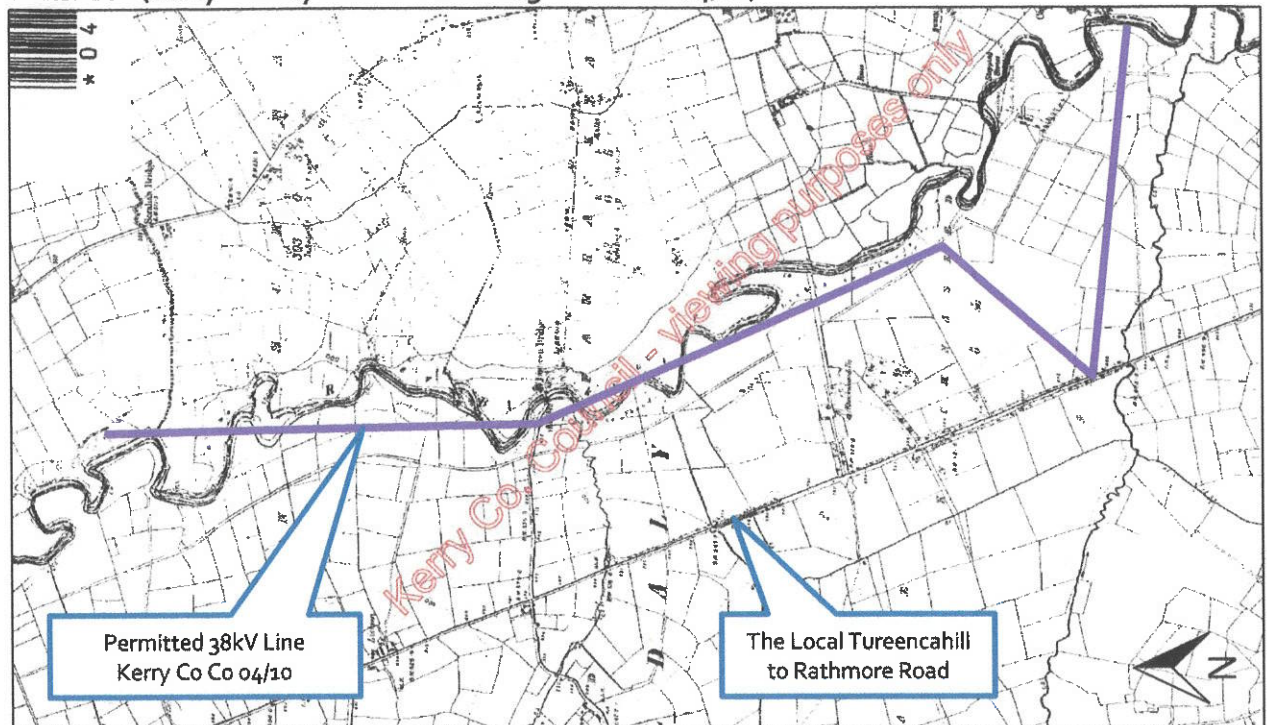
<b>Planning Authority:</b>	<b>Kerry County Council</b>	<b>Development Description : 38kV line in townland of Knocknaseed to crossing the River Blackwater in townland of Lisheen</b>
<b>File Ref. No.:</b>	<b>04/10</b>	<p>To construct a new 2.9 km section of 38kV line from an existing 38kV line in the townland of Knocknaseed to a point crossing the Blackwater River in the townland of Lisheen. Thus allowing for the retirement of a 1 km section of the existing 38kV line in the townland of Lisheen.</p>
<b>An Bord Pleanála</b>	<b>PL13.240910</b>	
<b>Applicant:</b>	Electricity Supply Board	
<b>Outcome:</b>	<p>Permission Granted by Kerry County Council by Order dated 14<sup>th</sup> April 2004, with the Final Grant of Permission issued on 18<sup>th</sup> May 2004.</p>	







**Figure 2.3: 38kV line in townland of Knocknaseed to crossing the River Blackwater in townland of Lisheen (Kerry County Council Plan. Reg. Ref. No.: 04/10)**



**Source:** Extract Kerry County Council Plan. Reg. Ref. No.: 04/10 for proposed 38kV line in townland of Knocknaseed to crossing the River Blackwater in townland of Lisheen, reproduced and annotated by The Planning Partnership under OS Licence No. AR0114721

The above is clear and unambiguous in that the permitted 38kV line does not follow a route along the Local Tureencahill to Rathmore Road.

#### **Key Issue to be Noted:**

The electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneevies 38kV substation (Gneevies Wind Farm in Co. Cork), following a route along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, does not carry benefit of any Planning Permission.

An Bord Pleanála 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 2001-2021*; 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 2001-2021* contravening a condition.

The Environmental Impact Statement associated with the Gneevs Wind Farm permitted under Cork County Council Plan. Reg. Ref. No.: 13/5717, further outlines that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevs 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line, and not the Ballynahulla 220kV Substation following a route along the Local Tureenahill to Rathmore Road.

#### 2.1.4 Concluding comments on relevant Planning History as outlined

From the above associated Planning History, the authorised status of the electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneevs 38kV substation (Gneevs Wind Farm in Co. Cork), following a route along the Local Tureenahill to



Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, are questionable, especially referencing:

1. Key wording associated with the Gneevs Wind Farm (Cork County Council Plan. Reg. Ref. Nos.: 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566 and 13/5717) as outlined in the Environmental Impact Statement document associated with 13/5717, details the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevs 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line;
2. The above is clear and unambiguous in that the Gneevs Wind Farm and 38kV Substation does not include for the Grid Connection to the Ballynahulla 220kV Substation at Ballydesmond, Co. Kerry;
3. The electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneevs 38kV substation (Gneevs Wind Farm in Co. Cork), following a route along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, does not carry benefit of any Planning Permission; and
4. The permitted 38kV line from an existing 38kV line in the townland of Knocknaseed to a point crossing the Blackwater River in the townland of Lisheen, allowing for the retirement of a 1 km section of the existing 38kV line in the townland of Lisheen, does not follow a route along the Local Tureencahill to Rathmore Road (Kerry County Council Plan. Reg. Ref. No.: 04/10).

**It is clear that any Grid Connection to the Ballynahulla 220kV Substation at Ballydesmond, Co. Kerry associated with the Gneevs Wind Farm in Co. Cork, 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 put to An Bord Pleanála as 4 no. separate Referrals in terms of section 5 of the *Planning and Development Act 2000* (as amended), 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 2000-2021* 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 2000-2021* 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 2001-2021*, where development would contravene a condition associated with a planning permission.

As stated above, An Bord Pleanála 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 An Bord Pleanála are not bound by previous exempted development declarations, which were incorrect, in reaching a different conclusion in the current case. This position has been confirmed by Recent precedent decisions by An Bord Pleanála (Reg. Ref. Nos.: 04.RL.3531 and ABP-300536-18).





### 3.0 KEY PLANNING PRINCIPLES RELEVANT

Part III, section 32 of the *Planning and Development Act 2000-2021*, 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 2000-2021*

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-Law<sup>2</sup>, draws the conclusion that 'Development' therefore, is either 'works' or a 'material change of use', and requires permission unless it is exempt from the requirement of planning permission.

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

The laying of the electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), following a route along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is development.

Section 3 (1) of the *Planning and Development Act 2000-2021* 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 electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), following a route along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, have been approved by the CER through the issuing of Authorisation to Construct Consents and Generating Licences.

<sup>2</sup> Keane, D. (2003) *Building and the Law: 4<sup>th</sup> Revised and Expanded Edition*, RIAI, Dublin.



Taken that both the Gneevs Wind Farm and the Ballynahulla 220kV Substation are operational and the connections energised, it is assumed that the grid connection works were undertaken either by the windfarm developers, and/or their agents, under the supervision of ESB Networks, or by ESB Networks. The entire grid connection infrastructure, including that along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, 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 2001-2021*

**Article 9(1)** of the *Planning and Development Regulations 2001-2021*:

"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 2001-2021* - Assessment

The laying of the electricity cable grid connection and associated works from the Ballynahulla 220kV Substation to the Gneevs 38kV substation (Gneevs Wind Farm in Co. Cork), following a route along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh:

- i. Does not form part of either the Gneevs Wind Farm, or the Ballynahulla 220kV Substation 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 Gneevs Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) as outlined in the Grant of Planning Permission and the Environmental Impact Statement document, details:
    - Condition No. 1: “*The proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein.*”
    - Condition No. 2: “*The proposed development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on 04/09/2013, and the submissions on 30/01/2014 and 11/6/14, including the measures set out in the Environmental Impact Statement, the revised Construction and Environmental Management Plan, the Natura Impact Statement, the Bog Restoration Plan and the Red Grouse Management Plan, save where amended by the terms and conditions herein.*”
    - The proposal include for a minor extension to the existing substation (45 sq m). The Environmental Impact Statement further outlines that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevs 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line.
    - The Environmental Impact Statement further confirms on page 4 that the “*study boundary used for the EIA process encloses an area of approximately 138 ha within which the proposed development is located*”.



The wording is clear and unambiguous in that the Gneevs Wind Farm is intended to connect to the grid via the existing onsite Gneevs 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line. Any deviation from such requires that separate planning permission be obtained for grid connections.

2. Planning History associated with the Ballynahulla 220kV Substation which does not facilitate/permit any electricity cable grid connection works to the electricity cable grid connection which runs from the Gneevs Wind Farm 38kV Substation in County Cork to the Ballynahulla 220kV Substation in County Kerry, crossing the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh.
3. The 38kV electricity cable grid connection which runs from the Gneevs Wind Farm 38kV Substation in County Cork to the Ballynahulla 220kV Substation along the Local Tureencahill to Rathmore Road in County Kerry, crossing the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh, does not correspond with the route as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10.
  - 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 (traversing), and proximate, a European Site, i.e. the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) and the *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 (traversing), and proximate, a European Site, i.e. the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) and the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161).
  - 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 in parts within (traversing), and proximate, a European Site, i.e. the *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) and the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161).
  - 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 2001-2021* 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 Gneeves Wind Farm, or the Ballynahulla 220kV Substation, and requires the benefit from Planning Permission. Key wording associated with the Gneeves Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) as outlined in the Environmental Impact Statement document and Conditions No.: 1 and No. 2 being the planning permissions for the relevant windfarms, confirm that it is intended to connect to the grid via the existing onsite Gneeves 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line. Any deviation from such requires that separate planning permission be obtained for grid connections.

The 38kV electricity cable grid connection which runs from the Gneeves Wind Farm 38kV Substation in County Cork to the Ballynahulla 220kV Substation along the Local Tureencahill to Rathmore Road in County Kerry, crossing the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh, does not correspond with the route as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10.

### 3.2.2 Sections 4 and 172 of the *Planning and Development Act 2000-2021* - Assessment

Section 4(2)(a)(i) of the *Planning and Development Act 2000-2021* 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 2001-2021*, further addressed under 3.3 below.

Section 4(4) of the *Planning and Development Act 2000-2021* 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 2000-2021* 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 limit 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 2001-2021*, 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 Gneeves Wind Farm (Co. Cork), does not extend to any grid connection works associated with the laying of underground electricity cable grid connections to the Ballynahulla 220kV Substation from a point crossing the Awnaskirtaun River into County Kerry (a tributary of the Blackwater River) in the townland of Shinnagh, following a route along the R582 Regional Road and then along the Local Rathmore to Tureencahill Road.

Key wording associated with the Gneeves Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) as outlined in the Environmental Impact Statement details that it is intended to connect to the grid via the existing onsite Gneeves 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry.

The Environmental Impact Assessment carried out for the Gneeves Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717), also does not do extent to an assessment of the works associated with the laying of underground electricity cable grid connection from the Gneeves 38kV Substation to the Knockearagh 110 kV substation in County Kerry.

Taken that both the Gneeves Wind Farm and the Ballynahulla 220kV Substation 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 laying of an underground electricity cable grid connection link between the Gneeves Wind Farm 38 kV Substation in County Cork, and the Ballynahulla 220kV Substation in County Kerry, has not been subject to Environmental Impact Assessment, Appropriate Assessment nor considered part of any Permitted Development.

The 38kV electricity cable grid connection which runs from the Gneeves Wind Farm 38kV Substation in County Cork to the Ballynahulla 220kV Substation along the Local Tureencahill to Rathmore Road in County Kerry, crossing the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh, does not correspond with the route as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10.

**Section 177U(9)** of the *Planning and Development Act 2000-2021* 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, traversing the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and being proximate to 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 2001-2021*

**Article 3(3)** of the *Planning and Development Regulations 2001-2021*: "electricity undertaking" means an undertaker authorised to provide an electricity service".

**Article 6(1)** of the *Planning and Development Regulations 2001-2021*: "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 2001-2021* - 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 2000-2021* refers to electricity transmission. Under sub-section 1 where an undertaker intends to carry out development comprising or for the purposes of electricity transmission, the "undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182 and shall apply to the Board for such approval accordingly".

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

Under sub-section 9, it is confirmed that 'transmission' in relation to electricity "shall be construed in accordance with section 2(1) of the *Electricity Regulation Act 1999* but, for the purposes of this section, the foregoing expression, in relation to electricity, shall be construed as meaning the transport of electricity by means of – (a) A high voltage line where the voltage would be 110 kilovolts or more, or (b) An interconnector, whether ownership of the interconnector will be vested in the undertaker or not."

The grid connection line which runs from the Gneevs Wind Farm 38kV Substation in County Cork, to the Ballynahulla 220kV Substation in County Kerry, crossing the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh, does not correspond with the route as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10.

Section 182A of the *Planning and Development Act 2000-2021* requires that the "undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182 and shall apply to the Board for such approval accordingly.



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

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

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

1. The laying of the underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, could be considered works presented per Class 26 of Schedule 2, Part 1 of the *Planning and Development Regulations 2001-2021* and as such considered exempted development as facilitated by Article 6(1) of the *Planning and Development Regulations 2001-2021*.
2. The laying of the underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, is development to which section 182A of the *Planning and Development Act 2000-2021* 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 Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, along a route which traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area* (Site Code 004161), is development to which section 182A of the *Planning and Development Act 2000-2021* requires that the "undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182 and shall apply to the Board for such approval accordingly".





## 4.0 CONCLUSION - ANSWERING THE KEY QUESTIONS

### 4.1 Identifying the nature and scope of 'works'

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

*The underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneevies 38kV substation (Gneevies Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, along a route which traverses the designated Blackwater River (Cork/Waterford) SAC Special Area of Conservation (Site Code 002170) at various locations, and is proximate to the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA Special Protection Area (Site Code 004161).*

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

### 4.2 Question at hand

Whether the provision of:

The underground electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneevies 38kV substation (Gneevies Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh,

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 2000-2021* 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 2000-2021*, confirming that development requiring an appropriate assessment shall not be exempted development, and in this instance being underground electricity cable grid connection works which traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 2000-2021*;
- (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 2000-2021*, being of a class not specified in Part 1 of Schedule 5 of the *Planning and Development Regulations 2001-2021*;
- (d) the said underground electricity cable grid connection works **come within the scope** of Section 177U of the *Planning and Development Act 2000-2021*, and the requirements as specifically outlined under Section 177U(g) of the *Planning and Development Act 2000-2021* requiring the



Screening for Appropriate Assessment being works which traverses the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 2000-2021*, constitute development of electricity transmission lines traversing the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 2001-2021* 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 2001-2021* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2001-2021*;
- (h) the said underground electricity cable grid connection works come within the scope of Article 9(1) of the *Planning and Development Regulations 2001-2021* 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. the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and is proximate to the *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 Gneevs Wind Farm 38kV Substation (County Cork) to the Ballynahulla 220kV Substation in County Kerry, from the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh, following a route along the R582 Regional Road and then along the Local Rathmore to Tureencahill Road to the Ballynahulla 220kV Substation in County Kerry, come within the scope of Article 9(1)(a)(i) of the *Planning and Development Regulations 2001-2021* by:
  - Contravening Condition No. 1 attached to Cork County Council Plan. Reg. Ref. No.: 13/5717 which details: *"The proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 99/0616, 03/6585, 04/1355, 04/0188, 08/5636, 13/4566 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein"*;
  - Contravening Condition No. 2 attached to Cork County Council Plan. Reg. Ref. No.: 13/5717 which details: *"The proposed development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on 04/09/2013, and the submissions on 30/01/2014 and 11/6/14, including the measures set out in the Environmental Impact Statement, the revised Construction and Environmental Management Plan, the Natura Impact Statement, the Bog Restoration Plan and the Red Grouse Management Plan, save where amended by the terms and conditions herein"*;
  - Being contrary to the Environmental Impact Statement associated with the Gneevs Wind Farm (Cork County Council Plan. Reg. Ref. No.: 13/5717) detailing that the proposed wind farm extension is intended to connect to the grid via the existing onsite Gneevs 38kV Substation, which is connected to the grid at Knockearagh 110 kV substation in County Kerry via an overhead line; and
  - Not corresponding with the route as permitted by Kerry County Council Plan. Reg. Ref. No.: 04/10.



- (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 2001-2021* having regard to the provisions of Article 9(1)(viiB) of the *Planning and Development Regulations 2001-2021*;
- (k) where the underground electricity cable grid connections and associated works of the Gneeves Wind Farm 38kV Substation (County Cork), from the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh to the Ballynahulla 220kV Substation in County Kerry, following a route along the R582 Regional Road and then along the Local Rathmore to Tureencahill Road to the Ballynahulla 220kV Substation in County Kerry, were constructed **after the judgements** of the High Court in *O’Grianna (and others) v. An Bord Pleanála (and others)* [2014] IEHC 632 and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308, the Planning Authority **can proceed to decide this part** of the underground electricity cable grid connection works subject to the consideration of Environmental Impact Assessment and Appropriate Assessment to the extent that is necessary, in accordance with the relevant legislative provisions;
- (l) where the underground electricity cable grid connections and associated works of the Gneeves Wind Farm 38kV Substation (County Cork), from the Kerry County / Cork County border at a point crossing the Awnaskirtaun River (a tributary of the Blackwater River) in the townland of Shinnagh to the Ballynahulla 220kV Substation in County Kerry, following a route along the R582 Regional Road and then along the Local Rathmore to Tureencahill Road to the Ballynahulla 220kV Substation in County Kerry, 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, and An Bord Pleanála 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, Kerry County Council as relevant Planning Authority, in exercise of the powers conferred on it by section 5 (1) of the *Planning and Development Act 2000-2021*, should declare that the said electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh, **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 2000-2021*.

Yours faithfully



**Wessel Vosloo**  
Principal  
The Planning Partnership



**Appendix A**

Electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), along the Local Tureencahill to Rathmore Road, joining the R582 and along the Regional Road to a point crossing the Awnaskirtaun River into County Cork (a tributary of the Blackwater River) in the townland of Shinnagh

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





**Appendix B**

Electricity cable grid connections and associated works from the Ballynahulla 220kV Substation to the Gneeves 38kV substation (Gneeves Wind Farm in Co. Cork), traversing the designated *Blackwater River (Cork/Waterford) SAC Special Area of Conservation* (Site Code 002170) at various locations, and proximity to the 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

