



An
Bord
Pleanála

Inspector's Report ABP-300135-17

Development	Solar farm with photovoltaic panels laid out in rows on ground mounted frames on 12.5 hectare site and all associated site works.
Location	Marlinstown, Mullingar, Co. Westmeath
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	16/6264
Applicant(s)	Elgin Energy Services Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party
Appellant(s)	Elgin Energy Services Ltd
Observer(s)	Transport Infrastructure Ireland
Date of Site Inspection	18 th of April 2018
Inspector	Angela Brereton

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1.0 Site Location and Description

- 1.1. The proposed solar farm site extends across undulating esker terrain located c.2km south east of the town of Mullingar. It is located in the townland of Marlinstown, in the rural area to the south east of the development boundary of Mullingar. The site is on the eastern side of the N52 Mullingar bypass. Access to the solar farm is proposed via the L1703 which connects the local road network to Mullingar Town. The site comprises four adjoining agricultural fields laid to grass with tree and hedge line boundaries and a narrow track way heading north east running through and adjacent to boundaries of two further fields. The site is bounded by the N52 to the west, neighbouring agricultural lands to the north, west and east and rear garden of a dwelling to the west.
- 1.2. The site is well set back from the existing access which is served by a section of private roadway (which serves a dwelling/farm and fields) and adjoins the public roadway L57131 (local tertiary road- Baltrasna Boreen). The tertiary road serves a number of farms and one-off dwellings, and is narrow and undulating only allowing one car to pass, with high banks and a few informal passing places. The site entrance is located approx. 1km along this narrow roadway. The nearest dwelling is approx. 70m from the site, the garden of this dwelling to the west adjoins the site.
- 1.3. The site and surrounding lands fall from north to south down to the area of the canal and railway. The N52 is raised in an embankment significantly above the site (estimated 6m) heading south along the western boundary and bridges over the canal and railway line. The Royal Canal and associated planting, walks/tow paths now developed as an amenity area lie to the south of the site. There is a steep path from the N52 which while not accessing passes the south western side of the site and adjoins the northern side of the canal. The Dublin -Sligo railway line lies adjacent to and follows the southern boundary of the canal.

2.0 Proposed Development

- 2.1. Permission is sought for a Solar farm comprising the following:

- The installation of Photovoltaic panels on ground mounted frames in rows on a site of c.12.5 hectares
- A single storey ESB Terminal Station
- A single storey Switchgear Enclosure with Storage Container
- 4no. single storey Inverter Stations
- Ducting & Underground Electrical Cabling
- Perimeter Fencing
- 7no.Mounted CCTV Cameras
- Provision of Internal Access Tracks
- All associated Site Development and Landscaping Works
- Access is to be from the Existing Entrance

2.2. RPS Planning and Environment have submitted this application on behalf of the Applicants and include drawings showing the proposed development. The following Reports have been submitted with the application:

- Town Planning and Environmental Report – RPS Group
- Landscape and Visual Assessment – RPS Group
- Solar Photovoltaic Glint and Glare Study - PagerPower
- Ecology Report – RPS
- Archaeological Assessment – John Cronin & Associates
- Traffic Projections
- Letter of consent from the owner of the land – Mr Tom McCormack.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 9th of October 2017 Westmeath County Council granted permission for the proposed development subject to 19no. conditions which include relevant to the

construction and maintenance of the proposed development, landscaping and site restoration, infrastructure and special development contributions. The following are of note relevant to the First Party Appeal and are summarised as below:

- Condition no.2 – Permission for a period of 25 years from the date of the commencement of development.
- Condition no.16 – Relative to Roads issues including the maintenance of unobstructed sightlines, design of passing bay on Local Tertiary Road L57131, Construction Traffic Management Plan and need to obtain consent for high voltage cable along the proposed route for ESB Grid Connection.
- Condition no.19 – Relative to mitigation measures to prevent glint and glare and to the provision for the payment of a Special Levy under Section 48 for relative mitigation measures on roadway lands.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner had regard to the locational context of the site, planning history and policy and to the technical reports and the submissions made. Planning Considerations included the Extent of the development proposed, Principle of development, Visual Impact, Impact on Neighbours, Impact on National Heritage, Land use impact, Servicing, Roadway Impact (including TII concerns), Flooding, Regard as to whether there is a need for AA/EIA. They had concerns regarding some of these issues and requested that Further Information be submitted to include the following:

- Details of the proposed grid connection.
- To remedy the unauthorised gate construction from the lands onto the N52.
- Evidence of right of way agreement to connect to the public roadway L57131.
- To address the concerns of the DoAHRRGA relative to the potential impact on designated sites and the need to address this in the AA Screening and the Ecology Report.

- To address the Flood Risk element of the site in accordance with the Guidelines.
- To consider the proposals to overcome the visual impact concerns of the TII.
- To provide amendments including additional planting/landscaping to mitigate visual impact.
- To review and provide more details on traffic movements including relative to the impact on the local road of construction traffic.
- To submit details of how the narrow local road is to be upgraded, to facilitate the construction of the proposed development.

Further Information Response

RPS Group Ltd, submitted F.I on behalf of the applicant as summarised below:

- The proposed grid connection does not form part of the planning application and its exact route maybe subject to change. It will be progressed in accordance with the necessary consent/permitting requirements.
- The landowner confirms that the unauthorised gate will be permanently fixed shut and not used to access the N52 without the permission of the L.A. They note that the badger fencing has been reinstated.
- Appendix 3 includes a letter from the applicant's solicitors to confirm entitlement regarding the right of way. In summary, the Agreement for Lease between Elgin Energy and the landowner, provides them with a benefit of the right of way from the leased lands to the public roadway L57131.
- The impact on ecology will be insignificant due the operation of the proposed development. Appendix 4 comprises an updated Ecology Report which considers and addresses those matters raised by the Department. Appendix II of the Ecology Report considers other Natura sites in the area as well as potential impacts on the SPA's and bird species.
- The proposal is designed to ensure that there is no impact on flooding and a detailed response is included in Appendix 5 of this Report.

- The Landscape and Visual Impact Assessment which refers to various viewpoints concludes that identified visual impacts would be reduced or negated through implementation of mitigation planting along the western boundary of the site. Also, that the site is capable of accommodating the development from a landscape and visual perspective.
- The Glint and Glare Report concludes that the potential impact is minor in the absence of mitigation. The revised drawing submitted in response to the TII concerns show a further band of planting along the site's western boundary to further screen proposals from traffic along the N52. Appendix 6 includes examples of solar projects adjacent to roads.
- The LVIA provides further details regarding landscaping having regard to visual impacts along the Royal Canal and on residences, in the vicinity of the site. They refer to Appendix 7 and include photographs showing views.
- Appendix 8 contains a Construction Traffic Management Plan to inter alia address items 8 and 9 of the FI request. They provide details relative to traffic management during construction and operational phases. This includes a swept path analysis and regard to a proposed road upgrade.

Planner's response

The Planner had regard to the F.I submitted and noted the concerns of the TII and the Department. They considered that the TII concerns regarding visual distraction could be addressed by the glint and glare mitigation measures. However, they are concerned that based on the comments of the Department, that it has not been demonstrated that harm to protected species would not result from the proposed development. The Planners considered that the need for AA/NIS cannot be screened out, at this time. They provide that the concerns of the Department would need to be subject to clarification to establish whether any impact would occur. Also, that in view of the time for determination of the application this clarification cannot be sought and therefore they recommended that the application be refused.

It is noted that subsequently permission was granted by the Director of Services, who was of the view that in the absence of National Guidelines and any specific data

related to the issue in question and bearing in mind the height of the proposed development that it is reasonable that development can be permitted.

3.3. Other Technical Reports

Internal – Westmeath County Council

Environment Section

The site is located to the south of Marlinstown landfill at a sufficient distance that the landfill will have no impact on it. They have no objection to the proposed development subject to recommended conditions. These include relevant to Construction and Waste Management.

Westmeath National Roads Office

They had concerns regarding an unauthorised gate as part of the N52 Bypass construction and provided that neither temporary or permanent access onto this road will be permitted in the interests of traffic safety. Also, that a section of badger proof road boundary fencing has been removed which will impact on the effectiveness of the badger underpass. They recommended conditions should permission be granted.

Roads Section – Area Engineer

They had concerns which include relative to sightlines at the vehicular entrance to the public road network, traffic management, road conditions i.e need for upgrade and request that an alternative route for the Grid Connection be submitted.

3.4. Prescribed Bodies

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

They note that the site of the proposed solar farm is in a location likely to impact on the Royal Canal pNHA and a number of SPA's and provide details of this relative to the Conservation Objectives and protected species. They are particularly concerned about potential adverse impact on protected bird species and wildlife collision. They note that mitigation measures have not been considered. They considered that having regard to the information submitted that it was not possible to adequately assess the impact of the proposed development on Loughs Ennell, Owel,

Derravaragh and Iron SPA's and the local avian and invertebrate life. They subsequently recommended that the precautionary principle be applied.

An Taisce

They note that a strategic National and Regional Strategy is required for solar array development. They provide that the Council should ensure optimum site suitability is selected, protecting biodiversity, sensitive area, archaeological heritage and good tillage land.

Transport Infrastructure Ireland

The TII considered that the proposal is at variance with official policy in relation to control of development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities 2012 and would adversely affect the operation and safety of the national road network and set an undesirable precedent. They noted that grid connection is not part of this application. Subsequent, to the F.I submission they requested appropriate mitigation measures be identified to avoid glint/glare impact on the N52.

3.5. Third Party Observations

There are no submissions noted on file, from local residents.

4.0 Planning History

There are no records of any planning history on the appeal site.

In recent years there have been a number of Solar PV Energy planning applications decided by the Board on appeal, the majority of which have been granted permission. The following are of note:

- PL26.247366 – Split decision by the Board. Permission granted subject to conditions for the northern solar array at Newtown Big and refused for the southern solar array at Ralphtown and Muchtown, Co. Wexford. It is of note that this contains issues relative to Appropriate Assessment

- PL14.246850 – Permission granted subject to conditions by the Board for a solar farm with an export capacity of approx.4.2MVA at Lisnageeragh, Edgeworthstown, County Longford.
- PL26.247217 – Permission refused by the Board for a solar farm relating to several townlands in Co. Wexford. This related to the substantial size of the solar farm in a single project. The AA Section is of note.
- PL17.248939 – Permission granted by the Board for a solar farm and ancillary features on a site of 11ha at Grangegeeth, Slane, County Meath. This contains a considerable section on landscape and visual assessment.

5.0 Policy Context

5.1. EU Directive 2009/28/EC - Energy from Renewable Resources

EU Directive 2009/28/EC sets a target of 20% of EU energy consumption from renewable sources and a 20% cut in greenhouse gas emissions by 2020. As part of this Directive, Ireland's legally binding target is 16% energy consumption from renewable sources by 2020. Ireland has set a non-legally binding target of 40% of renewable energy share for electricity by 2020 (from a 2012 position of 19.6%).

5.2. International Guidelines

There is a range of UK Guidance. The main guidance notes are Planning Practice Guidance for Renewables and Low Carbon Energy (DCLG 2013) and Planning Guidance for the development of Large Scale Ground mounted Solar PV systems (BRE 2013). Both refer to the desirability of preserving good agricultural lands and set out issues and mitigations. The BRE Guidance provides advisory information on planning application considerations including construction and operational works, landscape / visual impact, ecology, historic environment, glint and glare and duration of the planning permission. The document provides guidance on the information which should be provided within a Landscape and Visual Impact Assessment. The document also provides guidance on EIA Screening procedures.

5.3. National Guidelines

5.3.1. National Planning Framework (NPF)

A new National Planning Framework - 'Project Ireland 2040: Building Ireland's Future' has been developed to replace the National Spatial Strategy. This now replaces the National Spatial Strategy and represents the overarching national planning policy document, of direct relevance to the planning functions of regional and planning authorities, including An Bord Pleanála. This supports the Transition to a Low Carbon and Climate Resilient Society and harnessing the potential of regions for renewable energy systems including solar.

This also refers to the National Development Plan 2018-2027 which includes reference to investment in renewable energy sources, ongoing capacity renewal, and future technology affords Ireland the opportunity to comprehensively decarbonise energy sources. It supports diversification away from fossil fuels to green energy which includes solar.

5.3.2. Ireland's Transition to a low carbon Energy Future 2015-2030

This White paper on Energy policy published by the Department of Communications, Energy and Natural Resources in December 2015 sets out a vision to reduce greenhouse gas (GHG) emissions by between 80% and 95% compared to 1990 levels, by 2050, falling to zero or below by 2100. It states that as new energy solutions such as bioenergy, solar photovoltaic (PV) and offshore energy mature and become more cost effective they will be included in the renewable energy mix. The policy document recognises that solar photovoltaic (PV) technology is rapidly becoming cost competitive for electricity generation and that the deployment of solar power in Ireland has the potential to increase energy security, contribute to our renewable energy targets and support economic growth and jobs.

5.3.3. National Renewable Energy Action Plan (NREAP) submitted to the EC in 2010

The NREAP was submitted to the European commission in 2010. It sets out Ireland's approach to achieving its legally binding targets, with a target of 40% of electricity consumption to be from renewable sources by 2020.

A third progress report on the NREAP was submitted to the European commission in April 2016 which detailed installed capacity of solar power to be 1.38 MW.

5.3.4. Food Wise 2025 (Department of Agriculture, Food and the Marine, 2015)

This document sets out a 10-year vision for the Irish agri-food industry up to 2025.

Subject to following actions identified in the strategy, the sector projections are:

- Increasing value of agri-food exports by 85%, Increasing value added in the agri-food, fisheries and wood products sector by 70%, Increasing the value of Primary Production by 65% and the creation of an additional 23,000 direct jobs in the agri-food sector.

To achieve the projections set out above, Food Wise 2025 identifies c.400 recommendations and actions to achieve sustainable growth.

5.3.5. Regional Planning Guidelines for the Midland Region 2010-2022

Goal 8:

- To promote the delivery of renewable energy particularly in the context of the existing energy infrastructure in the Midland Region.

3.4.6.1 - *Renewable Energy*

The development of the renewable energy sector in the Midland Region will significantly contribute to the national target of generating 40% electricity from renewable sources by 2020.

5.4. **Westmeath County Development Plan 2014-2020**

Chapter 10 refers to Energy and Communications.

Section 10.3 refers to Renewable Energy and includes: *The national target commits 40% of electricity from renewable resources by 2020 under the Government's publication "Building Ireland's Smart Economy – A Framework for Sustainable Economic Renewal (2008)".*

Section 10.4 provides General Energy Policies (P-EN1 to P-EN5) & Objectives.

Policy P-EN1 seeks: *To promote renewable forms of energy where it is consistent with the proper planning and sustainable development of an area.*

Policy P-EN2 seeks: *To support local, regional, national and international initiatives for limiting emissions of greenhouse gases through energy efficiency and the development of renewable energy sources which make use of the natural resources*

in an environmentally acceptable manner, and having particular regard to the requirements of the Habitats Directive.

Objective O-EN1 seeks: *To support the implementation of actions identified in the Westmeath County Council Energy Efficiency Action Plan 2011.*

Section 10.7 refers to Solar Energy and includes the following:

Westmeath may be suitable for the development of solar power technologies. Solar applications are usually small scale and can supply electricity or energy. Solar energy provides a suitable source of energy for buildings. The Council will encourage solar energy in commercial and residential developments, subject to design and other considerations.

Policy P-SBV1 seeks: *To conserve the existing wide range of flora, fauna and wildlife habitats in the county, through the preservation of ecological corridors and ecological networks. These are the habitats that link the areas of high nature conservation value.*

5.5. Mullingar Local Area Plan 2014-2020

The site is outside and to the south east of the zoned land and the boundaries of the LAP, which is on the opposite (west) side of the N52. It is in the rural agricultural area. However, it is of note that the land on the opposite side of the road is within the 'open space' zoning, along the Royal Canal corridor. There is a walkway and national cycle network that extends along this corridor to the south of the site. The land within the LAP zoning to the north west is zoned for Information Technology.

5.6. Ardmore/Marlinstown Framework Area Plan 2009-2023

This represents an integrated strategy for the physical, social and economic development of the south-eastern edge of Mullingar, consistent with the protection and enhancement of its amenities. The Plan relates to lands located to the west of the N52 (within the Mullingar town boundary).

5.7. Natural Heritage Designations

The Royal Canal (pNHA) (site code 002103) abuts the southern boundary of the proposed development site. Regard is had to Designated Natura sites within a 15km radius within the Screening for Appropriate Assessment Section below.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. RPS Group Ltd have submitted a First Party Appeal on behalf of the Applicant. While they welcome the Council's decision to grant permission for the proposed development, their grounds of appeal relate to the following conditions:

- The absence of a condition clearly confirming the permission will have effect for 10 years.
- Condition 16 – Part of this condition is unnecessary; part of the condition is too restricted and unnecessary.
- Condition 19 – Mitigation measures avoid glint and glare.

Time Limit for Development

- They are concerned that despite 10years being requested in the documentation submitted with the application that, this time period is not specifically referred to in the Conditions of the Council's permission.
- They request the Board to attach a separate condition in accordance with section 42 of the Planning and Development Act 2000 as amended clearly specifying the 10year period during which the permission will have effect.
- They consider it reasonable that the appropriate period of a permission for a development of this nature would be 10 years. They note a significant precedent for such an approach both by individual planning authorities and An Bord Pleanála.

Condition 16

- They consider that bullet point no.1 of this condition is unnecessary as these sightlines are already achieved at the existing junction configuration.

- They note that construction works will be of a short duration and will be carried out in accordance with a Construction Traffic Management Plan.
- They submit that 90m sightlines would not be necessary and provide details of their reasoning for this.
- They request that this bullet point be omitted.
- While they will comply with bullet point 4 (Condition no.16) of this permission in principle they request that this part of the condition be amended as follows:
Prior to the commencement of development, the developer shall obtain consent to connect the development to the National Grid.

Condition 19

- The Applicant has already comprehensively assessed the potential for glint and glare including the requirement for mitigation measures in the application documentation and at F.I stage to provide screening which will eliminate even the minor potential for glint and glare on the N52 that has been identified in the original application documentation.
- They refer to the Solar Photovoltaic Glint and Glare Study provided at application stage which concluded that part of the N52 could theoretically experience solar reflection for some of the proposed development, but that this would be minor.
- They consider that on the basis of, the conclusions of the Report that no further mitigation measures were deemed necessary or were proposed in the original application.
- The application documents also included a Landscape Visual Impact Assessment which noted existing and proposed screening along the boundary of the site adjacent to the N52.
- They note that in response to the Council's F.I request, additional screening was proposed along the western boundary of the site with the N52 (Drawing 1723.5.01- Revision D- Appendix B). While the submitted reports outlined that the screening was not required, the applicant are willing to address the TII's concerns. They also refer to Condition no.11 relative to landscaping.

- On the basis of, the documentation submitted at application and F.I stage they provide that there is no residual potential for glint and glare impact identified and accordingly no grounds for attaching condition no.19. However, should the Board require further clarification or detail, they will comply with such a condition and agreement of same with the Planning Authority.

Basic Criteria for Conditions

- Condition no.19 as drafted, does not meet the basic criteria for conditions as set out in section 7.3.1 of the DoE *Development Management – Guidelines for Planning Authorities (June 2007)*. This relates to the criteria for Conditions to be Necessary, Enforceable, Precise, Reasonable and they provide their reasoning relative to this.
- The proposals go above and beyond what is required to screen the site. The provisions of Condition 19 are considered unnecessary, would not fall within the provisions of Section 48(2)(c) of the Planning and Development Act and have no legal basis and are unenforceable.
- Condition no.19 is imprecise and the basis for the special contribution is not substantiated, nor is the methodology of how WCC will determine the ‘adequacy’ of mitigation measures proposed. They consider that the imposition of the special development contribution levy is unreasonable and would affect the viability of the scheme.
- They note that the assessment of solar farms in Ireland is now well established and that the main planning related concerns and mitigation measures have been considered by the Board and have provided a template for the nature and extent of the information deemed appropriate for inclusion in a planning application.
- They include a letter from the TII submitted in response to the Council’s F.I request (dated 5th of October 2017). Also, a copy of a letter from the Commission for Railway Regulation (CRR dated 2nd of December 2016).

No Statutory Basis for Financial Contribution Element of the Condition

- Notwithstanding both the lack of justification for the principle of the condition and the lack of statutory basis for a financial contribution, they note that the

amount specified is vague and appears to be an arbitrary amount with no grounding in possible costs that may be associated with screen planting.

- They refer to Condition no.19 and request the Board to omit any request for a special financial contribution.

6.2. Planning Authority Response

Westmeath County Council response to the grounds of appeal includes the following in summary:

- Condition no.1 – no objection.
- Condition no.16(i) – They consider that this should not be omitted and sightlines should be provided in accordance with Section 14.4.4. of the CDP. Also, that traffic safety and sight visibility shall be provided and maintained, at all times at the proposed access point from the private laneway to the public Local Tertiary Road L57131.
- Condition no.16(iv) – They consider that where the developer is proposing to lay the high voltage cable along the public road, there will be a significant impact on the public road network and therefore consent should be obtained from the Council and the TII where the public road is a national road. The Council proposes that the condition should reflect the need to consult both WCC and TII and recommend a revision to reflect this.
- Condition no.19 – They note that the Glint and Glare Study, *Pager Power, Oct 2016*, provided with the application identified a minor impact onto the N52 and recommended mitigation measures to provide screening to eliminate all effects and identified the western site boundary in this regard. They also refer to the TII Observations (dated 05/07/17) and incorporated their requirements into this condition. The Council consider that such mitigation measures are necessary and without them in the interest of road safety permission should be refused. They refer to details of such measures, including the provision of a fenceline along the N52. They provide justification for sections one and two of this condition and consider that it would benefit the proposed development.

7.0 Observations

Transport Infrastructure Ireland (TII) provide that they undertook a review of the decision and issued further correspondence directly to the Council addressing in particular the requirements of Condition no.19 of the decision. They request that their Observations are taken into consideration by the Board in the assessment of the subject appeal and this includes the following:

- They refer to the issues raised in their submissions to the Council during the course, of the application in particular issues relating to glint and glare and impact on road user safety on the adjoining N52, national secondary road.
- They acknowledge the Council addressed the issue of glint and glare, including measures to provide for additional mitigation if necessary in condition no.19.
- They note that the condition applied by the Council requires the payment of a Special Levy under Section 48 of the Planning and Development Act for the construction and planting of mitigation measures on roadway lands in the event, that mitigation measures on site do not adequately prevent glint and glare from the development.
- They provide that the TII would welcome clarification measures and/ or mechanisms proposed to address the requirements of the condition and subsequent implementation of mitigation on roadway lands having regard to TII standards and protocols.
- The TII request that their observations be taken into consideration in the interest of public safety and in the context of the Council's adherence to official policy.

8.0 Assessment

8.1. Principle of Development and Planning Policy

- 8.1.1. The National Planning Framework -Project Ireland 2040: Building Ireland's Future which replaces the National Spatial Strategy includes: *In meeting the challenge of transitioning to a low carbon economy, the location of future national renewable*

energy generation will, for the most part, need to be accommodated on large tracts of land that are located in, a rural setting, while also continuing to protect the integrity of the environment and respecting the needs of people who live in rural areas.

- 8.1.2. Reference is made to National Strategic Outcome 8 which seeks to encourage the Transition to Sustainable Energy. It seeks to deliver 40% of electricity needs from renewable sources by 2020 with a strategic aim to increase renewable deployment in line with EU targets and national policy objectives out to 2030 and beyond. It is expected that this increase in renewable deployment will lead to a greater diversity of renewable technologies in the mix.
- 8.1.3. Having regard to the aim to meet EU targets and to National and Regional Policy and the policies and objectives in the Westmeath County Development Plan, the principle of providing renewable energy i.e in this case solar power is generally to be supported. It is also noted that while solar farms are a relatively new development in Ireland, they are an established industry and increasingly common element of the landscape in Europe, the US and worldwide and for access purposes are often located adjacent to both minor and major roads. However, while the principle is accepted, regard must also be had to issues such as its locational context, impact of the scale and nature of the proposed development on landscape and visual amenity, agricultural land, rural and residential amenity, the environment and designated sites, construction and traffic management and to ensure that this proposal would be, in compliance the proper planning and sustainable development of the area.

8.2. Appeal against Conditions

- 8.2.1. While they welcome the Council's permission, RPS have on behalf of the Applicant submitted an appeal against conditions. These include the following:
- The absence of a condition clearly confirming the permission will have effect for 10 years.
 - Condition 16 – Part of this condition is unnecessary; part of the condition is too restricted and unnecessary.
 - Condition 19 – Mitigation measures avoid glint and glare.

8.2.2. Section 139 of the Planning and Development Act 2000 as amended would apply as this relates only to appeals against conditions. Section 139 (1)(c) provides that where: *the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted.* Section 139 (2) includes: *In exercising the power conferred on it by subsection (1), apart from considering the condition or conditions to which the relevant appeal relates, the Board shall be restricted to considering— (a) the matters set out in section 34(2)(a),..*

8.2.3. Section 34(2)(a) includes: *When making its decision in relation to an application under this section, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, regard being had to—*

(i) the provisions of the development plan,

(ia) any guidelines issued by the Minister under section 28,...

(iii) any European site or other area prescribed for the purposes of section 10(2)(c),

(iv) where relevant, the policy of the Government, the Minister or any other Minister of the Government.

Section 10(2)(c) provides that a development plan shall include objectives for-

the conservation and protection of the environment including in particular, the archaeological and natural heritage and the conservation and protection of European sites and any other sites which may be prescribed for the purposes of this paragraph;

As amended Section 10(2)(ca) and (cb) are of note and include:

(ca) the encouragement, pursuant to Article 10 of the Habitats Directive, of the management of features of the landscape, such as traditional field boundaries, important for the ecological coherence of the Natura 2000 network and essential for the migration, dispersal and genetic exchange of wild species;

(cb) the promotion of compliance with environmental standards and objectives established —

- 8.2.4. It is noted that Department of the Culture, Heritage and the Gaeltacht has particular concerns, about Nature Conservation taking into account the absence of national guidelines with regard to solar farm proposals, the paucity of information on solar farm wildlife collision risk (in particular flight risk for protected bird species) and taking into account the site being located between Natura 2000 Special Protection Areas. They strongly recommend that the precautionary principle be applied.
- 8.2.5. The Observation relative to concerns from Transport Infrastructure Ireland (TII) has also been noted above. In view of the substantive issues raised including the environmental issues by the Department, I would recommend that it would be more appropriate in this case and in the interests of the proper planning and sustainable development of the area that the Board consider this application *de novo* rather than as a conditions only appeal as requested by the First Party. This application is therefore considered under first principles below.

8.3. Scale and Design

- 8.3.1. The proposed solar farm is to be located on 4 adjoining fields on a site of c.12.5 hectares. A detailed description of the proposed solar farm array is given in the documents submitted. The development proposed is designed to sit within the existing field boundaries. Proposals are to be designed to work within the existing contours of the land and there is to be no cut and fill on the site. The number of panels is to be governed by site specifics (e.g. ground conditions, proximity to hedgerows) – all in a series of rows within the existing field boundaries. It is noted that construction and maintenance works will utilise existing field openings where available and accordingly the majority of, vegetation is to be retained in its entirety.
- 8.3.2. The details submitted provide that the panels are to be approx. 1.95m by 1.0m arranged in a module comprising two panels. The panels are to be orientated to face south and between 0.6m – 0.8m above ground level with a higher edge of the panel located 2.2m – 2.9m depending on topography. Each frame table is to be supported on galvanised steel posts/frames to be driven or screwed into the ground to depths of up to 1.5m. No concrete foundations are required, minimising ground disturbance. They are to be mounted typically at 15 to 25 degrees to the horizontal but this may be adjusted to suit local conditions. The information submitted provides that rows maybe separated by a distance of between 2-6 metres depending on the topography

of the site. They note that panels always remain south facing and do not move to follow the path of the sun.

- 8.3.3. A terminal station and grid connection point are to be provided. The terminal station facilitating the development is to be sub-divided within the larger site. A switchgear unit is to be located adjacent to the proposed solar arrays within the north-eastern boundary of the main development site. As shown on the drawings this is to be a prefabricated building and the associated brick built ESB Terminal Station is to be located adjacent to the switchgear unit. Cables connecting the switchgear and the terminal station are to be placed underground. For clarity the application does not include the grid connection but the report includes an assessment of the underground route for completeness.
- 8.3.4. The First Party provides that during the lifetime of the installation (c.30 years), the application site will continue to be used for sheep grazing and at the end of its operation all infrastructure will be decommissioned, removed and the land will be returned to its former agricultural use.

8.4. **Archaeology**

- 8.4.1. The planning application was accompanied by an Archaeological Assessment. This included a desktop study and a site inspection. The latter was undertaken in July 2016. A description of the site is given and a photographic record of the greenfield site inspection was compiled and extracts are presented in the Appendix to this report. In addition, the area proposed as the site access running north from Field 4 was inspected as was the alignment of the proposed underground cabling to connect the scheme with the electrical grid (Figure 4 relates) and nothing of archaeological significance was noted. It is noted that there are no recorded archaeological sites within the lands comprising the proposed development area.
- 8.4.2. The surrounding 1km wide study area contain 13no. recorded archaeological monuments (Table 1 and Figure 2 refers), the closest being a Ringfort (Monument no. NM19-082) located within 150m of the proposed development site. The proposed development will not give rise to any significant visual impact on the setting of this site as views towards the site area from the Ringfort are blocked by the N52 road embankment and mature field boundaries. Table 2 provides a summary of 9no.

archaeological excavations that have taken place within the wider environs of the proposed development.

- 8.4.3. An assessment of impacts provides that whilst the proposed solar farm site extends over a relatively large area, extensive sub-surface ground disturbance will be largely confined to the construction of access/maintenance tracks, linear cable trenches and the creation of concrete bases for inverters, terminal station and switchgear station. The erection of individual solar panels will not give rise to significant ground disturbance as these will be fixed to pile-driven uprights.
- 8.4.4. Policies P-AH1 and P-AH3 of the Westmeath CDP 2014-2020 seek the preservation of archaeological features or sites. The Archaeological Report also refers to CDP Objectives relative to archaeology. While it is provided that the development will not impact on any recorded or protected archaeological heritage site, it is recognised that the potential exists for the presence of unrecorded sub-surface archaeological features and artefacts within the proposed development site. Also, that adoption of the construction phase mitigation measures shall ensure that no further potential impacts occur. It is recommended that a programme of archaeological monitoring be conducted during the course of development works. If the Board decide to permit it is recommended that an appropriate archaeological monitoring condition be included.

8.5. Landscape and Visual Impact Assessment

- 8.5.1. The U.K Guidelines 'Planning Guidance for the development of large scale mounted solar PV systems', state that the landscape/visual impacts of a solar farm are likely to be one of the most significant impacts which would result. I would agree that the same be applied to an Irish context. The overall scale of the development is significant in the context of the landscape character which comprises agricultural land, traditional farmsteads set back in the landscape and one-off housing along the tertiary road among gently undulating and generally low-lying lands.
- 8.5.2. Chapter 6 of the Westmeath County Development Plan refers to Landscape Character and Lake Management. Map 6.1 illustrates the LCA'S within Westmeath. A small section of the subject site (i.e trackway area) is within Area 04 – Central Hills and Lakes. This area in the north of the county is typified by undulating hills and lakes, the most prominent of which are Lough Derravaragh and Lough Owel. The

closest lake to the site is Lough Ennell which is situated almost 4kms to the southwest of the proposed development. Therefore, in view of distance the site is not visible from nor does it impact on the visual amenity of these lakes. The majority of the site including the area envisaged for solar panels is within LCA 05 – Royal Canal corridor. Objective O-RCC1 seeks: *To continue to work with Waterways Ireland to enhance and protect the visual corridor of the Royal Canal, by incorporating a visual assessment zone of 500m on each side of the bank of the canal.* Section 6.21 includes Landscape Management Policies – P-LLM1 seeks: *To require that development is sensitively designed, so as to minimise its visual impact on the landscape, nature conservation, archaeology and groundwater quality.*

- 8.5.3. A Landscape and Visual Impact Assessment (LVIA) was submitted with the planning application, based on EPA guidance and Advice Notes. Regard was had to the Study Area and to the Zone of Theoretical Visibility. A review has been made of the existing and proposed environment. The significance of landscape and visual effects is determined on the basis of, receptor sensitivity weighed against the magnitude of impact. As part of the LVIA a series of representative viewpoints were selected within the study area from which photomontages were prepared to accurately depict the final development proposal. A Visual Impact Assessment was then undertaken for each of the viewpoints.
- 8.5.4. It is noted that in view of the more low-lying albeit undulating topography of the site and set back from the tertiary access road to the north and tree/hedgerow screening along the southern boundary with the Royal Canal, that it will not be very visible in the surrounding landscape. There is a dense belt of planting along the southern boundary of the site with the rough track known as ‘High Bank Path’ (north bank) and there are few glimpses of the site to be had through the trees from this walk. The canal tow path is on the southern bank of the canal is at a lower level, with no views to the site. There will be some limited views from the rear of houses along the tertiary road, with the main view being from the farmhouse to the west. It is noted that the residents of this property (which shares the private road to the subject site) are the landowners and have not objected to the proposed development.
- 8.5.5. Section 1.8.1 of the LVIA also examined impacts along the primary road network surrounding the site including the N52. The site is set c.6m lower than the raised embankment of the N52 to the west. However, the solar panels will be visible in the

wider area along a short stretch of the N52. The F.I submitted includes images taken along the N52 to help to demonstrate that existing views are filtered by vegetation along the roadside. Viewpoint 1 (south-east from N52) and Viewpoint 6 (north-east from N52), included with the LVIA are located near to the site's western boundary and along the N52. It is provided that the views depicted represent the 'worst case' scenario in accordance with established, current Guidance.

- 8.5.6. The LVIA concluded that whilst visual impacts identified for Viewpoint 1 and Viewpoint 6 would be experienced as moderate to major by road users on the N52 at these locations, these would only be available for short durations. Furthermore, identified visual impacts would be reduced or negated through implementation of mitigation planting along the western boundary of the site. The characteristics of the site and surrounding land means that there will be no medium or long-distance views to the site from the N52. Rather these will be restricted to a c.300m section of the route. Further to mitigation proposals included within Section 1.9 of the LVIA and associated drawings it was concluded that the site is, capable of accommodating the development from a landscape and visual perspective and that the landscape and visual impacts are within acceptable parameters.

8.6. **Glint and Glare**

- 8.6.1. Glint and glare from reflected surfaces is a recognised issue in relation to solar farms. Glare is described in the submissions as reflected diffuse light, which is not a direct reflection of the sun, but a reflection of the bright sky around the sun. Glint is defined as either specular (concentrated) reflection or diffuse reflection of sunlight and is the principal element of nuisance. It is pointed out in the applicant's submissions that solar panels are designed to absorb light in order to convert it to useful energy, rather than reflect it, as reflected light is wasted. For glint and glare to occur, however, the sun must be shining. Most reflections are skyward due to the angle of orientation, with reflections to the east in the evening and to the west in the morning, when the sun is low in the sky, and are generally confined to the months of March to September.
- 8.6.2. Solar panels are normally dark in colour and designed to absorb daylight and therefore have a low level of reflectivity. The potential for glint and glare from a solar farm is much lower than from other manmade structures such as polytunnels, plastic

covering tillage crops and glasshouses, which form a typical part of the rural countryside, as well as natural features such as water or snow. It is provided that the intensity of any reflections from the panels will be similar to the intensity of reflections from still water and that in the ambient environment this is not considered a safety hazard with regard to road use.

- 8.6.3. The applicant submitted a Glint and Glare Study with the application (PagerPower), which identified potential receptors within 1 km of the site, undertook geometric reflection calculations and compared the results to impacts from other sources in the environment. The analysis considered the following receptors i.e: 38no. local dwellings (Figure 3 shows their location) within 1km of all or part of the site and road users on the N52 (Figure 4 relates) to the west of the site. Figure 5 shows the proposed development relative to the canal, tow path and railway line. Appendices in the Report include an Overview of Glint and Glare Guidance and Studies, Overview of Sun Movements and Relative Reflections, Pager Power's Reflection Calculations Methodology and Geometric Reflection Calculation Results. Figure 6 shows the Geometrically affected road where screening should be considered along the western boundary of the N52. Figure 8 includes a photograph showing a solar reflection incident to the sun and indicates the distance between the rows of panels.
- 8.6.4. The analysis results conclude that no impact on residential is predicted because potential effects would be mitigated by existing screening (terrain and vegetation). It noted that glint and glare effects would be possible towards a short section (<300m) of the N52. Any effects would be minor and between March and September and would last for a short time per day, predominantly in early mornings under particular conditions such as there would be a clear view of the reflecting panels on a sunny day during the months where reflections are geometrically possible. No mitigation requirement has been identified within this report because the predicted impacts are, at worst, minor. If the screening measures identified in Section 8 of the Report are implemented they provide that all impacts would be negligible.
- 8.6.5. The F.I response provides that as shown on Figure 4 conclusions regarding impacts along the N52 are based on a robust assessment of a 900m stretch of the N52 to the west of the site. This notes that the potential impact is minor in the absence of mitigation. The report does acknowledge that if screening identified within it were implemented then the impact would be negligible. Revision D which accompanies

the F.I submission illustrates planting proposals along the site's western boundary which ties in with screening identified within the Glint and Glare Report. Figure 9 shows views of the screening south of the site between the Royal Canal walkway and the site. They consider that the impact is minor and that the site is capable of accommodating the development from a landscape and visual perspective as well as a Glint and Glare perspective.

- 8.6.6. It is of note that the TII originally objected to the application indicating that it was at variance with policy relating to development on/affecting national roads and would create an adverse impact on the national road where the maximum speed limit applies. There is no access proposed to the N52. However, their concerns are related to the visual impact of glint and glare on road users. As part of the Council's F.I request the applicant was invited to consider proposals to overcome the concerns raised by the TII. In response the applicant referred to the LVIA and provided that further to mitigation proposals there will be no visual impact from Viewpoint 1 along the N52, there will be minor to moderate and not significant impact from Viewpoint 2 along the N52. Also, that the impact of any fleeting localised views of the site along the c.300m stretch of the N52 will decrease to a minor/moderate and not significant effect. Views are reduced as the current proposal is set back from and the solar array will be at a lower level than the raised embankment to the N52. It is provided that within a wider Irish and European scale there is significant precedence for locating solar farms adjacent to roadways without causing significant impacts. It is also of note that Appendix 6 of the F.I response includes examples of Solar Projects Adjacent to Roads in other locations.
- 8.6.7. RPS provide that they are mindful of the concerns raised by TII and accordingly propose a further band of planting along the site's western boundary to further screen the proposal from traffic along the N52, and these proposals have been included in the revised plans submitted. It is also recommended that landscaping be further augmented along the western and southern site boundaries. It is also noted that to aid screening and to reduce glint/glare the Council recommend that a 3m fence be erected along the public roadway (N52) to create an effective barrier in the short term. If the Board decides to permit it is recommended that these be conditioned as part of a revised landscaping scheme to be submitted.

8.6.8. Notwithstanding the conclusions which I consider are satisfactory, in order to address any residual impact that may arise I recommend that, if the Board is minded to grant permission, a condition should be included requiring the developer to provide detailed glint and glare surveys following commissioning and on an annual basis for a period of two years to the planning authority in order to confirm that no such glint or glare impact has taken place, and to provide such further mitigation measures as the planning authority may specify in writing to ensure that this is achieved.

8.7. Right of Way

8.7.1. The Council note that the applicant has shown a site entrance for the development from local road number L57131-0 and using a short length of right of way and provide that evidence of a right of way agreement for the construction, operation and maintenance of the proposed development should be provided. This vehicular access currently provides two separate gated entrances i.e. one to the landholding and the subject site and the other to the farm house and yard complex to the west. In response Appendix 3 of the F.I submitted confirms that the landowner has a benefit of a right of way over adjoining land to access the public roadway L57131 and that the landowner is entitled to grant a right of way to any occupier of his/her lands and has done so pursuant to an Agreement with Elgin Energy to lease the subject lands. Appendix 3 also contains a map highlighting the lands referred to within the associated letter. It is provided that in summary the Agreement for Lease between Elgin Energy and the landowner, provides their client with a benefit of right of way from the leased lands to the public roadway L57131.

8.7.2. While there does not appear to be an issue raised regarding ownership or use of the right of way it is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "A person shall not be entitled solely by reason of a permission under this section to carry out any development". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "The planning system is not designed as a mechanism for resolving disputes about title to

land or premises or rights over land; these are ultimately matters for resolution in the Courts...”

- 8.7.3. The Council’s F.I request was concerned that an unauthorised gated access had been made from the lands onto the N52 national secondary road and associated badger proof fencing has been removed. The F.I response acknowledges that the gate has not been replaced but rather has been fixed shut as a temporary measure. The landowner confirmed in writing that the unauthorised access is permanently fixed shut, no longer in use and will not be used in future without the permission of the Local Authority. It is of note that the issue of an unauthorised access and enforcement is within the remit of the Council rather than the Board.

8.8. Access and Traffic

- 8.8.1. The proposed route to the solar farm is via the L1703 which connects the townland of Marlinstown to Mullingar town. The N52 to the west of the site connects further northwards to junction 15 of the N4. Access to the site is proposed from the existing vehicular access located along the L57131, a local Tertiary Cul-de-sac to the south of the junction with the L1703. This road is only wide enough for one vehicle and visibility is restricted in part due to the alignment and undulating nature of the road.
- 8.8.2. The Town Planning and Environment Report submitted refers to Traffic and provides that the applicants are willing to improve the existing alignment in the vicinity of the access to the proposal by establishing an additional passing bay on the local road. This is to be in place for the construction phase and for the operation of the solar farm (in the event of a grant of permission) and they provide will benefit traffic movement in general on the local road. The indicative location of the proposed 20m passing bay is indicated on the original drawings and is within the control of the landowner. They provide that the exact location and detailed design/configuration of the passing bay can be agreed with the Council as part of compliance.
- 8.8.3. It is proposed to provide a temporary construction compound close to the entrance to the site. Parking for workers is to be accommodated within the construction compound and will be kept from the local road network. They provide that given the construction is expected to last for a relatively short time period and will generate a low level of additional trips on the surrounding road network, that the proposed

development is not expected to result in any significant impact on the existing road conditions. They note that there are no abnormal loads associated with the construction of the solar farm. The maximum vehicle required is a crane suitable for unloading materials on site. They provide that a Construction Management Plan will be prepared and agreed with the Planning Authority prior to the commencement of development and consider that this should be conditioned as part of any permission.

- 8.8.4. It is noted that internal site access is to be via existing tracks where possible. A small number of permeable stone access tracks are to be constructed throughout the land to provide access to each of the inverter stations during occasional maintenance. Internal access tracks are to be no more than 3.5m in width. Given the construction phase is expected to last for a relatively short time period and generate a low level of additional trips on the surrounding road network, the proposed development is not expected to result in any significant impacts on the existing road conditions.
- 8.8.5. When completed and operational the only access to the site will be from maintenance vehicles etc, which will generate a very low number of trips. It is provided that the solar farm will be unmanned during the operational phase and will be monitored during its lifetime. They provide that taking into consideration the relatively low operational traffic is such that the operational impacts of the proposed development to the local road networks are imperceptible.

Construction Traffic Management Plan

- 8.8.6. Appendix 8 of the F.I submitted provides a Construction Traffic Management Plan (CTMP). This confirms the volume, type and weight of traffic required to construct the proposed development. It also includes auto-tracking of the L57131 confirming where vehicle passing is achievable presently and includes proposals for an upgrade. It confirms the existing traffic levels on the proposed access road (L57131) allowing the proposed temporary construction traffic increase to be set within the context of baseline conditions. It also sets out a number of co-ordinated transportation measures and describes how they will be used to manage the proposed works associated with the construction of the solar farm site.
- 8.8.7. It is provided that the construction period for the solar farm is anticipated to be approx. 12-16 weeks during which there would be c. 79no. HGV vehicle trips equating to 158 two-way trips over this period (Table 2.2 refers). In addition, there

will be light goods vehicles (cars/vans) for construction works. It is anticipated that hours of operation for construction traffic will be 0800 to 1800. Figure 2.1 of the CTMP shows an indicative haulage route via the N4 to the site.

- 8.8.8. The Council has concerns that this road (L57131) currently does not have capacity to cater for the level of construction traffic required for the proposed development without the provision of suitably sized passing bays. The applicant was requested to submit details of how this road is to be upgraded to facilitate the construction.
- 8.8.9. The CTMP included at Appendix 8 refers to a swept path analysis undertaken by RPS to confirm conditions along the L57131 from the junction with the L1703 to the site access. They include that the swept path analysis (Appendix A) to demonstrate that along this 1km section of carriageway there is approx. 200m where vehicles can pass safely. This is divided into sections and does not comprise one uniform stretch of road. This is based on the largest HGV vehicle that will access the site and illustrates (the drawing has been colour coded) existing passing points as well as that proposed by the applicant. The road upgrade is proposed on lands in the control of the applicant and is shown on these drawings. A list of primary measures to protect traffic conditions along the L57131 is given. Regard is also had to the additional overarching construction traffic management measures as listed in Section 6.2 of the CTMP. These include that Elgin Energy would welcome a condition to be attached to any planning consent requiring that an updated CTMP be submitted to the Council for agreement prior to the commencement of any construction or enabling works at the site.
- 8.8.10. The applicants submit that the measures outlined will be sufficient to ensure safe access and egress from the proposed site and minimize any disruption on the local community. When completed and operational, the only access to the site will be from maintenance vehicles etc. which will generate a minimal number of trips. They anticipate that the development would only require to be serviced on a quarterly basis, by a site engineer in a car or van. Therefore, the main additional traffic movement to/from the site will occur during construction phase.

Regard to Condition no.16

- 8.8.11. As noted above the First Party has appealed part of condition no.16 as being too restrictive and unnecessary. This condition has been formulated by the Council

having regard to the recommendations of their Area Engineer's response to the F.I submitted. It is provided that the provision of 2.4m x 90m sightlines at the proposed access point from the private laneway to the public road i.e the Local Tertiary Road L57131 is unnecessary as these sightlines are already achievable at the existing junction configuration. They also cite the short duration of the proposed construction works to be undertaken in accordance with a Construction Traffic Management Plan. They request that this part of the condition be omitted.

In response to the appeal the Council note that the Local Tertiary Road L57131 is a narrow road serving 24 domestic houses, intensive farm holdings including a milking parlour and also, serving a canal cycle way with associated parking area. They note that this road has relatively high traffic volume for the narrow road width and therefore the provision of adequate sightlines is necessary considering the proposed development will result in the intensification of use of the private laneway both during construction and operation in addition to agricultural vehicles already using this laneway. They provide that the required sight visibility distance of 90m from the vehicular entrance to the proposed development on the local public road should be provided in accordance with section 14.4.4 (90m for Local Road) of the Westmeath CDP. Also, that traffic safety and sight visibility should be provided and maintained at all times at the proposed access point from the private laneway to the L57131.

- 8.8.12. Having viewed the documentation, and visited the site, I would have concerns about the impact of the proposed development and in particular the construction phase, on the narrow local road network. I would also be concerned that sightlines particularly to the east of the entrance to the local road are currently inadequate and about the need for passing bays. I would recommend that if the Board decide to permit that it be conditioned that the construction of the development be in accordance with a Construction Traffic Management Plan to be submitted and agreed in writing with the Planning Authority. Also, that a condition be included to ensure that adequate sightlines at the access from the site to the local road are achievable.

Grid Connection

- 8.8.13. Section 5.12 of the Town Planning & Environmental Report refers to Grid Connection. The applicants provide that it is likely that the solar farm will connect into the ESB Network via the existing 38kV substation at Ballinderry, located to the east

of the Ardmore Road by means of approx. 2.9km of underground cable. This is to connect to the proposed terminal station located on the proposed solar farm site to the 38kV substation. Elgin Energy have requested an underground cable connection from the site to the Ballinderry 38kV substation and a Grid Connection Offer has been issued by ESB networks and accepted by Elgin Energy. They note that while Elgin Energy has a Connection Agreement in place with ESB networks for this project, the proposed connection route is to be subject to final detailed design and agreement with the ESB.

- 8.8.14. The further information submitted provides that notwithstanding this, the proposed grid connection does not form part of the planning application. However, an indicative grid connection route was considered in the assessments submitted with the application. Figure 1 in Appendix 1 of the F.I submitted refers. While the grid connection does not form part of the planning application and its exact route maybe subject to change, the First Party provide that it will be progressed in accordance with the necessary consent requirements (e.g Road Opening Licence) and note details relative to finalising the proposed grid route.
- 8.8.15. While the First Party provide that they are agreeable to comply with part 4 of condition 16 relative to the need to obtain consent to install the high voltage cable along the proposed grid connection, they consider the details in this condition too prescriptive and request some revisions to more generally state: *Prior to the commencement of development, the developer shall obtain consent to connect the development to the National Grid.*
- 8.8.16. The Council's response to this issue provides that where the developer is proposing to lay the high voltage cable along any public road, there will be a significant impact on the public road network and therefore consent needs to be obtained from the Council (and the TII where the road is a National Road). They also recommend some modifications to the wording of this condition, However, since the grid connection route is not as yet fully established, I would consider it preferable to include a less specific and more generic condition to note that this permission does not form a consent or agreement for connection to the national grid or to the routing or nature of such connections as has been included in other solar farm Board decisions and as is recommended below.

8.9. Drainage and Flood Risk

Surface water drainage

- 8.9.1. The issue of Flood Risk having regard to surface water drainage is included in Section 5.8 of the Town Planning and Environment Report. Regard is had to surface water drainage and it is noted that the majority of the site consists of agricultural/permeable ground which provides varying degrees of infiltration; these factors will serve to reduce the potential for overland flows to develop. It is provided that the proposed development will not increase the rate of discharge from the current pre-development run-off rates as there are limited areas of hard standing associated with the development.
- 8.9.2. The installed solar panels will not form large impermeable surfaces. At their lowest the solar panels will be approximately 0.6m off the ground. The rear of the panels will be up to 2.9m above ground. The arrays are arranged to be in well-spaced rows with open avenues in between. As shown on the diagrams submitted there are spaces between the panels as they are affixed to the supporting structure allowing rainwater to pass through the arrays and disperse and infiltrate evenly. It is submitted that these design features combine to ensure permeability such that rainwater will fall more evenly on the land underneath and will not materially affect how the subsurface water is dispersed throughout the site.
- 8.9.3. It is provided that the risks of any significant overland flows being generated offsite that can affect the site are considered to be low. Furthermore, minor overland flows are not considered to pose a significant threat to the site's operation or infrastructure due to the elevated nature of the panels. Access and maintenance roads are to be constructed from permeable materials and therefore will not contribute to increasing runoff rates from the site. Surface water runoff will soak into the tracks where it will infiltrate into the ground as it does currently.
- 8.9.4. It is submitted that the proposal for a solar farm will have several benefits regarding runoff rates, as opposed to more intensive farming use of the agricultural land. Furthermore, it is likely that longer meadow type grasses and wild flowers will be allowed to propagate across the site over its designated 30year design life. Such would provide for high levels of natural attenuation which will serve to limit water flows across the site.

Flood Risk

8.9.5. It is noted that parts of the site are indicated to be subject to pluvial flooding as per the CFRAMS assessment. The applicant was requested to reassess the Flood Risk element of the development in light of this and in accordance with 'The Planning System and Flood Risk Management Guidelines'. In their F.I response they provide that the proposed development has been designed to ensure that only the steel mounting structure will be located in the area subject to localised pluvial flood risk and that all electrical equipment is located outside or above this area or specified to be water compatible. They provide that this is to ensure that there will be no impact on safety in a flood event. A detailed response to this item is included in Appendix 5 of their F.I response. This includes OPW Draft Flood Mapping and regard to surface water runoff. Details are given of the Design Approach and of Typical Construction Details. Regard is also had to the Ecology Report and it is provided that this approach to protection of the natural environment is also in accordance with the Flood Risk Management Guidelines.

8.10. **Other Environmental issues**

Dust

8.10.1. In order to mitigate dust emissions during the construction phase dust emissions will be minimised through the provision of mitigation measures that will be incorporated into the Construction Management Plan (CMP) to include the regular cleaning of the access road. Also, the construction methodology of the foundations will reduce the potential impacts arising from dust. Therefore, they provide that the implementation of these mitigation measures will ensure that construction works will not result in an increase in dust levels for local residents and the potential impact on air quality will be low. Also, that it is not anticipated that there will be any impact on air quality as a result of the operational phase of the development.

Soils

8.10.2. The solar panels are to be installed using piling techniques resulting in minimal disturbance to soils, subsoils and bedrock. There are no site levelling works proposed for the solar farm site requiring minimal earth works for the overall development of the site. Earthworks that will impact on the existing geological

environment locally include access tracks, trenching for cabling connecting the solar arrays to inverter stations and ESB substations and Bases for inverter and primary substations. It is provided that excavated soils, subsoils and bedrock during the installation of access tracks, trenches and bases will be managed appropriately on site.

Lighting

- 8.10.3. It is provided that for clarity there is no lighting proposed as part of the development and there are no proposals for external lighting on the public road.

Waste Management

- 8.10.4. The Report provides that during the construction phase of the development materials will be stored in a temporary construction compound. Recyclable material is to be segregated during construction works and removed off site to a permitted/licensed facility for recycling. Non-recyclable materials will also be removed from site and disposed of appropriately. It is not anticipated that there will be a necessity for waste collection during operational phase due to the relatively low level of maintenance required. However, where appropriate, waste which is generated will be removed off site to a permitted/licensed facility for recycling.

Facility Dismantling and Site Restoration

- 8.10.5. It is provided that at the end of the project lifetime (30years) the system will be completely dismantled and the site restored to its preconstruction state. Elgin Energy note that they are committed to working within established policies and procedures to maximise recycling and minimise waste during the project's construction, subsequent operation and eventual decommissioning. A Decommissioning Method Statement is included in Section 5.13 of the Town Planning & Environmental Report.

8.11. Ecological issues

- 8.11.1. The updated Ecology Report submitted as part of the F.I, provides that proposed solar PV farm has been designed to fit into existing field boundaries and that these are not to be removed to facilitate the arrays, security fencing or any other ancillary development. The layout of arrays in each field has been designed to maintain a set-back buffer from all ditches, treelines and hedges. Secure perimeter fencing is to be

constructed to leave a 150mm gap at the bottom of all fencing to allow for unimpeded mammal access throughout the site.

- 8.11.2. It is proposed that the construction of the electrical cable will use existing field openings and breaks in vegetation where possible to avoid any negative impacts on hedgerows, treelines or ditches. As shown on the revised drawings the proposed development includes a landscape mitigation strategy comprising enhancement to existing field boundary hedgerows with trees; hedge planting to be appropriate to the local setting, location and the wider context of the site. Also, that bird boxes and bug hotels will be introduced at appropriate locations across the site to encourage biodiversity. These are illustrated on the revised drawings showing mitigation measures.
- 8.11.3. Habitats within the site of the proposed development are principally improved grassland pasture fields enveloped by trees and hedgerows. The distribution of habitats is shown in Figure 3 of the Report. As a result of, sensitive site design and mitigation measures incorporated into the design, only two habitat types will be directly impacted upon. Field boundaries, including drains, hedgerows, treelines and wooded area are to be avoided with the development features set back from these features. Given the small direct habitat loss, indirect effects of solar arrays positioned over the grassland communities, and the safeguarding of boundary features, it is provided that the proposed development is in compliance, with CDP Policy P-SBV1 (preservation of ecological corridors and networks) through the retention and protection of ecological corridors and networks vital to migration, dispersal and genetic exchange of wild species.
- 8.11.4. The proposed development seeks to safeguard all natural habitat field boundaries. Security fencing includes a 150mm gap at ground level to allow fauna to pass through into and out of the site, and to facilitate continual use of the site by the local badger clan for commuting and foraging. Figure 4 shows locations with features suitable for roosting bats and Figure 5, a Badger activity map. It is noted that there is a badger sett indicated at the southern end of the site. As shown on the drawings there is to be a 30m exclusion zone around the badger sett and development works will seek to maintain a safe working buffer from the area of the sett. If new setts are discovered during pre-construction survey any works within 30m of a sett entrance

will need to be undertaken under licence issued by the NPWS. It is provided that, fragmentation of badger foraging habitats will not occur due to the site proposals.

8.11.5. Proposed development in a Greenfield location introduces the possibility that works might damage or destroy bird's nests, if they occur within any potential footprint, which would constitute an offence under the Wildlife Acts. The Ecology Report provides that no ground nesting birds were observed to occur at the site of the proposed development. Also, that all mature vegetation and field boundaries will be retained on site and protected during the development. This will ensure that these features remain as functioning foraging and commuting corridors for local wild life. The Report does not recommend any proposal to monitor avian, invertebrates or other wildlife mortality at the site, as faunal mortality is not a predicted effect, less so a significant adverse effect of the construction and operation of the proposed development.

8.11.6. Section 5.4 of the Ecology Report provides that literature review research has not concluded that Solar PV Farms such as that proposed, where solar array infrastructure does not exceed 3m above ground height, is likely to result in significant negative effects upon bird, insect or bat populations. Hedgerows and woodland planting are proposed as part of the mitigation strategy, species to be incorporated within the site area are native and will provide an additional foraging resource for local wildlife. The Report concludes, that the area will be enhanced and that no significant residual effects on designated sites, local habitats and their associated wildlife will occur. A suite of photographic plates illustrating the proposed development site are contained in Appendix IV of this Report. A list of species recorded within the survey area are detailed in Appendix V.

8.12. **Royal Canal pNHA**

8.12.1. Section 4.1 of the Ecological Report notes that the site of the proposed development is not located within the boundary of statutory or non-statutory designated sites of international, national or local conservation importance. There are however, three internationally designated sites within the surrounding area and one nationally designated site (the Royal Canal pNHA) within close proximity, to the proposed development. The latter (site code 002103) abuts the southern boundary of the site and is not a Natura 2000 site. Regard is had to the Natura 2000 sites in the

Screening for AA, section below. There are very few drainage ditches within the proposed development site, however topography of the area is such that surface water will ultimately drain from the site into the Canal. There are no significant earthworks proposed. A buffer has been set to all boundaries (especially along the wooded area to the south where the Canal is located). Strict controls are to be employed to reduce the risk of suspended sediment and polluting substances entering a watercourse as set out in the Ecology Report. The Site Synopsis for the Royal Canal states that: *The ecological value of the canal lies more in the diversity of species it supports along its linear habitats than the presence of rare species.*

8.12.2. It is provided that no works are proposed within the pNHA and a buffer zone will be maintained along the woodland area to the south of the proposed development site to ensure accidental damage to tree roots are avoided. Groundworks required for the installation of the panels is to be minimal with stock piling of overburden not required. This is to ensure silt laden runoff does not occur, therefore preventing any impact on the adjacent Canal and further downstream. Mitigation measures are designed into the project to be enforceable by planning condition and will also be included in a construction contract, it is not envisaged that any impact will occur to the water quality of the Canal (which was classified as 'Good' with low levels of conductivity and nutrient, according to the EPA).

8.13. Requirement for Environmental Impact Assessment

8.13.1. Regard is had to the Town Planning & Environmental Report which refers to EIA Screening. I would note that solar farms are not listed as a class of development under Part 1 or 2 of Schedule 5 of the Planning and Development Regulations 2001-2017, whereby a mandatory EIA and the submission of an EIS is required. I note that there are some projects under No. 3 of Part 2, 'Energy Projects' which relate to energy production. I consider that none of these projects would be applicable to the proposed solar farm. Article 92 of the Planning & Development Regulations 2001-2017 defines sub-threshold development for the purposes of EIA as 'development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development'. As I have considered above that the solar panel development is not a development set out in

Schedule 5, then I also consider that the subject development is a not 'sub-threshold development' for the purpose of EIA and an EIS is not required for the development.

8.14. Screening for Appropriate Assessment

- 8.14.1. Article 6 (3) of The EU Habitats Directive (92/43/EEC) requires that 'any plan or project not directly connected with or necessary to the management of the (European) site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site considering its conservation objectives'. No conservation designation applies directly to the appeal site.
- 8.14.2. A Stage 1 Appropriate Assessment (AA) screening report was submitted with the application. This is provided in Appendix II of the Ecological Report. Qualifying interests of SACs and Special Conservation Interests of SPAs are set out in Appendix III of the updated Ecology Report.
- 8.14.3. The closest European site is Lough Ennell which is designated as an SPA (Code:04044) and SAC (Code:000685) and is located c.3.5km to the southwest of the proposed development. This site is designated as an SPA due to its important population of wintering wildfowl (qualifying species: Pochard, Tufted Duck, Coot), wetland and waterbirds and as an SAC due to the presence of priority habitats such as alkaline fens. The Objective for the SPA seeks: *To maintain or restore the favourable conservation condition of the wetland habitat at Lough Ennell SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.*
- 8.14.4. Lough Owel is designated as an SPA(Code:004047), SAC (Code: 000688) and NHA and is located c.6.1km to the northwest. This site is designated as an SPA due to its importance of wintering wildfowl (Shoveler and Coot), wetland and water birds and as an SAC due to the presence of priority habitats such as alkaline fens. It is the main feeder of the Royal Canal which flows past the proposed development site.
- 8.14.5. It is provided that as both Lough Ennell and Lough Owel are upstream of the proposed development they will therefore not be affected by any proposed works on site via the Royal Canal.

- 8.14.6. Lough Derravarragh SPA (Code: 004043) is c.10.5kms north of the site, and is designated due to the qualifying species – Whooper Swan, Pochard, Tufted Duck, Coot, wetland and water birds.
- 8.14.7. Lough Iron SPA (Code: 004046) is c.12.5kms to the north west and is designated for Whooper Swan, Wigeon, Teal, Shoveler, Golden Plover, Greenland White-fronted Goose, wetland and waterbirds.
- 8.14.8. Mount Hevey Bog SAC (Code: 002342) and NHA is located 14km to the east/southeast of the proposed development. The Royal Canal passes along a section of the northern boundary of the site. Mount Hevey Bog is designated as an SAC due to the presence of priority habits, namely active raised bog, degraded bogs still capable of natural regeneration and depressions on peat substrates of Rhynchosporion vegetation.
- 8.14.9. With the exception of, Mount Heavy SAC, the European sites listed above are upstream of the proposed development and a hydrological pathway of effect via the Royal Canal is not open for likely significant effects of the proposed works. In relation to wetland habitat qualifying interests and special conservation interests, a path of possible effect could arise between the proposed development and any downstream designated sites.
- 8.14.10. Additional designated sites present along the boundary of the Royal Canal (downstream of the site) have been discounted from the assessment due to their distance from the proposed development site, namely the following areas:
- Rye Water Valley/Carton SAC, NHA;
 - South Dublin Bay and River Tolka Estuary SPA;
 - North Bull Island SPA;
 - North Dublin Bay SAC.
- 8.14.11. The Screening Report provides that in relation to habitat qualifying interests and special conservation interests, pollution events or the erosion of exposed soils by surface water runoff at a construction site can result in deterioration of downstream wetlands. It is noted that sediment, including all soils, mud, clay, silt, sand etc, is the single main pollutant generated at construction sites and largely arises from the erosion of exposed soils by surface water runoff. Fuels, lubricants and other

chemicals can also escape to the water environment if not controlled. It is submitted that these issues will be mitigated against and strict controls will be provided. It is noted that Mount Hevey Bog SAC is c.14kms from the site.

8.14.12. In relation to mobile species qualifying interests and special conservation interests, construction noise and visual disturbance can result in displacement of species or the loss of attractiveness of a part of the territory species. An operational Solar PV farm may also present a collision risk to flying species.

8.14.13. The Screening for AA concludes that the proposed development will not delay or hinder the maintenance or restoration to favourable conservation conditions, the qualifying interests for which the SACs have been designated or the special conservation interests for the SPAs have been designated. Also, that the proposed development of the lands at Marlinstown for a solar farm including underground link to the local ESB substation, cumulatively or in combination with other identified plans or projects will not adversely affect the integrity of any European site because no significant effects are predicted upon any European site. They provide this prediction is made with confidence.

8.15. Concerns regarding impact on Qualifying Species - Birds

8.15.1. The Department have concerns that the site of the proposed solar a farm is in a location likely to impact on the Royal Canal pNHA (site code:002103) and a number of SPA's including Lough Ennell SPA (site code:004044), Lough Owel (SPA 004047) and Lough Derravaragh (SPA 004043) and Lough Iron (SPA 004046). They have regard to the Conservation Objectives for these sites and are of a view that the proposal has the potential to cause an adverse impact on a significant population of bird species. This would be caused by barriers to movement and bird injuries and fatalities through collisions and burns. They note that the AA Screening Report as originally submitted dealt only with Mount Hevey SAC. There was then no assessment of other Natura sites in the area, in particular Lough Ennell, Owel, Derravaragh and Iron SPAs and the potential impact on birds. They are concerned that the Screening and Ecology Reports do not address the potential collision risk whereby birds and insects can mistake a reflective solar facility for a water body. Mitigation measures have not been considered.

- 8.15.2. As noted above, RPS provide that they have updated the main Ecology Report contained in Appendix 4 of the F.I submissions as well as the associated Screening Report (Appendix II of this Report) to consider other Natura 2000 sites in the area including those at Lough Ennell, Owel, Derravaragh, and Iron SPAs as well as the potential impact on birds. They provide that they have undertaken a review and supplied a review of currently available literature regarding the issue of Collision Risk to birds and insects with the proposed solar farm.
- 8.15.3. They have included a Collision Risk Review, which they provide is a desk top review based on current literature, and is not intended to be a peer reviewed scientific study. They note that the risk posed from mirrors, or other objects, which are used to concentrate sunlight, which can create large amounts of heat, killing birds through solar flux or collision, is not applicable here as these methods of solar capture will not be used in this project as confirmed in the information submitted at F.I stage including Section 5.2 of the Ecology Report. They confirm that the Solar PV Farm proposed at Marlinstown will not contain heliostats which relate to concentrated solar power, and therefore will not cause feather singeing.
- 8.15.4. Section 3.1 of the Collision Risk Review notes that published policy advice in Ireland in relation to the possible effects of solar development on bird species is lacking. In Northern Ireland, NIEA (2015) advise that if the proposed development is greater than 500m from an SPA or known flyway to a designated SPA, then 'no impact is envisaged'. In this instance all SPA sites are greater than 1km from the proposed development site i.e Lough Ennell is the closest at c. 3.5km from the site.
- 8.15.5. They note that despite the number of operational Solar PV Farms across Europe that there has been no research indicating that collisions risks are elevated by the types of infrastructure installed at solar farms. Despite the paucity of the research they note theories relative to the impact on wildlife including birds and bats. This includes that the wildlife impact of a ground mounted Solar PV Farms will be largely correlated to the biodiversity of the land on which the farm is located. They provide that no research has concluded that Solar PV Farms, such as that proposed in the present case where solar array infrastructure does not exceed 3m above ground height, results in significant negative effects upon bird, insect or bat populations.

8.15.6. It is noted that the Department of Culture, Heritage and the Gaeltacht response to the F.I submitted notes that while screening for AA was completed for the additional local Natura 2000 sites, this was done without establishing if any bird flight (in particular water birds) occur in the area of the proposed site. They note that the ecologist survey work was conducted in the summer season and therefore there is no information with regard to wintering bird flight lines. Also, that the site is located between a number of Natura 2000 SPAs including Lough Ennell, Owel, Derravaragh and Lough Iron. They note that despite the admission regarding the paucity of published research on collision and strike between flying wildlife and solar PV farms and of the attractiveness of solar farms to wildlife that there is still no proposal to monitor avian, invertebrate or other wildlife mortality at the site. As they previously outlined there is a paucity of information on solar farm wildlife collision risk. As such the Department strongly recommend that the precautionary principle be applied.

8.16. **Regard to Precedent Cases**

8.16.1. While each case is considered on its merits, the following cases are of interest relative to the bird's issue that has been raised. It is noted that (par 9.22.9) of the Inspector's Report relative to the consideration of a much larger solar farm in Wexford Ref. PL26.247217 had regard to the possibility that birds would mistake the solar panels for waterbodies and that this could result in collisions. Also, that the DAHRRGA then noted that this potential impact is not addressed in the screening report, but that they did not highlight it as a matter of particular significance. The Inspector considered that the potential for any such impacts could be addressed by way of a further information request to the applicant. They also considered that the potential would appear to be likely to be capable of resolution through design mitigation measures. However, unlike the current proposal, the main issue of concern in that case was potential surface water quality impacts. While the Board refused permission relative to the large scale of the development they did not include the Inspector's reason no.3 i.e: *The Board is not satisfied that the Stage 1 Appropriate Assessment Screening report adequately assesses the potential for water quality impact.* It is of note that as stated in the subsequent Direction: *The Board noted the Inspector's third recommended reason for refusal in relation to*

appropriate assessment, but considered that this matter could have been addressed by means of further information.

8.16.2. Regard is also had to the Inspector's Report in Ref. PL26.247366 and in particular to paragraphs (7.10.3 and 7.11.8). It was noted that the applicant dismissed the potential for the proposed solar arrays to be mistaken by birds as a water body, due to the design with intermittent gaps, which reduces the homogeneity of the surface area. In this case it was also provided that in the absence of evidence that the Board may wish to seek further information on this issue as it was difficult to be confident that the impacts on wintering wildfowl, which are the qualifying interests for so many European sites (SPAs) within a 15km radius of the site, would not be significant. Reason no.3 of the refusal recommended in the Inspector's Report concerned the issue of Appropriate Assessment. However, it is note that the Board concluded that having regard to the nature, scale and location of the proposed and the documentation submitted, including the NIS and Inspectors Report that the proposal would not be likely to adversely affect the integrity of the Natura 2000 sites in light of their conservation objectives. Having regard to the cumulative of overall larger scale of the development Board subsequently in a split decision granted permission subject to conditions, but refused permission for the proposed southern arrays.

8.17. Conclusion regarding Screening for Appropriate Assessment

- 8.17.1. Therefore, the question is in view of the issues raised by the Department as to whether it is deemed that the proposed development will cause a significant effect that would affect the Conservation Objectives and Qualifying features for which the Natura 2000 sites were designated, but excluding trivial or inconsequential effect. The Board may consider it necessary that precautionary principle be applied and that a Stage 2 Appropriate Assessment including Natura Impact Statement be submitted to address the issues raised to include details of wintering water birds flight lines and may decide to request further information in this respect.
- 8.17.2. However, having regard to the documentation submitted including the Further Information response and to the nature and scale of the proposed development including the distance from the lakes and Natura 2000 sites, I would consider that It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed

development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites aforementioned i.e: Lough Ennell SPA (Code:04044) and SAC (Code:000685), Lough Owel SPA(Code:004047), SAC (Code: 000688), Lough Derravarragh SPA (Code: 004043), Lough Iron SPA (Code: 004046), Mount Hevey Bog SAC (Code: 002342) or any other European site, in view of the sites Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.18. Time Period issue

- 8.18.1. It is of note that part of the First Party Appeal is concerned about the absence of a condition clearly confirming the permission will have effect for 10 years. They note that there is a significant precedent for such an approach both by individual planning authorities and An Bord Pleánala. They ask that in the event of the Board granting permission that in accordance with section 42 of the Planning and Development Act 2000 as amended, that such a condition be attached. The Council provide that they have no objection to the inclusion of such a condition.
- 8.18.2. I have had regard to other Board decisions and note that in the event of a grant this is generally attached and would recommend if the Board decide to permit that such a condition be included.

8.19. Development Contributions

- 8.19.1. Regard must be had to the Westmeath Development Contribution Scheme 2013-2020, Adopted in June 2013 and Revised in November 2015. This is proposed in accordance with Section 48 of the Planning and Development Act 2000 as amended, which provides for a system for levying development contributions for public infrastructure and facilities. An indicative list of projects that may be undertaken and the estimated volume of expenditure under the scheme in the period up to 2020 is given in Appendix 1. As per Table 1 (Level of Contribution) of the Scheme the class of infrastructure is described as being per residential unit or the m² of floor area for industrial/commercial and other types of development. Table 2 provides for Level of Contributions for Other Categories of Development. Class F of this category provides for: *Wind Turbines and other renewable energy installations generating more than 0.5MW where the levy is given as €1,000 per 0.1MW*. The information submitted with

the Appeal Statement provides that the typical export capacity of the solar farm is c.4.2MVA. In this respect regard is had to condition no.15 of the Council's permission, which is not the subject of the First Party appeal. There is a statutory requirement that contributions are applied to development in accordance with the adopted scheme. Therefore, it is considered that if the Board decide to permit that it would be in order to include a Condition for a S48 Development Contribution levy.

8.19.2. Section 48(2)(c) of the Planning and Development Act 2000 as amended, allows for special development contributions. Section 12 of the Westmeath County Council Development Contributions Scheme provides that the Council may, in addition to the terms of the General Development Contribution Scheme require the payment of a special contribution in respect of a particular development, where specific exceptional costs not covered by a scheme are incurred in respect of public infrastructure and facilities which benefit the proposed development. Also, that in such cases the condition will specify the particular works carried out or proposed to be carried out by the Council. The Scheme notes that conditions requiring the payment of Special Contributions maybe appealed to An Bord Pleanala.

8.19.3. It is noted that having regard to the proposed route and the works involved the Council's Area Engineer recommended that a Special Levy apply for works to Local Tertiary Roads. This is included in Condition no.17 of the Council's permission. In Condition no.19 they have also recommended a special levy relative to the mitigation measures regarding the glint and glare. The First Party has appealed the later and submit that the applicant has already comprehensively assessed the potential for glint and glare including the requirement or otherwise for mitigation measures including screening in the application documentation and at further information stage. They provide that Condition no.19 provides a lack of clarity and the screening will eliminate even minor potential for glint and glare on the N52 that has been identified in the original application documentation. Also, that potential mitigation screening does not fall within the provisions of section 48(2)(c) of the Planning and Development Act. They contend that there is no legal basis for this element of the condition and it is accordingly unenforceable. They provide that if for any reasons the Board concludes that a financial condition could and should be requested for the works, that a significantly reduced figure be requested and be reasonably and precisely aligned to the works in question.

- 8.19.4. Section 7.12 of the Development Management Guidelines 2007 refers to Development Contributions. These provide that a condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; *therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of the works, the expenditure involved and the basis for the calculation, including how it is apportioned to the development.* It notes the circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it.
- 8.19.5. The Observation from the TII provides that they would welcome clarification of measures and/or mechanisms proposed to address the requirements of condition no.19 and subsequent implementation of mitigation on roadway lands having regard to TII standards and protocols. The Council's response to the appeal notes the TII concerns. The TII advised that the applicant should be responsible for any costs associated with the required mitigation.
- 8.19.6. The Council note that the first section of this condition is to allow for other potential mitigation measures within the site which may have the potential to provide for an adequate barrier. The second section of this condition was drafted (i.e provision for the special development levy) in the event, that no appropriate solution that would meet the needs of the applicant and accord with the proper planning and development of the area could be achieved on site. They note that the Council would not be aware of the commercial costs and potential gains from the development to enable any assessment of the viability of the scheme with such cost imposed. They do not consider that the Development Management Guidelines require that the commercial viability of a scheme be assessed as a test of reasonableness when imposing conditions. They provide that the costs imposed reflect the cost to the P.A for public infrastructure on a public road that would benefit the development and renders the minor roadway impact to be eliminated and therefore eliminate adverse impact on roadway safety on the national secondary roadway.
- 8.19.7. Having regard to the issues raised and the documentation submitted, and the advice given in the Development Management Guidelines, I would consider that in this case the inclusion of Special Development Levy as per Condition nos.17 and 19 would as

outlined not be appropriate or in accordance with Section 48(2)(c) of the Planning and Development Act 2000 as amended. The matters raised and in particular in Condition no.17 would be more appropriately dealt with under S48 and the terms of the General Development Scheme. The issues raised in Condition no.19 lack clarity and would be more appropriately provided for in mitigation measures in an appropriate landscaping/screening scheme, to be submitted and agreed by the Council prior to the commencement of development, and it is recommended if the Board decide to permit, this be conditioned.

- 8.19.8. It is also recommended similarly to other Board permissions for solar farms that conditions to allow for cash bonds be included to ensure the reinstatement of public roads that maybe damaged by construction traffic and the satisfactory reinstatement of the site.

9.0 Recommendation

- 9.1. I recommend that planning permission should be Granted for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the provisions of national and regional policy objectives in relation to renewable energy, the provisions of the Westmeath County Development Plan 2014 – 2020, the nature and scale of the proposed development, the continued agricultural use and improved biodiversity which would result and the proximity of a potential grid connection, it is considered that, subject to compliance with the conditions set out below, the proposed development would support national and regional renewable energy policy objectives, would not conflict with the provisions of the Development Plan, would not seriously injure the residential amenities of property in the vicinity, would not have unacceptable impacts on the visual amenities of the area, would not result in a serious risk of pollution, would be acceptable in terms of traffic safety and convenience, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 12th day of September 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be 10 years from the date of this Order.

Reason: Having regard to the nature of the proposed development, the Board considered it reasonable and appropriate to specify a period of the permission in excess of five years.

- 3.(a) The permission shall be for a period of 25 years from the date of the commissioning of the solar array. The solar array and related ancillary structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

(b) Prior to commencement of development, a detailed restoration plan, including a timescale for its implementation, providing for the removal of the solar arrays, including all foundations, anchors, inverter/transformer stations, substation, CCTV cameras, fencing and site access to a specific timescale, shall be submitted to, and agreed in writing with, the planning authority.

(c) On full or partial decommissioning of the solar farm, or if the solar farm ceases operation for a period of more than one year, the solar arrays, including foundations/anchors, and all associated equipment, shall be dismantled and removed permanently from the site. The site shall be restored

in accordance with this plan and all decommissioned structures shall be removed within three months of decommissioning.

Reason: To enable the planning authority to review the operation of the solar farm over the stated time period, having regard to the circumstances then prevailing, and in the interest of orderly development.

4. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

Reason: In the interest of clarity.

- 5.(a) The landscaping proposals including along the western boundary shall be planted to the written satisfaction of the planning authority prior to the commencement of development. All existing hedgerows (except at access track openings) shall be retained. The landscaping and screening shall be maintained at regular intervals. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously damaged or diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.
- (b) Prior to the commencement of development details shall be submitted for the written agreement of the planning authority to show additional screening including fencing and/or planting to be provided so as to mitigate against glint/glare impact and screen views from the N52 as a result of the development, and a time period agreed for their implementation.
- (c) Upon commissioning of the development and for a period of two years following first operation, the developer shall provide detailed glint surveys on an annual basis to the planning authority in order to confirm that no such glint impact has taken place, and shall provide such further mitigation measures, as the planning authority may specify in writing, to ensure that this is achieved.
- (d) The construction compound shall be removed at the end of the construction phase and the resultant area covered with topsoil and reseeded.

Reason: To assist in screening the proposed development from view and to blend it into its surroundings in the interest of visual amenity, and to mitigate any glint impact from the proposed development upon adjoining residential amenities.

- 6.(a) No artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission.
- (b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road.
- (c) Cables within the site shall be located underground.
- (d) The inverter/transformer stations shall be dark green in colour. The external walls of the proposed substation shall be finished in a neutral colour such as light grey or off-white and the roof shall be of black slate or tiles.

Reason: In the interests of clarity, of visual and residential amenity.

7. Before construction commences on site, details of the structures of the security fence showing provision for the movement of mammals shall be submitted for prior written agreement to the planning authority. This shall be facilitated through the provision of mammal access gates every 100 metres along the perimeter fence and in accordance with standard guidelines for provision of mammal access (National Roads Authority 2008).

Reason: To allow wildlife to continue to have access across the site.

8. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall:
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site (including archaeological testing) and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in situ or by record) and protection of any archaeological remains that may exist within the site.

9. Prior to commencement of development, land required by the planning authority for road improvement and to obtain adequate sightlines at the access to the site shall be reserved free from development and shall be marked out on site in consultation with the planning authority.

Reason: In the interest of traffic safety and to prevent the development of this area prior to its use for future road improvements.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) details of site security fencing and hoardings,
- (b) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site,
- (c) measures to obviate queuing of construction traffic on the adjoining road network,

- (d) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (e) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (f) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained; such bunds shall be roofed to exclude rainwater,
- (g) details of on-site re-fuelling arrangements, including use of drip trays,
- (h) details of how it is proposed to manage excavated soil, and
- (i) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water drains or watercourses.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of environmental protection, amenities, public health and safety.

11. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory reinstatement of the local public road (L-57131), if damaged by the transport of material to the site in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of local roads.

12. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site on cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such

reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure satisfactory reinstatement of the site.

13. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Angela Brereton
Planning Inspector

30th of April 2018