



An
Bord
Pleanála

Inspector's Report ABP 307927-20

Question

Whether the provision of a circa 5.1 km underground grid connection is or is not development or is or is not exempted development.

Location

Clondardis and Slane More
Townlands, Walshestown, Mullingar,
Co. Westmeath to the existing ESB
substation at Irishtown Townland,
Mullingar, Co. Westmeath.

Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-9-20

Applicant for Declaration

Harmony Solar Mullingar Limited

Planning Authority Decision

Not Exempted Development.

Referral

Referred by

Harmony Solar Mullingar Limited

Owner(s)

Brendan and Una Sweeney

Kathleen McEneaney

Bridget Healy
Adrian Flynn

Occupier Harmony Solar Mullingar Limited

Observer(s) None

Date of Site Inspection 16th February 2021

Inspector Brendan Coyne

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1.0 Site Location and Description

1.1. The proposed development comprises an underground grid cabling (UGC) route, which extends at its eastern end from an ESB owned 110kV substation in the townland of Irishtown in Mullingar, to an approved solar farm in the townland of Clondardis at its western end. The route has a length of c. 5.1km. The 110kV substation at Irishtown is located c. 2.5km north-west of Mullingar town centre. The route exits the 110kV substation and continues along the carriageway of the local road L1801 in a south-westerly direction until connecting with the regional road R393. The route then continues in a north-westerly direction along the R393 for c. 3.1 km before connecting with the local road L5802. Along the R393 the route passes the water treatment plant for Mullingar, known as the Ardonagh reservoir. The route continues along the L5802 in a southerly direction before turning in a westerly direction along a narrow road, connecting with the site of a permitted solar farm in the townland of Clondardis. The physical environment along the route is characterised with limited ribbon development in the townland of Irishtown and dispersed detached housing elsewhere along the route. The landscape along the route consists of rolling patchwork farmland, with fields enclosed by hedgerows.

2.0 The Question

2.1. The application to Westmeath County Council was lodged on the 02nd June 2020. The original question put before Westmeath County Council was as follows;

‘Whether the provision of a circa. 5.1km underground grid connection within the corridor of public roads and private lands which links a permitted solar farm at Clondardis and Slane More Townlands, Walshestown, Mullingar, Co. Westmeath to the existing ESB Mullingar 110kV substation at Irishtown townland, Mullingar, Co. Westmeath is or is not development and is or is not exempted development’.

The documentation submitted includes the following: -

- Application Form,
- Maps, Drawings and Aerial Photographs,
- Archaeological Screening Report,

- Outline Construction Methodology Report,
- Screening Report for Appropriate Assessment.

2.1.1. The Declaration of the Planning Authority has been referred to An Bord Pleanála for review, by Harmony Solar Mullingar Limited.

3.0 Planning Authority Declaration

3.1. Declaration

On the 14th July, Westmeath County Council issued a decision declaring that a '5.1km underground medium voltage cable within the corridor of public roadway between permitted Clondardis Solar Farm at Clondardis and Slane More Townlands, Walshestown, Mullingar, Co. Westmeath to the national grid via the existing ESB 110kV substation at Irishtown townland, Mullingar, Co. Westmeath' is development and is **not** exempted development.

3.2. Planning Authority Reports

3.2.1. *Planning Report*

Basis for the Planning Authority's decision. Includes:

Re. Development:

- The laying of 4 no. 110mm diameter ducts underground between Clondardis Solar Farm and Irishtown ESB substation is considered development.

Re. Exempted Development:

- The proposed development is assessed against Class 26 of the Planning and Development Regulations 2001 (as amended). There are no conditions or limitations under Class 26.
- Article 3(3) of Part 1 of the Regulations defines 'electricity undertaking' as an 'undertaker authorised to provide an electricity service'.
- Having regard to a similar case declared by An Bord Pleanála under ABP Ref. 302895-18, the applicant falls within the category of a 'statutory undertaker'.

- The proposal complies with Article 9(1)(a)(i) of the Regulations by reason that the Conditions imposed by the Board under ABP Ref. 301116-18 for the permitted solar farm at Clondardis do not limit electricity connection.
- Re. Article 9(1)(a)(iii) – Further to comment from the District Engineer, additional information is required regarding the use of the proposed route along the R393, along with details of existing services that would be affected by the proposal and the availability of a lower category road where such issues do not arise.
- Re. Article 9(1)(a)(v) - The proposed works are under the public road but are works to which Class 26 applies.
- Re. Articles 9(1)(a)(vii) - The site is located within the zone of notification of protected monument WM019-087 which lies adjacent to the R393. The archaeological screening report submitted with the referral indicates that “there is the potential for direct, negative impacts on unrecorded subsurface archaeological features associated with this ringfort”. The proposed development would comprise excavation and alterations within the zone of notification of a protected monument. The archaeological report recommends mitigation measures with archaeological monitoring in the area. Article 9(1) of the Regulations does not allow for mitigation measures.
- The applicant has not indicated whether the proposed development has been granted consent under Section 14 or a licence granted under Section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended, as per Section 9(1)(a)(viiA) of the Regulations.
- Re. Articles 9(1)(a) (viiB) - A significant proportion of the cable route is within the catchment zone of Lough Owel SPA and SAC. There are two potential surface water connections from the route of the proposed development to Lough Owel. Silt and hydrocarbon pollutants could enter watercourses which may flow into Lough Owel. Further information is required in order to indicate if there is hydrological connection from the route of the proposed development to Lough Owel.
- The qualifications and competencies of the author(s) of the Screening Report for Appropriate Assessment have not been provided.

- In conclusion, the Planning Authority consider the proposal to be development as defined by Section 3 of the Planning and Development Act 2000 (as amended) and comes within the scope of restrictions on exemptions as set out under Articles 9(1)(a)(vii) and 9(1)(a)(viiA) of the Planning and Development Regulations 2001 (as amended) and is deemed **not** to be exempted development.

3.2.2. Other Technical Reports

District Engineer - Mullingar Municipal District:

- The proposed route would endanger public safety by way of traffic hazard, during both construction and future maintenance stages, as it would be necessary to divert regional road traffic (Mullingar – Ballynacarrigy) onto lower category roads.
- By laying the cable along the R393, the future realignment of this poorly aligned road may prove excessively expensive due to the presence of the cables.
- The proposed route passes the Ardonagh reservoir. There are a number of large diameter, high capacity watermains in both the carriageway and verge at this location. Laying cables at this location would create an unnecessary risk of breakages and complicate future repairs to the watermain.
- The applicant has not provided details of existing services along the route. The aerial photograph does not give an adequate level of detail required in order to assess the application.
- There is an alternative route along the local road network, albeit slightly longer, which would remove most of the concerns raised.

4.0 Planning History

P.A. Ref. 20/6132 Permission GRANTED in September 2020 to Harmony Solar Mullingar Ltd. for amendments to the design of the solar farm approved under P.A. Ref. 17/6239 & ABP Ref. PL25M.301116 (see below). Amendments comprise the following:

- Optimised Solar PV Panel configuration located within the same areas of the site as previously permitted, with the exception of a reduced buffer distance under the existing 110Kv lines from c.56m to c.46 m to comprise up to 252,000 square meters of solar panels to allow for solar panel array height increase from up to 2.8m to 3.2m.
- Modifications and enlargement to the onsite substation and substation compound.
- Omission of 2 no. inverter/transformer hard standing areas and minor changes of position of hardstanding from the permitted solar development to allow for a total of 10 hardstanding areas which will provide the base for 20 no. inverter and transformer units housed in sound pressure containers,
- Amend the life span of the consented development from 25 years to 30 years.

Permission was granted subject to 15 no. Conditions. Noted Condition includes the following:

4. The permission shall be for a period of 30 years from the date of commencement of development.

P.A. Ref. 17/6239 & ABP Ref. PL25M.301116 Permission GRANTED in February 2019 to Harmony Solar Mullingar Ltd. for a solar farm with an operational period of 25 years and an output of 21.6MW. The development includes the following:

- 71,900 photovoltaic panels on ground mounted steel frames, covering an area of 139,520sqm,
- A fenced electricity substation compound to the north of the site which includes an electricity control building and hardstanding for ancillary electrical equipment,
- A temporary construction compound to the south of the sub-station,
- 12 no. inverter/transformer stations, positioned throughout the site,
- Underground cable and ducts connecting the solar panels, inverter/transformer station and sub-station,
- Internal access tracks (typically 3.5m wide) and hardstanding areas,

- Boundary security fencing comprising a mix of 2m mesh fencing, along external boundaries of the solar farm, 1.6m stock proof fencing along peripheral access tracks and 2.4m palisade fence around the sub-station (drawing no. P1030-0400-0004, 14th December 2017),
- Landscaping within and along external boundaries of the site, to include new hedgerows and screening/ecological areas and biodiversity enhancement,
- Provision of 10m access strip to maintainable channels on site,
- Sub-station lighting.
- Boundary CCTV,
- Two new site access points from the public road.

Permission was granted subject to 18 no. Conditions. Noted Conditions include the following:

2. The period during which the development hereby permitted may be carried out shall be 10 years from the date of this Order.
3. The permission shall be for a period of 25 years from the date of the commissioning of the solar array.
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.

Adjoining land to the north-west:

P.A. Ref. 18/6215 - Permission GRANTED in September 2018 for the construction of an Energy Storage Facility comprising battery containers and associated infrastructure including combined power conversion systems, grid connection compound, electrical substation, transformers and grid compliance equipment, temporary construction compound, ducting and electrical cabling, fencing, CCTV cameras, landscaping and access tracks.

P.A. Ref. 17/6028 Permission GRANTED in May 2017 for a 12.458 MW solar farm on land to the northwest of the appeal site (21.35ha).

PA ref. 17/6224 Permission GRANTED in April 2018 for the extension of the above solar farm by 6.43ha.

5.0 Policy Context

5.1. Development Plan

Westmeath County Development Plan 2013-2020 is the statutory plan for the area. The following provisions are considered relevant:

P-AH1 To generally preserve in situ all archaeological remains and sites of importance, such as National Monuments, Recorded Monuments, their setting and context and zones of archaeological potential. Within zones of archaeological potential and in the vicinity of Recorded Monuments, development shall only be permitted where the Council considers the importance of the proposed development or other material considerations outweigh the value of the remains in question, in consultation with the National Monument Service.

P-AH3 To ensure that all sites of archaeological potential are protected from development that may injure any potentially important archaeological features or sites, in consultation with the National Monument Service.

5.2. Natural Heritage Designations

The site is located 0.7km km to the south of the Lough Owel SPA (Site Code: 004047) and Lough Owel SAC (Site Code: 000688).

Lough Ennell SAC (Site Code: 000685) and SPA (Site Code: 004044) are located c. 4.7 km to the south of the site.

6.0 The Referral

6.1. Referrer's Case

6.2. A 1st party referral was received from Harmony Solar Mullingar Limited against the decision made by the Planning Authority, that the above works do not constitute

exempted development, under the Planning and Development Act 2000 (as amended). The following is a summary of the issues raised;

- The proposed works do not contravene Articles 9(1)a) (vii) & (viiA) of the Planning and Development Regulations 2001 (as amended) by reason that they do not contravene any policies or objectives within the Westmeath County Development Plan 2014 – 2020.
- The proposed UGC route passes adjacent to a Recorded Monument (WM019-087--)) in the townland of Walshestown North. This monument, identified as a Ringfort, is dissected by the R393 regional road, within which the proposed UGC will be placed.
- The road and proposed UGC pass through the zone of notification of the recorded monument.
- Whilst the proposed development traverses the zone of notification of Recorded Monument (WM019-087---), the proposal would not comprise the excavation, alteration or demolition of the archaeological monument by virtue of its location on the public road and the relatively non-intrusive nature of the works, which consists of the laying of an electrical cable within a duct under the public road.
- Details provided of four sections along the route of the UGC, with reference to Recorded Monument WM019-087.
- The proposal will be located in the carriageway of the road.
- No works will be carried out outside of the existing road carriageway.
- Details provided of the depth of the trenches for the cables along the route - 1220mm deep along Sections 1,3 and 4 and c. 625mm deep along Section 2.
- While the UGC route passes through the Zone of Notification for the Recorded Monument WM019-087, this zone is an arbitrary buffer placed around the existing Monument.
- Trenching works will not take place within the Monument itself as they will take place within the carriageway of the existing road.
- The proposed works will be undertaken for a distance of c.120m in the public road adjacent to the ringfort.

- None of the archaeological or heritage structures along the UGC route will be affected by the proposed development due to the nature of works within the existing road surface.
- The proposed development will not impact on the existing Recorded Monument.
- Given the proposed works are placed within a shallow trench entirely within the carriageway of the R393 road, the works do not 'consist of or comprise the excavation, alteration or demolition of any archaeological monument'. As such the appellant submits that Articles 9(1)a) (vii) & (viiA) of the Planning and Development Regulations 2001 (as amended) are not applicable in this instance.
- In accordance with Section 3 of the Monuments Act 1994, notice of the proposed works will be given to the Commissioners of the OPW which will indicate, in line with best practice, that archaeological monitoring will be undertaken, as recommended in the original submission.
- TLI Group, who undertook the route design did not observe any water crossings along the route.

6.3. **Planning Authority Response**

No response

6.4. **Owners response**

No response

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000 (as amended)**

- 7.1.1. **Section 2(1) Interpretation** - defines the terms used within the Act including the following;

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

(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon

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

7.1.2. **Section 3(1)** defines development as follows:

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

7.1.3. **Section 4(1) (a) – (l)** sets out what is exempted development for the purposes of this Act and includes;

(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;

7.1.4. **Section 4(2) of the Act** states that

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

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

7.1.5. **Section 4 (4)** states that

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

7.1.6. **Section 177U(9)** refers to screening for appropriate assessment and states that

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

7.1.7. **Section 254** outlines the provisions in relation to the licensing of appliances and cables etc. on public roads and states that

1) Subject to subsection (2), a person shall not erect, construct, place or maintain -

(e) a cable, wire or pipeline,

(2) This section shall not apply to the following—

(c) the erection, construction, placing or maintenance under a public road of a cable, wire or pipeline by a statutory undertaker.

(7) Development carried out in accordance with a licence under this section shall be exempted development for the purposes of this Act.

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

7.2.1. **Article 3** defines “electricity undertaking” as follows:

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

7.2.2. **Part 2** refers to Exempted Development. Relevant articles thereunder include the following;

7.2.3. **Article 6** refers to Exempted Development

Article 6(1) states;

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

7.3. **Article 9(1)** sets out restrictions on exemptions for development to which Article 6 relates and states as follows

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

(a) if the carrying out of such development would—

- i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

- (vii) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan*
- (viiA) *consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under Section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*
- (viiB) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site’.*
- (c) *if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these*

Part 1 of Schedule 2 sets out Exempted Development – General., including:

Class 26

The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking.

There are no Conditions or Limitations in column 1 of this Class.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. Section 3 of the Planning and Development Act, 2000, as amended, defines 'development' as the 'carrying out of any works on, in, over or under land, or the making of any material change in the use of any structures or other land'. Having regard to Section 2 of the Act wherein 'works' are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..' it is my view that the laying of c. 5.1 kilometres of underground grid connection cabling and associated works would involve the carrying out of 'works' through an act of 'excavation' and 'construction' and, therefore, constitutes development.
- 8.1.2. Accordingly, having established that the subject works constitute development within the meaning of the Act, it is necessary to ascertain whether or not they can be considered to be exempted development.

8.2. Is or is not exempted development

- 8.2.1. Article 6(1) of the Planning and Development Regulations, 2001, as amended, states that subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1.
- 8.2.2. Class 26 of Part 1 of Schedule 2: 'Exempted Development – General' of the Regulations refers to 'The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking'. There are no conditions or limitations within column 2 of this class. Accordingly, I am satisfied that the laying of the underground grid connection cabling referenced in the subject referral comprises 'development consisting of the laying underground of...cables...for the purposes of the undertaking', although it is a requirement of this class that the

development be carried out by an ‘undertaker authorised to provide an electricity service’.

8.2.3. Article 3(3) of the Regulations states that an electricity undertaking means ‘an undertaker authorised to provide an electricity service’. However, there is no statutory definition to clarify what exactly this means. The Electricity Regulation Act 1999, at Section 2(1), provides the following definition:

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

I note that while this definition refers to holders of licences/authorisations/permits, the use of the conjunction ‘including’, prior to the reference to these instruments, indicates that they are not essential and that the term ‘electricity undertaking’ can apply to ‘any person’ engaged in the generation, transmission, distribution or supply of electricity.

8.2.4. As indicated, Class 26 falls under the heading ‘Development by statutory undertakers’. It is one of several classes (Classes 23-32) in this part of the Schedule. It would seem, therefore, that the references to undertakers, undertakings and other bodies/authorities referred to in these classes must be construed as meaning statutory undertakers.

8.2.5. The definition of ‘Statutory Undertaker’, as provided in Section 2(1) of the Act, appears to encompass a very broad spectrum of categories of persons or bodies. It includes ‘...a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity’. In my opinion, Harmony Solar Mullingar Limited would appear to fall within this category as the developer of Clondardis Solar Farm at Clondardis and Slane More townlands that comprises a project for the provision of electricity as authorised under the Planning Act.

8.2.6. Furthermore, I note that the current definition of ‘Statutory Undertaker’, clearly contemplates undertakings that are not solely public undertakings. This compares to the definition in the original 1963 Act [Section 2(1)] that appears to have contemplated public undertakings only. The change presumably reflects the liberalisation of markets

in services and infrastructural provision that has occurred since that time. Therefore, I am satisfied that the development falls within the scope of the said Class 26.

8.3. Restrictions on exempted development

Article 9(1)(a)(i) of the Regulations

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

8.3.2. In this respect it is of relevance to note that Condition No. 4 of the 'parent' grant of permission issued by the Board on appeal under ABP Ref. PL25M.301116 which authorised the development of the existing Clondardis Solar Farm stated the following:

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.

Notwithstanding the wording and intent of Condition No. 4, it is my view that the proposed development would not contravene this Condition and thereby would not be restricted on exemption under Article 9(1)(a)(i) of the Regulations.

Article 9(1)(a)(iii) of the Regulations

8.3.3. Article 9(1)(a)(iii) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would 'endanger public safety by reason of traffic hazard or obstruction of road users'.

8.3.4. Having regard to the documentation on file, I note that the Council's District Engineer report from Mullingar Municipal District states that the proposed development would endanger public safety by way of traffic hazard during both construction and future maintenance stages, by reason of the following;

- It would be necessary to divert regional road traffic along the R393 (Mullingar – Ballynacarrigy road) onto lower category roads.
- The future realignment of the poorly aligned R393 may prove excessively expensive due to the presence of the proposed cables within the carriageway.
- The proposed route of the cables passes the Ardonagh reservoir. There are a number of large diameter, high capacity watermains in both the carriageway and verge at this location. The laying of cables at this location would create unnecessary risk of breakages and complicate future repairs to the watermain.
- The applicant has not provided a sufficient level of detail of existing services along the route in order to assess the application.

8.3.5. In consideration of the District Engineer's report, the Planning Authority report states that further information is required regarding services along the R393 road, which would be affected by the proposed development and the availability of lower category roads to accommodate diverted traffic during construction and future maintenance stages of the proposed development. I note that the Planning Authority did not de-exempt the proposed development on these grounds.

8.3.6. The referrer states in the original referral to Westmeath County Council that the proposed development requires a road opening licence, which will ensure that all matters related to the construction of the development are managed to the highest of standards. The referrer has submitted an 'Outline Construction Methodology' report for the proposed development. The report details, inter alia, the following:

- Preliminary site investigations are to be undertaken along the cable route prior to construction, including associated traffic management systems to be undertaken.
- Construction methodology details including depth of trenches, variations to adapt to bridges, service and watercourse crossings. Ducts will be installed and trenches reinstated in accordance with landowner / Westmeath County Council specifications. Construction methodologies and materials to be used will be in accordance with the requirements and specifications of the ESB.
- Trenching methodology with detail addressing watercourse crossings, culverts, excavated materials, phasing of the trenching / installation of ducts, hours of operation and the storage of plant and machinery.

- An assessment of the proposed route by section and construction requirements.
- Details of compliance with best practice design, construction and environmental management.
- Details of traffic management and access routes to work areas.
- The proposed development will require a road opening licence under Section 254 of the Planning and Development Act 2000 (as amended). A Traffic Management Plan will be agreed with Westmeath County Council prior to the commencement of development. This Traffic Management Plan will outline the location of traffic management signage, together with the location of any necessary road closures and the routing of appropriate diversions.
- Details of provisions made for and the relocation of existing services along the route, including underground cables, gas networks and watermains.

8.3.7. Given that a Road Opening Licence is required prior to the construction of the proposed development under Section 254 of the Planning and Development Act 2000 (as amended), I am satisfied that all road safety issues will be addressed by the Roads Authority. On this basis I do not consider the proposed development would create a traffic hazard and, thereby, would not be restricted on exemption under Article 9(1)(a)(iii) of the Regulations.

Articles 9(1)(a)(vii) and (viiA) of the Regulations

8.3.8. Articles 9(1)(a)(vii) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would 'consist of or comprise the excavation, alteration or demolition...of places...sites, features or other objects of archaeological...interest, the preservation, conservation or protection of which is an objective of a development plan...for the area in which the development is proposed'. Articles 9(1)(a)(viiA) states that development shall not be exempted development if the carrying out of the development would 'consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in

accordance with a consent granted under section 14 or a licence granted under Section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended’.

8.3.9. As identified on the Archaeological Survey of Ireland’s Sites and Monuments Records (SMR) database, there are four recorded archaeological monuments at two separate locations within 100m of the proposed underground grid connection route. These are as follows;

SMR No. WM019-087 – classified as a ringfort. This monument is located on the north-eastern side of the R383 regional road. The SMR database details that this ringfort has ‘been levelled from S-W-NW where it has been cut by the public road running NW-SE’ and ‘levelled from ESE-SE-S’. The SMR database shows that the proposed development passes through the Zone of Notification of this recorded monument.

SMR No.’s WM018-085001, WM018-085002, WM018-085003 – classified as Ring Barrow, Enclosure and Mound Barrow respectively. These three recorded archaeological monuments are located in close proximity to each other, c.50-95m to the south of the R383 Regional Road. The SMR database shows that proposed development does not pass through the Zone of Notification of these recorded monuments.

The referrer has submitted an Archaeological Screening Report for the proposed development, prepared by John Cronin & Associates. The report presents the results of a desktop study undertaken to identify the recorded and potential archaeological resources within the environs of the proposed underground grid connection route. A windscreen survey was carried out and a written description and selection of photographs are provided to illustrate the location of the archaeological monuments along the route. The report presents an assessment of the potential impacts of the proposed works on archaeology.

8.3.10. The Planning Authority in its assessment of the referral states that the proposed development would comprise the excavation and alteration of the zone of notification of a protected monument. The Planning Authority report refers to the archaeological screening report submitted which indicates that ‘there is the potential for direct, negative impacts on unrecorded subsurface archaeological features associated with this ringfort’. Further to this, the Planning Authority report states that Article 9(1) of the Regulations does not allow for mitigation measures. The Planning Authority also note

that the referrer has not indicated whether the proposed development has been granted consent under Section 14 or a licence granted under Section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended, as per Section 9(1)(a)(viiA) of the Regulations. On this basis, the Planning Authority concludes that the proposed development comes within the scope of restrictions on exemptions as set out under Articles 9(1)(a)(vii) and 9(1)(a)(viiA) of the Planning and Development Regulations 2001 (as amended) and is deemed not to be exempted development.

- 8.3.11. The Archaeological Screening Report submitted states in its assessment of impact (Section 4) that 'without appropriate mitigation, there is potential for direct, negative impacts on unrecorded subsurface archaeological features associated with the recorded ringfort (WM019-087---) as a result of the proposed scheme. The report however concludes that 'as construction and maintenance of the existing public road network likely resulted in significant disturbance to the substrata underlying the public road, no archaeological mitigation is recommended for the portions of the underground grid connection cable which are carried by the public road and which do not extend through the Zone of Notification of any recorded archaeological site'.
- 8.3.12. Given that the recorded monument, ringfort WM019-087 has been levelled and cut by the R383 Regional Road running from NW-SE, that the construction of this road likely resulted in significant disturbance to the substrate underlying the road and that the proposed underground grid connection route will be laid within the public road carriageway, it is my view that the proposed development would not interfere with the remains of the existing recorded monument, and thereby would not be restricted on exemption under Articles 9(1)(a)(vii) and (viiA) of the Regulations.

Article 9(1)(a)(viiB) of the Regulations

- 8.3.13. Under Article 9(1)(a)(viiB), development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would comprise development that would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site. In addition, it is stated under Section 177U(9) of the Planning and Development Act, 2000 (as amended) that 'in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall

where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.’

8.3.14. The documentation submitted to the Planning Authority included a Screening for Appropriate Assessment. The report identifies all European sites within a 15km radius of the proposed grid route. These are as follows;

Lough Owel SAC (site code 000688) is located approximately 1.9 km to the north-east of the solar farm site.

Scragh Bog SAC (site code 000692) is located approximately 5.6 km to the north-east of the solar farm site.

Lough Ennell SAC (site code 000685) is located approximately 5.1 km to the south-east of the solar farm site.

Garriskil Bog SAC (site code 000679) is located approximately 11.4 km to the north of the solar farm site.

Ballymore Fen SAC (site code 002313) is located approximately 13.7 km to the south-east of the solar farm site.

Lough Owel SPA (site code 004047) is located approximately 1.9 km to the north-east of the solar farm site.

Lough Ennell SPA (site code 004044) is located approximately 5 km to the south-east of the solar farm site.

Lough Iron SPA (site code 004046) is located approximately 4.8 km to the north-west of the solar farm site.

Lough Derravarragh SPA (site code 004043) is located approximately 11 km to the north of the solar farm site.

Garriskil Bog SPA (site code 004102) is located approximately 11.4 km to the north of the solar farm site.

Glen Lough SPA (site code 004045) is located approximately 14 km to the north-west of the solar farm site.

8.3.15. Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways. Using the source-pathway receptor risk assessment principle, the European sites that could potentially be affected by the

proposed development are those listed above in close proximity to the site. The distance to all other European Sites are in excess of 4km. It can be reasonably concluded that the proposed development would not have a significant effect individually or in combination with other plans or projects on European sites in excess of 4km from the site having regard to the conservation objectives for these European Sites, the nature of discharge from the development site, and the source pathway-receptor risk assessment principle.

8.3.16. The closest European sites are the Lough Owel SPA (Site Code: 004047) and Lough Owel SAC (Site Code: 000688), which are located c. 0.7km km to the north of the grid connection route, at its closest point.

8.3.17. The conservation objectives for the Lough Owel SPA are as follows;

- To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:
- To maintain or restore the favourable conservation condition of the wetland habitat at Lough Owel SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

8.3.18. Bird species listed as special conservation interest include the following;

- Shoveler *Anas clypeata*
- Coot *Fulica atra*

8.3.19. The conservation objective for the Lough Owel SAC are as follows;

- To maintain the favourable conservation condition of Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. in Lough Owel SAC.
- To maintain the favourable conservation condition of Transition mires and quaking bogs in Lough Owel SAC.
- To maintain the favourable conservation condition of Alkaline fens in Lough Owel SAC.
- To maintain the favourable conservation condition of White-clawed Crayfish in Lough Owel SAC.

8.3.20. Habitats and species listed for conservation include the following:

White-clawed Crayfish *Austropotamobius pallipes*

- Hard oligo-mesotrophic waters with benthic vegetation of Chara spp.
- Transition mires and quaking bogs
- Alkaline fens

8.3.21. As detailed in the Screening Report for Appropriate Assessment, the proposed underground grid connection cable does not traverse any watercourses. The solar farm to which the grid connects has been subject to screening for Appropriate Assessment under P.A. Ref. 20/6132 and ABP Ref. PL25M.301116.

8.3.22. The main potential for likely and significant effects on European sites from the proposed underground grid connection is from water run-off and contamination during the excavation and construction phase. However, having regard to the nature and scale of works required to undertake the grid connection over a distance of 5.1km and the presence of the existing hard surfaced public route along the route between the Clondardis solar farm and ESB substations, and by reason of the intervening distance of 0.7km from the proposed route to the nearest European Site Lough Owel SPA and SAC, it can be concluded that the development in question would not be likely to give rise to significant effects. As the underground cable would not have any direct or indirect impacts on any Natura site, it can reasonably be concluded that in-combination effects do not arise.

8.3.23. It is therefore 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 No.'s 004047 and 000688 or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required. On the basis of the foregoing, I am satisfied that the development would not be restricted on exemption under Article 9(1)(a)(viiB) of the Regulations.

8.3.24. Article 9(1)(a)(viiC) de-exempts development that would have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000. The nearest pNHAs coincide with the locations of the

Lough Owel SPA and SAC. For the reasons outlined in the appropriate assessment screening, I am satisfied that the grid connection in question would not have an adverse impact on the nearest designated pNHAs.

Article 9(1)(c) of the Regulations

- 8.3.25. Under Article 9(1)(c), development to which Article 6 relates shall not be exempted development for the purposes of the Act if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.
- 8.3.26. Whilst the provision of an underground grid connection cable for the transmission of electricity does not fall within a class of development for the purposes of Environmental Impact Assessment, it is necessary to have regard to recent legal developments in this area with specific reference to the judgements of the High Court in respect of *O’Grianna v. An Bord Pleanála [2014] IEHC 632* and *Patrick Daly v. Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited [2017] IEHC 308*.
- 8.3.27. In *O’Grianna v. An Bord Pleanála* (delivered on the 12th December, 2014), the High Court quashed the decision of the Board in granting planning permission for a wind farm in Co. Cork on the grounds of ‘project-splitting’ and held that the Board had failed to ensure that the grid connection had been considered as part of the Environmental Impact Assessment process prior to the granting of permission for the turbines and ancillary works. It should be noted that the wind farm development itself required mandatory EIA as it exceeded the 5 No. wind turbine threshold provided for in Class 3 (i) of Part 2, Schedule 5, of the Planning and Development Regulations, 2001, as amended. In essence, the High Court judgement was based on the conclusion that the wind farm and the grid connection constituted a single project, and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Directive. Consequently, new applications for permissions for wind farm developments, which require EIA, now include relevant information on proposed grid connections.
- 8.3.28. In the subject instance, the grant of permission issued for the Solar Farm at Clondardis under ABP Ref. PL25M.301116 did not include for the underground grid connection

works detailed in the subject referral. Condition No. 4 of the permission states that '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'. I note that the Planning Inspector's report stated that the proposed solar farm is a type of development that does not fall within any of the Classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Notwithstanding this, the Planning Inspector carried out an environmental impact assessment of the proposal given the possible environmental effects of the proposal and proposed grid connection under the application. In addressing the proposed grid connection, the Planning Inspector considered an option A (underground cable) and Option B (loop-in connection) and concluded that the option A (underground cable) would have only temporary and localised impacts on semi-natural habitat and modified habitats and no impacts on operation / post operation.

8.3.29. Given that a) the proposed underground grid connection cable for the transmission of electricity does not fall within a class of development for the purposes of Environmental Impact Assessment and b) the permitted solar farm and underground cable and ducts connecting the solar panels to the Mullingar sub-station was subject to Environmental Impact Assessment by the Board under ABP Ref. PL25M.301116 and that the subject underground grid connection cable had been considered as part of the Environmental Impact Assessment process prior to the granting of permission, it is my view that the proposed development would not be restricted on exemption under Article 9(1)(c) of the Regulations.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the provision of a circa. 5.1km underground grid connection within the corridor of public roads and private lands which links a permitted solar farm at Clondardis and Slane More Townlands, Walshestown, Mullingar, Co. Westmeath to the existing ESB Mullingar 110kV substation at Irishtown townland, Mullingar, Co.

Westmeath is or is not development and is or is not exempted development’.

AND WHEREAS Harmony Solar Mullingar Limited requested a declaration on this question from Westmeath Council and the Council issued a declaration on the 14th day of July, 2020 stating that the matter is development and is not exempted development:

AND WHEREAS Harmony Solar Mullingar Limited referred this declaration for review to An Bord Pleanála on the 10th day of August, 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3, 4, 177U(9) and 254 of the Planning and Development Act, 2000, as amended,
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended),
- (d) the planning history of the site,
- (e) The Inspector’s Report, including the EIA therein,
- (f) Relevant case law, including in particular *O’Gianna (and Others) – v - An Bord Pleanála (and others) [2014] IEHC 632*.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the provision of the underground grid connection and associated works involves the carrying out of works and, therefore, constitutes development, under sections 2 and 3 of the Planning and Development Act, 2000, as amended,

- (b) the underground electricity grid connection involves works carried out by an electricity undertaking, and, having regard to the nature of those works, would come within the scope of Class 26 of Part 1 of the Second Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (c) it is considered that the underground electricity grid connection and associated works, while forming part of the solar farm at Clondardis and Slane More Townlands would not be likely to have significant impacts on the environment over and above those already considered and assessed as part of the Environmental Impact Assessment for that solar farm, and in combination with the solar farm, and that, therefore, an Environmental Impact Assessment for the connection and associated works would not be required. Accordingly, the provisions of Section 4 (4) of the Planning and Development Act, 2000, as amended, and Article 9(1)(c) of the Planning and Development Regulations, 2001, as amended do not apply in this instance, and the development is exempted development, and
- (d) there are no other restrictions on exemption, set out in the Act and Regulations, that would apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the c.5.1 km underground grid connection from the permitted solar farm at Clondardis and Slane More Townlands to the national grid via the existing ESB Mullingar 110kV substation at Irishtown, Mullingar is development and is exempted development.

Brendan Coyne
Planning Inspector

17th February 2021