



An
Bord
Pleanála

Inspector's Report ABP-310120-21

Question

Whether the provision of c.3834m of 38kv underground medium voltage grid connection cable between the consented Cleggill Solar Farm (Ref 17/47) to the nearest 38kv Longford substation is or is not development and is or is not exempted development.

Location

Townlands of Cleggill, Lismore, Cartrons, Moneylagan, Aghadegan and Minard.

Declaration

Planning Authority

Longford County Council

Planning Authority Reg. Ref.

DC21/2

Applicant for Declaration

Grian PV Longford Limited

Planning Authority Decision

No declaration

Referral

Referred by

Longford County Council

Owner/ Occupier

George McCloughery

Observer(s)

None

Date of Site Inspection

23rd of August 2021

Inspector

Angela Brereton

1.0 Site Location and Description

- 1.1. The permitted solar farm site has a stated area of c.19 Ha is located in the townland of Cleggill, c.2.5km North West of Longford town. Current access to the site is via an existing agricultural laneway which serves a farm complex. The laneway connects with the L5003 local road to the north, which has a speed limit of 80kph. Site boundaries consist of mature hedgerows, trees and drainage ditches. Land use in the immediate environs of the site is mostly agricultural. The River Camlin runs along the south-western site boundary.
- 1.2. There is a new dwelling located along the farm road, sited c.320m north of the proposed solar farm. There is another dwelling located along the L5003 local road, c.300m to the north of the proposed solar farm. There are a number of other one- off dwellings further to the south with access to the L5003.
- 1.3. It is of note that the proposed grid connection which is the subject of this Referral is to run from the consented Cleggill Solar Farm to the nearest 38kV Longford Substation in County Longford running through the townlands of Cleggill, Lismore, Cartrons, Moneylagan, Aghadegan and Minard.
- 1.4. Details submitted with the application provide that the proposed cable route will run north from Cleggill farm, southeast along the L5003 for approx. 1.9km before turning east onto the L1001 where it will run for approx. 0.2km. Here it will turn northeast onto the N5 for approx. 1.2km before turning left onto the N4 where it will continue for approx. 0.5km and turn right into the Longford Substation.

2.0 The Question

- 2.1. Whether the provision of c3834m of 38kv underground medium voltage grid connection cable between the consented Cleggill Solar Farm (Reg.Ref.17/47 and Board Ref. PL14.248470) to the nearest 38KV Longford substation is or is not development or is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).
- 2.2. I have amended the Question slightly by including the Board reference, which relates to the decision to grant permission for the solar farm. This is also in view of the Council's decision to refuse permission for the solar farm under Reg.Ref.17/47.

2.3. Referral to the Council.

2.4. On the 7th of April 2021 Neo Environmental Ltd on behalf of Grian PV Longford Limited sought a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) on the above question from Longford County Council.

2.5. The documentation submitted from Neo Environmental with this Referral included the following:-

- Volume 1 – Appropriate Assessment Screening Report
- Volume 1 – Appropriate Assessment Screening – Section 5 Application: Cleggil – Longford Underground Cable Connection
- Technical Appendix 1: Outline Construction Management Plan
- Technical Appendix 2: Construction Traffic Management Plan
- Maps, Drawings and Aerial Photographs

3.0 Planning Authority Declaration

3.1. Declaration

Having regard to the provisions of Section 5 of the Planning and Development Act, 2000 (as amended) the Planning Authority referred the declaration on to the Board for determination. Their reasoning was as follows:

The Planning Authority is of the opinion that the proposed development given the applicant status at the time of development is being carried out as a statutory under taker would likely result in the development being exempted under Schedule 2 Part 1 Class 26.

However, given the significant changes in relation to interpretation and implementation of the Habitats Directive and the legal complexity of the matter regarding the application of AA provisions, in particular the use of mitigation measure as part of the screening process and the need for clarity in the issue the Planning Authority proposed to refer this Section 5 Referral to An Bord Pleanala for determination.

They attach a copy of the AA Screening Report submitted for the Board's consideration. It is noted that the Board received the planning authority's referral on the 4th of May 2021.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report (28/04/21) noted that Grian PV Longford Limited requested a declaration from the Council as to the Question raised (as above). Their Report has regard to the Planning History, the Statutory Provisions and in summary included the following:

- The proposed development site is located solely along public roads connecting the permitted solar farm site to the substation and it is anticipated that this work will be undertaken along the side of the road within the road corridor.
- Having regard to the proposed development and the information submitted as part of the application, the interpretation of the relevant descriptions, the PA is satisfied that the applicant at the time of development will be considered a statutory undertaker and so can avail of the exemption under Class 26 of Schedule 2 Part 1.
- As such the crux of the issue comes down to the screen report associated with the application and they note that the conclusion of the AA Screening Report in the original planning application identified that:

There will be no significant impact on any Natura 2000 sites within 15km of the proposed development, with the implementation of recommended mitigation measures. Therefore, a Natura Impact Statement is not required.

- They note that the conclusion of the AA submitted as part of this Section 5 declaration states:

This screening report, based on the best available scientific information, finds that there is no reasonable scientific doubt that the development does not pose risk of significant adverse effects on

Natura 2000 sites, and that the development does not require progression to a Sage 2 Appropriate Assessment. It is considered that the next stage of the Appropriate Assessment is not required.

- However, they note that Section 6.10 of the AA Screening Report indicates that: *During the construction phase, best practice pollution measures will be implemented* and Section 6.11 states: *At watercourse crossings, the contractor will be required to adhere to environmental control measures outlined within the Section 5 application and accompanying reports...*
- As such they provide that it is not clear to the PA that the AA Screening Assessment has been concluded in the absence of the consideration of mitigation measures and given the recent ruling of Judge Garrett Simons in Heather Hill Management Company CLG v An Bord Pleanala it is unclear as to whether the Screening Report should have progressed to development to a stage 2AA and requested An NIS which, if required, would de-exempt the proposed development.

3.3. Other Technical Reports

None noted.

4.0 Planning History

- Reg.Ref.17/47 – Permission refused by the Council, but subsequent to a First Party Appeal by Grian PV Limited, granted permission subject to conditions by the Board (Ref.PL14.248470 refers) for: A solar farm with an energy export capacity of 11.1MW. This was comprising of photovoltaic panels on ground mounted frames with associated infrastructure including seven number inverter cabins, one number control building, one number customer cabin, one number DNO sub-station, temporary construction compound, ducting and electrical cabling, perimeter agricultural fencing, mounted CCTV cameras and internal access tracks. This application is for a 10 year permission at a site within the townland of Cleggil, Longford.

A copy of the Board's decision to grant permission is included in the History Appendix to this Report.

5.0 Policy Context

5.1. Longford County Development Plan 2015-2021

This is the pertinent plan – the following policies and objectives are of note:

Renewable Energy

Section 5.5.2 – is supportive of Renewable Energy Sources and includes the following policies:

Policy RE 2 - *The following criteria shall be used in the assessment of potential sites for the development of alternative energy sources:*

- *Significant wind energy potential*
- *Accessibility to the national grid*
- *Suitability of the site having regard to land uses*
- *Measures to minimise impact on other development*

Policy RE 3 - *The Council will consider the promotion of renewable energy and low energy/passive houses to be a high priority to help reduce global warming. The Council will support initiatives that encourage energy conservation and reduce reliance upon non-renewable sources of energy, including schemes for wind energy, biomass, photovoltaics, solar thermal installations, heat exchange, geothermal etc*

Section 5.5.2.3 supports Alternative Energy Developments such as solar.

Natural Heritage and Biodiversity

Section 6.1.1 – Landscape Character Assessment – Landscape Policies relevant to the assessment include LCA 1, LCA 2 and LCA 3.

Policy NHB 6 – to protect designated sites, including SACs and SPAs.

Policy NHB 10 – to protect and enhance important landscape features.

Section 6.2.1 – Archaeological Heritage, Section 6.2.2 – Designated sites, Section 6.2.2.7 – Inland lakes and Waterways which includes Policy ILW1.

5.2. **Natural Heritage Designations**

There are a number of European sites designated under the Habitats Directive located within 15km of the proposed development. These include Brown Bog SAC (002346), Lough Forbes complex SAC (001818), Clooneen Bog SAC (002348), Lough Ree SAC (000440), Lough Ree SPA (004064) and Ballykenny Fisherstown Bog SPA (004101)

There are 3 proposed NHAs within 5km of the site. (Brown Bog, Lough Forbes complex and Royal Canal).

6.0 **The Referral**

6.1. **Referrer's Case**

On the 30th of May 2021, Longford County Council, referred the aforementioned Question that has arisen to the Board. They attached a copy of their Planner's Report (as have been noted above) which makes their case for this Referral and recommends that this Section 5 be referred to the Board for a determination.

They also attach the details from the agent NEO Environmental Ltd. which includes a Stage 1 Appropriate Assessment Screening Report and a copy of the Technical Appendix 2: Construction Traffic Management Plan and accompanying Appendices.

Drawings have also been included with the Referral showing the Cable Route (Overall) and in Sections from the permitted site to Longford DNO 38kV Substation. These include photographs showing parts of the route.

6.2. **Owner/ occupier's response**

There has been no response to this Referral to the Board from the Applicant or the Land owner noted on file.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1)

“works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and

Section 3(1)

“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.

“statutory undertaker” means a person, for the time being, authorised by or under any enactment of 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.

Section 4(2)(a)(i)

“The Minister may by regulations provide 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

Section 4(4)

- (ii) Notwithstanding..... any regulations under subsection (2), development shall not be exempted development if an environmental

impact assessment or an appropriate assessment of the development is required”

Section 172(1)

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

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

Section 177U(9)

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

7.2. Planning and Development Regulations, 2001

Article 3(3)

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

Article 6(1)

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

Schedule 2, Part 1

Development by Statutory Undertakers

Class 26

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

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

Article 9(1)

Restrictions on Exemption 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, watermain, 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) comprise 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.

- (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 regulations) to comply with the procedures for the purposes of giving effect to the Council Directive.

7.3. Case Law

O Grianna (and others) v An Bord Pleanála (and others) Record L 2014 No 2014 No 19 JR; 2014 No 10 COM.

High Court judgement on judicial review of a permission granted on appeal by the Board for a development comprising 6 wind turbines and associated infrastructure in County Cork. The High Court judgement, quashing the Board's decision, was based on the conclusion that the windfarm and grid connection constitute one 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.

Heather Hill Management Company CLG & ANOR V An Bord Pleanala & ANOR 2019 No. 20 J.R

High Court judgement on judicial review of a permission granted on appeal by the Board for a development comprising 197 residential units – 'strategic housing development' as defined. The High Court judgement, quashing the Board's decision, referred to a number of issues, these include that Bord Pleanala failed to carry out a proper screening exercise for the purposes of the EU Habitats Directive, as implemented under Part XAB of the PDA 2000. *The board erred in relying on measures which were intended to avoid/reduce potential harmful effects on the proposed development on two European sites located in Galway Bay. Measures of*

this type cannot lawfully be taken into account for the purposes of a stage 1 screening exercise. See Case C323/17 People Over Wind.

Also of note is Case c-323/17 People Over Wind and Peter Sweetman v Colite. This case focused on proposed works that were necessary to lay a cable connecting a wind farm to the electricity grid and the potential effects that this would have on two special areas of conservation. The Court of Justice of the European Union (CJEU) ruled that mitigation measures could not be taken into account at the screening stage of an appropriate assessment.

7.4. Other Referral Cases

ABP-300536 The Board determined that the provision of an underground electricity cable grid connection from the substation within the Raheenleagh Wind Farm to the Arklow 200kV substation at Coolboy, Arklow, County Wicklow is development and is not exempted development.

The reason given for the restriction on exemption was:

- (a) The provision of the said underground electricity cable grid connection would contravene condition number 26 of planning register reference number 10/2140 and would, therefore, come within the restriction on exemption, as set out in article 9(1)(a)(i) of the said Regulations.

ABP-302895-19 The Board determined that the provision of a medium voltage (20kV) underground grid connection between the permitted solar farm development at Dysart, Johnstownbridge, County Kildare and the Dunfirth ESB substation at Dunfirth, Johnstownbridge, County Kildare is development and is exempted development.

ABP-307927-20 The Board determined that the provision of c.5.1km underground grid connection from the permitted solar farm at Clondardis and Slane More Townlands, Walshestown, Mullingar, County Westmeath to the national grid via the

existing ESB Mullingar 110kV substation at Irishtown Townland, Mullingar, County Westmeath is development and is exempted development.

8.0 Assessment

8.1. Introduction

- 8.1.1. The planning merits as to whether or not the development should take place is not the basis on which to determine the referral. The sole purpose of a Section 5 Referral is to determine, when a question arises in any particular case, what is or is not development or what is or is not exempted development within the meaning of the Act. The purpose of a Section 5 Referral is therefore not to adjudicate on the particular planning merits associated with a case, or whether or not a proposal is in accordance with the proper planning and sustainable development of the area, but rather a referral under Section 5 of the Act is confined to a legal interpretation as to whether or not planning permission is required in accordance with the provisions of the Act and associated Regulations.
- 8.1.2. It must be noted that the documentation submitted with the Referral as originally submitted to the Council refers to a 'Section 5 Application'. This is a Referral by the Planning Authority to the Board, under Section 5(4) of the Planning and Development Act 2000 (as amended) relative to the Question asked i.e. whether the proposal is or is not development and is or is not exempted development. It is not a planning application. That would be the separate process, if it is deemed that the proposal constitutes development and is not exempted development. The issue is whether it is considered having regard to the legislation and based on the documentation submitted as to whether the grid connection as referred to the Board, would constitute exempted development.

8.2. Is or is not development

- 8.2.1. The question before the Board is whether a Medium Voltage Grid Connection for a permitted Solar Farm is or is not Development and/or Exempted Development. The relevant statutory provisions in the case are set out at Section 7 above. In addressing the primary question of whether the works are development, I note that

having regard to the nature of the proposal, the solar farm development has been permitted by the Board under ref no. PL14-248470. It is evident, by reference to the broad definition of works set out in Section 2(1) and 3(1) of the Act that the proposal i.e the provision of an underground grid connection cable, does involve works and constitutes development for planning purposes. The focus, therefore, is on whether or not the proposed development constitutes exempted development.

8.3. Is or is not exempted development

- 8.3.1. As regards Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is Class 26, Part 1 Schedule 2 of the Planning and Development Regulations, as amended. This refers to “*The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking.* I am satisfied that the proposal is “a development consisting of the laying underground of cables for the purposes of the undertaking”.
- 8.3.2. On the requirement for the development to be carried out by an “*undertaker authorised to provide an electricity service*” I refer to Article 3(3) of the regulations which states that an electricity undertaking means an undertaker authorised to provide an electricity service. The Electricity Regulation Act 1999 provides a definition as follows: “*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.”
- 8.3.3. I note the broad definition of “statutory undertaker” provided within the Planning and development Act 2000 as follows: “*statutory undertaker*” means a person, from the time being, authorised by or under any enactment or instrument under an enactment to- (b)Provide, or carry out works for the provision of, gas, electricity or telecommunications services,” .
- 8.3.4. In light of these definitions, I am satisfied that Grian PV Limited (the Applicant for the solar farm development and the Referrer to the Council in the subject case), falls within the category of statutory undertaker on foot of its authorisation under the Planning Act to construct a solar farm that is a project for the provision of electricity.

On this basis I am satisfied that the proposed development falls within the scope of Class 26.

8.4. Restrictions on exempted development

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

- 8.4.1. This 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. In this respect it is of relevance to note that Condition No. 4 of the 'parent' grant of permission issued under Board Ref. PL14.248470 which authorised the development of the Cleggill Solar Farm stated the following:

This permission shall not in any way 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.

- 8.4.2. It could be considered that the inclusion of such a condition would serve to remove any possibility that the grid connection could be undertaken as exempted development pursuant to Class 26 of Part 1 of Schedule 2 of the Regulations. It is of note, however, that in the case of Referral Ref. ABP-300536-18 as referred to in Section 7 above, that development was not exempt in that the condition then included in the clause: *Prior to the commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the national grid.*
- 8.4.3. It is noted that, Condition no. 4 of PL14.248470 does not include the clause stating that planning permission must be sought for the said grid connection works, rather that they are not granted by the said permission. In the subject case, the grant of permission issued for the Solar Farm did not include for the grid connection works detailed in the subject referral and, therefore, the cumulative impact of the said grid connection works when taken in conjunction with the Solar Farm was not assessed as part of that planning application. However, this condition did not explicitly state that permission is required for the grid connection works.

8.4.4. Therefore, the restriction on exemption as per Article 9(1)(a)(i) of the said Regulations would not apply in that the grid connection which is the subject of this Referral would not contravene Condition no.4 of the said permission.

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

8.4.5. This 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'.

8.4.6. 'Technical Appendix 2: Construction Management Plan' by Neo Environmental has been included in the details submitted with the Referral to the Council. This provides a description of the construction of the underground medium voltage grid connection cable from the permitted Cleggill Solar Farm to the Longford 38kV Substation. The grid connection is to be installed from the solar farm along c.3.8km of public road with the construction carried out in sections of no more than 100m at a time. It is provided that the excavation, installation and reinstatement process for each 100m section will take an average of one day to complete.

8.4.7. The aim of the CTMP is to put in place procedures to manage grid connection construction traffic effectively. It outlines measures to enhance the efficient transportation of construction materials and machinery whilst minimising delay and disruption to general traffic. It is stated that traffic management measures will be implemented in accordance with those included in the Preliminary Construction Management Report, and a detailed Traffic Management Plan will be prepared and agreed with Longford County Council prior to construction stage. The CTMP includes details of the hours of operation, construction parking.

8.4.8. Section 4 of the CTMP provides Mitigation Measures to be considered to minimise the impact of the construction on the road network. These include Traffic Control Measures. A number of Appendices are included. Appendix 2A shows the outline of the Longford Underground Cable Connection relative to the Natura 2000 sites. Appendix 2B shows the standard construction specification for grid connection ducting.

8.4.9. 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.

8.5. Restrictions on Exemption relative to EIA and AA

- 8.5.1. Section 4(4) of the Act essentially de-exempts any development which attracts a requirement for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA). In relation to EIA, the development of a connection between the medium voltage grid connection between the solar farm development permitted under ref no. PL- 248470 and the Longford 38kV Substation is not a prescribed class of development for the purposes of EIA.
- 8.5.2. I note that by reference to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, having regard to the limited nature and scale of works involved, the provision of the medium voltage grid connection between the solar farm development permitted under ref no. PL14 - 248470 and the Longford 38kV Substation is not likely to have significant effects on the environment. In the context of the O’Grianna judgement, I would note that the original solar farm application was not subject to EIA and is not a prescribed class of development for the purposes of EIA.
- 8.5.3. However, issues relative to the AA and to the Screening Report carried out, have been raised by the Council in this Referral and are considered further below.

8.6. Other Issues – Online Construction Measures

- 8.6.1. Technical Appendix 1 provides an: ‘Outline Construction Environmental Management Plan’. This includes an identification of the Environmental Sensitivities of the route corridor. Table 4-1 notes the Environmental Considerations and Impacts i.e. Water/waterways adjacent to the development – contamination of aquatic environment. Also relative to Soil/Soil on site – contamination, compaction and soil degradation and reduced filtration.
- 8.6.2. This has regard to the Environmental Designations and to Natura sites within a 15km radius. Section 4.4 notes that the findings of the AA Screening concluded that in the

absence of mitigation, there will be no significant impacts to the integrity for any of the Natura 2000 sites from the proposed development.

8.6.3. Note is had in Section 4 of Hydrology. This includes that the cable route will pass through the following river catchments as defined by the Water Framework Directive.

- Camlin _ 070
- Camlin _ 060

It will cross two significant watercourse crossings, both of which are bridge channel crossings, where the cable works will be confined to the public highway. These crossings are at the following locations:

- Lisnabo Watercourse
- Lismore Stream (crosses twice).

8.6.4. A Construction Method Statement (CMS) is provided. This outlines the management plan for the construction and decommissioning phases of the proposed development. It includes the proposed development will be constructed in accordance with standard best practice. The construction works includes relevant to watercourse crossings:

- The contractor will be required to adhere to the environmental control measures outlined within the Section 5 application and accompanying reports, the detailed Construction Environmental Plan (CEMP) to be prepared prior to the commencement of construction, and best practice construction methodologies.
- Where the cable route intersects a small culvert, the culvert will remain in place and the ducting will be installed above it, providing minimum separation distances in accordance with ESB and Irish Water specifications.
- The proposed development does not involve the draining or modifying of any of the minor or major tributary watercourses.

8.6.5. Section 6 provides the details relative to Waste Management during construction phase. This includes regard to Identification of Waste, Storage of fuels and chemicals, refuelling, excavation and earth works. It is provided that operations and activities that have the potential to impact on the water environment will be regularly

monitored throughout the construction of the proposed development. This is to ensure compliance with planning conditions and environmental regulations.

8.6.6. Section 7 refers to Pollution Management. The OCEMP identifies elements of the proposed development which are potentially capable of giving rise to pollution and identifying pollution prevention and mitigation measures. Details are given of Mitigation Measures. It is provided that these protection measures will be in-line with EPA Pollution Prevention Guidelines.

8.6.7. Section 8 includes a Drainage Management Plan. Section 9 provides Summary & Conclusions. Table 9-1 provides the OCEMP Mitigation Measures, which relative to Water and Soil recommended Mitigation – Implementation of pollution prevention measures detailed within this OCEMP. The overall objective of the OCEMP is to reduce the potential impact on the environment during the construction phase of the proposed development.

8.7. Screening for Appropriate Assessment

8.7.1. As regards this issue, the grid connection is in relation to the permitted development (PL14 - 248470). It is noted that the Inspector's Report relative to the solar farm considered (Section 8.9.7) found it reasonable to conclude based on the information on file which included a Stage 1 Screening Assessment Report, that: *The proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on any designated European site in view of those site' conservation objectives and that a Stage 2 AA (and submission of an NIS) is therefore not required.*

8.7.2. The information submitted with this referral relative to the grid connection includes an AA screening report, which identifies five SAC's and two SPA's within 15kms of the site. Table 5.1 refers and these are listed as follows:

- Brown Bog SAC (site code:002346) – 1.14km west
- Lough Forbes Complex SAC (site code:001818) – 1.89km northwest
- Mount Jessop Bog SAC (site code: 002202) – 5.82km south
- Clooneen Bog SAC (site code 002348) – 6.32km northwest

- Lough Ree SAC (site code 000440) – 12.67km southwest
- Ballykenny – Fisherstown Bog SPA (site code 004101) 1.89km northwest
- Lough Ree SPA (site code 004064) 12.69km southwest.

8.7.3. This Table lists the Qualifying Interests of each of these Natura 2000 sites. Four of these sites are listed as having ‘Potential hydrological connection’ and these are listed below:

- Lough Forbes Complex SAC
- Ballykenny – Fishertown Bog SPA
- Lough Ree SAC
- Lough Ree SPA

8.7.4. The Screening Report notes that the proposed cable route falls within the Upper River Shannon sub-catchment. The proposed cable route follows the N5 public road for much of its length. The cable route crosses the Moneylagan and Lisnabo watercourses (flowing into the Camlin River). The Camlin River flows through the Lough Forbes Complex SAC and Ballykenny - Fishertown Bog SPA. The Camlin River flows through the Lough Forbes Complex SAC and Ballykenny-Fisherstown Bog SPA. It provides that connectivity between the proposed cable route and these Natura sites is considered unlikely. That the works will take place within the hardstanding, in areas isolated from drains or watercourses.

8.7.5. Section 5.6 notes that there is, however, some very minor risk that surface water could enter the watercourses in the event of flooding. That taking a precautionary approach, it is therefore considered that there is a hydrological connection existing with the following of the aforementioned Natura 2000 sites.

8.7.6. Section 6 of the AA Screening Report contains an ‘Assessment of Likely Effects’ relative to these sites. Table 6-1 lists Common Water Pollutants, Their Effects and Standard Pollution Prevention Measures.

8.7.7. Regard is had in the Screening Report to the aforementioned Natura 2000 sites below:

Lough Forbes Complex SAC

- 8.7.8. The Conservation Objectives are: *To maintain or restore the favourable conservation condition of Annex 1 habitat(s) and/or the Annex II species for which the SAC has been selected.* Table 6.2 provides the Qualifying Habitats of the Lough Forbes Complex SAC and their extent within the SAC. It is noted that Lough Forbes Complex SAC comprises a natural eutrophic lake formed by a broadening of the River Shannon other qualifying habitats (series of active raised bogs, alluvial woodlands, degraded raised bogs and Rhynchosporion vegetation and alluvial forests).
- 8.7.9. The AA Screening Report provides that as the grid connection will follow existing roads, there will be no loss of habitat as a result of the proposed development. The proposed cable route is entirely within an area of hardstanding. The road network is heavily used by traffic, which they provide means that emissions from the minor cable laying proposed will in all likelihood not be significant.
- 8.7.10. It has been noted relative to the Planning Report above that the Planning Authority is concerned relative to this Referral about Sections 6.10 and 6.11 of the AA Screening Report. These provide:
- Section 6.10 – During the construction phase standard best practice measures will be implemented. All relevant pollution prevention law (listed under legislation) will also be adhered to.*
- Section 6.11 – As outlined in the supporting Technical Appendix 1: Outline Environmental Management Plan, at watercourse crossings, the contractor will be required to adhere to environmental control measures outlined within the Section 5 application and accompanying reports, the detailed Construction Management Plan (CEMP) to be prepared prior to the commencement of construction, and best practice construction methodologies.*
- 8.7.11. The Screening Report provides that given the nature and design of the proposed development, it is considered that the potential impacts on the qualifying interests of Lough Forbes Complex SAC will be negligible. That, therefore, no likely significant effects upon the SAC are predicted.

Ballykenny-Fishertown Bog SPA

- 8.7.12. This SPA overlaps Lough Forbes SAC. It is designated for supporting a population of Greenland White-fronted Goose (although the last record of these species at the site was in 1990/91). The main conservation objective is: *To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.* Table 6-4 identifies the percentage of the extent of various habitat types within the SPA.
- 8.7.13. The Assessment of Likely Impacts includes Section 6.22 which provides: *The grid route uses only areas of existing hardstanding along roads, these areas do not support habitats supportable for supporting qualifying bird species. As outlined above the proposed development will not lead to contaminants entering the aquatic environment.*
- 8.7.14. The Report provides that given the nature and design of the proposed development, it is considered that potential impacts on the qualifying features of Ballykenny-Fisherstown Bog will be negligible and not be significant.

Lough Ree SAC

- 8.7.15. The Conservation Objectives are: *To maintain or restore the favourable conservation condition of Annex 1 habitat(s) and/or the Annex II species for which the SAC has been selected.* Table 6.3 provides the Qualifying Habitats of the Lough Ree SAC and their extent within the SAC. It is also noted that it is designated for otter. This is a natural eutrophic lake with Magnopotamion or Hydrocharition – type vegetation. Lough Ree is a large lake, designated as both an SAC and SPA. The SAC is separated from the proposed cable route by the Lough Forbes Complex SAC.
- 8.7.16. The AA Screening Report considers that potential impacts would be similar (or potentially lesser) than those outlined for the Lough Forbes Complex SAC. It provides that it is considered that the potential impact on the qualifying features of Lough Ree will be negligible. Therefore, no likely significant effects upon the SAC are predicted.

Lough Ree SPA

8.7.17. The Lough Ree SPA is designated for its importance to wetland and waterbirds and specify populations of 13 bird species – Table 5.1 refers. The Conservation Objectives are: *To maintain or restore the favourable conservation condition of the wetland habitat at Lough Ree SPA as a resource for a regularly occurring migratory waterbirds that utilise it.* Table 6-5 identifies the extent of habitats of Lough Ree SPA.

8.7.18. The Assessment of Likely Impacts of Lough Ree SPA notes that it is of high ornithological importance for both wintering and breeding birds. The grid route uses only areas of existing hardstanding along roads, these areas do not support habitats for supporting qualifying bird species. Section 6.29 provides:

Given the nature of the development and the dilution factor that will occur along the intervening watercourses, the proposed development is not likely to have any significant direct or indirect impact on the SPA. There will be no significant contamination of water in the absence of mitigation.

8.7.19. They provide that given the nature and design of the proposed development, it is considered that the potential impacts on the qualifying interests of Lough Ree SPA will be negligible. That, therefore, no likely significant effects upon the SPA are predicted.

8.8. AA Screening Report Conclusion

8.8.1. This report concludes that the proposed development would not be likely to give rise to significant effects on the qualifying interests of the Natura 2000 sites. It provides in Section 6.31 that this conclusion has been reached in the absence of mitigation measures, to avoid or reduce any significant effect, that may be applied during the construction or operational phases of development.

8.8.2. Section 7 provides a Consideration of Cumulative Effects. Table 7-1 refers to similar type developments within 5km of the subject site. These include:

- Cleggill Solar Farm (Reg.Ref. 17/47) – refers to the solar farm relative to the subject proposal
- Ballykenny Solar Farm (Reg.Red.19/222) – 1.2kms to the west of the subject site.

- Atlantic Mills Factory Solar Farm (Reg. Ref. 18/146) – 5km east of the site.

8.8.3. No likely effects on development sites were predicted in relation to the solar farm developments outlined above. The Screening Report provides that the proposed development will have negligible effects upon any Natura 2000 site, and the Report concludes that the proposed development will give rise to no likely significant individual or cumulative effects upon Natura 2000 designated sites in combination with any other development. They conclude that the next stage of AA i.e a Stage 2 NIS is not required.

8.8.4. In considering the nature of the development subject of the referral the provision of the medium voltage grid connection between the solar farm development permitted under ref no. PL14.248470 and the Longford ESB substation and by reason of the online construction methodology outlined and the intervening distance to the European Sites in the vicinity it can be concluded that the proposed development would not be likely to give rise to significant effects on the Natura 2000 sites. I consider it reasonable to conclude therefore on the basis of the information provided on 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 significant effect on European sites in the vicinity and a stage 2 Appropriate Assessment is not therefore required.

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 c.3834m of 38kv underground medium voltage grid connection cable between the consented Cleggill Solar Farm (Reg.Ref.17/47 and Board Ref. PL14.248470) to the nearest 38KV Longford substation is or is not development or is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleánala by Longford County Council on the 28th day of April 2021:

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

(a) sections 2, 3, 4, 172 (1) and 177U (9) of the Planning and Development Act, 2000, as amended,

(b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,

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

(d) the planning history of the solar farm, under planning authority register reference number 17/47 and Board reference number PL14.248470,

(e) the documentation and submissions on file, including the Outline Construction Environmental Management Plan, the Construction Traffic Management Plan and the Appropriate Assessment Screening Report, submitted to the planning authority on the 7th day of April 2021, and

(f) the report of the Planning Authority

(g) the report of the Inspector, including the Appropriate Assessment screening.

AND WHEREAS An Bord Pleanála has concluded that:

(a) the provision of the underground electricity 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 to the Planning and Development Regulations,

2001, as amended, and would, therefore, constitute exempted development,

- (c) none of the restrictions on exempted development provided for under section 4 (4) of the Planning and Development Act 2000, as amended, apply in this case, and,
- (d) none of the restrictions on exempted development provided for under Article 9 (1)(a) of the Planning and Development Regulations, 2001, as amended, apply in this case, and in particular, having regard to the scope of the works as set out in the Construction Traffic Management Plan submitted by the referrer, the development in question would not endanger public safety by reason of traffic hazard.
- (e) none of the restrictions on exempted development provided for under Article 9 (1)(a) (viiB) of the Planning and Development Regulations, 2001, as amended, apply in this case, and in particular, having regard to the Appropriate Assessment Screening Report and Outline Construction Environmental Management Plan submitted.
- (f) there are no other restrictions on exemption set out in the Planning and Development Act, 2000 and/or the Planning and Development Regulations, 2001 that would apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the provision of a c.3834m of 38kv underground medium voltage grid connection cable between Cleggill Solar Farm and the nearest Longford DNO 38kV substation is development and is exempted development.

Angela Brereton,
Planning Inspector
1st of September 2021