



An  
Bord  
Pleanála

## Inspector's Report ABP-318001-23

<b>Development</b>	Construct a solar farm
<b>Location</b>	Townlands of Gormagh and Culleen, Tullamore, Co. Offaly
<b>Planning Authority</b>	Offaly County Council
<b>Planning Authority Reg. Ref.</b>	22387
<b>Applicant(s)</b>	Elgin Energy Services Limited
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Third Party Appeal
<b>Appellant(s)</b>	Elgin Energy Services Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> April 2024
<b>Inspector</b>	Susan Clarke

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	6
4.0 Planning History.....	10
5.0 Legislative and Policy Context.....	10
6.0 The Appeal .....	23
7.0 Assessment.....	27
8.0 Appropriate Assessment.....	40
9.0 Recommendation.....	41
10.0 Reasons and Considerations .....	41
11.0 Conditions .....	42
Appendix 1 - Form 1: EIA Pre-Screening.....	50
Appendix 2: Appropriate Assessment .....	52

## **1.0 Site Location and Description**

- 1.1. The appeal site, measuring 83.55ha, is located in the townlands of Gormagh and Culleen, approximately 3.5km north of Tullamore, Co. Offaly. The N52 forms the eastern boundary of the site, while the River Silver forms the southern boundary. Further south of the River Silver, there is a concrete works facility, accessed off the Arden Road (R421), which borders the suburbs of Tullamore with residential developments (Norbury Woods and Eiscir Meadows). The site is bound to the north by agricultural land beyond which there is a row of rural dwellings fronting onto the L2005. To the west is further agricultural land, beyond which is the R420 which links Tullamore to Clara.
- 1.2. The site comprises low lying gently rolling fields of various sizes, generally separated by hedgerows and intermittent tree planting.
- 1.3. There are two existing field entrances to the application site off the N52. However, the main access to the site is via a private laneway (cul-de-sac) off the L2005 to the north. The L2005 runs in an east-west direction and leads to the N52 which links Kilbeggan and Tullamore and connects to the M6 just south of Kilbeggan.
- 1.4. Offaly County Council, in partnership with Westmeath County Council and in association with Transport Infrastructure Ireland (TII), is developing the N52 Tullamore to Kilbeggan Link Scheme. An 'Emerging Preferred Route Corridor' (EPRC) has been identified for the Scheme, which runs along the eastern boundary of the subject site. Should the road upgrade project proceed, I understand from the information on file that the N52, where it passes the subject site, would be downgraded from its current status as a national secondary route.
- 1.5. The closest residential property to the site is located at a distance of c.130m, but separated by the N52. There is an archaeological feature (a recorded enclosure (OF009-020--)) located within the site.

## **2.0 Proposed Development**

- 2.1. The proposed development subject to this appeal constitutes the provision of a solar farm on agricultural lands comprising a total area of 83.55ha, a battery storage facility and substation. The solar farm constitutes the provision of the following:

- the installation of photovoltaic panels on ground mounted frames in rows,
- a single storey on site 38kv substation within a compound,
- 2 no single storage containers,
- 45 no. battery storage containers within a compound,
- 40 no. inverter stations, ducting & underground cabling,
- perimeter fencing,
- mounted cctv cameras,
- provision of internal access tracks and,
- all associated site development and landscaping works.

The proposed panels will be arranged in parallel rows facing south and will be fixed. The panels will be approximately 2.4 metres by 1.3 meters and are arranged in a module comprising 2 panels. This module is typically mounted in either landscape or portrait orientation and set on a framing table at an inclination of between 15 and 25°. Each frame will be supported by galvanized steel posts or frames that will be driven or screwed into the ground to depths of up to approximately 1.5 metres. Concrete foundations are not normally required minimizing ground disturbance. The panels would be a maximum of 2.3 metres tall and have clearance from the ground of at least 0.8 metres in areas to the south of the site at risk of flooding panels will be raised to 1.1m from the ground. However, the height of the panels will not exceed to 3.2 metres. The topography ranges from 55mOD to 68mOD. There are no solar panels proposed on the raised mounds within the site.

The 38kV substation and compound are proposed to the south-east of the site. The proposed development does not include grid connection. The Thornsberry 38kV/110kV substation is located off the L1024, approximately 2km from the site.

The locations for the 40 No. prefabricated inverter stations will be determined as part of the final solar panel layout. The Applicant highlights that it may be possible to construct the solar farm without the need for centralised inverter stations using a string inverter methodology, which includes for a small apparatus located underneath the solar panels. If feasible at the time of construction this method could be employed. Drawings illustrating same are included with the application.

Access to the solar farm is via a private laneway (cul-de-sac) off the L2005. A potential future secondary operational access is also included onto the N52. It is stated that this access point is only to be provided in the event that the N52 Tullamore to Kilbeggan Link Road Scheme progresses, and that part of the N52 which borders the site is downgraded to a regional or local road. Should the planned road scheme not progress, the secondary access point will not be provided.

A ten-year permission and a 40-year operational period have been sought in relation to the proposed development.

## **2.2. Amendments Following a Request for Further Information (RFI)**

- 2.2.1. Following a RFI, a number of panels and security fencing were removed from with the EPRC and the substation and battery storage compound were relocated in a north-westerly direction to avoid conflict with the potential junction area. In addition, a number of panels were omitted along the southern boundary of the site to maintain a 10m buffer from Silver River.
- 2.2.2. The Statutory Notices were readvertised on foot of the RFI Response.

## **2.3. Documentation Submitted with the Application**

- 2.3.1. The application is accompanied by the following information:
  - Completed application form
  - Planning application drawings
  - Statutory notices
  - Landowner consent letters
  - Planning Report
  - Ecological Impact Assessment with a Screening Appraisal for Appropriate Assessment and an Ecological Survey for Bager included as appendices
  - Glint and Glare Assessment
  - Landscape and Visual Impact Assessment
  - LVIA Photomontages
  - Landscape Mitigation Plan

- Archaeological Assessment
- Flood Risk Assessment
- Traffic and Transport Report.

Subsequent a Request for Further Information, the following documents were submitted:

- Electrical Fire Risk Assessment Report
- Geophysical Survey Report
- Traffic and Transport (Revised)
- Response – Supplemental View 5.

### 3.0 Planning Authority Decision

#### 3.1. Decision

In their decision dated 16<sup>th</sup> August 2023, Offaly County Council (OCC) refused permission for the proposed development for the following reasons:

1. ***Given the lack of test trenching on site the Planning Authority is not satisfied that the proposed development will not have an adverse impact on archaeological heritage.*** *Offaly County Council Development Plan 2021-2027 objective BHO-05 states: It is an objective of the Council to protect archaeological sites and monuments, and archaeological objects, which are listed in the Record of Monuments and Places, and to seek their preservation in situ (or at a minimum, preservation by record) through the planning process. Given the lack of information available it is considered that the proposal could impact on archaeological material. It is therefore considered that the proposed development would materially contravene the Offaly County Development Plan 2021-2027 and is therefore contrary to proper planning and sustainable development of the area. (Bold: My emphasis.)*
2. *The proposed development would contravene materially objective SMAO-11 of the Offaly County Council Development Plan 2021-2027 which states "It is an objective of the Council to facilitate the development of the national secondary road network in Offaly through the continued construction, upgrading and*

improvement of the National Secondary Roads in the County, the N62, the N52 and the N80" and this includes "To support the construction of a road between Tullamore and Kilbeggan (Link Road)". **The proposed development is partially located within the Preferred Option Corridor of the proposed Tullamore and Kilbeggan (Link Road) and the proposal could therefore prevent the development of this link road** and on that basis the proposed development is deemed contrary to proper planning and sustainable development. (Bold: My emphasis.)

3. The proposed development would contravene materially objective SMAO 18 of the Offaly County Council Development Plan 2021-2027 which states "It is an objective of the Council to protect the study area, route corridor options and thereafter the preferred route corridor selected for the National Road Schemes being progressed in the Development Plan in accordance with National Development Plan Objectives and to prohibit development that could prejudice their future delivery." **The proposed development is partially located within the Preferred Option Corridor of the proposed Tullamore and Kilbeggan (Link Road) and therefore it is considered that the proposal would be premature pending the determination by the Planning Authority or the Road Authority of a road layout for the area or any part thereof**, and on that basis the proposed development is deemed contrary to proper planning and sustainable development. (Bold: My emphasis.)
4. The proposed development would contravene materially SMAP-25 which states that **"It is Council policy that development(s) requiring a new direct access or an intensification of an existing access onto a National Secondary Road, or onto a privately owned road leading onto a National Secondary Road where a speed limit greater than 60 km/h applies will be avoided in accordance with the provisions of Spatial Planning and National Roads Guidelines for Planning Authorities, January 2012.** Exceptional circumstances may be considered where the development is of national and regional strategic importance, is plan-led and complies with the criteria set out in the Spatial Planning and National Roads Guidelines in this regard." **The proposal includes a haul route along the N52 which is contrary to the above provisions** and the proposal is therefore deemed

*contrary to the proper planning and sustainable development of the area. (Bold: My emphasis.)*

5. *The proposed development would contravene materially objective SMAO-11 of the Offaly County Council Development Plan 2021-2027 which states "It is an objective of the Council to facilitate the development of the national secondary road network in Offaly through the continued construction, upgrading and improvement of the national secondary roads in the county, the N62, the N52 and the N80" and this includes. "To examine the feasibility of the provision of a Western Bypass/Relief Road to the west of Tullamore Town linking the R420 to the northwest of the town with the N52 to the southwest of the town ..... the Council will seek to pursue and / or facilitate the relevant project." **The proposed development is partially located adjoining the proposed Western Bypass and the development is deemed to be premature pending the determination by the Planning Authority and the Road Authority of a detailed road layout for the locality.** The proposal could prevent the development of this link road and on that basis the proposed development is deemed contrary to proper planning and sustainable development. (Bold: My emphasis.)*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports (26<sup>th</sup>/27<sup>th</sup> September 2022 and 15<sup>th</sup>/16<sup>th</sup> August 2023)

- Recommended refusal as per the reasons attached to the Notification of Decision to Refuse Permission.

#### 3.2.2. Other Technical Reports

- Area Engineer (13<sup>th</sup> September 2022): Comments required from the National Roads Office.
- Environment and Water Services (12<sup>th</sup> September 2022): No objection, subject to condition.
- Roads Section (26<sup>th</sup> September 2022 and 14<sup>th</sup> August 2023): Proposed development poses a high impact to the Emerging Preferred Route Corridor (EPRC) of the N52 Tullamore to Kilbeggan Scheme.
- Chief Fire Officer (19<sup>th</sup> August 2022): No objection, subject to condition.



### 3.3. Prescribed Bodies

- Dept of Housing Local Government and Heritage (8<sup>th</sup> September 2022 and 18<sup>th</sup> July 2023): Originally recommended that geophysical surveying and an archaeological impact assessment with test trenching be completed. Subsequent to the RFI Response, which included a Geophysical Survey Report, the Dept maintains that an archaeological impact assessment with test trenching be undertaken prior to determining the case.
- TII (23<sup>rd</sup> August 2022 and 6<sup>th</sup> July 2023): Proposed development would result in the intensification of an existing direct access to a national road contrary to official policy in relation to control of frontage development on national roads. The proposed abandonment could prejudice plans for the delivery of a preferred and/or approved route corridor of a national road scheme. Insufficient data has been submitted with the application to demonstrate that the proposed development would not have a detrimental impact on the capacity, safety or operational efficiency of the national road network in the vicinity of the site.
- Westmeath National Roads Office (21<sup>st</sup> September 2022 and 10<sup>th</sup> July 2023): Originally recommended that revised plans be prepared to illustrate that the EPRC would be protected from development. Subsequent to the RFI Response, which included ancillary infrastructure in the EPRC, it contends that the proposal poses a high impact to the Route.
- Inland Fisheries Ireland (23<sup>rd</sup> August 2022): No objection, subject to condition
- Irish Water: No comments received
- Arts Council: No comments received
- An Taisce: No comments received
- Heritage Council: No comments received
- Office of Public Works: No comments received

### 3.4. Third Party Observations

One Observation (dated 1<sup>st</sup> September 2022) from Durrow Community Committee was submitted in respect of the proposed development. The key points raised can be summarised as follows:

- No objection to the principle of the proposed development.
- Use of the cul-de-sac to access the site will be a traffic hazard. The road is not designed for vehicles over 3 axles or 7.5 tonnes.
- Use of the road will incur further maintenance and upkeep and will cause inconvenience to local residents on the basis of traffic congestion, noise pollution and CO2 emissions.

## 4.0 Planning History

### Subject Site

No applications identified relating to the subject site.

### Neighbouring Lands

OCC Reg. Refs: 171, 23316; Planning permission secured for a solar farm (17.7ha) on lands c.170m south-west of the subject site in 2017 with an operational life of 30 years. The operational life was extended to 40 years in 2023.

## 5.0 Legislative and Policy Context

### 5.1. International and National Policy and Guidance

#### **REPowerEU Plan 2022 and Directive EU 2018/2001, as amended 18.05.2022**

This plan was prepared in response to the Russian invasion of Ukraine. It focuses on the need to end the EU's dependence on Russian fossil fuels and to tackle the climate crisis. Recovery and Resilience Facility is central to this plan. It includes the accelerated rollout of renewable energy. It amends the Directive on the Promotion of the Use of Energy from Renewable Sources (Directive EU 2018/2001) to require that 45% of energy is from renewable sources. It notes that lengthy, complex administrative procedures are a key barrier to investment in renewable energy and its infrastructure. The Directive simplifies and shortens the length of the administrative permit granting processes in certain environmental-related aspects. This includes national plans for designated renewable go-to areas, that have been subject to SEA.

In these areas, the Directive states:

*“Renewable energy projects that comply with the rules and measures identified in the plan or plans prepared by Member States, should benefit from a presumption of not having significant effects on the environment. Therefore, there should be an exemption from the need to carry out a specific environmental impact assessment at project level in the sense of Directive 2011/92/EU of the European Parliament and of the Council 24, with the exception of projects which are likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests.”*

It confirms that:

Article 1(10) inserts a new Article 16d to ensure that plants for the production of energy from renewable sources, their connection to the grid, the related grid itself or storage assets are presumed to be of overriding public interest for specific purposes.

The following Article 16d on Overriding Public Interest is inserted:

*“By [three months from entry into force], until climate neutrality is achieved, Member States shall ensure that, in the permit-granting process, the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself and storage assets are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual cases for the purposes of Articles 6(4) and 16(1)(c) of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC.”*

It states that:

*“Renewable energy sources are crucial to fight climate change, reduce energy prices, decrease the Union’s dependence on fossil fuels and ensure the Union’s security of supply. For the purposes of the relevant Union environmental legislation, in the necessary case-by-case assessments to ascertain whether a plant for the production of energy from renewable sources, its connection to the*

*grid, the related grid itself or storage assets is of overriding public interest in a particular case, Member States should presume these plants and their related infrastructure as being of overriding public interest and serving public health and safety, except where there is clear evidence that these projects have major adverse effects on the environment which cannot be mitigated or compensated. Considering such plants as being of overriding public interest and serving public health and safety would allow such projects to benefit from a simplified assessment.'*

### **The Climate Action and Low Carbon Development (Amendment) Act 2021**

- 5.1.1. The Climate Action and Low Carbon Development (Amendment) Act 2021 (Climate Act, 2021), commits Ireland to a legally binding 51% reduction in overall greenhouse gas emissions by 2030 and to achieving net zero emissions by 2050. As part of its functions the Board must, in so far as practicable, perform its functions in a manner that is consistent with the most recent approved climate action plan, most recent approved national long term climate action strategy, national adaptation framework, sectoral plans, furtherance of the national climate objective and the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State<sup>1</sup>.

### **Climate Action Plan 2023**

- 5.1.2. The Climate Action Plan 2023 (CAP 23) follows the commitment in the Climate Act, 2021 and sets out the range of emissions reductions required for each sector to achieve the committed to targets. CAP 23 supports the acceleration of the delivery of renewable energy onto the national grid with a target of achieving 80% of electricity demand being met from renewable energy by 2030. Towards this end CAP 23 sets a target of providing 5GW of solar energy by 2025, and a longer-term target of 8GW by 2030. Note that the Climate Action Plan 2024 was approved by Government in December 2023. Public consultation on the Plan closed on 5<sup>th</sup> April 2024.

### **National Planning Framework**

- 5.1.3. The National Planning Framework 2018-2040 (NPF) sets ten strategic outcomes, one of which (No. 8), is to Transition to a Low Carbon and Climate resilient society. In

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<sup>1</sup> Section 15(1) of the Climate Action and Low Carbon Development Act 2015 (as amended) refers.

discussing this outcome the NPF states “New energy systems and transmission grids will be necessary for a more distributed, renewables-focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such as wind, wave and solar and connecting the richest sources of that energy to the major sources of demand.” The NPF states that this transition to a low carbon economy requires:

- A shift from predominantly fossil fuels to renewable energy sources,
- Increasing efficiency and upgrades of appliances, buildings, and systems.
- Decisions around development and deployment of new technologies relating to wind, smart grids, electric vehicles, buildings, ocean energy and bioenergy, and
- Legal and regulatory frameworks to meet the relevant demands and challenges.

5.1.4. The NPF states that the future planning and development of our communities at local level will be refocused to tackle Ireland’s higher than average carbon-intensity per capita and enable a national transition to a competitive, low carbon, climate resilient and environmentally sustainable economy by 2050 through harnessing our country’s prodigious renewable energy potential. National Policy Objective 55 seeks to “*Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.*” The NPF goes on to note the following in relation to the role of rural areas:

*“In meeting the challenge of transitioning to a low-carbon economy, the location of future national renewable energy generation will, for the most part, need to be accommodated on large tracts of land that are located in a rural setting, while also continuing to protect the integrity of the environment and respecting the needs of people who live in rural areas.”*

#### **National Development Plan 2021-2030**

5.1.5. The National Development Plan 2021-2030 (NDP) sets out Governments investment strategy and budget up to 2030. The NDP commits to increasing the share of renewable energy up to 80% by 2030 and acknowledges that this will require world-leading levels of wind and solar electricity penetration onto the national grid.

Chapter 7 relates to regional accessibility. It notes that the N52 Tullamore to Kilbeggan roads project is subject to approval.

#### **Framework and Principles for Protection of Archaeological Heritage, 1999**

- 5.1.6. This document was prepared by the Department of Arts, Heritage, Gaeltacht, and the Islands and sets out the basic principles of national policy on the protection of the archaeological heritage. Section 3.0 of the Framework notes that: - archaeological heritage is a non-renewable resource; the first option should be a presumption in favour of avoidance of developmental impacts and that preservation in-situ is the preferred option; if removal cannot be avoided, preservation by record should be applied; carrying out an archaeological assessment where appropriate is the first step in ensuring that preservation in-situ and by record take place; and monitoring is another method of ensuring that preservation takes place.

#### **NMS – Solar Farm Developments - Internal Guidance Document**

- 5.1.7. The National Monuments Service produced an internal guidance document (IGD) specifically in relation to solar farm development as a supplement to the 1999 document set out above. This document acknowledges that solar development can occupy a large site but also have potentially relatively low levels of ground impact over much - but not all - of the development site. The IGD notes that any solar farm development application should be accompanied by an archaeological statement (including a field assessment of the entire site). It also notes that blanket requests for geo-physical surveys or test trenching by further information should not issue just due to the size of the site area, the document also notes that it may be acceptable to deal with areas of unclear archaeological potential by way of conditions on any grant of development requiring geo-physical survey and/or testing followed by avoidance or appropriate mitigation.

#### **OPR Practice Note PN03: Planning Conditions**

- 5.1.8. The Office of the Planning Regulator published a Practice Note on Planning Conditions in October 2022 to promote greater consistency, insofar as is practical, in the use of standard planning conditions, and to support planning authorities in devising their own manual of conditions. Section C includes seven sample conditions relating to archaeology.

### **Food Vision 2030**

- 5.1.9. Food Vision 2030 is a strategy produced by the Department of Agriculture, Food and Marine in August 2021; it sets out the 2030 vision for Ireland's Agri-Food sector which aims for Ireland to become a world leader in Sustainable Food Systems (SFS). The Agri-food sector grew substantially between 2010 to 2020 with Irish food and drink exports increasing by 60% from €8.9 billion in 2010 to €14.2 billion in 2020. Agriculture is recognised as having a key role in protecting Ireland's climate and environmental credentials as the sector is the largest contributor to Ireland's greenhouse gas emissions. The strategy notes that facing into the decade to 2030 the agri-food sector can make significant and urgent improvements in its environmental footprint. To realise this vision the strategy has adopted four high level missions for the sector to work towards in the period to 2030. Mission 1 of the strategy is to create "A climate smart, environmentally sustainable Agri-food sector". To achieve this mission seven goals have been created, the first of these is to "Develop a Climate Neutral Agri-Food System by 2050". The ten actions identified to achieve this goal includes Action 7 which states the sector must "Scale up renewable energy (RE) sources especially anaerobic digestion, biorefining and biomass supply, and solar PV, focus on energy efficiency and examine potential barriers to the roll-out of RE at farm level, including necessary support for microgeneration and access to the grid."

### **Flood Risk Management Guidelines**

- 5.1.10. These Guidelines seek to avoid inappropriate development in areas at risk of flooding and avoid new developments increasing flood risk elsewhere and they advocate a sequential approach to risk assessment and a justification test.

#### **5.1.11. Spatial Planning and National Roads Guidelines for Planning Authorities, 2012**

The 'Spatial Planning and National Roads, Guidelines for Planning Authorities', 2012 set out the planning policy considerations relating to development affecting national primary and secondary roads, including motorways and associated junctions, outside the 50-60kph speed limit zones for cities, towns and villages.

The guidelines indicate the importance of the national route network and that the planning system must ensure that the strategic traffic function of national roads is maintained by limiting the extent of development that would give rise to the generation of short trip traffic on national routes. Proper planning is central to ensuring road safety

and the creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users. Therefore, from a road safety perspective, planning authorities and road authorities must guard against a proliferation of roadside developments accessing national roads to which speed limits greater than 50-60 kph apply as part of the overall effort to reduce road fatalities and injuries.

Reference is made to a plan led approach and section 2.5 refers to required Development Plan Policy on Access to National Roads and with regard to access to national roads, all development plans and any relevant local area plans must implement the policy approaches outlined. Specifically on lands adjoining National Roads to which speed limits greater than 60 kph apply the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kph apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

Section 2.6 provides for Exceptional Circumstances and notwithstanding the provisions of Section 2.5, planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA and having followed the approach outlined below in relation to Developments of National and Regional Strategic Importance and Lightly-trafficked Sections of National Secondary Routes.

## **5.2. Regional Policy: Eastern and Midland Regional Spatial and Economic Strategy 2019- 2031 (RSES)**

The RSES transposes the policies and objectives of the NPF to a regional level. There are 16 no. Regional Strategic Outcomes (RSO's). RSO 8 is to build climate resilience. RSO 9 is to support the transition to low carbon and clean energy. The RSES notes in Section 4.8 that *'Energy production, including renewable energy in the form of wind, solar and biomass have to date largely been provided in rural areas and the location of future renewable energy production is likely to be met in rural areas'*. RPO 4.79 and 4.84 support renewable energy developments in rural areas.



Section 7.9 (Climate Change) is relevant to the proposed development. *‘The Strategy supports an increase in the amount of new renewable energy sources in the Region. This includes the use of ... solar photovoltaics and solar thermal, both on buildings and at a larger scale on appropriate sites in accordance with National policy and the Regional Policy Objectives outlined in this Strategy’.*

Section 10.3 – In the context of a move towards a more energy efficient society and an increase in renewable sources of energy, there is a need to set a policy approach which will address an increased demand for indigenous resources and increased security of supply. To meet our energy targets, we need to better leverage natural resources to increase our share of renewable energy. There is an established tradition of energy production in the Midland counties by state agencies, however national environmental policies are dictating the wind down of traditional fossil fuel powered stations, such as peat fired power plants in these counties.

RPOs 10.20 and 10.22 are also particularly relevant in relation to their support for the development of enhanced electricity supplies across the island.

### **5.3. Local Planning Policy: Offaly County Development Plan 2021 - 2027**

The relevant plan to this assessment is the Offaly County Development Plan 2021 – 2027 which came into effect on 22nd October 2021.

#### **5.3.1. Site Selection for Larger Solar Farms**

Chapter 3 relates to the Climate Action and Energy. Section 3.2.4: Solar Energy discusses site selection for Larger Solar Farms:

‘Larger solar farms have potential to be built on agricultural land and leave room for dual land use so that farm practices, such as grazing, can co-exist with the ground mounted solar panels. These projects are much less visually intrusive than wind and some other forms of energy generation, but may have impacts on local ecosystems, wildlife and the land’s agricultural potential.

The following site selection criteria for ground mounted arrays apply:

- Typically suited to low lying lands due to a need for level sites;
- Accessibility/proximity to electricity networks. Ability to achieve a network connection, typically via a 10kV or 20kV overhead cable on the electricity

transmission grid. In general, it is not viable to locate solar farms over 1km from network infrastructure;

- The reuse of previously developed land such as brownfield land, contaminated land or industrial land and non-productive agricultural land in preference to productive agricultural land;
- South facing aspect with either flat terrain or sloping gently; and
- Land free from obstacles that may cause shading.

DMS-110 in Chapter 13 outlines the considerations when assessing a solar farm:

- The reuse of previously developed land such as brownfield land, contaminated land or industrial land and non-productive agricultural land in preference to productive agricultural land;
- The proximity of the proposal to the electricity infrastructure such as substations and indicative proposals to connect to existing or proposed grid connections; The effect of glint and glare on landscapes, traffic and aircraft safety;
- The extent to which there may be additional impacts if solar arrays follow the daily movement of the sun;
- The need for, and impact of, security measures such as lights and fencing;
- The visual impact of a proposal on heritage assets, designated sites and key views and prospects identified in Chapter 4 of the Plan;
- The potential impact on the ecological characteristics and features of the site and its sensitivity to the proposed changes arising from the construction, operation and decommissioning stages of a development. On a proposed site where a significant level of ecological impact is predicted an Ecological Management Plan may be used to mitigate against the predicted impact and/or a Natura Impact Statement if applicable;
- The potential to mitigate landscape and visual impacts through appropriate siting, design and screening with native hedges;
- The cumulative impact of the proposal with other ground mounted solar panels and wind turbines in the area;

- An appraisal of the existing roads infrastructure and the potential impact of the proposed development, including traffic numbers and movements during the construction, operation and decommissioning phases of the proposal should be carried out. Evidence of appropriate sight lines at the entrance to the development from public roads shall also be provided;
- Adequate drainage, surface water run-off and flooding mitigation. Where access tracks need to be provided, permeable tracks should be used, and localised SUDs, such as swales and infiltration trenches should be used to control any run off. Sites should be selected and configured to avoid the need to impact on existing drainage systems and watercourses. Culverting existing watercourses/drainage ditches should be avoided unless it is demonstrated that no reasonable alternatives exist and where necessary only temporarily for the construction period. The preparation of an outline Construction Environmental Management Plan setting out key environmental management controls for all phases of the development minimising impacts on existing drainage systems and watercourses may be required.
- Impact of the development on radio observatories and broadcast communications in the area.

This list is not exhaustive and the Council may consider other requirements contained in the chapter on a case by case basis with planning applications should the need arise. Where impacts are predicted to arise as a result of the development proposed, suitably detailed mitigation measures shall be proposed.

### 5.3.2. **Climate Action and Energy Policies**

The Chapter lists a number of Climate Action and Energy Policies. Those of particular relevance to solar energy include:

**CAEP-06** It is Council policy to promote the use of efficient energy storage systems and infrastructure that supports energy efficiency and reusable energy system optimization, in accordance with proper planning and sustainable development.

**CAEP-11** It is Council policy to support the transition to a competitive, low carbon, climate-resilient and environmentally sustainable economy by 2050, by way of

reducing greenhouse gases, increasing renewable energy, and improving energy efficiency.

**CAEP-23** It is Council policy to require that environmental assessments should address reasonable alternatives for the location of new energy developments, and where existing infrastructural assets such as sub-stations, power lines and roads already exist within the proposed development areas, then such assets should be considered for sustainable use by the proposed development where the assets have capacity to absorb the new development.

**CAEP-25** It is Council policy to encourage and facilitate the production of energy from renewable sources, such as from bioenergy, waste material, solar, hydro, geothermal and wind energy, subject to proper planning and environmental considerations.

**CAEP-34** It is Council policy to promote the development of solar energy infrastructure for on-site energy use, including solar PV, solar thermal and seasonal storage technologies subject to environmental safeguards and the protection of natural or built environment.

**CAEP-35** It is Council policy to ensure that the assessment of solar farm proposals will have regard to:

Site selection, by focusing in the first instance on developing solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value.

- Where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays. Decommissioning and site rehabilitation plans will be required providing for the land to be restored to its previous use.

### 5.3.3. Sustainable Transport Strategy

The Chapter relates to sustainable mobility and accessibility. Those of particular relevance to this project include:

**SMAO-11** It is an objective of the Council to facilitate the development of the national secondary road network in Offaly through the continued construction, upgrading and

improvement of the national secondary roads in the county, the N62, the N52 and the N80 where on examination it is found to be feasible, including as outlined in the accompanying table:

- N52: To support the construction of a road between Tullamore and Kilbeggan (Link Road) in accordance with National Development Plan investment objectives taking into account environmental sensitivities as identified in the SEA Environmental Report and the policies and objectives of the County Development Plan relating to sustainable mobility. Where feasibility is established, the Council will seek to pursue and / or facilitate the relevant project, subject to other provisions in the Plan and in accordance with statutory processes and TII Publications subject to compliance with requirements of various TII Planning Guidelines for Assessment of Environmental Impacts that include headings such as “Constraints Study”, “Route Corridor Selection” and “Environmental Impact Assessment”.
- To examine the feasibility of the provision of a Western Bypass/Relief Road to the west of Tullamore town linking the R420 to the north west of the town with the N52 to the south west of the town taking into account environmental sensitivities as identified in the SEA Environmental Report and the policies and objectives of the Plan relating to sustainable mobility. Where feasibility is established, the Council will seek to pursue and / or facilitate the relevant project, subject to other provisions in the Plan, including section 8.6.4 Corridor and Route Selection Process. The line on the map in Volume 2 is indicative only.

**SMAO-18** It is an objective of the Council to protect the study area, route corridor options and thereafter the preferred route corridor selected for the national road schemes being progressed in the Development Plan in accordance with National Development Plan Objectives and to prohibit development that could prejudice their future delivery.

**SMAP-25** It is Council policy that development(s) requiring a new direct access or an intensification of an existing access onto a National Secondary road, or onto a privately owned road leading onto a National Secondary road where a speed limit greater than 60 km/h applies will be avoided in accordance with the provisions of

Spatial Planning and National Roads Guidelines for Planning Authorities, January 2012. Exceptional circumstances may be considered where the development is of national and regional strategic importance, is plan-led and complies with the criteria set out in the Spatial Planning and National Roads Guidelines in this regard.

#### 5.3.4. **Built Heritage**

Chapter 10 relates to Built Heritage and includes the following policy:

**BHO-05** It is an objective of the Council to protect archaeological sites and monuments, and archaeological objects, which are listed in the Record of Monuments and Places, and to seek their preservation in situ (or at a minimum, preservation by record) through the planning process.

#### 5.3.5. **Biodiversity and Landscape**

Other policies of relevance in the Development Plan are contained in Chapter 4, which relates to Biodiversity and Landscape including *inter alia*:

**BLP-38** It is Council policy to protect and enhance the county's landscape, by ensuring that development retains, protects and where necessary, enhances the appearance and character of the county's existing landscape.

#### 5.4. **Natural Heritage Designations**

##### **Natura 2000 Sites (SAC & SPA)**

The closest designated Natura 2000 Site is the Charleville Wood SAC (Site Code 000571) which, at its closest point is c.2.9km south of the subject site. Other Natura 2000 sites in the vicinity include the Clara Bog (Site Code 000572) which is c. 5km northwest of the subject site, Raheenmore Bog SAC (Site Code 000582) located 9.7km northeast and Split Hills and Long Hill Esker SAC (Site code 001831), 9km north of the subject site. All other Natura 2000 Site are beyond this distance.

##### **Proposed Natural Heritage Areas (pNHA)**

The closest pNHA to the subject site is Ballyduff Wood (Site Code: 001770), which is located 0.5km southwest of the site.

#### 5.5. **EIA Screening**

- 5.5.1. See completed Appendix 1 on file. Having regard to the nature and scale of development and the absence of any significant environmental sensitivity in the vicinity

of the site as well as the criteria set out in Schedule 7 of the Planning & Development Regulations, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. A First-Party Appeal was submitted to the Board on 8<sup>th</sup> September 2023 opposing the Local Authority's decision and includes a revised design layout (Dwg. No. DG0002A, Alternate Site Layout Plan). The grounds of appeal can be summarised as follows:

#### First Reason for Refusal (Archaeology)

- The geophysical survey found no clear evidence to suggest the presence of extensive archaeological activity, remains of settlement closures and/or expansive concentrations of archaeological response. While the survey did identify some anomalies, the majority of these did not display coherent archaeological patterning or character and were generally considered to be indicative of responses from natural soil/geological variation, recent land use and/or modern ferrous debris.
- In light of the findings of the geophysical survey it is reasonable and appropriate that targeted test trenching be required to be undertaken post permission and prior to the commencement of the development as per the sample conditions (C3, C4, and C5) outlined in the Office of Planning Regulator's Practice Note PN03: Planning Conditions (October 2022).
- Both the OPR's Practice Note PN03 and the National Monuments Service's Solar Farm Developments – Internal Guidance Document (2016) acknowledge that testing post permission prior to the commencement of development can be an appropriate and suitable approach.
- The proposal would not materially contravene Policy BHO-05.

### Second and Third Reasons for Refusal (EPRC)

- The proposed layout overlaps slightly with the EPRC from Tullamore to Kilbeggan Link Road Scheme, with a small area of panels and some security fencing as well as a potential future secondary operational access (proposed to be implemented only in the event of the N52 being downgraded from a national road as part of the Link Road Scheme). These are not critical elements for the operation of the solar farm and could easily be revised in the future if necessary to accommodate detailed design of the EPRC. They do not pose a 'high impact' to the EPRC.
- A condition could easily have been attached to a decision to grant permission requiring localized design revisions to remove the fencing and solar panels which overlap the corridor. The potential secondary operational access could also have been conditioned to only be implemented in the event that the existing N52 roadway is retained as a roadway and downgraded as part of the future total more to Killbegan Link Road. It could have conditioned that the secondary operational access and associated tracks be excluded from the permission. Such design revisions would be of a minor nature in the context of the overall solar farm and would be appropriate to revise by way of condition. Similarly the Board could condition these layout revisions. In this regard, Dwg. No. DG0002A, Alternate Site Layout Plan submitted with the First-party Appeal illustrates these design revisions whereby all fencing and panels are fully removed from the Corridor. This drawing also differentiates the area of potential secondary operational access track and entrance which could be specifically conditioned either for its implementation only in the event of the N52 being downgraded on foot of the link road scheme or indeed that it be fully omitted from the permission.
- The proposal would not prevent the development of the Link Road, nor materially contravene Policy SMAO-11 or Policy SMAO-18.

### Fourth Reason for Refusal (National Road Network)

- There is no proposal to provide an access from the solar farm to the N52 as long as it remains as a national route. A potential secondary operational access is proposed to this roadway only in the event that the current N52 roadway



adjacent to the site is downgraded to a regional or local road as part of the future N52 Tullamore to Kilbeggan Link Road Scheme. The proposed access for the site is via an existing private laneway to the north of the site which accesses onto a local road the L2005. This is in line with section 2.5 of the Spatial Planning and National Roads Guidelines for Planning Authorities.

- Neither SMAP-25 or the Spatial Planning and National Roads Guidelines for Planning Authorities prohibit the use of national roads by construction traffic.
- National roads have greater capacity than local roads to accommodate construction traffic.
- The average daily number of trips for HGV and LGV movements combined is 34 No.
- The proposal would not materially contravene Policy SMAP-25.

#### Fifth Reason for Refusal (Western Bypass)

- There were no concerns raised in relation to the Western By Pass by the Roads Section.
- The application site does not lie on the western side of the town. There is no conflict arising between the proposed development and the proposed Western Bypass.
- Whilst the Local Authority's GIS system may delineate a route for the Western Bypass, it is not included in the Development Plan. Furthermore, the Tullamore Town Zoning Map does not show the Western Bypass extending as far as the site.
- The proposal would not materially contravene Policy SMAO-11.

#### Material Contravention

- An overview of EU and national policy which recognises the strategic importance of delivering renewable energy development for combating climate change is outlined in Section 3.2 and 3.3 of the Appeal.
- With respect to conflicting or unclear objectives in the Development Plan, it is stated with respect to:

- BHO-05: it is unclear at what stage of the planning process this objective must be met.
- SMAO-11: it is unclear that any form of development within a proposed corridor for such a route is precluded. It is also unclear why the Planning Authority would not condition a permission requiring a modest layout revision to ensure no elements of the proposal overlap with the EPRC.
- SMAO-18: it is unclear what type of development could prejudice the future delivery of a national road. It is also unclear why the Planning Authority would not condition a permission requiring a modest layout revision to ensure no elements of the proposal overlap with the EPRC.
- SMAP-25: it is unclear why the Planning Authority consider the proposal to materially contravene this Objective.
- SMAP-11: it is unclear how this objective affects the application site.

## **6.2. Planning Authority Response**

The Local Authority advised the Board on 10<sup>th</sup> October 2023 that the future development of the N52 Tullamore to Kilbeggan Scheme is a priority of the planning authority. In addition, it is stated that the provision of the Western Bypass will facilitate more sustainable settlement patterns. An extract from “the Western Bypass on the OCC Planning GIS” is included with the Response. The Local Authority request that the Board to omit any development within potential road corridors and amend proposed site boundaries to be outside such corridors should permission be granted for the proposed development.

## 7.0 Assessment

Having examined the application details and all other documentation on file, including the First-Party Appeal, the reports of the Local Authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Policy Context and the Principle of the Development
- Roads and Transportation
- Archaeology
- Landscape and Visual Impact
- Biodiversity
- Flooding Risk
- Impact on Residential Amenities
- Other Matters.

Each of these issues are assessed below.

### 7.1. Policy Context and the Principle of the Development

- 7.1.1. Having regard to the relevant sections quoted in Section 5 above, renewable energy development, including solar photovoltaic farms, is supported 'in principle' at international, national, regional and local policy levels, with collective support across government sectors for a move to a low carbon future and an acknowledgement of the need to encourage the use of renewable resources to reduce greenhouse gas emissions and to meet renewable energy targets set at a European Level. National Policy Objective No. 55 of the National Planning Framework is to promote renewable energy use and generation at appropriate locations within the built and natural environment. It is also an action of the NPF under National Policy Objective No. 8 to reinforce the distribution and transmission network to facilitate planned growth and distribution of a more renewables focused source of energy across the major demand centres. At a local level in the Offaly County Development Plan 2021-2027, Solar Energy is addressed under Section 3.2.4. Policy CAEP-25 of the Plan seeks to promote the development of solar energy infrastructure within the county subject to proper planning and environmental considerations. I note that the Local Authority's

Planner's Report nor the Third-Party Observation raise concerns in relation to the principle of the development. Having regard to the policy context outlined in Section 5 above, I consider the proposed development to be acceptable in principle subject to further environmental assessment.

## **7.2. Roads and Transportation**

### **Second and Third Reasons for Refusal**

- 7.2.1. As outlined in Section 3.1 above, the second and third reasons for refusal relate to the location of the proposed development within the Preferred Option Corridor of the proposed Tullamore and Kilbeggan (Link Road). In the Submission (dated 10<sup>th</sup> October 2023) to the Board, the Local Authority reiterates the importance of the proposed road upgrade project and requests that the Board omit any development within the Corridor (200m wide).
- 7.2.2. As outlined by the Applicant and illustrated on Dwg. No. DG0002-00, Rev. C03 submitted at RFI stage, a small area of panels and some security fencing in addition to a proposed secondary operational access point overlap with the EPRC along the southeastern boundary of the subject site. The Applicant contends that these elements could be revised in the future should the road upgrading project proceed. Should this not be acceptable to the Board, the Appellant states that these elements could be removed from the corridor and that a positive Decision could be conditioned to either permit the secondary access point only in the event that the N52 would be downgraded subsequent to the road upgrade or omitted from the project entirely. In this respect, Dwg. No. DG0002A, Rev P01, submitted as part of the Appeal, illustrates no works within the Corridor, (including the proposed bridge and junction location area).
- 7.2.3. Having regard to:
1. the policy context in the Development Plan (in particular SMAO-11 and SMAO-18),
  2. noting that the subject road upgrade scheme is listed in the National Development Plan, and
  3. acknowledging the advanced design stage of the road project which has been subject to public consultation, resulting in the EPRC been identified,

I consider that that it would be premature to permit the originally proposed development and that at RFI stage, which both include works within the EPRC (including the proposed bridge and junction location area), in the absence of a finally approved road scheme.

However, the proposed layout submitted with the First-Party Appeal resolves this matter as there are no works included within the EPRC. Therefore, this revised layout would not inhibit the final road design. As such, this revised proposal would not materially contravene SMAO-11 or SMAO-18 of the Development Plan.

#### Fourth Reason for Refusal

7.2.4. With respect to the fourth reason for refusal (a new access point onto a national road), the Appellant outlines in the Appeal that the proposed secondary access point to the N52 would only be provided subsequent to the road being downgraded to a regional or local road, following the provision of the new Link Road, and would only be used during the operational phase of the development. The Appellant has clarified that all construction traffic would access the site via the cul-de-sac road off the L2005 (see Figure 5 Proposed Haul Route in the Traffic and Transport Report (Revised) (dated 2<sup>nd</sup> March 2023). As outlined in Section 5 above, this is consistent with Section 2.5 of the Spatial Planning and National Roads Guidelines for Planning Authorities. I concur with the Appellant that there is no policy provision restricting the use of national roads as haul roads; on the contrary having regard to their capacity to accommodate large volumes and vehicle sizes than regional and local roads, their use is frequently preferred particularly with respect to large infrastructural projects. In this regard, I consider the reasoning for the fourth reason for refusal to be somewhat unclear. Furthermore, the Planner's Report provides no justification for the inclusion of this Reason.

7.2.5. Notwithstanding that solar farms by their nature generate very limited operational traffic volumes, to ensure that the proposal does not in any way prejudice the final road design for the new Link Road, in my opinion, the secondary operational access point should be omitted via condition, should the Board be minded to grant permission for the proposed development. Whilst the Third-Party Observation contends that the use of the cul-de-sac would cause a traffic hazard and inconvenience local residents, there is no substantial evidence on file to support these claims. The cul-de-sac

provides access to three dwellings and a farmyard and as such currently has very low traffic volumes. The Traffic and Transport Report (Revised) states that the project will result in a combined average daily increase of 34 No trips per day (HGV (10) and LGV (24)). There are no abnormal loads associated with the project. The TTR includes various mitigation measures (Section 3.3) including limiting the construction hours, restricting parking on the access route, employing banksmen to ensure deliveries are timed and two vehicles to not meet on the cul-de-sac, and preparation of a CTMP. Auto track analysis is provided on Dwg. 0008, Rev. C01. Whilst I accept that the cul-de-sac is narrow, having regard to the volume of traffic likely to be generated during the construction phase, the duration of the construction phase and the proposed mitigation measures, I do not consider that the proposed development represents a traffic hazard nor would adversely impact on the residential amenity of local residents in the area.

- 7.2.6. Should the proposed secondary access point be omitted as per my recommendation, Policy SMAP-25 would not be relevant to the subject case.

#### Fifth Reason for Refusal

- 7.2.7. The fifth reason for refusal states that the proposed development is partially located adjoining the proposed Western Bypass and that it would be premature to permit the proposal pending the final detailed layout for the locality. In its Submission to the Board, the Local Authority states that the Western Bypass would provide more sustainable settlement patterns. However, as highlighted by the Appellant the route for the proposed Western Bypass in the context of the subject site has not been outlined by the Local Authority in a statutory plan. (The Tullamore Town Plan contained in Volume 2 of the Development Plan illustrates a small section of the Bypass to the west of the Town, but highlights that this is indicative only. The subject site is not shown on the Tullamore Town Plan. A copy of the Plan is included with the photographs attached to this Report.) Whilst the Local Authority states that the route is on the OCC Planning GIS and provides an extract of same within the Submission illustrating that it traverses the subject site, it is unclear if this tool is publicly available (no weblink has been provided with the Submission). SMAO-11 requires an examination of the feasibility of providing the Bypass *“taking into account environmental sensitivities as identified in the SEA Environmental Report and the policies and objectives of the Plan relating to sustainable mobility. Where feasibility is*

*established, the Council will seek to pursue and / or facilitate the relevant project, subject to other provisions in the Plan, including section 8.6.4 Corridor and Route Selection Process. **The line on the map in Volume 2 is indicative only.***” (Bold: My emphasis.) The Local Authority has given no indication as to how advanced this Policy has been progressed to-date, if even commenced. More importantly, the Policy clearly states that the line shown on the map in Volume 2 (Tullamore Town Plan) is “indicative only”. The proposed development does not preclude the execution of the Policy. Having regard to the foregoing, I consider that it would be unreasonable to refuse permission for the proposed development solely on this basis.

- 7.2.8. In conclusion, subject to condition, I do not consider that the proposed development prejudices the final design option for either the N52 Link Road or Western Bypass, nor does it represent a traffic hazard. As such, I do not recommend that Reasons two, three, four or five attached to the Notification of Decision to Refuse Permission should be upheld.

### 7.3. **Archaeology**

- 7.3.1. The Local Authority’s first reason for refusal relates to a lack of test trenching and potential impacts from the proposed development on archaeology. The Local Authority contends that the proposed development would be contrary to Policy BHO-05 which aims to protect archaeological sites and features.
- 7.3.2. As part of the planning application documentation the Applicant prepared an Archaeological Assessment (dated July 2022), which notes that there are eight recorded archaeological sites within a 1km radius of the site, one (an enclosure) of which is located within the site (OF009-020---). Section 6 of the Report lists the recommended mitigation measures which includes that an archaeological buffer extending a minimum of 30m from the centre point of the recorded enclosure be established for the duration of the construction phase. Furthermore, it is recommended that the paddock and ruins within Field 7 and the range of buildings that survive in an overground rectangular enclosure adjoining the northern boundary of Field 11 should be excluded from the proposed development. In addition, archaeological monitoring by a qualified archaeologist is recommended. As part of the RFI Response, the Applicant submitted a Geophysical Survey Report (dated March 2023), which concluded that there is no responses of definite archaeological character

within the investigation area were recorded. The Applicant stated that while the survey did identify some anomalies the majority of these did not display coherent archaeological patterning or character and were generally considered to be indicative of responses from natural soil/geological variation, recent land use, and/or modern ferrous debris. The Applicant contended that in accordance with the OPR's guidance and the National Monuments Services' Solar Farm Developments - Internal Guidance Document targeted test trenching under license should be carried out post permission.

- 7.3.3. As outlined in Section 3.4 above, the Dept of Housing, Local Government and Heritage recommended that an archaeological impact assessment with test trenching be undertaken prior to determining the case. The National Monuments Service – Internal Guidance Document in relation to Solar Farms (November 2016) notes that while solar developments can have large sites they present relatively low levels of ground impact and that by their very nature they also have design flexibility to avoid impacts. [This includes the ability to avoid intrusive groundworks by providing concrete “shoes” as anchoring systems for the solar panels in lieu of driven metal frames or standard foundations, as well as omitting areas of solar panels]. The guidance also notes that FI requests should not take the form of blanket geo-physical surveys across entire sites and that any such surveying and testing could be targeted and, dependent on the case, can be made subject to a condition of planning permission and/or avoidance.
- 7.3.4. I concur with the Applicant that in light of the geophysical survey results and having regard to the National Monuments Service – Internal Guidance Document in relation to Solar Farms, I consider it reasonable that targeted test trenching be undertaken post permission. I note that the Board have adopted similar approaches in relation to other solar projects for example ABP-302475-18, ABP-305953-19, ABP-311760-21 and ABP-312712-22. As evidenced in the layouts provided and documented in the archaeological assessment included within the application documentation submitted, the overall design of the proposed development has been fully informed by the archaeological context, with any areas of recorded sensitivity being omitted from works areas. I note that in areas of potential archaeological sensitivity mitigation by layout design (avoidance) and construction design (deployment of concrete shoe supports for solar panels in lieu of earth piling or screws) can be implemented. Furthermore, the solar panels are not proposed as a permanent feature as they will have an operational lifespan of 40 years (unless a further consent is sought and permitted). The application



and first party appeal documentation submitted commits the applicant to carrying out archaeological trench testing. In summary, I am satisfied that subject to appropriate conditions that the proposed development would not have an adverse impact on the archaeology of the area. Having regard to the foregoing, I do not consider that the proposed development materially contravenes Policy BHO-05.

#### **7.4. Landscape and Visual Impact**

- 7.4.1. The application is accompanied by Landscape and Visual Impact Assessment and I consider that the methods used for viewpoint analysis, landscape assessment and visual assessment are satisfactory and in accordance with industry standards. The assessment is supported by photomontages from 8 viewpoints and provide for, where appropriate, pre and post mitigation views. A supplementary view of VP5 (along the N52) was provided at RFI stage. I consider the locations for the images chosen to be representative and provide a useful tool in the assessment of the visual impacts of the proposed development.
- 7.4.2. Having inspected the site and surrounding area and having reviewed the viewpoint photographs and photomontages, I consider that the visual impact of the proposed development will be limited due to the site topography and the extensive hedgerows. While solar farms can take up extensive areas at ground level they are generally modest in height which can facilitate effective screening particularly at ground level/eye level through additional planting and hedgerow augmentation where necessary. The LVIA sets out details of the baseline environment and notes that the site is located in an area designated as 'low sensitivity' in landscape terms. The landscape zoning in the Development Plan implies that the receiving environment in which the solar farm is to be located is not particularly sensitive or scenic in landscape terms and therefore constitutes a more robust visual environment in terms of accommodating and facilitating visual change. Having visited the site and surrounding area, I note that the fields earmarked to accommodate the panels are well screened with mature and semi-mature hedgerow with only truncated and intermittent views available. The LVIA notes that the highest impact significance (Moderate) occurs at VP5 along the N52 where relatively close and open views are afforded of a proportion of the proposed solar farm. At all other VP locations, the visual impacts are deemed to be slight due to the combination of substantial existing screening within and around the application site. Following the proposed mitigation measures the residual impact

significance will reduce to slight at VP5. It should also be noted that the impact will not be permanent and that the solar farm will be decommissioned and removed after an operational life of 40 years (however, the substation will be permanent).

7.4.3. I consider that the assessment undertaken in the landscape and visual appraisal is robust and comprehensive and I consider the conclusions reached therein are reasonable having particular regard to the fact that the site is located in a landscape which is characterised as being of low sensitivity. My site inspection would reinforce this view. The baseline environment is not an untouched pristine natural environment, but rather a typical rural agricultural landscape accommodating a working farm environment with large-scale anthropological interventions, located next to the N52. I note that the Local Authority considered that the visual impact would be acceptable. Furthermore, I highlight that no third-party or prescribed bodies raised concerns in relation to the visual impact from the proposed development.

7.4.4. In conclusion, I consider that the proposed development is acceptable from a landscape and visual impact perspective.

## **7.5. Residential Amenities**

7.5.1. As outlined above, there was only one observation submitted from local residents in the area, which solely raised concerns in relation to traffic impacts from the proposed development. Nonetheless, I consider commonly raised issues with respect to solar farm development and residential amenity below.

### ***Glint and Glare***

7.5.2. The proposed development does not include tracking panels and that the panels are fixed in one orientation, facing due south. Solar PV panels, in order to be efficient, need to absorb as opposed to reflect solar irradiation and therefore have an anti-reflective coating.

7.5.3. A site specific Glint and Glare Assessment has been prepared. The assessment considers the worst case potential impacts on ground based receptors including road (102 No. road receptor points examined) and residential dwellings (33 No. residential properties were examined). In addition, the potential future re-alignment of the N52 was considered. As there are no IAA registered aerodromes within 15km of the site, no aviation analysis was undertaken. The Applicant has given an undertaking to

augment hedgerows and to ensure these hedgerows are maintained to a height of at least 3-4m. With the implementation of these mitigation measures glint and glare from the solar panels will be adequately screened to ensure that there are no significant impacts resulting from the proposed development. Overall, I accept the findings of the report that no significant nuisance is predicted from glint and glare.

### **Noise**

- 7.5.4. The panels in themselves would not generate noise. The main noise sources would be from the substation and battery storage unit, which are located along the eastern boundary of the site, next to the EPRC and the existing N52. Having regard to the position of this infrastructure removed from residential dwellings (nearest dwelling is in excess of 100m) and the existing baseline noise (largely dominated by traffic flows on the N52), no significant noise impacts on residential amenity are anticipated. Inverter stations would also generate noise should they be installed. However, having regard to their removed positions away from residential properties, no significant noise that would negatively impact residential amenity is anticipated. The Applicant has committed to complying with BS5228:2009 and A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites, the National Roads Authority Guidelines for the Treatment of Noise and Vibration in National Road Schemes, World Health Organisation Community Noise Guidelines and BS 8233:2014 Guidance on Sound Reduction and Noise Insulation for Buildings.

### **Construction Phase**

- 7.5.5. It is estimated that the construction period would be in the region of 16 weeks. It is inevitable that potential negative impacts to the local population may occur during the construction period particularly in terms of noise and traffic. However, these impacts would be temporary and could be appropriately mitigated in a detailed Construction Environmental Management Plan to be agreed in writing with the Local Authority prior to the commencement of the development.

### **Operational Phase**

- 7.5.6. As the site will be largely unmanned save for occasional inspections/maintenance vehicular movements during the operational phase will be minimal and will have no impact.

## **7.6. Flooding**

- 7.6.1. A Flood Risk Assessment (July 2022) was submitted with the planning application documentation. It highlights that while a significant proportion of the site is located in Flood Zone C, there are areas located next to the River Silver located in Flood Zone A/B. As highlighted by the Applicant, solar farms can be classified as a water-compatible development and therefore are suitable for development within Flood Zone A, subject to appropriate mitigation (Section 5.1 of the Report). The measures include restricting the placement of solar panels in areas with a maximum flow depth of 0.5m, which will allow for a minimum panel height of 0.8 metres. This criterion will afford a minimum free board of 300mm above the 1% AEP MRFS flood event. Furthermore, all critical infrastructure will be placed above the 0.1% AEP flood levels.
- 7.6.2. Regarding the potential impact on surface water runoff characteristics, the Applicant contends that the placement of solar panels would have no impact on the surface water regime on site. The portion of the proposed development which consists of hard standing is approximately 0.1 % of the total site area. Furthermore, all access roads will be permeable. The Applicant argues that, overall, the proposed mitigation measures will have a positive impact on the surface water regime within the site. Measures include the provision of long grass to attenuate surface water flow and to chisel plough between solar arrays to improve infiltration.
- 7.6.3. I highlight that the Local Authority's Environment and Water Services Department had no objection to the subject development subject to standard conditions.
- 7.6.4. Having regard to the above, and noting the small increase in hard surfaced areas and lack of significant reprofiling works, I consider that the proposed development is appropriate at this location, and is in accordance with the Flood Risk Guidelines and will ensure that there is no loss of flood storage or significant increased flooding risk to neighbouring properties.

## **7.7. Biodiversity**

- 7.7.1. The application is accompanied by a Screening Appraisal for Appropriate Assessment and AA screening is undertaken in Appendix 2 below.
- 7.7.2. An Ecological Impact Assessment was also submitted as part of the planning application documentation. A desk study and a walkover survey of the site were

carried out by the Applicant. The flora as identified is synonymous with a managed agricultural landscape with no protected species identified. No invasive species were recorded on the site during the surveys. The majority of the site comprises Grassland (Improved) GA1. Woodlands (WD1) will not be impacted by the proposed development as they will be retained and incorporated into the overall design.

- 7.7.3. Given the use of the lands in active agricultural use that are heavily managed, the proposed solar farm and associated infrastructure, once constructed, will entail significantly less on-site activity than heretofore is experienced. Fields are generally separated by hedgerows, often including mature trees. In addition to the retention of the existing hedgerow network and its augmentation, coupled with the planting of wildflower and/or wild grass and the provision of a biodiversity area, provides for the potential for increase in diversity over time. I also note that perimeter fencing which will allow for mammal access is proposed. Save for the construction phase, vehicular movements arising would be limited thus the potential for mortality would be no greater than currently exists.
- 7.7.4. Evidence of otter was recorded within the proposed development site. Otter prints were identified in field tracks adjacent to the Silver River at the southern end of the proposed development site and three potential resting locations were noted along the water course. No aquatic habitat will be lost as a result of the proposed development and no solar panels will be placed within the riparian corridor. The Applicant highlights that indirect effects as a result of sediment loading or pollution events are possible on a localized level in the immediate vicinity of the proposed works. It is stated that the proposed development will have no significant residual effect on otters subject to the implementation of mitigation measures including *inter alia* water quality controls, and ceasing works within 30m of an identified holt or within 150m of a natal den. Should works be required within these specified areas a derogation license from NPWS will be sought.
- 7.7.5. A badger sett containing three entrances were located within the overall landholding, but outside the site (at a distance of 350m). Notwithstanding that the sett is located outside the site, a 25m radius ecological exclusion zone (EEZ) will be set up around any identified sett prior to the commencement of pre-site clearance and construction works. Temporary high visible fencing will be erected 25 metres from the nearest sett entrance. No vehicles, storage or stockpiling of materials will be allowed in the EEZ.

An ECoW will supervise the erection of each EEZ. Fencing will be inspected daily by the contractor to ensure that the EEZ is in working condition. Construction works in the vicinity of the EEZ will cease two hours prior to sunset in order to avoid disturbance of any badgers. All pipes would be capped overnight to prevent access by mammals. Artificial lighting during construction will be avoided within the EEZ of any badger sett and positioned to avoid illumination of any entries to any badger set. No significant residual effects on badgers are anticipated following the implementation of the listed mitigation measures.

7.7.6. In terms of bats, the hedgerows which provide potential for commuting and foraging are to be retained and augmented. I submit that in view of the nocturnal nature of the species, the fact that the existing hedgerows and treelines are to be augmented and to the preponderance of comparable habitat in the vicinity, the development will not result in an adverse impact on bats.

7.7.7. Given the location of the site in an area characterised by similar habitats and the mitigation measures to be incorporated, I consider that the impacts on the ecology of the site and the wider area would be acceptable.

## **7.8. Other Matters**

### Material Contravention

7.8.1. Each of the five reasons for refusal outlined in the Notification of Decision to Refuse Permission state that the proposed development materially contravenes various policies in the Development Plan. As outlined in my assessment above, I do not consider this to be the case.

7.8.2. Should the Board not concur with my opinion, I note the exceptional criteria set out in Section 37 2(b) of the *Planning and Development Act 2000, (As Amended)*, whereby the Board may decide to grant permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates. These include where the proposal would be considered to:

- (i) be of strategic or national importance

- (ii) where there are conflicting objectives in the development plan or the objectives are not clearly stated insofar as the proposed development, is concerned, or
- (iii) that permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under Section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or finally
- (iv) having regard to the pattern of development, and permissions granted, in the areas since the making of the development plan.

7.8.3. In regard to the foregoing, I do not consider the proposal to be of strategic or national importance. I do not consider that there are conflicting objectives in the Development Plan. As regards government strategies and guidelines to address renewable energy, I have noted above the current applicable policies and guidelines (including *inter alia* REPowerEU Plan 2022 and Directive EU 2018/2001, as amended 18.05.2022, Climate Action and Low Carbon Development (Amendment) Act 2021, Climate Action Plan 2023, National Planning Framework, National Development Plan 2021-2030, and RSES) which would lend support for the case in hand. As outlined in Section 7.1 above, I consider that the principle of the proposed development is consistent with national, regional and local policy. Should the Board be of the opinion that the proposed development does materially contravene the policies referenced in the reasons for refusal, and is minded to grant permission, it is open to the Board to consider a grant of permission in this case having regard to the exceptions (i-iv) set out in Section 37(2)(b) of the *Planning and Development Act 2000 (As Amended)*.

#### Fire

7.8.4. I note that the Local Authority's Fire Officer raised a number of concerns in relation to fire. An Electrical Fire Risk Assessment Report (April 2023) was submitted as part of the RFI Response. It highlights that the risk of fire from the solar panels is very low as the panels are low combustibility. The Report notes that the most significant risk is around inverter stations and energy storage units, as the electrical energy in these areas is very high. The units include electrical protection such as two level short circuit protection and an anti reverse connection design to reduce the risk of units being

incorrectly connected during maintenance. The BESS includes a robust fire suppression system. There is a risk of fire from the centralised inverter units, transformers and HV switchgear. However, all can be effectively mitigated by the use of well-designed electrical project protection to ensure electrical faults are cleared quickly. The Report highlights that as the proposed development is in an open field with multiple escape points, a fire would not pose a significant threat to the public. In this regard, I am of the opinion that the proposed solar farm/array development will not endanger public safety or the built environment by reason of a fire hazard.

## **8.0 Appropriate Assessment**

8.1.1. See completed Appendix 2 on file.

8.1.2. In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is not required.

8.1.3. This conclusion is based on:

- Objective information presented in the Screening Appraisal for Appropriate Assessment (August 2022)
- The separation distance to European Sites whereby a pathway exists (in excess of 30km) and an absence of a meaningful pathway to any closer European site
- Standard pollution controls that would be employed regardless of proximity to a European site and effectiveness of same
- Impacts predicted would not affect the conservation objectives.

8.1.4. No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.



## 9.0 Recommendation

Subject to the conditions below, I recommend that permission be granted.

## 10.0 Reasons and Considerations

Having regard to:

- the provisions of international, national and regional policy objectives in relation to renewable energy,
- the provisions of the Offaly County Development Plan, 2021-2027,
- the nature, scale, extent and layout of the proposed development,
- the nature of the landscape and its capacity to visually accommodate the proposed development without significant adverse effects,
- the location of the proposed development within an ecologically robust landscape,
- the ongoing design and selection assessment process for the N52 Tullamore to Kilbeggan Link Road,
- the current status of the Western Bypass,
- the separation distances between the proposed development and dwellings or other sensitive receptors,
- the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the absence likely significant effects of the proposed development on European Sites,

it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of transportation, cultural heritage, landscape and ecological impacts and would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by particulars received by Offaly County Council on 21<sup>st</sup> June 2023, and the further plans and particulars submitted to An Bord Pleanála on 8<sup>th</sup> September 2023 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. No development shall occur within the Emerging Preferred Route Corridor for the N52 Tullamore to Kilbeggan Link Road (including the proposed bridge and junction location area). In addition, the proposed secondary access point to the N52 shall be omitted from the proposed development.

**Reason:** To ensure the proposed development does not prejudice the future delivery of the proposed N52 Tullamore to Kilbeggan Link Road.

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

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

4. a) The permission shall be for a period of 40 years from the date of the commissioning of the solar array. The solar array and related ancillary structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.  
b) Prior to commencement of development, a detailed restoration plan, including a timescale for its implementation, providing for the removal of the solar arrays, including all foundations, anchors, CCTV cameras, fencing and site access to

a specific timescale, shall be submitted to, and agreed in writing with, the planning authority.

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

5. 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.

6. a) All of the environmental, construction, operation and decommissioning phase mitigation measures set out in the Ecological Appraisal Report, and the Flood Risk Assessment and other particulars submitted with the application shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order. Where such measures require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development.

b) Prior to commencement of development badger and otter surveys shall be undertaken, and in the event of badger sett(s) or otter holt(s)/den(s) being identified appropriate mitigation and avoidance will be agreed in writing with the Planning Authority.

c) There shall be no felling or scrub clearance within the bird nesting season (1st March to 31st August).

**Reason:** In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

7. The developer shall appoint a suitably qualified ecologist to monitor and ensure that all avoidance/mitigation measures relating to the protection of flora and fauna are carried out in accordance with best ecological practice and to liaise with consultants, the site contractor, the NPWS and Inland Fisheries Ireland. A report

on the implementation of these measures shall be submitted to the planning authority and retained on file as a matter of public record.

**Reason:** To protect the environmental and natural heritage of the area.

8. Prior to the commencement of development on site, details of the structures of the security fence showing provision for the movement of mammals at regular intervals along the perimeter of the site shall be submitted for prior approval to the Planning Authority. This shall be facilitated through the provision of mammal access gates designed generally in accordance with standard guidelines for provision of mammal access (NRA 2008).

**Reason:** To allow wildlife to continue to have access across the site, in the interest of biodiversity protection.

9. All mitigation measures in relation to archaeology as set out in the archaeological assessment carried out by John Cronin and Associates submitted with the application documentation and technical note included as part of the RFI Response (dated 12<sup>th</sup> June 2023) by the same author shall be implemented in full, except as may otherwise be required in order to comply with other conditions here specified.

The developer shall engage a suitably qualified archaeologist to carry out an Archaeological Impact Assessment (AIA) in advance of any site preparation works and groundworks, including site investigation works/topsoil stripping/site clearance, and/or construction works. The AIA shall involve an examination of all development layout/design drawings, completion of documentary/cartographic/photographic research and fieldwork, the latter to include, geophysical survey and archaeological trench testing (consent/licensed as required under the National Monuments Acts).

The archaeologist shall prepare a comprehensive report, including an archaeological impact statement and mitigation strategy, to be submitted for the written agreement of the planning authority in advance of any site preparation works, groundworks and/or construction works. Where archaeological remains are

shown to be present, preservation in-situ, establishment of 'buffer zones', preservation by record (archaeological excavation) or archaeological monitoring may be required and mitigatory measures to ensure the preservation and/or recording of archaeological remains shall be included in the AIA. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

The developer shall engage a suitably qualified archaeologist to monitor (licensed under the National Monuments Acts) all site clearance works, topsoil stripping, groundworks, and/ or the implementation of agreed preservation in-situ measures associated with the development. The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary. Should archaeological remains be identified during the course of archaeological monitoring, all works shall cease in the area of archaeological interest pending a decision of the planning authority, in consultation with the National Monuments Service, regarding appropriate mitigation [preservation in-situ/excavation]. The developer shall facilitate the archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer. Following the completion of all archaeological work on site and any necessary post-excavation specialist analysis, the planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation either insitu or by record of sites, features or other objects of archaeological interest.

10. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. The developer shall agree such details in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of environmental protection.

11. (a) No artificial lighting shall be installed or operated on site unless authorised by a separate grant of planning permission.
- (b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road.
- (c) Cables within the site shall be located underground unless otherwise agreed with the Planning Authority.
- (d) The inverter/transformer stations control units and all fencing shall be dark green in colour unless otherwise agreed with the Planning Authority prior to commencement of development.

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

12. Landscaping shall be carried out in accordance with Landscape Mitigation Plan submitted to the Planning Authority on 3<sup>rd</sup> August 2022. The developer shall planned screening vegetation as indicated in the drawings and documentation submitted not later than the planting season following commencement of construction. Planting shall be protected from construction works using protected fencing in accordance with the requirements of the planning authority. All existing hedgerows and field boundaries shall be retained except where altered or amended by conditions in this permission.

**Reason:** In the interests of visual amenity and to ensure the proper screening of the development from residential and other receptors.

13. Cables from the Solar Arrays within the site shall be located underground.

**Reason:** In the interests of Health and Safety and Visual Amenity

14. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the amenities of property in the vicinity.

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

- a) Details of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- b) Details of areas for construction site offices and staff facilities;
- c) Details of site security fencing and hoardings;
- d) Details of on-site car parking facilities for site workers during the course of construction;
- e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- f) Measures to obviate queuing of construction traffic on the adjoining road network;
- g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- i) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil; and

- k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

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

**Reason:** In the interest of amenities, public health and safety

- 16.a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:

(i) An LAeqT value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. [The T value shall be one hour.]

(ii) An LAeqT value of 45 dB(A) at any other time. [The T value shall be 15 minutes]. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with respect of Community Response" as amended by ISO Recommendations R 1996 1, 2 or 3 "Description and Measurement of Environmental Noise" as applicable.

**Reason:** To protect the amenities of property in the vicinity of the site.

20. Prior to commencement of development, the developer shall lodge with the Offaly County Council a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site on cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure satisfactory reinstatement of the site.



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

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

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Susan Clarke

Senior Planning Inspector

30<sup>th</sup> April 2024

## Appendix 1 - Form 1: EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	318001-23		
<b>Proposed Development Summary</b>	Solar Energy development with ancillary development works		
<b>Development Address</b>	Townlands of Gormagh and Culleen, Tullamore, Co. Offaly		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	✓
		<b>No</b>	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>	✓		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
			<b>Conclusion</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required
<b>Yes</b>	✓	Class 1 of Part 2 of Schedule 5, (a) Projects for the restructuring of rural land holdings, where the length of field boundary to be removed is above 4 kilometres, or where re-contouring is above 5	Proceed to Q.4

		hectares, or where the area of lands to be restructured by removal of field boundaries is above 50 hectares.		
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4. Has Schedule 7A information been submitted?		
No	✓	Preliminary Examination required
Yes		Screening Determination required

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix 2: Appropriate Assessment

### Screening for Appropriate Assessment Screening Determination

#### Step 1: Description of the project

I have considered the proposed solar farm development in light of the requirements of S177U of the Planning and Development Act 2000 as amended. A Screening Appraisal for Appropriate Assessment has been prepared by RPS Group on behalf of the Applicant and the objective information presented in that report informs this screening determination.

The closest European Site, Charleville Wood SAC (Site Code: 000571), is located 2.7km south (as-the-crow-flies) of the subject site. However, there is no hydrological connection between the subject site and this European Site. The two closest European Sites which are connected (hydrologically) to the subject site are the River Shannon Callows SAC (Site Code: 000216) (38km southwest) and Middle Shannon Callows SPA (Site Code: 004096) (38km south).

The proposed development constitutes the provision of a solar farm, battery storage facility, substation and ancillary works on agricultural lands comprising a total area of 83.55ha. The significant majority of site is used for grazing animals. The habitats on site have been surveyed and are described in the Ecological Impact Assessment (August 2022) in accordance with standard practice (Fossitt 2000). They comprise mostly of improved grassland (GA1), with pockets of arable grassland (GS4), semi-improved grassland (GA3), eroding/upland rivers (FW1), scrub (WS1), woodlands (WD1), hedgerows (WL1)/treelines (WL2), scattered trees and parkland (WD5), artificial lakes and ponds (FL8), and buildings and artificial surfaces (BL3). No invasive species were identified. The River Silver is the most prominent water feature in the area and forms the southern boundary of the site. There are a number of field drains throughout the site, which ultimately flow to the River Silver. The lands topography is generally sloped in the direction of the River.

I have provided a detailed description of the proposed development in Section 2.0 of my report above and detailed specifications of the proposal are provided in the AA Appraisal Report and other planning documents provided by the Applicant. In summary, the proposal includes *inter alia* the installation of photovoltaic panels on ground mounted frames in rows, a 38kv substation within a compound, 2 no single storage containers, 45 No. battery storage containers within a compound, 40 No. inverter stations, ducting & underground cabling, perimeter fencing, mounted cctv cameras, provision of internal access tracks and, all associated site development and landscaping works.

No AA concerns have been raised by the Local Authority, Third-Parties or Prescribed Bodies.

#### Step 2: Potential impact mechanisms from the project

The proposed development will not result in any direct effects such as habitat loss on any European Site.

The Applicant has applied the source-pathway receptor model in determining possible impacts and effects of the proposed solar farm development.

Sources of impact include:

- Release of silt and sediment during site works to make the site suitable for the installation of the solar panel structures and excavation and ground works associated with infrastructure requirement. While this development type does not involve major ground works, some land levelling is required for example in relation to the access tracks, substation compound and battery storage facility which may, in unmanaged and wet conditions contribute to increased sediment load to receiving waters, in particular, the River Silver.
- Release of construction related compounds including hydrocarbons to surface water.
- Increased human disturbance at the site during the construction phase.

Where an ecological pathway exists, these indirect impacts could negatively alter the quality of the existing environment, negatively affecting qualifying interest species and habitats that are dependent on high water quality, that require maintenance of natural vegetation composition and for mobile species, unimpeded access.

### Step 3: European Sites at risk

**Table 1 European Sites at risk from impacts of the proposed project [example]**

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Deterioration of water quality, siltation via surface water, construction related pollutants.	Subject site and field drainage network drain to the River Silver, which in turn flows to the Clodagh River 11.5km downstream and then joins the Brosna River 16km downstream. The Brosna River continues southwest where it meets the River Shannon 38km downstream of the proposed development. The River Shannon continues in a southerly direction to the estuary in Limerick and further to the Atlantic Ocean.	River Shannon Callows SAC (Site Code: 000216)	<p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</p> <p>Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510]</p> <p>Alkaline fens [7230]</p> <p>Limestone pavements [8240]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Lutra lutra (Otter) [1355]</p>

Disturbance	Subject site and field drainage network drain to the River Silver, which in turn flows to the Clodagh River 11.5km downstream and then joins the Brosna River 16km downstream. The Brosna River continues southwest where it meets the River Shannon 38km downstream of the proposed development. The River Shannon continues in a southerly direction to the estuary in Limerick and further to the Atlantic Ocean.	Middle Shannon Callows SPA (Site Code: 004096)	Whooper Swan (Cygnus cygnus) [A038]  Wigeon (Anas penelope) [A050]  Corncrake (Crex crex) [A122]  Golden Plover (Pluvialis apricaria) [A140]  Lapwing (Vanellus vanellus) [A142]  Black-tailed Godwit (Limosa limosa) [A156]  Black-headed Gull (Chroicocephalus ridibundus) [A179]  Wetland and Waterbirds [A999]
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#### **River Shannon Callows SAC (Site Code: 000216)**

The River Shannon Callows is a long and diverse site which consists of seasonally flooded, semi-natural, lowland wet grassland, along and beside the river between the towns of Athlone and Portumna. It is approximately 50 km long and averages about 0.75 km wide (reaching 1.5 km wide in places). The Shannon Callows has by far the largest area of lowland semi-natural grassland and associated aquatic habitats in Ireland, and one in which there is least disturbance of natural wetland processes. Botanically, it is extremely diverse with two legally protected species of plants and many scarce species. Excellent examples of two habitats listed on Annex I of the E.U. Habitats Directive occur within the site – Molinia meadows and lowland hay meadows with good examples of a further three Annex habitats (two with priority status). In winter the site is internationally important for numbers and species of waterfowl. In spring it feeds large numbers of birds on migration, and in summer it holds very large numbers of breeding waders, rare breeding birds and the endangered Corncrake, as well as a very wide variety of more common grassland and wetland birds. The presence of Otter, an Annex II species, adds further importance to the site. Threats to the quality of the site may come from the siting of boating marinas in areas away from centres of population, fertilising of botanically-rich fields, the use of herbicides, reversion of hay meadow to pasture, neglect of pasture and hay meadow, disturbance of birds by boaters, anglers, birdwatchers and the general tourist. The maintenance of generally high water levels in winter and spring benefits all aspects of the flora and fauna, but in this regard, summer flooding is a threat to breeding birds, and may cause neglect of farming.

#### **Middle Shannon Callows SPA (Site Code: 004096)**

The Middle Shannon Callows SPA is an internationally important site that supports an assemblage of over 20,000 wintering waterbirds. It holds internationally important populations of two species

- Whooper Swan and Black-tailed Godwit. In addition, there are four species that have wintering populations of national importance. The site also supports a nationally important breeding population of Corncrake. Of particular note is that several of the species which occur regularly are listed on Annex I of the E.U. Birds Directive, i.e. Whooper Swan, Corncrake and Golden Plover.

#### Step 4: Likely significant effects on the European site(s) 'alone'

Having reviewed the documentation on file, the Conservation Objectives supporting documents for the above referenced sites available through the NPWS website ([www.npws.ie](http://www.npws.ie)), and noting the nature, scale, design, and location of the proposed development, together with the nature of the qualifying interests which will not be in anyway affected, I am satisfied that likely significant impacts on the qualifying interests of the subject European Sites that are not listed in the Tables below can be ruled out and do not require further consideration. As such, the tables below focus only on the qualifying interest features at risk having regard to the specifics of the proposed development.

**Table 2: Could the project undermine the conservation objectives 'alone'**

European Site and qualifying feature	Conservation objective (summary) [provide link/ refer back to AA Screening Report]	Could the conservation objectives be undermined (Y/N)?	
		Deterioration of water quality	Disturbance
River Shannon Callows SAC (Site Code: 000216)	<a href="#">River Shannon Callows SAC   National Parks &amp; Wildlife Service (npws.ie)</a>		
Otter (1355)	Maintain FCS: No significant decline in the extent of freshwater habitat or fish biomass available	N	N
Alluvial forests (91E0)	Maintain FCS: Appropriate hydrological regime.	N	N

The European Site is located 38km downstream of the proposed development. Having regard to this distance, the nature, scale and extent of the proposed works, and implementation of standard construction techniques, significant effects on the European site are unlikely. Potential dilution and settling effects would address any potential event arising.

Evidence of Otter was recorded on site, however, having regard to the separation distance between the European Site and Subject Site, it is reasonable to assume that the evidence relates to a local population. Due to the separation distance between the subject site and the SAC, the proposed development would not have any disturbance impacts on Otter related to the European Site.

**Table 3: Could the project undermine the conservation objectives 'alone'**

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?
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	[provide link/ refer back to AA Screening Report]	Effect A	Effect B
Middle Shannon Callows SPA (Site Code: 004096)	<a href="#">Middle Shannon Callows SPA   National Parks &amp; Wildlife Service (npws.ie)</a>	Deterioration of water quality	Disturbance
Whooper Swan (Cygnus cygnus) [A038]	Maintain FCS: Winter spatial distribution	N	N
Wigeon (Anas penelope) [A050]	Restore FCS: Winter spatial distribution	N	N
Corncrake (Crex crex) [A122]	Under Review	N	N
Golden Plover (Pluvialis apricaria) [A140]	Maintain FCS: Winter spatial distribution	N	N
Lapwing (Vanellus vanellus) [A142]	Restore FCS: Winter spatial distribution	N	N
Black-tailed Godwit (Limosa limosa) [A156]	Restore FCS: Winter spatial distribution	N	N
Wetland and Waterbirds [A999]	Restore FCS: Winter spatial distribution	N	N

The European Site is located 38km downstream of the proposed development. Having regard to this distance, no ex situ impacts are anticipated or any other significant effects on the European site are likely.

I note that the Applicant included a greater number of European sites in their initial screening consideration with sites within 15km of the development site considered. However as correctly highlighted, there is no ecological connection with any other European Site.

I conclude that the proposed development would have no likely significant effect 'alone' on any qualifying feature(s) of River Shannon Callows SAC (Site Code: 000216) and Middle Shannon Callows SPA (Site Code: 004096).

**Step 5: Where relevant, likely significant effects on the European site(s) 'in-combination with other plans and projects'**

Having reviewed Offaly County Council and An Bord Pleanála's online mapping systems, I do not consider that there are any projects, which could have the potential to have significant in-combination effects on a European Site when considered alongside the proposed development. Similarly, I am not aware of any plans that could have the potential to have in-combination effects on a European Site when considered alongside the proposed development. As outlined above earlier in my report, the plans for the N52 Tullamore to Kilbeggan Link Road are only at design stage. Nonetheless, it will be required to adhere to the relevant planning policy and the relevant EU Directives, including Habitats Directive, and environmental considerations at application stage. As such, there is no potential for adverse in-combination effects on European Sites.



I conclude that the proposed development would have no likely significant effect in combination with other plans and projects on the qualifying features of any European site(s). No further assessment is required for the project.

#### **Overall Conclusion - Screening Determination**

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is not required.

This conclusion is based on:

- Objective information presented in the Screening Appraisal for Appropriate Assessment (August 2022)
- The separation distance to European Sites whereby a pathway exists (in excess of 30km) and an absence of a meaningful pathway to any closer European site
- Standard pollution controls that would be employed regardless of proximity to a European site and effectiveness of same
- Impacts predicted would not affect the conservation objectives.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.