



An
Bord
Pleanála

Inspector's Report ABP-318925-24

Development	Modifications to permitted solar farm and all associated site works. A Natura Impact Statement (NIS) has been prepared in respect of the proposed development and the NIS will be submitted to the planning authority with the application.
Location	Ballinvuskig, Douglas, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2341837
Applicant(s)	Ballinvuskig Solar Farm Limited
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Ballinvuskig Solar Farm Limited
Observer(s)	None
Date of Site Inspection	28.05.24

Inspector

Una O'Neill

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1.0 Site Location and Description

- 1.1. The subject site is located in Ballinvuskig, approx. 3.5km south west of Douglas town centre and approx. 6km northwest of Carrigaline, within the administrative boundary of Cork City Council. The N27 and Cork Airport are located approx. 2km west of the site.
- 1.2. The site has a stated area of 44.4ha and comprises agricultural lands. It forms part of a larger landholding within the ownership of the applicant. The central portion of the site, which is outside the red line boundary, accommodates a dairy farm with associated buildings and a dwelling. There are existing overhead power lines running in a north -south direction along the eastern portion of the site.
- 1.3. Access to the site is via the L2462 (Elm Hill) along the northern boundary of the site. The site is bounded to the south, east and west by agricultural lands, with Douglas Allotments adjoining a portion of the eastern boundary. There are a number of rural dwellings and businesses in the vicinity of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development comprises modifications to a permitted solar farm (Pl. Ref. No: 19/5371, ABP-305186-19) known as Ballinvuskig solar farm (not yet constructed). The proposed modifications are entirely within the boundary of the permitted development and will consist of:
 - (I) The exclusion of the permitted 38kV substation and grid connection which comprised of a loop in to the existing 38kV overhead line on site;
 - (II) The exclusion of the permitted battery storage unit and container unit;
 - (III) A reduction in number of inverter/transformer stations from 12 no. permitted to 8 no. inverter/transformer stations;
 - (IV) The provision of a ring main unit to facilitate the connection of Ballinvuskig solar farm to a proposed 110kV substation at Ballinrea Co. Cork;
 - (V) Assorted changes to the internal access tracks and the layout and dimensions of their permitted photovoltaic panels which will increase the

solar photovoltaic footprint from c. 178,600 sq.m of ground mounted solar panels to c. 188,000 sq.m of ground mounted solar panels; and

(VI) All associated site works and ancillary infrastructure.

2.2. The application is accompanied by the following documents:

- Natura Impact Statement (NIS)
- Planning and Modifications Report
- Construction and Environmental Management Plan
- Ecological Impact Assessment (EcIA)
- Landscape and Visual/Glint and Glare Addendum Report
- Revision of Archaeological, Architectural, and Cultural Heritage Impact Assessment

2.3. There is a concurrent application before the Board for modifications to a permitted solar farm at Ballinrea with a proposed 38kV grid connection proposed from that permitted solar farm site to this appeal site, which would link the two solar farms.

2.4. Since the lodgement of this appeal, I note that permission has been granted by ABP for a 110kV substation at Ballinrea solar farm (ref ABP-317706-23), with a 100kV grid connection from Ballinrea to an existing 220kV substation at Rafeen to the southeast.

3.0 Planning Authority Decision

3.1. Decision

Permission refused for the following reason:

The Planning Authority is not satisfied based on the information submitted with the planning application that the applicant has demonstrated that the proposed development would not have significant adverse impacts upon the sensitive bird species during the breeding season and upon the waterbird species listed for Cork Harbour SPA (Site Code: 004030). Therefore, the granting of permission for this development at this time would not be in accordance with the policy objective indicated in the Cork City Development

Plan 2022 - 2028, namely Objective 6.23 for the protection of Designated Sites and Protected Species. The development, if permitted would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The PA sought Further Information (FI) on 09.05.23 in relation to the following areas:

- Sightlines
- Revised EclA to include: breeding bird survey during the optimum survey time; programme of surveys for wintering waterbirds to include greater survey effort surveys across a range of tidal stages, but particularly at high tide when many waterbirds move inland to forage terrestrially, and the recording of detailed baseline data such as species, behaviour, habitat birds recorded etc; baseline aquatic survey; more detailed bat survey and assessment of collision risk and singeing, with reference to the overall accumulative impact arising from the full extent of the solar farm development.
- Revised NIS: further data collection, analysis and assessment required as follows: programme of surveys for wintering waterbirds to include greater survey effort, surveys across a range of tidal stages, but particularly at high tide when many waterbirds move inland to forage terrestrially, and the recording of detailed baseline data such as species, behaviour, habitat birds located in, etc. Reference shall be made to overall accumulative effects arising from the full extent of solar farm development.

3.2.2. Further information was submitted on 06.09.23 in relation to the EclA and NIS. The sightlines response was considered adequate. Clarification of Further Information (CFI) was sought on 02.10.23 in relation to the following areas:

- Ecological assessment impact report is insufficient and requires clarification from the applicant. Requested to contact PA.
- The Natura Impact Statement of the further information requested is inconclusive and requires clarification. Requested to contact PA. Advised that the input/report of a qualified ecologist to assess and report on same will be required. The Planning

Authority will arrange consultation with the PA consulting ecologist and applicant's ecologist.

- An email to the applicant follow CFI clarified that information specifically sought as follows: in relation to Breeding Bird Survey methodology; in terms of wintering waterbirds, uncertainty as to whether site falls within core foraging range of species identified on the site and likely to be associated with Cork Harbour SPA (Curlew, Black-Headed Gull, Lapwing, and Golden Plover) given lack of data in relation to numbers and frequency of occurrence of wintering waterbirds. Best practice advises up to 10 winter survey visits focussing on the high tide period; 6-hour duration survey visits; repeat half hourly or hourly counts of birds within the site, with overall aim to provide quantitative data on the numbers and duration that waterbirds and other species utilise the site.

3.2.3. The PA agreed to a time extension to respond to the CFI request until 19.02.24.

3.2.4. The final report issue by the PA notes the following:

- The applicant has not provided the required Breeding Bird Survey stating that 'the proposed modifications to the permitted solar farm are minor in nature, a full suite of breeding bird surveys is not required for the Proposed Development'.
- PA view of CFI response on EcIA: This is not accepted by the PA consultant ecologist who states that " Adequate baseline surveys and assessment in relation to breeding birds have not been undertaken, either for the original (permitted) development, nor for the current application"... "The planning department does not have enough information, based on baseline breeding bird surveys, to adequately rule out negative impacts upon sensitive bird species during the breeding season as a result of the proposed development, in-combination with the permitted development. This decision upholds the aims, objectives and principles of Ecological Impact Assessment (EcIA).
- PA view of CFI response on NIS: The applicant was required to submit a Programme of surveys for wintering waterbirds, which they have not done. The applicant states the proposal is "minor in nature" and refers to their previous surveys carried out for the submitted EcIA and NIS. While the applicant acknowledges that SCIs of Cork Harbour were utilising the site for foraging, the applicant stresses the point that the current application is for "minor modifications to an already permitted

solar farm and thus, significant impacts on ex-situ SCIs of Cork Harbour SPA are not anticipated as a result of the Proposed Development". The applicant refers back to the assessment of the parent permission by both the Planning Authority and the Inspector of An Bord Pleanála of 2019 where it was concluded that no significant effects were identified. Section 7.2 of the submitted NIS provides a list of "Other Projects" where were considered in - combination with the proposed development. The report from the ecologist dated 18/12/2023 has reviewed the applicant's response. The response is considered to be inconclusive and lists out the reasons for this in the report. The ecologist's report from Cork City Council Planning concludes that the planning department does not have enough information, based on previously undertaken birds surveys and assessment to adequately rule out negative impacts upon wintering waterbird species listed for Cork Harbour SPA as a result of the proposed development.

3.2.5. Other Technical Reports

- Cork City Council Consultant Ecologist – FI and CFI sought. Refusal recommended.
- Area Engineer – FI sought in relation to sightlines. No further issues raised following receipt of FI.
- Drainage Division – In relation to drainage and flood risk the proposed amendments are insignificant. No objection subject to conditions.
- Contributions – None.
- Drainage – No objection.
- Environment – No objection.

3.3. Prescribed Bodies

- Cork Airport – Recommend consultation with IAA and IAA-ANSP.
- IAA – Glint and Glare to be submitted to DAA Cork and IAA Air Navigation Service Provider.
- Inland Fisheries – Conditions recommended.
- Irish Water – No response received.

3.4. Third Party Observations

The following issues were raised in a third party submission to the PA:

- Application should be invalid - Documents incomplete, no AA screening available for inspection, Appendix 1 of NIS. Issue acknowledged by planning staff. Description of proposed development incorrect and misleading as a substantial amount of new development proposed outside of the boundary of the permitted site.
- Screening report is inadequate and inappropriate. Failure to undertake multi seasonal assessments and surveys in order to assess potential environmental effects of the development, including the required grid connection on Cork Harbour SAC.
- EIAR is mandatory for development of such a scale and with potential effect on Cork Harbour SPA.
- Project splitting with application in Cork County Council area (234563), contrary to EU and Irish law.
- Public Safety issue – glint and glare.
- Inadequate information to allow assessment of environmental impacts.
- No assessment of route selection for grid connection, constraint mapping, assessment of alternatives etc.
- Lack of national and regional strategy for solar arrays.
- Loss of agricultural land and impact on soils.
- Carrying capacity of local roads and inadequacy of CEMP.
- Poor layout in incorrect location.
- Visual Impact.

4.0 Planning History

ABP-305186-19 (PA ref ref 19/5371): Permission GRANTED for a solar farm consisting of circa 178,600 m² of solar panels on ground mounted frames, 1 no. single storey 38 kV substation and associated electrical compound with loop in to existing 38kV overhead line on site via 2 no. new timber polesets, 12 no. single

storey electrical inverter/transformer stations, battery storage module and associated equipment container, security fencing, satellite pole, CCTV, landscaping and all associated ancillary development works. Construction and operational access will be via an existing entrance from the L-2462. The proposal will be connected to the national grid via the loop-in to existing overhead wires that traverse the site. The operational lifespan of the solar farm will be 35 years.

Solar farm to southeast of application site:

ABP-318915-24, concurrent appeal with ABP: Proposal for modifications to an existing permitted solar farm at Ballinrea (ABP-303013-18) and proposal for a new 33kV cable linking this solar farm at Ballinrea with Ballinvuskig solar farm.

- Note: Ballinvuskig solar farm is the subject of this current appeal.

ABP-303013-18: Permission GRANTED at Ballinrea for a solar farm consisting of c. 159,100 sqm of solar panels on ground mounted frames, 1 no. substation, 10 no. single storey inverter/transformer stations, battery storage module and associated equipment building, security fencing, satellite pole, CCTV and all associated ancillary development works. Construction and operational access to the site will be via the existing entrance from the L2464.

ABP-317706-23: Permission GRANTED on 08/04/24 for development of a 110kV substation, grid connection and associated infrastructure located at Ballinrea and adjacent townlands, Co. Cork.

5.0 Policy Context

5.1. National Policy Context

Climate Action and Low Carbon Development (Amendment) Act 2021 (Climate Act, 2021)

- 5.1.1. The 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.

National Energy Security Framework (April 2022)

- 5.1.2. Published in April 2022 – provides an overarching and comprehensive response to Ireland's Energy security needs in the context of the war in Ukraine. The framework outlines the structures in place to monitor and manage energy supplies. The framework outlines proposals to speed up the country's shift to increased energy efficiency and indigenous renewable energy systems.
- 5.1.3. Section 7.2, 'Replacing Fossil Fuels with Renewables' notes that the replacement of fossil with renewable energy (such as onshore wind, offshore and solar power) is a key method of reducing Ireland's reliance on imported fossil fuels.
- 5.1.4. The following responses are noted:
- Response 25: Align all elements of the planning system to fully support accelerated renewable energy development.
 - Response 26: Review grid connection arrangements for renewable electricity projects and the development of system services to accelerate the growth in renewable electricity.
 - Response 27: Accelerate investment in the electricity grid and the development of storage technologies.

Climate Action Plan 2024

- 5.1.5. The Climate Action Plan 2024 (CAP24) is the third annual update to Ireland's Climate Action Plan. It builds on the previous CAP by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings. The Plan provides a roadmap for taking decisive action to halve Ireland's emissions by 2030 and reach net zero by no later than 2050, as committed to in the Climate Action and Low Carbon Development (Amendment) Act 2021.

- 5.1.6. CAP 24 supports the acceleration of the delivery of renewable energy onto the national grid with KPIs to be achieved by 2025 as follows: 50% renewable electricity share of demand (80% by 2030); 6 GW onshore wind capacity; Up to 5 GW solar PV capacity, including at least 1 GW of new non-utility solar (8 GW by 2030, including 2.5 GW of new non-utility solar).
- 5.1.7. CAP 24 states 'A continued drive for solar energy, with an ambitious target of up to 5 GW by 2025, will support land-use diversification and enable farmers and communities to participate in the energy transition'.

National Planning Framework (NPF) (2018)

- 5.1.8. The NPF is a high-level strategic plan to shape the future growth and development of the country to 2040. It is focused on delivering 10 National Strategic Outcomes (NSOs).
- 5.1.9. NSO 8 focuses on the 'Transition to a Low Carbon and Climate Resilient Society' and recognises the need to harness both on-shore and off-shore potential from energy sources including solar and deliver 40% of our electricity needs from renewable sources.
- 5.1.10. NPO 52 states the planning system will be responsive to our national environmental challenges and ensure that development occurs within environmental limits, having regard to the requirements of all relevant environmental legislation and the sustainable management of our natural capital.
- 5.1.11. It is a National Policy Objective (NPO 55) 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'.

National Energy & Climate Action Plan 2021-2030

- 5.1.12. The NECP incorporates all planned policies and measures identified up to the end of 2019 and which collectively deliver a 30% reduction by 2030 in non-ETS greenhouse gas emissions (from 2005 levels).
- 5.1.13. Ireland has excellent renewable energy resources, which will be a critical and growing component of Irish energy supply to 2020 and beyond. Indigenous renewable energy already plays a vital role in our domestic fuel mix. It increases sustainability through the use of clean power sources and enhances energy security

by reducing Ireland's dependence on imported fuels. Ireland has a target of increasing reliance on renewables to 70% by 2030.

- 5.1.14. Para 3.1.2. notes that the new Renewable Electricity Support Scheme (RESS) commits to 70% of electricity from renewable sources by 2030 and is expected to support up to an additional 4.5 GW of renewable electricity by 2030.

5.2. Regional Policy Context

Regional Spatial and Economic Strategy (RSES) for the Southern Region 2040

The following Regional Policy Objectives are noted:

- RPO1: Environmental Assessment (a) Any reference to support for all plans, projects, activities and development in the RSES should be considered to refer to 'environmentally sustainable development' that has no adverse effects on the integrity of European sites and no net loss of biodiversity, that shall be subject to appropriate feasibility studies, best practice site/route selection (to consider environmental constraints such as landscape, cultural heritage, the protection of water quality, flood risks and biodiversity as a minimum), environmental assessment including EcIA to support development management and where required, the completion of statutory SEA, EIA and AA processes as appropriate...
- RPO 87: relates to a low carbon energy future.
- RPO 90: addresses regional decarbonisation.
- RPO 95 Sustainable Renewable Energy Generation: To support implementation of the National Renewable Energy Action Plan (NREAP), and the Offshore Renewable Energy Plan and the implementation of mitigation measures outlined in their respective SEA and AA, and leverage the Region as a leader and innovator in sustainable renewable energy generation.
- RPO 96 Integrating Renewable Energy Sources: To support the sustainable development, maintenance and upgrading of electricity and gas network grid infrastructure to integrate renewable energy sources and ensure our national and regional energy system remains safe, secure and ready to meet increased demand as the regional economy grows.
- RPO 98: supports the development of a Regional Renewable Energy strategy.

- RPO 100: to support the integration of indigenous renewable energy production and grid injection.
- RPO 219: to support the sustainable reinforcement and provision of new energy infrastructure by infrastructure providers.
- RPO 221 Renewable Energy Generation and Transmission Network:
 - a. Development Plans shall support the sustainable development of renewable energy generation andto spatially suitable locations to ensure efficient use of the existing transmission network;
 - c. The RSES supports the Southern Region as a Carbon Neutral Energy Region.

5.3. Local Policy Context

Cork City Development Plan 2022-2028

Zoning applicable to appeal site: ZO 20 City Hinterland.

ZO 20.1 The primary objective of this zone is to preserve the character of the City Hinterland generally for use as agriculture, rural amenity, open space, recreational uses, green and blue infrastructure and to protect and enhance biodiversity. Rural - related business activities which have a demonstrated need for a rural location are also permissible. Any development associated with such uses should not compromise the specific function and character of the City Hinterland in the particular area.

ZO 20.2 Other uses open for consideration in this zone include renewable energy development (wind turbines, solar farms), tourism uses and facilities, garden centres and nurseries, cemeteries and community and cultural uses, market gardening and food production ancillary to agricultural uses.

ZO 20.3 The City Hinterland helps to maintain a clear distinction between urban areas and the countryside and avoid the harmful impacts of urban sprawl.

The appeal site lies within the Draft Airport Safety Zones and Noise Contour of Cork Airport.

Objective 6.22 Natural Heritage and Biodiversity

- a. To protect, promote and enhance Cork City's natural heritage and biodiversity;
- b. To support the implementation of the National Biodiversity Plan and the All - Ireland Pollinator Plan and successor publications in Cork City;
- c. To support and implement the biodiversity actions from the Cork City Heritage and Biodiversity Plan (2021 - 2026) in partnership with all relevant stakeholders;
- d. Cork City Council will seek to establish and use a City biodiversity database, accessible across all council departments for consideration in land management decision - making;
- e. Cork City Council will work with communities to enhance existing, and the delivery of new, biodiversity - rich areas throughout the City including individual buildings, streets, public and private spaces by supporting the provision of green roofs and walls, rain gardens, biodiversity - rich parklets, rainwater harvesting, natural banks and naturalised SUDS;
- f. Cork City Council will seek, where appropriate, to enhance the linear habitat connectivity, including the interconnection and enhancement of:
 - Woodlands, gardens, open spaces, fields and hedgerows.
 - Coastal habitats, river catchments, lakes, streams, ponds.
 - Aquatic, marginal and bank side habitats.
 - Parks, playing fields and recreational areas.
 - Upstream of mapped flood zones. • City transport routes.

Objective 6.23 Designated Sites and Protected Species

To protect and enhance designated sites and areas of natural heritage and biodiversity and the habitats, flora and fauna for which it is designated, and to protect, enhance and conserve designated species.

Renewable and Low Carbon Energy

5.29 Renewable and low carbon energy generation can take a number of forms including, but not limited to wind; solar; geothermal; hydro; air, water and ground

source heat pumps; biomass; and energy from waste. Geothermal energy is addressed in more detail in Chapter 9.

5.30 The Plan promotes the generation and supply of low carbon and renewable energy alternatives, having regard to the opportunities offered by the City's urban morphology, settlement hierarchy and the hinterland.

Objective 9.15 Renewable Energy a. To promote the increased use of renewable energy resources in Cork City such as solar, small or microscale wind, geothermal, heat pumps and district heating.

Renewable Energy

11.247 Applications for renewable energy will be considered in the context of current government policy and other policy objectives in this plan including visual impact, heritage and impacts on sensitive ecological sites.

Solar Energy

11.249 Solar energy has the potential as a clean source of energy to reduce dependence on fossil fuels and help achieve climate change targets on greenhouse gas emissions. The retrofitting of existing buildings and the integration of solar infrastructure into the design of new buildings will generally be encouraged.

11.250 In the assessment of any planning applications for solar farms, Cork City Council will consider these renewable energy developments having regard to:

1. Any future national guidance to be published on Solar Farms
2. The landscape character of the area in which the site is located
3. Visual impact
4. Glint and Glare
5. Ecology
6. Heritage and Archaeology
7. Security requirements such as CCTV, security lights, fencing
8. Construction impacts and impact on drainage patterns and water tables

9. Suitability of and access to the electricity grid

10. Decommissioning

Chapter 11 Placemaking and Managing Development

Development and Landscape, Natural Environment and Biodiversity:

Paragraph 11.24:

Appropriate Assessment (AA) is an assessment under the EU Habitats Directive in order to ascertain whether any project (or plan) would have significant effects on any European Site (formally Natura 2000 site). As with EIA, permission can only be granted for development proposals if it is demonstrated that the project (or plan) would not have significant adverse impacts on the integrity of any European Site. Cork City Council screens all planning applications for potential AA.

Paragraph 11.224:

All development proposals are expected to:

1. Avoid, or as a last resort satisfactorily mitigate, adverse impacts on existing designated and non - designated habitats. This is in addition to the Appropriate Assessment requirement relating to designated sites;
2. Integrate provision for biodiversity enhancement which may include compliance through public open space, gardens, areas of planting (pollinator friendly planting and native tree species should be prioritised), sustainable urban drainage systems, incorporating green roofs, bee hotels, bird and bat boxes;
3. Avoid adverse impacts, incapable of satisfactory avoidance or mitigation on mature trees, protected flora, animal or bird species.

5.4. Natural Heritage Designations

Cork Harbour SPA (site code 004030), c. 5km to the southeast/c.3.5km to the northeast

Great Islands Channel SAC (001058), c. 8.5km to the northeast

Owenboy River, pNHA (site code 001990), c. 5km to the southeast

5.5. EIA Screening

- 5.5.1. Schedule 5 of the Planning and Development Regulations, 2001 (as amended), sets out Annex I and Annex II projects which mandatorily require an EIAR. Part 1, Schedule 5 outlines classes of development that require EIAR and Part 2, Schedule 5 outlines classes of developments that require EIAR but are subject to thresholds.
- 5.5.2. Solar energy development is not listed as a class of development for the purposes of EIA under Part 2 of Schedule 5, within the Planning and Development Regulations, 2001 (as amended). In this regard, a requirement for preliminary examination or EIA does not arise.
- 5.5.3. Class 2 Agriculture, Silviculture and Aquaculture (a) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, relates to restructuring of rural landholdings and removal of field boundaries. No field boundaries are to be removed as part of the proposed development. I therefore do not consider that issues arise with this class of development.
- 5.5.4. Class 10 Infrastructure Projects of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended includes for (dd) 'All private roads which would exceed 2000 metres in length'. An existing permitted private access track is proposed to be utilised for construction and maintenance and part of the underground cabling route, therefore issues do not arise with this class of development.

6.0 The Appeal

6.1. Grounds of Appeal

The first party make the following points in their appeal against the planning authority decision to refuse permission:

- Winter bird surveys were undertaken between October 2022 to March 2023. The survey effort included and considered the Irish Wetland Bird Survey (I-WeBS) methodology. Recordings of birds within the entirety of the solar farm site indicate highly mobile movements in and out of the site.
- Site is a beef and dairy farm, with intensive agricultural practice. Main habitat type is improved agricultural grassland (GA1) which predominantly comprises

perennial ryegrass maintained/grazed to uniform heights. Habitat type within the site is abundant in the wider environment.

- Breeding bird habitat appraisal undertaken in July 2022 and July 2023. Site does not provide any significant breeding habitat for breeding birds.
- The Cork City Council assessment is a de novo assessment of the entire solar farm and not just the proposed amendments. Concern raised by Cork City Council consultant ecologist that the ecological significance/importance of the proposed site overall may be greater than what was previously known. OPR guidelines, as reference by PA, do not outline any provisions for any competent authority to re-visit permitted developments or to challenge the findings or conclusions of previously permitted planning applications. This is unlawful and amounts to an impermissible collateral attack on an extant permission. The do-nothing scenario is that the proposed development will be constructed as permitted.
- Case law of South-West Regional Shopping Centre Promotion Association Limited & Anor v ABP states *'it is the proposed amendments or revisions only that are to be assessed. The parts of the development which are not modified or varied have the benefit of a valid planning permission and this issues relating to the totality of the development (as opposed to the modifications) should not be revisited'*.
- Any attempt to challenge the validity of the earlier decision represents an impermissible collateral attack on that permission and this is set out in case law such as KSK Enterprises Ltd v ABP [1994] 2 I.R. 128 and Goonery v Meath County Council [1999] IEHC 15.
- The proposed modifications represent a reduction in the scale of the permitted infrastructure with the removal of the permitted 38kV substation and grid connection, removal of the permitted battery storage unit and fewer inverter/transformer stations. The exclusion of this infrastructure will be replaced by a c. 5.3% increase in the footprint of the photovoltaic panels.
- The permitted solar farm was considered as part of the cumulative assessment in the NIS.

6.2. Planning Authority Response

None.

7.0 Assessment

7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the application, having inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in the planning assessment are as follows:

- Principle and Scope of Development
- Development Plan Considerations in relation to Solar Farm Applications
- Appropriate Assessment

7.1.2. I note the Cork City 2022-2028 is the operative development plan. The parent permission relating to this application was permitted under the Cork County Development Plan, however, I note that due to a boundary change, the site is now located within the administrative area of Cork City Council. I assess the application hereunder under the operative development plan.

7.2. Principle and Scope of Development

- 7.2.1. The development is described as modifications to a solar energy development permitted under ABP-305186-19 (PA reg, ref. 195371). The modifications, which are within the boundary of the permitted solar farm, are detailed in Section 2 of this report. The proposed development seeks to increase the area of solar panels on the site from 178,000sqm to 188,000sqm, through the extension of some of the tracks where the solar panels are located for additional panels, at various locations across the site, in addition to new panels proposed in the area of the 38kV substation which is being omitted as part of this application, as is the grid connection and battery storage and container unit (see drawing 211231-b-100, which identifies changes to the permitted and proposed layout). The changes are stated in the documentation to be required due to changes in PV technology and a need to consolidate the array.
- 7.2.2. The first party raises issue with the scope of assessment. It is contended that based on planning law a de novo assessment of the application is not permissible, given the application is for modifications to a previously permitted development where full EclA and AA Screening was undertaken. The first party considers the scope of

assessment undertaken by the PA to be contrary to EU and Irish law. Reference is made to the legal case of South-West Regional Shopping Centre Promotion Association Limited and Anor v ABP [2016] IEHC 84, which concludes that the focus is on evaluating the proposed changes rather than revisiting the entirety of the development permitted under an existing permission, whereby the judge concludes 'matters that are subject to an extant grant of planning permission ought not to be reassessed. Accordingly, I hold that the Board was required to assess only the modifications to the development in the application to amend the existing permissions for the development'. The first party notes that while the legal case quoted referred to EIA (as raised by the PA as an issue in terms of relevance of this legal case), the applicant highlights that this case also included a separate ground on how an amendment to an existing application should be assessed and is relevant.

- 7.2.3. The PA acknowledges the development is for modifications to a permitted development and disputes their assessment is contrary to EU and Irish law, referencing Section 177U of the Planning and Development Act 2000 (as amended), which requires in-combination impacts of a development to be considered and therefore the extant permitted solar farm area must be considered alongside this application for modifications. The PA is satisfied that the AA element of the proposal has been accurately assessed having regard to the specific legislation, OPR and EU Commission guidance.
- 7.2.4. I acknowledge that the subject application and appeal relates to a revision or amendment of an extant permission for development on these lands. This planning assessment, therefore, having regard to planning law, relates only to the proposed amendments and their impacts, and does not relate to a de-novo assessment of the extant permission itself. I have had due regard to the operative development plan policy and to the sensitivity of the receiving environment, and in-combination impacts of these amendments on the extant permission.
- 7.2.5. The proposed development is supported by national, regional and local policies in terms of renewable energy. I have had regard to the Cork City Development Plan 2022-2028 which governs the site, noting the site was previously within the remit of Cork County Council. The operative Cork City development plan identifies the location of the site as being within ZO City Hinterland, which states under ZO 20.1 in terms of uses within this area that '...Rural - related business activities which have a demonstrated need for a rural location are also permissible. Any development

associated with such uses should not compromise the specific function and character of the City Hinterland in the particular area.' It is stated under ZO 20.2 that 'Other uses open for consideration in this zone include renewable energy development (wind turbines, solar farms)...'.

- 7.2.6. Having regard to the extant permission relating to this site, as well as existing planning policy, the principle of the proposed amendments to the previously permitted and extant development are acceptable at this location, subject to assessment against other planning criteria.
- 7.2.7. In terms of Appropriate Assessment, the application before the Board must be assessed in terms of its impacts on the environment with specific regard to European sites. I note the parent application was assessed in this regard by the competent authority (ABP ref 305186-19, permitted on 28.11.2019). I note the existing environmental context has not changed in the intervening years with the site remaining in dairy farm use. I note the extent of survey work undertaken which is elaborated upon in the EclA, Further Information Response, and NIS. The environmental context has been assessed, the information presented has been reviewed by ABP Ecologist Dr. Maeve Flynn (see report under separate cover, dated 26.06.24) and I am satisfied that the cumulative impacts of the proposed amendments with the permitted development in place, having regard to the existing environment, need only be assessed and not the extant permission itself. I refer the Board to section 8 hereunder for a more detailed assessment in relation to Appropriate Assessment.

7.3. Development Plan Considerations in relation to Solar Farm Applications

- 7.3.1. Section 11.250 of the Cork City Development Plan 2022-2028 states that in the assessment of any planning applications for solar farms, Cork City Council will consider these renewable energy developments having regard to:
1. Any future national guidance to be published on Solar Farms
 2. The landscape character of the area in which the site is located
 3. Visual impact
 4. Glint and Glare
 5. Ecology

6. Heritage and Archaeology

7. Security requirements such as CCTV, security lights, fencing

8. Construction impacts and impact on drainage patterns and water tables

9. Suitability of and access to the electricity grid

10. Decommissioning

- 7.3.2. In assessing the implications of the proposed amendments to the permitted solar farm, I have considered the impacts of the modifications against the above criteria, including specifically the issue of ecology which was raised in the Cork City Council reason for refusal.

National Guidance

- 7.3.3. The proposed development is supported by national, regional and local policies in terms of renewable energy. Objective 55 of the National Planning Framework seeks to promote renewable energy and generation at appropriate locations within the built and natural environment. Consequent to same, the Climate Action Plan 2024 stresses the importance of accelerating renewable energy resources available, including solar energy.
- 7.3.4. To date Ministerial Guidelines have not been prepared providing guidance for planning authorities regarding the future development of solar farm proposals. I note the operative development plan states criteria against which the Council will assess the appropriateness of individual applications. This application has been considered on its merits, having regard to the permitted extant application relating to the site, and subject to normal planning considerations of the modifications proposed and all planning issues as governed by the operative development plan.

Landscape and Visual Impact

- 7.3.5. While the policy context has changed with the site now located within the administrative boundary of Cork City Council, no significant policy changes have arisen in relation to the landscape/visual value assigned to the site.
- 7.3.6. The layout changes proposed are minor in nature with the amendments adding to/reducing in length the pattern of rows previously permitted resulting in no additional significant visual impacts over what was permitted. No significant alterations to hedgerows are proposed and no additional habitat change is required. I

consider no significant impacts on residential amenity will arise as a result of the amendments.

- 7.3.7. Overall, I consider it reasonable to conclude that the proposed modifications will be visually absorbed within the permitted solar development on this site.

Glint and Glare

- 7.3.8. A Glint and Glare Assessment was submitted with the extant application, ABP-305186-19. No significant impact was found in relation to Cork City Airport, local roads or local dwellings.
- 7.3.9. A revised Glint and Glare Assessment (February 2023) has been undertaken as part of this application to take account of the modifications proposed. Potential for impacts arising from the modifications have been fully assessed and no additional impacts above what was considered in the extant application are predicted.

Ecology and PA Reason for Refusal

- 7.3.10. Cork City Council raised a number of issues relating to ecology and Appropriate Assessment and refused permission as it was not satisfied that the applicant demonstrated that the proposed development would not have significant adverse impacts upon the sensitive bird species during the breeding season and upon the waterbird species listed for Cork Harbour SPA (Site Code: 004030), contrary to Objective 6.23 for the protection of Designated Sites and Protected Species. I address the issues raised in relation to QIs of the SPA in Section 8 of this report hereunder and I address the issue of breeding birds hereunder.
- 7.3.11. With regard to breeding birds, I refer the Board to an assessment undertaken by ABP Ecologist, Dr. Meave Flynn, which is included under separate cover.
- 7.3.12. The EclA undertook a bird survey in July 2022, with an additional survey undertaken on 12th July 2023, specifically addressing breeding bird species. The EclA references the previous EclA undertaken in 2019 which found 28 bird species observed, including curlew, herring gull and yellowhammer Red Listed. The current EclA indicates bird species listed under Birds of Conservation Concern Ireland (BOCCI) (Gilbert et al. 2021) were recorded within the proposed development site with green and amber listed birds recorded, (amber birds being swallow, and starling), red listed bird of snipe, as well as common bird species. QI bird species recorded and associated with Cork Harbour SPA (curlew, black-headed gull, golden

plover and lapwing) are addressed in Section 8 of this report. I note golden plover, curlew, and lapwing are red listed. The additional survey on 12th July 2023 recorded one adult curlew and five adult herring gulls foraging, with there stated to be no indication of breeding bird species within the grassland habitats of the site.

- 7.3.13. The issue of the adequacy of the breeding bird assessment and the timing of surveys as per referenced guidelines, has been considered further by ABP Ecologist, Dr. Maeve Flynn (report dated 26th June 2024). I refer the Board to this report which is attached under separate cover and which states as follows in relation to breeding birds:

In their report accompanying the first party appeal MKO ecologists clarify that the survey in July 2022 and again in July 2023 was a breeding bird habitat appraisal and that based on the habitats present and locations of the proposed modifications within open agricultural fields there would be no loss of potential breeding habitat and therefore no significant effects could arise, and that this conclusion could be reached without a dedicated breeding bird survey.

I note that in her appraisal of further information for the Local authority planning application Dr Lewis cites CIEEM guidance (2018) among others related to the 'collecting of information and describing the ecological conditions in the absence of the proposed project to inform the assessment of impacts'.

I also draw attention of the Inspector and the Board to the page 10 of those guidelines related to *differing scale of EclA and a proportionate approach*.

..the level of detail required in an EclA will inevitably be proportionate to the scale of the development and complexity of its potential impacts. These Guidelines do not prescribe exactly how to undertake an EclA, but provide guidance to practitioners for refining their own methodologies.

Scoping (Chapter 2) should be proportionate to potential effects on ecological features. Professional ecologists need to use their knowledge and experience to judge the resources required to complete an adequate and effective EclA

The MKO ecologists reiterate this point throughout their documentation and in the report that accompanies the planning appeal. They are experienced

professional ecologists with knowledge of the site in question and I consider that they present a robust justification for their approach.

Given the already extant permission, I consider that the MKO approach is reasonable and proportionate to the works proposed which amount to a reduction in some aspects of infrastructure on the site. The proposed modifications don't include any additional impacts on habitats such as hedgerows and treelines that are of significance to breeding birds in the agricultural landscape and therefore do not combine to create further additive effects to that already granted in that respect.

- 7.3.14. I note the ecological impact of the extant permission for a solar farm at this site was assessed and deemed acceptable under ref ABP-305186-19. The extant permission proposes biodiversity enhancement measures, namely the retention of all existing hedgerows and includes a landscaping plan with provision for an overall increase of linear habitats such as treelines and hedgerows planted around the site perimeter (965m of new hedgerow and the bolstering of 4,324 m of existing hedgerow with native whips), in addition to native wildflower/grasses of local provenance laid around the perimeter, in place of existing species poor agricultural grass lands.
- 7.3.15. The modifications to the extant permission proposed by way of this application will not impact on any aspect of the permitted landscaping and biodiversity enhancement measures and do not give rise to additional ecological impacts. The landscape proposals relating to the parent permission should be implemented by way of condition in this application, should the Board be minded to grant permission for the modifications proposed.
- 7.3.16. Furthermore I note the submitted document, 'Planning and Modifications Report', discusses 'Husbandry Management' under section 4.4.6. It is proposed that sheep will graze the site and reference is made to the BRE Agricultural Good Practice Guidance for Solar Farms, which is attached to the report as an appendix, which is considered alongside the biodiversity enhancement measures listed in the EclA. I consider a new condition requiring submission of a biodiversity management plan to support the co-ordination of the implementation of the EclA enhancement measures/extant landscape plan and the proposed sheep grazing regime should be included as an additional condition to this application, in the interests of supporting biodiversity at the site. This will support the new operative development plan policies,

with specific regard to chapter 11 (paragraph 11.224, see section 5.3 above) which states that all development proposals are expected to 'Integrate provision for biodiversity enhancement which may include compliance through public open space, gardens, areas of planting (pollinator friendly planting and native tree species should be prioritised), sustainable urban drainage systems, incorporating green roofs, bee hotels, bird and bat boxes', and ZO 20.1 'to protect and enhance biodiversity in the City Hinterland zone'.

- 7.3.17. Overall, I note no habitats of high ecological value are present on the site and no significant breeding bird habitat is present given the highly managed nature of the farming lands, with significant areas of similar habitat abundant in the wider area. The value of the hedgerows for birds is recognised and will continue to be supported with this development in place through the landscape and biodiversity enhancement measures proposed, which are also in existence under the parent application. I do not consider additional breeding bird surveys were warranted, as confirmed in the report from ABP Ecologist Dr. Meave Flynn, and I consider the level of survey work reasonable and proportionate to the existing context.
- 7.3.18. With regard to the change from agricultural/dairy use, the change of use from intensive dairy practices to a renewable energy development will reduce pressures on the local environment as the application of fertilizers and pesticides will be reduced as cattle will no longer be grazing the land, with the application documentation stating sheep will graze the lands around the solar farm site. I note that development plan policy supports the development of solar farms on agricultural land. Whilst the top soil layer will be disrupted during construction, the original pasture conditions are stated to be generally returned within less than a season, with no significant loss of habitat.
- 7.3.19. Having regard to all the information submitted, and submissions made, I consider the impact of the proposed modifications on ecology is not significant and the predicted impact on breeding birds is not so significant as to warrant a reason for refusal.

Heritage and Archaeology

- 7.3.20. An Archaeological, Architectural and Cultural Heritage Report was submitted under the extant permission ABP-305186-19. The modifications proposed relate to the existing assessed area and no new issues arise. Should the Board be minded to

grant permission, a condition requiring compliance with parent permission ABP-305186-19 is recommended.

Security requirements such as CCTV, security lights, fencing

- 7.3.21. Should the Board be minded to grant permission, a condition requiring compliance with parent permission ABP-305186-19 is recommended, under which condition 3 and 7 addresses CCTV, security lights, and fencing.

Construction Impacts and Impact on Drainage Patterns and Water Tables

- 7.3.22. The proposed modifications will not result in additional construction or drainage impact over what was previously permitted. As per the report received from the drainage division of the planning authority, the proposed changes will not have a significant impact on drainage patterns or water tables. As noted previously, should the Board be minded to grant permission, a condition requiring compliance with parent permission ABP-305186-19 is recommended.

Suitability of and Access to the Electricity Grid

- 7.3.23. The proposed development does not provide for a grid connection and proposes the exclusion of the permitted 38kV substation and grid connection. I note a concurrent application is before the Board which proposes a connection from this site to a permitted solar farm to the southeast, from which permission has been granted for a new 110kV line to connect to the grid to the southeast. The concurrent application does not affect consideration of the modifications as proposed in this application and no issues in terms of grid connection requirements arise.

Decommissioning

- 7.3.24. Decommissioning was considered as part of the Outline Construction and Environmental Management Plan submitted under parent application ABP-305186-19. The proposed amendments do not alter the impacts of the development, given the relatively minor nature of the scale of the modifications proposed. As noted previously, should the Board be minded to grant permission, a condition requiring compliance with parent permission ABP-305186-19 is recommended.

7.4. Other Matters

Project Splitting

- 7.4.1. Solar farms are not listed as a class of development for the purposes of EIA within the Planning and Development Regulations, 2001 (as amended), therefore an EIAR is not required. I note that a similar conclusion has been reached by the Board on other solar farm developments. Project splitting to avoid EIA therefore does not arise as an issue.

Cumulative Impacts

- 7.4.2. Potential impacts of the overall development, namely the entirety of the solar farm, and consideration of solar farms in the wider area has been considered in so far as it is required within the NIS, and in documentation accompanying the application and I am satisfied that the Board has the necessary information before it to allow for a cumulative assessment of the environmental impacts for the overall development.

Validity of the Application

- 7.4.3. In terms of procedural matters and the alleged irregularities, I note that matters were addressed and considered acceptable by the planning authority. I am satisfied that this did not prevent any concerned party from making representations. The above assessment represents my consideration of all planning issues material to the proposed development.

8.0 Appropriate Assessment Stage 1 Screening and Stage 2 AA

8.1. Compliance with Article 6(3) of the Habitats Directive

- 8.1.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.1.2. The proposed development comprises modifications to a permitted solar farm development. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).
- 8.1.3. The application is accompanied by a Natura Impact Statement (NIS) prepared by MKO dated 15th March 2023. It contains a description of the proposed development, the project site and the surrounding area. It contains a Stage 1 Screening Assessment in an appendix to the document. It outlines the methodology used for

assessing potential impacts on the habitats and species within European Sites that has the potential to be affected by the proposed development. It predicts the potential impacts for Cork Harbour SPA and its conservation objectives (section 5), it suggests mitigation measures (section 5), and assesses cumulative effects (section 7).

- 8.1.4. Having reviewed the documents and submissions I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development alone, or in combination with other plans and projects on European sites. This is supported within the accompanying report submitted by ABP Ecologist Dr. Maeve Flynn (dated 26.06.24), which is attached under separate cover.

8.2. Stage 1 AA Screening

- 8.2.1. The applicants AA Screening Report concluded that 'It cannot be excluded beyond reasonable scientific doubt, in view of best scientific knowledge, on the basis of objective information and in light of the conservation objectives of the relevant European sites, that the modifications to the design and layout of the permitted solar farm, individually or in combination with other plans and projects, would be likely to have a significant effect on the Cork harbour SPA [004030]'.
- 8.2.2. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

Background and Description of the Application

- 8.2.3. I note the habitats recorded on the site of the solar farm include, as per the submitted EclA (see habitat map, figure 5-1) primarily Improved Agricultural Grassland (GA1), with areas of Hedgerows (WL1), Treelines (WL2) and dirt tracks classified as Spoil and bare ground (ED3) (see Figure 5-1, Habitat Map, within the EclA).
- 8.2.4. There are no annex 1 habitats on the site and no areas of significant wetland suitable for supporting wintering birds related to Cork Harbour SPA.
- 8.2.5. The South Ballinrea Stream flows along the eastern boundary of the site. A small unnamed stream flows from north to south through the eastern section of the site,

before discharging to the South Ballinrea Stream on the eastern boundary of the site. A number of Drainage ditches (FW4) are also present throughout the site, which ultimately discharging to the South Ballinrea stream.

8.2.6. The South Ballinrea stream discharges into the Owenboy river approx. 2.9 km to the south of the proposed development site and ultimately discharges to Cork Harbour, which is designated as Cork Harbour SPA, approximately 7 km downstream of the site.

8.2.7. Wintering bird surveys were undertaken over six dates, at alternate high/low tides, within two hours of high/low tide: the 14th of October 2022, the 8th of November 2022, the 6th of December 2022, the 18th of January 2023, the 17th of February 2023, and the 1st of March 2023. Reference is also made to the EclA submitted with the parent solar farm application, where following field survey during April/May one curlew was observed foraging on the site. The bird surveys undertaken as part of this application identified curlew, black-headed gull, golden plover and lapwing utilising the site for foraging, and were recorded as using the site either on occasion or in relatively small numbers. These species are listed as SCIs for Cork Harbour SPA and are also are listed on the Birds of Conservation Concern Ireland (BOCCI) (2020 – 2026) red list. The site provides some suitable foraging habitat in the form of agricultural grassland for these species.

8.3. Potential Impact Mechanisms from the Project

8.3.1. The proposed development will occur primarily on improved grassland. The watercourse identified on site has an indirect link to Cork Harbour SPA via the Ballinrea Stream, to which the development lands drain. Following the precautionary principle, a potential pathway for indirect effects on Cork Harbour SPA is identified due to deterioration of water quality arising from construction works associated with the proposed amended layout and design.

8.3.2. Low numbers of bird species associated with the SPA were recorded on the site of the permitted solar farm, including the area of the proposed modifications, during winter bird surveys, therefore an indirect link exists in relation to ex-situ effects.

8.3.3. I have considered links to other European sites, specifically Great Islands Channel SAC. There is no hydrological connectivity between the proposed development site and the SAC and given the nature and scale of the works, the distance between the

development and the SAC, and the absence of connectivity, no potential for indirect effects on the SAC were identified.

8.3.4. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on the European site of Cork Harbour SPA:

- Surface water pollution during construction and operation.
- Ex-situ habitat loss and disturbance/displacement of SCI bird species during construction and operation.

8.4. European Sites and Identification of Likely Significant Effects

8.4.1. There is one European site within the zone of influence and the following table highlights the potential for connectivity and likely significant effects.

Table 1 Could the project undermine the conservation objectives 'alone'				
European Site(s)	Qualifying interest/features	Potential Impact	Impact pathway/Zone of influence	Screening Conclusion
Cork Harbour SPA (004030)	<p><u>Objective:</u> to maintain the favourable conservation status of species of community interest. See www.NPWS.ie for list of attributes and targets.</p> <p><u>Objective in relation to Wetlands:</u> To maintain the favourable conservation condition of the wetland habitat in Cork Harbour SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.</p> <p><u>Qualifying Interests:</u> Little Grebe (<i>Tachybaptus ruficollis</i>) [A004]</p>	<p>Pollution from surface water run-off;</p> <p>Disturbance of SCI bird species (ex-situ).</p>	<p>Distance: c.3.5km at its closest to SPA to the northeast and c.5km to the southeast.</p> <p>Indirect links: -The proposed modifications will include works along the eastern site boundary of the proposed development site, in close proximity to the South Ballinrea stream, including excavation of trenches to facilitate the laying of underground cables. There is an indirect hydrological connectivity between the proposed development site and Cork Harbour SPA via the South Ballinrea</p>	Screened in.

Great Crested Grebe (Podiceps cristatus) [A005]		stream which rises within the site, and discharges into the Owenboy River approx. 2.9 km downstream. From here the Owenboy river discharges into the Cork Harbour SPA, approx. 4.1 km downstream. An impact on the wetlands of Cork Harbour SPA through a deterioration of water quality could have a significant indirect effect on SCI bird species.	
Cormorant (Phalacrocorax carbo) [A017]			
Grey Heron (Ardea cinerea) [A028]			
Shelduck (Tadorna tadorna) [A048]			
Wigeon (Anas penelope) [A050]			
Teal (Anas crecca) [A052]			
Pintail (Anas acuta) [A054]			
Shoveler (Anas clypeata) [A056]			
Red-breasted Merganser (Mergus serrator) [A069]			
Oystercatcher (Haematopus ostralegus) [A130]			
Golden Plover (Pluvialis apricaria) [A140]			
Grey Plover (Pluvialis squatarola) [A141]			
Lapwing (Vanellus vanellus) [A142]			
Dunlin (Calidris alpina) [A149]			
Black-tailed Godwit (Limosa limosa) [A156]			
Bar-tailed Godwit (Limosa lapponica) [A157]			
Curlew (Numenius arquata) [A160]			
Redshank (Tringa totanus) [A162]			
		-Indirect potential during construction/operation for disturbance of ex-situ SCI bird species which have been recorded utilising the site, namely Curlew, black-headed gull, lapwing, and golden plover.	

	Black-headed Gull (Chroicocephalus ridibundus) [A179] Common Gull (Larus canus) [A182] Lesser Black-backed Gull (Larus fuscus) [A183] Common Tern (Sterna hirundo) [A193] Wetland and Waterbirds [A999]			
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Mitigation Measures

- 8.5.1. No measures designed or intended to avoid or reduce any harmful effects of the project on a European site have been relied upon in this screening exercise.

Screening Determination

- 8.5.2. Having regard to the information presented in the Screening Report, the submissions and observations, the nature, size, scale and location of the various elements of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of ecological receptors, I consider that the applicant has identified all European sites that could be significantly impacted.
- 8.5.3. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European site no. 004030 (Cork Harbour SPA), in view of the sites' Conservation Objectives and therefore Appropriate Assessment (and submission of a NIS) is required.

8.6. The Natura Impact Statement

- 8.6.1. The NIS submitted was prepared by MKO Planning and Environmental Consultancy and is dated 15.03.23. It examines and assesses potential adverse effects of the

proposed development on one designated European Site, Cork Harbour SPA (004030). An assessment of the adequateness of the information submitted for the purpose of AA (including PA reason for refusal and 1st party appeal) has been undertaken by ABP Ecologist, Dr. Meave Flynn and is included under separate cover to this report.

8.6.2. A description of the site and its Conservation Objectives and Qualifying Interests are set out in the NIS and are summarised above in table 1. I have also examined the Natura 2000 data forms as relevant and relevant Conservation Objectives Supporting Documents for these sites available through the NPWS and European websites (www.npws.ie and <https://natura2000.eea.europa.eu>).

8.6.3. The NIS is supported by associated reports submitted with the application, including inter alia:

- Ecological Impact Assessment
- Wintering and Breeding Bird Surveys (2022/23)
- Construction and Environmental Management Plan

8.6.4. Section 5 of the NIS contains an assessment of the potential impacts of the proposed development on the identified European site and identifies a series of mitigation measures and best practice measures which have been integrated into the design and into the Construction and Environmental Management Plan, which has a focus on water quality and management of potentially polluting substances.

8.6.5. The NIS concludes that:

Where the potential for any adverse effect on any European Site has been identified, the pathway by which any such effect may occur has been robustly blocked through the use of avoidance, appropriate design and mitigation measures as set out within this report and its appendices. The measures ensure that the construction and operation of the proposed development does not adversely affect the integrity of European sites.

Therefore, it can be objectively concluded that the proposed development, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Site.

8.6.6. Having reviewed the NIS, all supporting documentation and submissions, and having regard to the report from ABP Ecologist Dr. Maeve Flynn (dated 26.06.24), I am satisfied that the information presented allows for a complete assessment of any adverse effects of the proposed development on the conservation objectives of the above-mentioned European site alone, or in combination with other plans and projects.

8.7. **Appropriate Assessment of Implications of the Proposed Development**

8.7.1. The following is an assessment of the implications of the project on the relevant conservation objectives of the European site using the best available scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are examined and assessed. I have relied on the following guidance:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service. Dublin
- EC (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC.

8.7.2. The Qualifying Interests (QIs)/Special Conservation Interests (SCIs) below have been selected on the basis of, inter alia, identified source-pathway-receptors and knowledge in relation to the roosting and foraging preferences of the bird species in question, including consideration of ex-situ habitats, in addition to the ornithological survey results accompanying the application. Those SCIs of Cork Harbour SPA excluded from further assessment are dependent on coastal habitats such as estuaries and mudflats, which were not recorded within or adjacent to the proposed development site.

Table 2: Assessment of selected QIs of Cork Harbour SPA based on source-pathway-receptor connections.

European Site	Distance	Selected QIs for assessment on basis of identified source-pathway-receptor [hydrological pathway and/or foraging distance of birds]	Targets for achieving Conservation Objectives
<p>Cork Harbour SPA [004030]</p> <p>Conservation Objective:</p> <p>To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA (see NPWS for list of attributes and targets)</p>	<p>c.3.5km northeast and 5km southeast</p>	<p>[A179] Black-headed Gull</p> <p>[A160] Curlew</p> <p>[A130] Oystercatcher</p> <p>[A183] Lesser Black-backed Gull</p> <p>[A182] Common Gull</p> <p>[A142] Lapwing</p> <p>[A140] Golden Plover</p> <p>[A999] Wetlands</p>	<p><u>Targets for QI Birds:</u></p> <p>Long term population trend stable or increasing; No significant decrease in the range, timing or intensity of use of areas by the QI, other than that occurring from natural patterns of variation.</p> <p><u>Target for QI Wetlands:</u> The permanent area occupied by the wetland habitat should be stable and not significantly less than the area of 2,587 hectares, other than that occurring from natural patterns of variation.</p>

8.7.3. A description of the sites, their Conservation Objectives and Qualifying Interests (QIs)/Special Conservation Interests (SCIs), including any relevant attributes and targets for the site, are set out in the NIS and summarised in Tables 1 and 2 of this

report as part of my assessment. Section 5 of the NIS assesses each attribute and target of the identified relevant SCIs of Cork Harbour SPA, identifying potential impacts on the specific SCIs and where mitigation is required. The table above (table 2) identifies those SCIs which have the potential to be affected and which require further examination.

Submissions and Observations

8.7.4. Following receipt of FI and CFI, the PA recommended refusal as follows:

The Planning Authority is not satisfied based on the information submitted with the planning application that the applicant has demonstrated that the proposed development would not have significant adverse impacts upon the sensitive bird species during the breeding season and upon the waterbird species listed for Cork Harbour SPA (Site Code: 004030). Therefore, the granting of permission for this development at this time would not be in accordance with the policy objective indicated in the Cork City Development Plan 2022 - 2028, namely Objective 6.23 for the protection of Designated Sites and Protected Species. The development, if permitted would therefore be contrary to the proper planning and sustainable development of the area.

8.7.5. I have addressed in section 7 above issues in relation to breeding birds. I address hereunder the issue of impacts on the waterbird species listed for Cork Harbour SPA.

Cork Harbour SPA

8.7.6. This SPA is a large, sheltered bay system, with several river estuaries - principally those of the Rivers Lee, Douglas, Owenboy and Owennacurra. The SPA site comprises most of the main intertidal areas of Cork Harbour, including all of the North Channel, the Douglas River Estuary, inner Lough Mahon, Monkstown Creek, Lough Beg, the Owenboy River Estuary, Whitegate Bay, Ringabella Creek and the Rostellan and Poul nabibe inlets.

Deterioration in Water Quality

8.7.7. The lands drain from the site to Ballinrea Stream, which is located along the eastern boundary of the site. This stream ultimately drains to Cork Harbour SPA.

8.7.8. Taking into account the measures set out relating to prevention of water pollution and surface water management as described in the submitted documentation,

CEMP and outline Construction Methodology, as well as in the submitted NIS (section 5 and 6), it may be concluded that following the implementation of mitigation, the construction and operation of this proposed development will not adversely affect the integrity of Cork Harbour SPA and no reasonable doubt remains as to the absence of such effects.

Habitat and Species Disturbance

- 8.7.9. Curlew, black-headed gull, lapwing, and golden plover were recorded foraging either occasionally or in relatively small numbers, as per the wintering bird surveys undertaken, and these birds are associated SCI species of Cork Harbour SPA. The proposed development site is located outside the core foraging range of these birds, however, it is located within the maximum foraging range for golden plover. Tables 6.1 to 6.8 of the submitted NIS consider the attributes and targets of each of these bird species and of the Wetlands QI associated with Cork Harbour SPA.
- 8.7.10. With regard to the issue of habitat, the optimal habitats of the SCI bird species listed above are typically coastal or upland areas with open habitats and different sward heights. The wetland habitats of Monkstown Creek and Owenboy Estuary are suitable habitats for these species, which are well utilised, rather than the grassland habitat of the site.
- 8.7.11. The PA in its reason for refusal states it is not satisfied that the proposed development would not have significant adverse impacts upon the waterbird species listed for Cork Harbour SPA (Site Code: 004030). ABP Ecologist, Dr. Maeve Flynn, has reviewed the evidence and assessment presented by the applicants ecologist and by the planning authority ecologist (see report attached under separate cover, dated 26.06.23):

The overarching objectives for all the species recorded on the site is to maintain the favourable conservation status. To achieve this the population trend should be stable or increasing and there should be no significant decrease in the range timing or intensity of use of areas (within the SPA) other than that occurring from natural patterns of variation. Of relevance is the supporting document for conservation objectives which provides additional detail with particular reference to ex situ sites and their relevance to supporting the functions of the SPA.

Ex-situ factors: several of the listed waterbird species may at times use habitats situated within the immediate hinterland of the SPA or in areas outside of the SPA but ecologically connected to it. The reliance on these habitats will vary from species to species and from site to site. Significant habitat change or increased levels of disturbance within these areas could result in the displacement of one or more of the listed waterbird species from areas within the SPA, and/or a reduction in their numbers.

In terms of wintering birds and the use of the site as an ex-situ site for SCI bird species of Cork Harbour SPA, I consider that the applicant has demonstrated that the site is part of the wider network agricultural land that is utilised occasionally for foraging/ commuting by species including Curlew, Golden Plover, Lapwing, and black headed gull. Having reviewed the documentation, I agree with the rationale put forward by MKO ecologists.

I consider that (a) the proposed modifications to the permitted solar farm do not significantly alter the availability of grassland on this site and (b) overall, the loss of foraging area for wintering birds alone or in combination with other permitted solar farms in the area is not significant given the widespread availability of similar habitat throughout the area. While the proposal may result in localised displacement of low numbers of wintering SCI birds, such disturbance and habitat change is highly unlikely to result in displacement of the listed waterbird species from areas within the SPA as referenced in the conservation objectives supporting document and thus I concur with the findings that the proposal will not undermine the conservation objectives of the Cork Harbour SPA and adverse effects on site integrity can be excluded.

8.7.12. As reiterated by ABP Ecologist, and as demonstrated in the submitted documentation, as well as witnessed following site inspection, the site where the modifications are proposed and to which the overall extant permission applies is a highly managed agricultural habitat with low biodiversity value. The likelihood of impacts on protected species is low, as was the case when this issue was considered under the parent application. There has been no material alteration to the existing habitat in the intervening period of that assessment and this assessment. Due to the uniform sward height across the site and continuous disturbance from farming practices, the proposed development site does not provide optimal habitat for the QI species in question. Furthermore, the proposed

amendments do not result in any significant environmental impacts, alone or in combination with permitted or other developments.

8.7.13. With regard to breeding bird species, the proposed modifications do not affect hedgerows with the site and there is very limited potential for sensitive ground nesting bird species in the grass sward.

8.7.14. Overall, given the distance of the development site from the SPA, the nature of the habitat in question and its agricultural use, the abundance of similar habitat in the wider area, and the results of the wintering bird surveys which are proportionate to the site circumstances, I am satisfied that the construction and operation of this proposed development will not adversely affect the integrity of Cork Harbour SPA and no reasonable doubt remains as to the absence of such effects.

Mitigation Measures Proposed

8.7.15. As referenced above, Section 5 and 6 of the NIS details mitigation measures to be employed during the construction, which are considered to represent best practice construction measures. Measures to be implemented during the construction phase are set out in Construction and Environmental Management Plan and will be implemented by an appointed Environmental Manager.

8.7.16. No mitigation measures are proposed in relation to habitat loss or disturbance/displacement as they are not deemed to be required given the proposal will not result in significant loss of ex-situ habitat for SCI species associated with Cork Harbour SPA, given the minor nature of the works proposed, the distance of the proposed development site from the SPA, and the abundance of similar habitat in the wider landscape. However, best practice disturbance measures will be adhered to during construction of the proposed modifications to the design and layout of the permitted solar farm.

8.7.17. The conservation objectives, targets and attributes as relevant to the identified potential adverse effects have been examined and assessed in relation to all aspects of the project (alone and in combination with other plans and projects). Mitigation measures proposed to avoid and reduce impacts to a non-significant level have been assessed.

8.7.18. I am satisfied that the implementation of the suite of mitigation measures outlined in the NIS and CEMP will ensure that no adverse effects on the conservation objectives

of the Cork Harbour SPA will arise during the construction and operational stages of the proposed development, including the potential for run-off of sediment/hydrocarbons into any of the watercourses present on site, and no significant loss of foraging area for wintering birds alone or in combination with other permitted solar farms in the area given the widespread availability of similar habitat throughout the area, therefore the proposed development will not undermine the conservation objectives of the Cork Harbour SPA and adverse effects on site integrity can be excluded.

In-combination effects with plans, projects and activities

8.7.19. In terms of possible in-combination effects, plans, programmes and existing and permitted developments were considered.

8.7.20. The NIS concludes in terms of Cumulative Impact that:

In the review of the projects that was undertaken in Section 7.2 above, no connection that could potentially result in additional or cumulative impacts was identified. Neither was any potential for different (new) impacts resulting from the combination of the various projects and plans in association with the proposed development.

Taking into consideration the reported residual impacts from other plans and projects in the area and the predicted impacts with the current proposal, no residual cumulative impacts have been identified with regard to any European Site.

8.7.21. I am satisfied that existing and permitted developments have been considered in the submitted application, including the extant permission related to this application, and potential for in-combination impacts arising from this proposed development do not arise.

8.7.22. This complete assessment allows for clear, precise and definitive conclusions to be reached in terms of adverse effects on the integrity of European sites.

8.7.23. I do not consider that there are any specific in-combination effects that arise from other plans or projects. The NIS considered the combined impacts of the overall development proposal on the site. I consider that any potential for in-combination effects on water quality and potential for habitat disturbance/displacement of SCIs of Cork Harbour SPA is negligible. Furthermore, other projects within the area, which

can influence water quality via rivers and other surface water features, are also subject to AA.

Appropriate Assessment Conclusion

- 8.7.24. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that the likelihood of significant effect on the Cork Harbour SPA (004030) could not be excluded.
- 8.7.25. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of that site in light of its conservation objectives.
- 8.7.26. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site no. 004030 (Cork Harbour SPA), or any other European site, in view of the sites Conservation Objectives. This conclusion is based on a full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the conservation objectives of the Cork Harbour SPA (004030), detailed assessment of in combination effects with other plans and projects, and current proposals, and there is no reasonable scientific doubt as to the absence of adverse effects on the integrity of the Cork Harbour SPA (004030). This is consistent with the findings of the submitted NIS.

9.0 Recommendation

I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

10.0 Reasons and Considerations

Having regard to:

- national and regional policy objectives in relation to renewable energy,
- the provisions of Cork City Development Plan 2022 – 2028,
- the nature, scale, extent and layout of the proposed development,

- the topography of the area,
- the existing hedging and screening on the site,
- the pattern of development in the area,

it is considered that, subject to compliance with the conditions set out below, the proposed development would support national and regional renewable energy policy objectives, would not conflict with the provisions of the Cork City Development Plan 2022-2028, would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity, would not be likely to have significant effects on the environment, or the ecology of the area, and would not give rise to increased risk of flooding of the site or 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, as amended by the further plans and particulars submitted to the planning authority on the 06th day of September 2023 and on the 24th day of November 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 the development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 28/11/2019, reference ABP-305186-19, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including those set out in the Natura

Impact Statement (dated 15th March 2023), and Ecological Impact Assessment (dated 15th March 2023), 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.

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

4. The developer shall submit a Biodiversity Management Plan, which shall have regard to BRE (2014) Agricultural Good Practice Guidance for Solar Farms and BRE (2014) Biodiversity Guidance for Solar Developments, and which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details to address management of grazing within the site of the solar farm having regard to the need to support species rich meadows/grasslands, breeding bird species, and wintering farmland birds and waterbirds.

Reason: To protect site biodiversity.

5. (a) No artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission.
(b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road.
(c) Cables within the site shall be located underground.
(d) The inverter/transformer stations shall be dark green in colour.

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

6. All road surfaces, culverts, watercourses, verges and public lands shall be protected during construction and, in the case of any damage occurring, shall be reinstated to the satisfaction of the planning authority.

Reason: In order to ensure a satisfactory standard of development.

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

development, including but not limited to, hours of working, noise and dust management measures, surface water management proposals, the management of construction traffic and off-site disposal of construction waste.

Reason: In the interests of public safety, residential amenity and protection of the environment.

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

Reason: To ensure satisfactory reinstatement of the site.

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.

Una O'Neill
Senior Planning Inspector

27th June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318925-24			
Proposed Development Summary	Modifications to permitted solar farm and all associated site works. A Natura Impact Statement (NIS) has been prepared in respect of the proposed development and the NIS will be submitted to the planning authority with the application.			
Development Address	Ballinvuskig, Douglas, Cork			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	x	
		No		
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?				
Yes			EIA Mandatory EIAR required	
No		No	Proceed to Q.3	
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]?				
		Threshold	Comment (if relevant)	Conclusion
No				No EIAR or Preliminary Examination required
Yes		Solar energy development is not listed as a class of development for the purposes of EIA under Part 2 of Schedule 5, within the Planning		Proceed to Q.4

		and Development Regulations, 2001 (as amended). Having regard to the purpose, nature and to the limited extent of the works, the proposed development would not constitute rural restructuring under Class 2 of Part 2 of Schedule 5 or relate to private roads under Class 10 of Part 2 of Schedule 5		
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4. Has Schedule 7A information been submitted?		
No	N/A	Preliminary Examination required
Yes	N/A	Screening Determination required

Inspector: _____ Date: _____