



An
Bord
Pleanála

Inspector's Report ABP-319406-24

Question	Whether the proposed 38kV underground electrical connection between the consented Slanemore Solar Farm (Westmeath County Council PL. Ref. 17/6028 & 17/6224) and ESB Mullingar existing sub-station located at Mullingar Substation, Co. Westmeath is or is not development or is or is not is not exempted development.
Location	Slanemore, Mullingar, Co. Westmeath
Declaration	
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	S5-16-23
Applicant for Declaration	Grian PV Ltd.
Planning Authority Decision	Not exempted development
Referral	
Referred by	Grian PV Ltd.
Owner/ Occupier	Aidan & Conchita Rooney Westmeath Co Co.
Observers	None
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. This is a request for a declaration on development and exempted development for a proposed 38kV underground electrical connection between the consented Slanemore Solar Farm (Westmeath County Council PL. Ref. 17/6028 & 17/6224) located c4km north-west of Mullingar Co. Westmeath and Mullingar ESB sub-station about half a kilometre north of the built-up area of the town.
- 1.1.2. The proposed development comprises an underground grid cabling (UGC) route, extending for 4.995 km: 700m within agricultural land and 4,295m within public roads. The route extends from the yet to be constructed solar farm in the townland of Slanemore at its western end to an ESB 110kV substation in the townland of Irishtown at its eastern end.
- 1.1.3. The route extends across agricultural lands, joining the regional road R393 west of Walshestown graveyard. It then continues in a south-easterly direction along the R393 for about 3 km. At Irishtown it join local road L5802, for 1.3km: on which the substation is located.
- 1.1.4. The area around Slanemore is elevated relative to the town of Mullingar and areas to the north-east, east and south-east.
- 1.1.5. Along the R393, the route passes the water storage plant for Mullingar: Ardonagh reservoir. It also passes Walshestown church and graveyard, and a number of archaeological sites. Along both the Regional road and the local road there are farms and one-off housing.
- 1.1.6. Slanemore Solar Farm was granted planning permission under Refs 17/6028 & 17/6224. In accordance with Group processing principles set out by the Commission for Energy Regulation (CER), ESB Networks as the Distribution System Operator, in Slanemore Solar Farm's ESB Networks Connection Agreement, specified that the connection method should be via a new dedicated 38kV connection from the Slanemore Solar Farm site to the existing 110 KV Substation.
- 1.1.7. The route passes through the townlands of Slanemore, Walshestown North, Walshestown South, Tullaghan and Irishtown.
- 1.1.8. About 300m to the east of where the proposed route joins the public road there is another proposed underground cable route for a nearby permitted solar farm at

Clondardis and Slanemore Townlands, Walshestown; in respect of which a similar question was posed and referred to the Board under ref. 307927-20.

- 1.1.9. A cable route for a proposed 140 hectare solar farm east of Ballinacarrigy, currently before the Board under ref. 320999, also runs along these public roads.

2.0 The Question

- 2.1.1. The question, the subject of the referral, is the Section 5 declaration request to Westmeath County Council, which was lodged on the 13th June 2023. The question put before Westmeath County Council was as follows:

Request for declaration on development and exempted development for the proposed 38kV Underground Electrical Connection between the consented Slanemore Solar Farm WCC PI. Ref. 17/6029 & 17/6224 and ESB Mullingar existing Sub-Station located at Mullingar Substation Co Westmeath.

- 2.1.2. The planning authority changed the wording to:

‘Whether a 38kV Underground Electrical Connection between the consented Slanemore Solar Farm WCC PI. Ref. 17/6029 & 17/6224 through the townlands of Slanemore, Walshestown North, Walshestown South, Tullaghan and Irishtown to the existing ESB Sub-Station located at Mullingar Substation Co Westmeath is or is not development and if it constitutes development, whether or not such development constitutes exempted development’.

- 2.1.3. The documentation submitted includes the following:

- Development Drawings,
 - Appropriate Assessment Screening Report,
 - Consent letters from third-party landowner and the applicant,
 - Construction Method Statement,
 - ESB Networks Specification for the Installation of Ducts & Structures for Underground 38kV Power Cables & Communications Cables,
- ESBN drawings.

2.1.4. Further information was requested 29th August 2023 and following the applicant's response, a further request for information issued 17th November 2023. This request was responded to by e-mail 5th February 2023.

2.1.5. The proposed development comprises an underground grid cabling (UGC) route, extending for 4.995 km, 700m within agricultural land and 4,295m within public roads. The proposed electrical connection is to be constructed by Grian PV Limited, to the requirements and specifications of ESB Networks such that the connection would be taken over by ESB Networks prior to energisation. Once taken over by ESB Networks, the asset will be owned, operated and maintained by the semi-state body.

The 38kV underground power cable construction type is 38kV XLPe cable, to be ducted according to ESB Networks Standard Specification for ESB 38kV Networks Ducting / Cabling.

The 38kV power cable will be laid in a cable trench according to:

- ESNB Drawing: 38kV Single Circuit Standard Trench Cross – Section 3.5 on page 10 of the ESB Networks specification document, and
- ESNB Drawing: 38kV Single Circuit Joint Bay - Section 3.6 on page 10 of the ESB Networks specification document.

There will be 8 joint bays along the 4.995 km underground 38kV route (JOD drawing 6973-S5-100 Overall Location Plan). The joint bays are standard ESB Networks 38kV design.

AA

2.1.6. A screening for AA report is provided concluding that there is no potential for significant effects due to the scale of the project, implementation of best practice, and the distance and lack of ecological connectivity with any Natura 2000 sites

2.1.7. EIA - The proposal does not come within the scope of Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations, 2001 (as amended). It is not a class for the purposes of EIA.

3.0 Planning Authority (PA) Declaration

3.1. Declaration

- 3.1.1. On the 28th February 2024, Westmeath County Council issued a decision declaring that it is development and is not exempted development, having regard to the provisions of Article 9(1)(a)(vii) and (viiA) of the Planning and Development Regulations 2001 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first planning report, 25th August 2023, recommended a request for further information, which issued 29th August 2023. The report:

refers to the AA screening report and its conclusions and states 'having regard to the nature and siting of the works proposed and the contents of the submitted AA screening report, the proposed works would not give rise to significant adverse direct, indirect or secondary impacts on the integrity of any nearby Natura 2000 sites having regard to their conservation objectives.

notes the application statement that 'there are 4 recorded monuments located within 100m of the proposed grid connection. There are no recorded archaeological sites on the footprint of any of the underground cable route', and further that 'no impacts on the archaeological features of the area are predicted.' The PA note that recorded monuments Ref WM018-085001- barrow – ring barrow, Ref WM018-085002 – enclosure, Ref WM018-085003 - barrow – mound barrow, and Ref WM019-087 – ringfort – rath, are located in close proximity to the application site. The location and proximity of recorded monuments to the proposed works indicates potential for subsurface archaeological remains across the site and surrounding environs. Due to the nature and magnitude of the construction works required, including excavation works along a total route of 4.995km, there is a risk of potential impacts on subsurface archaeology.

- 3.2.2. The further information request includes:

The high concentration of recorded monuments within close proximity to the application site, including recorded monument Ref WM018-085001- barrow – ring barrow, Ref WM018-085002 – enclosure, Ref WM018-085003 - barrow – mound barrow and Ref WM019-087 – ringfort – rath indicates potential for subsurface archaeological remains across the site and surrounding environs. Due to the nature and magnitude of the construction works required, including excavation works along a total route of 4.995km, there is a risk that works may result in the excavation or alteration of in-situ features or other objects of archaeological interest. Having regard to the provisions of Articles 9(1)(a)(vii), of the Planning and Development Regulations 2001 (as amended), the applicant is requested to submit an archaeological Impact Assessment which shall address the following matters:

- a) the applicant is required to engage the services of a suitably qualified archaeologist to carry out an archaeological assessment of the development site. No sub-surface developmental work, including geotechnical test pits, should be undertaken until the archaeological assessment has been completed and commented on by this office.
- b) The archaeologist shall carry out any relevant documentary research and inspect the development site. As part of the assessment a programme of test excavation shall be carried out at locations chosen by the archaeologist licensed under the National Monuments Acts 1930-2004).
- c) Having completed the work, the archaeologist shall submit a written report stating their recommendations to the Planning Authority. Where archaeological material / features are shown to be present, preservation in situ, preservation by record (excavation) or monitoring may be required.

3.2.3. Other Reports

3.2.4. Municipal District Engineer Mullingar / Kinnegad, 17 October, 2023, directly to applicant:

Road opening licence will be required.

3.2.5. National Monuments Service, 26 October, 2023, directly to applicant:

The Department has reviewed the archaeological assessment carried out and concurs with the recommendations.

The proposed UGC route travels along the existing road network that dissects the Recorded Monument ringfort WM019-087. A Section 12 notification notice will have to be submitted to the National Monuments, Dept of Housing, Local Government and Heritage (National Monuments (amendment) Act, 1994 section 12 (3) and Section 5 (8) of the 1987 Act (Register of Historic Monuments), at least 2 months before any work is carried out at an archaeological / historic structure or site included in the Record of Monuments and Places or Register of Historic Monuments.

- The proposed development contains the site of recorded monument - ringfort WM019-087 and is in proximity to recorded monuments WM018-085001 - WM018-085003 all of which are subject to statutory protection in the Record of Monuments and Places, established under A Section 12 of the National Monuments (Amendment) Act, 1994. Given the scale, extent and location of the proposed development it could impact on subsurface archaeological remains.
- In line with national policy, (sec 3.6 of the Frameworks and Principles for the Protection of the Archaeological Heritage 1999, the Department recommends that an Archaeological Impact Assessment, as outlined below, should be prepared to assess any impact on archaeological remains within the proposed development site. This assessment should be carried out as a condition of any grant of planning permission.

Conditions:

1 The applicant is required to engage the services of a suitably qualified archaeologist to carry out an archaeological assessment of the development site.

2 The archaeologist shall carry out any relevant documentary research and inspect the development site. Where the development crosses green fields (off road alignment) as part of the assessment a programme of test excavation shall be carried out at locations chosen by the archaeologist (licensed under the National Monuments Acts 1930-2004), having consulted the site drawings and the National Monuments Service.

3 All ground works associated with the proposed development shall be monitored under licence by a suitably qualified archaeologist. Should archaeological material be found during the course of the works, the work on site shall be stopped pending a

decision on how best to deal with the archaeology. The developer shall be prepared to be advised by the National Monuments Service with regard to any necessary mitigating action (e.g. preservation in situ, or excavation) and should facilitate the archaeologist in recording any material found.

4 Having completed the work, the archaeologist shall submit a written report stating their recommendations to the Planning Authority and to the National Monuments Service. Where archaeological material / features are shown to be present, preservation in situ, preservation by record (excavation) or monitoring may be required.

Following the further information request a similar letter was submitted to the applicants, on 29th January 2024, and forwarded to the PA on 5th February 2024.

4.0 Planning History

The solar farm associated with the referral:

23/60200 permission granted 8/23/2024 for an amendment planning application, previously granted permission under references PL/17/6028 & PL/17/6224 in the townland of Slanemore, Mullingar, Co Westmeath. The proposed amendments to the previously consented solar farm include: provision of a new 38kV on-site substation control building & compound; reconfiguration of consented solar array to optimise layout; reconfiguration of internal maintenance/access roads; provision of a new access from the R393 Regional Road; and adjustments to the red line boundary to cater for the new access and access track.

PA Reg. Ref. 17/6224 10 year permission granted for development to consist of a proposed 4.392MW extension to an approved solar farm (ref 17/6028). The proposed extension will comprise of photovoltaic panels on ground mounted frames with associated infrastructure including 2 no. inverter cabins, temporary construction compound, ducting and electrical cabling, perimeter agricultural fencing, mounted CCTV cameras and internal access tracks.

PA. Reg. Ref. 17/6028 Permission granted in May 2017 for a 12.458 MW solar farm on 21.35 hectares of land.

Condition no. 2 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.

Relevant planning history in the vicinity:

307927 - PA Reg Ref S5-9-20, section 5 referral by Harmony Solar Mullingar Limited of the question of whether the provision of a circa 5.1 km underground grid connection is or is not development or is or is not exempted. The Board decided it was development and exempted development.

P.A. Reg. Ref. 23/60306 - permission refused 11/11/2023, to WEP Storage Ltd, for development to consist of amending the existing granted application (Planning Reference 18/6215), for a Battery Storage Facility; including:

- (1) re-location of 3No. Battery Containers, 3No. HVAC units and 3No. Combined Power Conversion Systems and Transformers and
- (2) the project lifetime is proposed to be extended from 5 to 10 years.

Refusal reasons:

- 1. deficiencies in provision of up-to-date information provided in association with the proposed development, in particular the lack of information in relation to Ecology, Construction Environment Management Plan, (CEMP), Flood Risk Assessment, Transportation, Surface Water Drainage, Noise, Archaeology and Appropriate Assessment.
- 2. the applicant has not demonstrated to the satisfaction of the Planning Authority that the proposal, in absence of mitigation, would not adversely impact upon the conservation objectives of any Natura 2000 sites.

P.A. Reg. Ref. 18/6215 - Permission granted in September 2018 to WEP Storage Ltd, for the construction of an Energy Storage Facility comprising battery containers and associated infrastructure including combined power conversion systems, grid connection compound, electrical substation, transformers and grid compliance

equipment, temporary construction compound, ducting and electrical cabling, fencing, CCTV cameras, landscaping and access tracks.

PL25M.301116, P.A. Ref. 17/6239 - Permission granted, February 2019, to Harmony Solar Mullingar Ltd. for a solar farm with an operational period of 25 years and an output of 21.6MW, involving 71,900 photovoltaic panels on ground mounted steel frames, covering an area of 139,520sqm.

Conditions include:

2 - 10 years for implementation.

3 - 25 years operation.

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

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

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

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

- 71,900 photovoltaic panels on ground mounted steel frames, covering an area of 139,520sqm,

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

Some distance to west. The cable route follows the same route as the route of the subject referral:

320999 – PA Reg Ref No 2460050, a third party appeal, **currently** before the Board, against the decision to grant planning permission to Harmony Solar for development which consists of: a 10-year permission for the development of a solar farm on a site of 140 hectares (the main site is located east of Ballinacarrigy), consisting of the following: 781,578sqm of solar photovoltaic panels on ground mounted steel frames; 17 hardstanding locations for the installation of electrical skids; new internal access tracks; underground power and communications cables and ducts, including along the L-5802, R-393, L-5913, L-1811 and the L-5808 public roads; a new access point and an upgrade to an existing access point along the R-393 public road and a new access point along the L-5808 public road; landscaping and biodiversity enhancement measures; boundary fencing; and all associated ancillary development, site works and services. The solar farm will be operational for 40 years.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Westmeath County Development Plan 2013-2020 is the operative plan. It includes: Transition to a Low Carbon Economy/Green Economy - Economic Development Policy Objectives

CPO 5.51 Ensure that the County is well positioned to capitalise on the economic benefits associated with the transition to a low carbon economy.

CPO 10.52 Safeguard the carrying capacity and safety of the County's regional and local road network.

CPO 5.59 Support Renewable energy initiatives that supports a low carbon transition.

CPO 10.62 Require all applications for significant development proposals affecting Regional or Local Roads to be accompanied by a Traffic and Transport Assessment (TTA) and Road Safety Audit (RSA), carried out by suitably competent persons, in accordance with the TII's Traffic and Transport Assessment Guidelines.

CPO 10.118 Ensure new development is adequately serviced with surface water drainage infrastructure which meets the requirements of the Water Framework Directive, associated River Basin Management Plans and CFRAM Management Plans.

CPO 10.119 Require that planning applications are accompanied by a comprehensive SUDS assessment that addresses run-off quantity, run-off quality and its impact on the existing habitat and water quality

CPO 10.149 Support Ireland's renewable energy commitments outlined in national policy by facilitating solar power where such development does not have a negative impact on the surrounding environment, landscape, historic buildings or local amenities.

CPO 10.150 Encourage and support the development of solar energy infrastructure, including solar PV, solar thermal and seasonal storage facilities.

CPO 12.7 Assess any plan or project in accordance with Article 6 of the Habitats Directive to determine whether the plan or project is likely to have a significant effect on the site either individually or cumulatively upon the integrity, conservation objectives and qualifying interest of any Natura 2000 Site.

P-AH1 To generally preserve in situ all archaeological remains and sites of importance, such as National Monuments, Recorded Monuments, their setting and context and zones of archaeological potential. Within zones of archaeological potential and in the vicinity of Recorded Monuments, development shall only be

permitted where the Council considers the importance of the proposed development or other material considerations outweigh the value of the remains in question, in consultation with the National Monument Service.

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

CPO 10.168 Support and promote the sustainable improvement and expansion of the electricity transmission and distribution network that supply the County, subject to landscape, residential, amenity and environmental considerations.

5.2. Natural Heritage Designations

- 5.2.1. Lough Owel SPA (Site Code: 004047) and Lough Owel SAC (Site Code: 000688), located 0.7km km straight line distance to the north, and Lough Ennell SAC (Site Code: 000685) and SPA (Site Code: 004044), located c. 4.7 km to the south, are the nearest Natura sites.

6.0 The Referral

6.1. Referrer's Case

- 6.2. The 1st party referral was received from Grian PV LTD on the 25th March 2024. Their submission includes: setting out the legislative and planning policy context.
- 6.3. Compliance with Article 9(1) is set out in Table 2.1
- 6.3.1. With regard to the PA's assessment regarding Articles 9(1)(a) (vii) & (viiA):
- The submission received from the Department of Housing, Local Government and Heritage (DPHLG) requested information. Through Time Ltd, was appointed Archaeologist and carried out a site inspection in March 2023, to assess the potential effects on known and unknown archaeological and architectural heritage assets and enable a visual assessment. There are 4 recorded monuments located within 100m. The closest, a ringfort in Walshestown North (WN019-087), is dissected by the R393 roadway.

- The proposed UGC route travels along the existing road network that dissects the Recorded Monument ringfort WM019-087. Any development within this area requires prior notification (8 weeks) to be given to the Department of Housing, Local Government and Heritage. It is recommended that the grid connection be located on the west side of the roadway – furthest away from the remains of the ringfort. It is possible that sub-surface archaeological remains associated with the recorded monument survive in the area of the proposed grid connection at this location. It was recommended that archaeological pre-development testing is undertaken in the area of the proposed grid connection route in the vicinity of the ringfort to ascertain if any sub-surface archaeological layers / features survive. The testing should be undertaken by a licensed archaeologist. A report of the findings with recommendations on how best to proceed, should be submitted to all relevant authorities. If significant archaeological features are uncovered the report may recommend that the area is avoided and / or that further archaeological measures are required.
- Full time archaeological monitoring during construction was recommended along the proposed grid connection route in proximity to the recorded monuments WM018-085001 - WM018-085003. The monitoring should be undertaken by a licensed archaeologist. If archaeological material is encountered work should be stopped and the archaeologist afforded adequate time to record the feature / artefact. A report of the finding, with recommendations on how best to proceed in relation to the archaeology uncovered, should be submitted to all relevant authorities. Archaeological monitoring was also recommended in the area of the proposed grid connection running alongside Walshestown church and graveyard.
- The mitigation strategy recommended was subsequently endorsed by the Department of Housing, Local Government and Heritage. They recommended that archaeological testing in green field areas (off road alignment) be included as part of the Archaeological Impact Assessment and recommended monitoring during construction. Notification for the archaeological works in the vicinity of the ringfort (WM019-087) was submitted to National Monuments in January 2024. Archaeological testing in the vicinity of the ringfort will entail works along the R393 and will require appropriate permissions to enable works to be completed safely.

The Local Authority cite the associated planning history as a reason for refusal. The exemption applied for would not contravene any of these conditions. The grant of permission did not include for the grid connection works. Therefore the cumulative impact of the grid connection works, taken in conjunction with the Solar Farm, was not assessed. However the condition did not explicitly state that permission is required for the grid connection works.

They refer to case ABP 310120-21 and quote from the Inspector's Report.

Other precedent cases referred to are: ABP 21.307927-20; ABP 302895-18; RL3503; and RL3375.

6.4. Planning Authority Response

No response

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 as amended)

Section 2 Interpretation

(1) In this Act, except where the context otherwise requires—

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

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

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

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

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

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

Section 3 Development

- (1) In this Act, except where the context otherwise requires, "development" means—
- (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or
 - (b) development within the meaning of Part XXI¹ⁱ.

Section 4 Exempted development.

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

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

Section 4(2)

- a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—
 - (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development...

Section 4 (4)

¹ Inserted by section 171 of the Maritime Area Planning Act 2021

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

Section 177U(9) screening for appropriate assessment

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

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

- 1) Subject to subsection (2), a person shall not erect, construct, place or maintain -
(e) a cable, wire or pipeline,
- (2) This section shall not apply to the following—
(c) the erection, construction, placing or maintenance under a public road of a cable, wire or pipeline by a statutory undertaker.
- (7) Development carried out in accordance with a licence under this section shall be exempted development for the purposes of this Act.

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

Part 1 Preliminary and General

Article 3 defines “electricity undertaking” as follows:

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

Part 2 Exempted Development

Article 6 refers to Exempted Development

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

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

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

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

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under Section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision...

Schedule 2

Part 1

Exempted Development — General

Class 24 onwards - Development by statutory undertakers

Class 26

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

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

7.3. Other

7.3.1. I have examined the referrals database and have found the following:

307927 - PA Reg Ref S5-0-9-20 : whether the provision of a circa 5.1 kilometres underground grid connection within the corridor of public roads and private lands which links a permitted solar farm at Clondardis and Slane More Townlands, Walshestown, Mullingar, County Westmeath to the existing ESB Mullingar 110kV substation at Irishtown Townland, Mullingar, County Westmeath is or is not development or is or is not exempted development. The Board decided it was development and exempted development.

- (a) the provision of the underground grid connection involves the carrying out of works and, therefore, constitutes development under sections 2 and 3 of the Planning and Development Act, 2000, as amended, and Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (b) the underground electricity grid connection involves works carried out by an electricity undertaking and, having regard to the nature of those works, would come within the scope of Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,

- (c) the underground electricity grid connection involves works within the existing public road carriageway structure, including the stretch of existing public road located in the original area of Recorded Monument (WM19-087) and, as a consequence, the proposed development would not comprise the excavation, alteration or demolition of any archaeological features and, therefore, would not fall within the scope of limitation of exemption, as set out at articles 9(1)(a)(vii) and 9(1)(a)(viiA) of the Planning and Development Regulations 2001, as amended, and,
- (d) there are no other restrictions on exemption set out in the Planning and Development Act, 2000 and/or the Planning and Development Regulations, 2001 that would apply in this instance.

8.0 Assessment

- 8.1.1. I consider that the question could be stated as:

whether a 38kV Underground Electrical Connection between the consented Slanemore Solar Farm WCC Pl. Ref. 17/6029 & 17/6224, through the townlands of Slanemore, Walshestown North, Walshestown South, Tullaghan and Irishtown to the existing ESB Sub-Station located at Mullingar Substation Co Westmeath is or is not development and is or is not exempted development.

8.2. Is or is not development

- 8.2.1. It is evident, by reference to the broad definition of works set out in Section 2(1) and 3(1) of the Act, that the proposal: the provision of an underground grid connection cable, involves works and constitutes development.

8.3. Is or is not exempted development

- 8.3.1. Article 6(1) of the Planning and Development Regulations, 2001, as amended, states that subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1.

- 8.3.2. Class 26 of Part 1 of Schedule 2: 'Exempted Development – General' of the Regulations refers to 'The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking'. There are no conditions or limitations within column 2 of this class.
- 8.3.3. It is a requirement of this class that the development be carried out by an 'undertaker authorised to provide an electricity service'.
- 8.3.4. Article 3(3) of the Regulations states that an electricity undertaking means 'an undertaker authorised to provide an electricity service'.
- 8.3.5. The Electricity Regulation Act 1999, at Section 2(1), provides the following definition:
- “electricity undertaking” means any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under section 37 of the Principal Act.

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

- 8.3.6. As indicated, Class 26 falls under the heading 'Development by statutory undertakers'. It is one of several classes (Classes 23-32) in this part of the Schedule.
- 8.3.7. The references to undertakers, undertakings and other bodies / authorities referred to in these classes must be construed as meaning statutory undertakers.
- 8.3.8. The definition of 'Statutory Undertaker', as provided in Section 2(1) of the Act, (Planning and development Act 2000) includes '...a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity'. The party who made the referral falls within this category as the project is related to the transmission of electricity associated with a development authorised under the Planning Acts to generate electricity.

8.3.9. It is worth noting that this definition of 'statutory undertaker', contemplates undertakings that are not solely public undertakings, in comparison with the 1963 Act definition (Section 2(1)) which referred to public undertakings.

8.3.10. I note that the Board has previously accepted that operators of solar farms can avail of the Class 26 exemption and therefore, I am satisfied that the development falls within the scope of the said Class 26.

8.4. Restrictions on exempted development

8.5. Article 9 restrictions on exemption.

Article 9(1)(a) (vii) restricts exemption where development would consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

Article 9(1)(a)(viiA) restricts exemption where development would consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

8.5.1. I note that the excavation for the placement of the cables, per drawings no. 6973-S5-008 and 6973-S5-009, extends some 1.2m below the road surface; that the trench is 0.6m in width; that this is the second such trench in respect of which a Section 5 referral has been made; and that a third underground cable route is proposed for a proposed development currently at appeal, 320999.

8.5.2. I note also that National Monuments Service, Dept of Housing, Local Government and Heritage, in their response to the developers' enquiries, informed the applicants

of their obligations under the National Monuments, and set out their advice in the form of conditions. Conditions cannot be attached to a section 5 determination. The matters raised by the National Monuments Service are ones which are under their control, regardless of planning consent. In their advice they have not sought to prohibit the development or to put a stay on it pending further examination.

- 8.5.3. The planning authority deemed that the development was not exempted having regard to the provisions of Article 9(1)(a)(vii) and (viA).
- 8.5.4. The developers are engaging with the National Monuments Service. The only test excavation which the National Monuments Service have so far requested is at locations chosen by the archaeologist where the development crosses green fields. No such test excavation locations were deemed necessary by the archaeologist.
- 8.5.5. I am satisfied that the developers are complying with their obligations under the National Monuments Acts and are following the advice they have been given by the National Monuments Service. In effect this means that they will have the necessary consent / licence for any development.
- 8.5.6. I would therefore conclude in these circumstances that the restrictions on exemption, having regard to the provisions of Article 9(1)(a)(vii) and (viA), do not apply.
- 8.6. Article 9(1)(a)(i) of the Regulations:
 - 8.6.1. Article 9(1)(a)(i) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would contravene a condition attached to a permission issued under the Act, or if it would be inconsistent with any use specified in a permission under the Act.
 - 8.6.2. One of the parent permissions Reg Ref 17/6028 includes a condition (no. 2) which states: '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'. The proposed development would not contravene this condition and this condition would not restrict exemption under Article 9(1)(a)(i) of the Regulations.
 - 8.6.3. I am not aware of any such restriction impacting on this development.
- 8.7. Article 9(1)(a)(iii) of the Regulations:

- 8.7.1. Article 9(1)(a)(iii) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would 'endanger public safety by reason of traffic hazard or obstruction of road users'.
- 8.7.2. In a response to the developers, the Council's Municipal District Engineer, informed them that a road opening licence would be required, where they would put conditions on the developer. Public safety endangerment, traffic hazard or road user obstruction, were not raised as concerns. The restrictions on exemption, having regard to the provisions of Article 9(1)(a)(iii), do not apply.
- 8.8. Restrictions on Exemption relative to EIA and AA:
- 8.8.1. Section 4(4) of the Act de-exempts any development which attracts a requirement for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA). This is also reflected in Article 9(1)(a)(viiB) of the Regulations as regards AA and in 9(1)(c) for development requiring Environmental Impact Assessment.
- 8.9. Article 9(1)(a)(viiB) of the Regulations:
- 8.9.1. This states that development shall not be exempted development if it would: comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site'.
- 8.9.2. The site extends as a linear route for nearly 5km and lies between sub catchments of the River Brosna (Brosna 10, Brosna 40 and Brosna 20) which drain either towards Lough Owel (SPA and SAC), or Lough Ennell (SAC). There are no streams in the immediate vicinity of the site.
- 8.9.3. A Screening Report for Appropriate Assessment accompanied the request. The distance from protected sites, is referred to, such that impacts on protected sites (including for example from disturbance to species, etc), are not likely to occur.
- 8.9.4. The construction methodology is set out in the document Construction Method Statement for 38kV Electrical Grid Connection of June 2023. The construction methodology includes measures to mitigate potential surface water contamination. These construction methods, together with the sequencing of the works on a section

by section basis, as referred in Screening Report for Appropriate Assessment, mean that significant impacts on the protected sites from surface water are not likely to occur.

- 8.9.5. The restrictions on exemption having regard to the provisions of Article 9(1)(a)(viiB do not apply.
- 8.10. Article 9(1)(c) denies exemption if it is development to which Part 10 applies, unless the development is required by or under any statutory provision.
- 8.10.1. Following the O’Grianna judgement, the Board must consider the grid connection in connection with the parent permission. In this case the grid connection is required for a solar farm which is not itself development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended).
- 8.10.2. The need for Environmental Impact Assessment would therefore only arise in the case of a development which was considered, having regard to the criteria set out in Schedule 7, Planning and Development Regulations 2001 (as amended), to require environmental impact assessment,
- 8.10.3. I have considered the proposed development under each of the criteria in Schedule 7 and I am satisfied that having regard to the limited nature and scale of works involved, and the nature of the receiving environment, no issue arises under any of the headings, such as to require environmental impact assessment.
- 8.10.4. My assessment in relation to EIA is attached as appendix 1 to this report.
- 8.10.5. EIA screening is not required.
- 8.10.6. The restrictions on exemption having regard to the provisions of Article 9(1)(c) do not apply.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether the provision of a circa. 4.995km underground grid connection, on private lands and within the public road, to connect the permitted Slanemore solar farm to the existing

ESB Mullingar 110kV substation at Irishtown, Mullingar, Co. Westmeath is or is not development or is or is not exempted development:

AND WHEREAS Grian PV Ltd. requested a declaration on this question from Westmeath Council and the Council issued a declaration on the 28th day of February, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 25th day of March, 2024:

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

- (a) Sections 2, 3, 4, 177U(9) and 254 of the Planning and Development Act, 2000, as amended,
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended),
- (d) the planning history of the site,
- (e) the Inspector's Report,
- (f) the pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

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

- (b) the underground electricity grid connection involves works carried out by an electricity undertaking, and, having regard to the nature of those works, would come within the scope of Class 26 of Part 1 of the Second Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (c) the underground electricity grid connection and associated works, while forming part of the solar farm at Slanemore Townland would not be likely to have significant impacts on the environment, or on protected sites. The provisions of Section 4 (4) of the Planning and Development Act, 2000, as amended, Article 9(1)(a)(viiB) of the Regulations, as amended and Article 9(1)(c) of the Planning and Development Regulations, 2001, do not apply in this instance,
- (d) the development would not involve excavation or any works, except pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended, and
- (e) there are no other restrictions on exemption, set out in the Act and Regulations, that would apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the c.4.995 km underground grid connection from the permitted solar farm at Slanemore to the national grid at the existing ESB Mullingar 110kV substation at Irishtown, Mullingar is development and is exempted development.

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.

Planning Inspector

Date

Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	319406		
Proposed Development Summary	38kV Underground Electrical Connection between the consented Slanemore Solar Farm WCC Pl. Ref. 17/6029 & 17/6224 and ESB Mullingar existing Sub-Station located at Mullingar Substation Co Westmeath		
Development Address	Townlands of Slanemore, Walshestown North, Walshestown South, Tullaghan and Irishtown, Mullingar, Co Westmeath.		
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	/
		No	No further action required
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		Class.....	EIA Mandatory EIAR required
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	/	N/A		No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	/	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Form 2**EIA Preliminary Examination**

An Bord Pleanála Case Reference	ABP- 319406	
Proposed Development Summary	38kV Underground Electrical Connection between the consented Slanemore Solar Farm WCC Pl. Ref. 17/6029 & 17/6224 and ESB Mullingar existing Sub-Station located at Mullingar Substation Co Westmeath	
Development Address	Townlands of Slanemore, Walshestown North, Walshestown South, Tullaghan and Irishtown, Mullingar, Co Westmeath	
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development.</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment.</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>		<p>N</p> <p>N</p>
Size of the Development		

Is the size of the proposed development exceptional in the context of the existing environment?		N
Are there significant cumulative considerations having regard to other existing and / or permitted projects?		N
Location of the Development		
Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact on an ecologically sensitive site or location, or protected species?		N
Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?		N
Conclusion		
There is no real likelihood of significant effects on the environment. EIA is not required.		

Inspector:

Date: _____