



An
Bord
Pleanála

Inspector's Report ABP-319600-24

Question

Whether the proposed 110kV underground grid connection cabling between the L30535 public road (to north of the existing Kellis 220kV substation) to a line bay in the substation, at Kellistown East, Co. Carlow, is or is not development and is or is not exempted development:

Location

Kellistown East, Co. Carlow

Declaration

Planning Authority

Carlow County Council

Planning Authority Reg. Ref.

S5.23.41

Applicant for Declaration

Garreenleen Solar Farm Limited

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Garreenleen Solar Farm Limited

Owner/ Occupier

Garreenleen Solar Farm Limited

Observer(s)

None

Inspector

Angela Brereton

Contents

1.0 Site Location and Description	4
2.0 The Question.....	4
2.2. Referral to the Council	4
3.0 Planning Authority Declaration	9
3.1. Declaration	9
3.2. Planning Authority Reports	9
3.3. Other Technical Reports	12
4.0 Planning History	12
5.0 Policy Context	14
5.1. Carlow County Development Plan 2022-2027	14
5.2. Natural Heritage Designations	16
5.3. EIA Screening.....	16
6.0 The Referral	16
6.1. Referrer's Case.....	16
6.2. Planning Authority Response.....	20
7.0 Statutory Provisions	20
7.1. Planning and Development Act, 2000 (as amended)	20
7.2. Planning and Development Regulations, 2001	22
7.3. Case Law.....	24
7.4. Precedent	25
8.0 Assessment.....	27
8.1. Introduction.....	27

8.2.	Is or is not development.....	27
8.3.	Is or is not exempted development	28
8.4.	Restrictions on exempted development	29
8.5.	Screening for Appropriate Assessment.....	31
9.0	Recommendation	40

1.0 Site Location and Description

- 1.1. The application site is located in the rural area in the townland of Kellistown East, c. 1.2km west of Rathoe Village and c.8.5km southeast of Carlow town. The site comprises an area running from the L-30535 public road to the existing Kellis 220kV substation. This Referral relates solely to the 43m of additional underground cabling required to connect the approved cabling to the substation.
- 1.2. It is located off a narrow road and there is locked recessed gated entrance to the onsite laneway that provides access to the Kellis 220kV Substation. The roadway is too narrow for two cars to pass. There is a ditch (dry on the day of the site visit) along the road frontage to the west of the site. There are trees and hedgerows alongside the roadside boundary which provide screening for the substation.
- 1.3. In view of the location of the substation, there are a considerable number of pylons and wirescape in the area. The area is predominantly agricultural and there are some one-off houses, including to the east of the site, with access to the laneway.

2.0 The Question

- 2.1. The Question, the subject of the referral, is as per the Section 5 declaration request to Carlow County Council, which was lodged on the 1st of December 2023. The question put before Carlow County Council was as follows:

Whether the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the substation, at Kellistown East, Co. Carlow constitutes development and is or is not exempted development.

2.2. Referral to the Council

On the 1st of December, 2023, HWP Planning on behalf of Garreenleen Solar Farm Limited requested a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) on the above question from Carlow County Council.

The documentation submitted with this Referral included copies of the following:

- Site location Mapping prepared by HW Planning

- Technical plans/specification of proposed grid connection by TLI Group
- Section 5 request statement by HW Planning
- Statutory undertaker letter by Garreenleen Solar Farm Limited.

Their Referral to the Council is summarised under the headings below.

Background

Garreenleen Solar Farm Limited are currently advancing plans for the construction and operation of a solar farm at Garreenleen, Bendinstown, Tinnaclash and Ardbearn, Co. Carlow. As part of this they are finalising grid connection arrangements with EirGrid to allow for the export of renewable energy generated by the project to the national transmission network.

They provide details of the planning history noting that the application for planning permission for the solar farm, support infrastructure and associated ancillary development works was previously made to Carlow County Council under Reg.Ref. 20/143 and was permitted by the Board under Ref. ABP-307891 on the 28th of September 2021.

Pursuant to this, permission was obtained from the Board on the 2nd of November 2022 under Section 182A of the Planning and Development Acts (as amended) for a 110kV substation in the townland of Bendinstown and associated 110kV underground cable connection to the existing Kellis 220kV substation. Permission was sought for and obtained to the point at which the underground cabling terminates in the public road at the boundary of the Kellis 220kV substation. They note that while permission was not sought for the remainder of connection to the line bay in the substation, these works were described and assessed in environmental reports in the SID application as part of a 'one-project' approach. Figure 01 shows the Permitted Context Under Ref. ABP-313139.

Proposal

They provide that it is now proposed to complete the underground cable connection to the EirGrid allocated line bay within the Kellis 220kV substation. That the underground 110kV cabling will extend from the public road to the north and be trenched to the line-bay as per the submitted plans by TLI Group.

They consider that these works are exempted development based on the provisions of Schedule 2, Part 1, Class 26 of the Planning and Development Regulations 2001. Noting that the purpose of this request is to set out the nature and extent of the grid connection works and seek a formal declaration from the Council confirming that they are exempt under Section 5 of the Planning and Development Act 2000 (as amended).

Strategic Infrastructure Development Screening

They submit that prior to the making of this request for a Section 5 declaration, and for the avoidance of any doubt on the matter, Garreenleen Solar Farm Limited obtained a determination from ABP that the subject works do not constitute 'strategic infrastructure' as defined under Section 182A of the Planning and Development Act 2000(as amended). That this was confirmed in a letter dated 28th July 2023.

Planning Context

They provide details of the Statutory Context relevant to the subject of the Referral and include reference to:

- The Planning and Development Act 2000 (as amended)
- The Planning and Development Regulations 2001 (as amended).

Description of Works

They submit that in order to connect the permitted underground cable to the now assigned bay (H10) in the existing Kellis 220kV substation, it is proposed to extend this cabling southwards from the public road into the substation lands by means of underground trench before connecting into the bay. The underground cabling will consist of 2no.160mm diameter HDPE power cable ducts, 2no. 126mm diameter HDPE communications ducts and 1no. 63mm diameter earth continuity duct to be installed in an excavated trench 825mm wide by 1316mm in depth. That the total length of the subject underground cabling is approx. 43m.

They note that as per the submitted plans, the laying of the cabling will require the temporary removal of 5m of hedgerow at the boundary of the public road and substation site. That this will be reinstated post the completion of works with native landscape planting.

They envisage that the subject works will be completed alongside permitted Ref. ABP-313139-22, (Figure 01 of the Referral refers). That, as such they will be subject to environmental management and monitoring measures which form part of the wider development. That the contractor will prepare a targeted method statement outlining the construction methodology and control measures. That the excavation, installation and reinstatement will take 1no. day to complete. Excavated material shall be employed to backfill the trench. A grade smooth and trim trench floor will be established, before the ducts are laid and carefully covered by a Cement Bound Granular Mixture. That encased ducts will be backfilled before laying of topsoil and reseeded of grass. Figure 02 shows a Typical Trench Detail for Underground Cabling.

They provide that based on submitted plans, the majority of the works will be contained within the substation lands in control of ESB Networks. That notwithstanding this, appropriate engagement will take place with the Council in advance with a road opening licence obtained as required. That all works will be subject to necessary licenses, consents and/or directions and safe systems working arrangements, including temporary traffic management procedures.

Precedent

They refer to a summary of sample relevant precedent. These are as follows:

- ABP-302895-18
- RL3503

In both cases the Board decided that these cases (relevant to grid connections) constituted development but were exempted development. Regard is had further to Precedent Cases in the relevant section below.

Referrer's Assessment

Based on a review of governing legislation and case precedent, they consider that the following are the principal issues when assessing where the proposed development complies with Class 26 of Schedule 2, Part 1 of the Planning and Development Regulations 2001:

- Do the proposed works fall within the definition of development under the Planning and Development Act 2000 (as amended)?

- Does the proposed development fall within the qualifying criteria of Class 26, including any associated conditions/limitations under the Planning and Development Regulations 2001 (as amended)?

They provide a discussion under each of these headings. In summary this notes, as confirmed by established precedent that the proposed works constitute development within the meaning of the Act.

They consider that the proposal constitutes exempted development under Class 26 of Schedule 2, Part 1 of the Regulations, as the works will be undertaken by Garreenleen Solar Farm Limited who are 'a *statutory undertaker*' within the meaning of the primary legislation, authorised to provide an electricity service. That the submission from Garreenleen Solar Farm Limited includes a letter which confirms their status as a statutory undertaker.

They also pose the question:

- Do any Restrictions apply which would de-exempt Class 26 in this case?

They provide a review of the legislation relative to Article 4(4) of the Planning and Development Act 2000 (as amended). They note that an EIAR is not required relative to the proposed works. That there are no interactions with watercourses arising from the subject works or hydrological connectivity to any designated Natura 2000 sites and that the submission of an AA is not required.

Noting that they have reviewed the proposal in the context of relevant potential Article 9 de-exemptions and provide that no restrictions apply which would de-exempt the applicability of Class 26 in this case.

Conclusion

They conclude that for the reasons outlined in this Referral, they consider that the proposed underground cabling between the L30535 public road to a line bay in the Kellis 220kV substation constitutes development and is exempted development having regard to the provisions of:

- a) Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended):

- b) Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

3.0 Planning Authority Declaration

3.1. Declaration

On the 3rd of April 2024, Carlow County Council, concluded:

- (a) The proposal is development which comes within the scope of Section 3 of the Planning and Development Act 2000(as amended);
- (b) The proposal does come within the scope of Class 26 in Part 1of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (c) Notwithstanding part (i) of the foregoing, it is considered that the restrictions on exemption in Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended) would apply i.e. proposal comprises development which requires Appropriate Assessment.

They issued a decision that the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the substation at Kellistown East of Co. Carlow, Bagenalstown, County Carlow, is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report, dated 14th of December, 2023, had regard to the Referral Submission, to the locational context, planning history and policy, the Statutory provisions and to previous Referrals for grid connectors in other locations. The Assessment included the following:

- The proposal is not a prescribed class of development for EIA and a screening determination is not required.
- It noted that an NIS had been carried out for the previous application Ref. ABP-313139-22. Regard is had to the NIS then submitted noting that this

assessment included proposed underground cabling comprising a length of 4km. Also relevant to the mitigation measures proposed.

- It is stated that the proposed development subject to this Section 5 is an extension of the approved development, including mitigation measures, thus the proposal is dependent on approved such measures to ensure the protection of the protected sites.
- On the basis of CFRAM flood maps for the area the proposed cabling route is not located in an area at risk of flooding.
- At its closest point, the proposed cabling is located over 250m southwest of the nearest recorded monuments' zone of influence (CW01387 enclosure).
- The Section 5 Declaration relates to the installation of c. 45m of underground cabling.
- They note that under Section 3 of the Planning and Development Act 2000 (as amended) the proposal constitutes development.
- They are satisfied that on the basis of the planning history of the site that the applicant qualifies as a statutory undertaker, thus may avail of the Class 26 exemption.
- They have regard to the restrictions on exemption as provided by Article 9 of the Planning and Development Regulations 2001 (as amended).

Further Information request

They recommended a request for further information, requesting the Referrer's response to include the following:

- They noted that the proposal is for an extension to the underground cabling of an approved development. In combination the proposal is subject to an NIS, accordingly it is the Planner's view that the proposal may require AA and not be deemed exempted development. They refer to Section 4(4) of the Planning and Development Act 2000 (as amended).
- The proposed works have previously been subject to a pre-application consultation under Section 182E of the Planning and Development Act 2000

(as amended) in which it was concluded that a planning application should be made in the first instance to the Council.

Further Information response

HWP's Planning F.I response on behalf of the Referrers includes the following:

- They refer to the AA matter raised and note that it has been reviewed in full by the project ecologists, Ecology Ireland, with a dedicated Screening Report in support of the AA process (dated 13th of March 2024) enclosed with their response.
- They provide details and submit that it has been demonstrated that the provisions of Section 4(4) of the Planning and Development Act 2000 do not apply in this case.
- The provision of Section 182A of the Planning and Development Act, 2000, as amended, does not provide for ABP to adjudicate on whether any works constitute exempted development or not, rather the sole consideration of this part of the legislation is for the Board to determine if the proposed development constitutes 'strategic infrastructure development'.
- The proposal is small scale in nature and is ancillary to the main works that have been permitted.
- The non-applicability of the need for a planning application for consent for a 110kV underground grid connection cabling is established by numerous precedent cases which confirm that such a development is exempted development. They refer to RL3503, RL2789, ABP-307927-20.
- They conclude that for the reasons outlined in the original submission as well as in their F.I response they consider that the proposed underground cabling between the L30535 public road to a line bay in the Kellis 220kV substation constitutes development and is exempted development having regard to the provisions of:
 - a) Section 2(1) and 3(1) of the Planning and Development Act 2000 (as amended);

- b) Class 26, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Planner's response

The Planner had regard to the F.I and documentation submitted. In summary their Assessment response included the following:

- They are satisfied on the basis of the planning history of the site that the applicant qualifies as a statutory undertaker, thus may avail to the Class 26 exemption, subject to compliance with the relevant conditions/limitations and restriction on exemptions.
- They refer to Section 4(4) of the Planning and Development Act 2000 (as amended). They note that the proposal is for an extension to the underground cabling of an approved development. In combination, the overall proposal , comprising the approved route plus the extended route, is subject to an NIS, accordingly, it is their view that the proposal may not be deemed exempted development pursuant to the above.
- They recommended that a declaration be issued informing the applicant that the proposal is development and is not exempted development.

3.3. Other Technical Reports

None noted on file.

4.0 Planning History

The Planner's Report has regard to the Planning History relative to the solar farm and in summary this includes the following relevant to the subject Referral:

ABP-307891-20 - the Board overturned the decision of the planning authority (Carlow County Council Register Ref. 20/143) to refuse permission for Garreenleen Solar Farm. This 10 year permission is for the development of solar panels and ancillary works development on a 127-hectare site. The majority of the defined site lies to the south of the substation. A Natura Impact Statement (NIS) was submitted with the application.

ABP-313139-22 – the Board permitted under section 182A(1) of the Planning and Development Act 2000 (as amended), subject to conditions, the development of a 110kV electricity substation, to connect to and serve a solar farm, associated grid connection between the proposed substation and the existing Kellis 220kV substation comprising 110kV underground electricity interconnector cables of c. 4.099km in length and all associated site development and reinstatement works.

An NIS was submitted with this application.

ABP-316205-23 – the Board decided that the proposed development consisting of a new line bay and associated underground cabling at Kellis 220kV substation on lands in the townland of Kellistown East, Co. Carlow, as set out on the plans and particulars received by ABP on the 4th of April, 2023, does not fall within the scope of section 182A of the Planning and Development Act, 2000, as amended, and that a planning application should be made in the first instance to Carlow County Council.

ABP-318526-23 – Request received by ABP on the 24th of November 2023 from Garreenleen Solar Farm Limited, care of HW Planning under section 146B of the Planning and Development Act 2000, as amended, to make alterations to the permitted 110kV substation and underground grid connection, a strategic infrastructure development, the subject of a permission granted under Ref. ABP-313139-22.

The Board decided that the approved development shall be altered in accordance with the plans and particulars received by ABP on the 24th of November 2023 – as set out in Condition no. 4. They decided these alterations would not be material. In accordance with section 146 (3)(a) of the Planning and Development Act, as amended, the Board made the said alterations.

Copies of these decisions are included in the History Appendix of this Report.

Other Applications in the vicinity

ABP-315063-22 – Permission granted subject to Conditions to Island Stability Services Limited for a synchronous condenser grid support facility, which will connect to the ESB Kellistown Electricity Substation.

ABP-303821-19 – Permission granted subject to conditions to ENGIE Developments Ireland Limited for development of an up to 100MW Battery Energy Storage Facility that will provide energy services to the national grid.

5.0 Policy Context

5.1. Carlow County Development Plan 2022-2027

Chapter 6: Infrastructure and Environmental Management

Section 6.7 refers to Energy Infrastructure and 6.7.1 to Electricity.

Section 6.7.3 to Energy Infrastructure Policies.

- EI.P1: Support and facilitate the reinforcement and development of enhanced energy infrastructure, and associated networks, to serve the existing and future needs of the County and Region. This will include the delivery of the necessary integration of transmission network requirements facilitating linkages of renewable energy proposals to the electricity and gas transmission grid, in a sustainable and timely manner, subject to proper planning and environmental considerations.
- EI.P2: Ensure that development proposals for energy transmission and distribution infrastructure follow best practice with regard to siting and design..

Climate Action and Energy

Renewable Energy Policies include:

- RE.P1: Encourage and facilitate the production of energy from renewable sources, such as from wind, solar, bioenergy, hydroelectricity, and geothermal, subject to compliance with proper planning and environmental considerations.

Renewable Energy Objectives include:

- RE.O1: Seek to achieve a minimum of 130MW of renewable electricity in the County by 2030, by enabling renewable energy developments, and through micro-generation including rooftop solar, wind, hydro-electric and bioenergy combined heat and power (CHP).

Infrastructural Facilitators – Policies include:

- IF.P1: Support the development, reinforcement, renewal, and expansion of key supporting infrastructure to facilitate renewable energy developments, subject to compliance with proper planning and environmental considerations.

Section 7.10.3.2 refers to Solar Energy. Figure 7.9 refers to Solar Opportunity Areas.

Policies seek to favourably consider Solar Energy.

Objectives include:

- SE.01: Increase the penetration of solar energy developments at appropriate locations subject to compliance with proper planning and environmental considerations.

Chapter 9 Landscape and Green Infrastructure

Section 9.3 refers to Landscape Character Assessment

Section 9.4 to County Landscape Character Areas and Landscape Types- Map 9.1 refers.

The site is located in the Central Lowlands character area, described as occupying a substantial portion of the County, in an area designated as farmed lowland.

The landscape sensitivity is assessed at 2.3 in a 5 point scale where 5 is the highest sensitivity and 1 is the lowest. The relevant policy objective is as follows: new developments to maintain integrity of landscape character area through careful location, siting and design. Section 9.8 refers to Landscape Policies and Landscape Objectives.

Chapter 16: Development Management Standards

Section 16.11.10 refers to Undergrounding Cables – requirement to demonstrate that environmental impacts are minimised.

Section 16.12.2 to Energy Development Projects – will be considered in the context of Government policy and competing Council policy. Proposals should demonstrate that human health has been considered. Where existing infrastructural assets (such as substations) already exist, such assets should be considered for sustainable use where there is capacity.

Section 16.12.4 refers to and provides the criteria for Solar Energy.

5.2. Natural Heritage Designations

The application site is not located within or immediately adjacent to any sites with a natural heritage designation. The nearest designated sites are:

- Ardristan Fen, proposed Natural Heritage Area (p NHA), site code 000788 c. 2.7km to the east;
- Slaney River Valley Special Area of Conservation (SAC), site code 000781, 4.8km to the east;
- Slaney River Valley pNHA, site code 000781, 5.9km to the south-east;
- River Barrow and River Nore SAC, site code 002162, 9.4km to the west;
- Cloghrystick Wood p NHA, site code 000806, 9.5km to the east.

5.3. EIA Screening

The proposed development, which is the subject of this Referral, does not fall under a category of development listed in Schedule 5, Parts 1 or 2. As a result, the development is not considered sub-threshold, and a mandatory Environmental Impact Assessment (EIA) or screening for EIA is not required.

6.0 The Referral

6.1. Referrer's Case

On the 24th of April, 2024, HWP Planning on behalf of Garreenleen Solar Farm Limited, referred the aforementioned Question that has arisen to the Board. They note the Council's Declaration and attach a copy of their Planning Report (as has been noted above) which makes their case for this Referral and recommends that this Section 5 be referred to the Board for a determination.

The Referrer disagrees with the issued opinion of the Council and submits that the nature of the development comes within the scope of the exemption provided under Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001

(as amended) and this is not restricted by Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended).

Background

- It is noted that their details on Background are similar to those included in their Referral to the Council. In addition, they note that the point of final connection to the substation is now known and it is proposed to complete the underground cable connection to the EirGrid allocated line bay within the Kellis 220kV substation.
- The underground 110kV cabling will extend from the public road to the north and be trenched to the line-bay as per the submitted plans by TLI Group. They consider that these works are exempted development based on the provisions of Schedule 2, Part 1, Class 26 of the Planning and Development Regulations 2001.

Planning Context

They provide details of the Statutory Context relevant to the subject of the Referral and include reference to:

- The Planning and Development Act 2000 (as amended)
- The Planning and Development Regulations 2001 (as amended).

They have regard to the Decisions of the Local Planning Authority which concluded that the subject development does not constitute exempted development.

Assessment

Based on a review of Carlow County Council's internal reports on the Section 5 Request, they note the following:

1. That the Council are satisfied that the applicant qualifies as a 'statutory undertaker' which allows them to avail of a Class 26 exemption in this case;
2. That the Council are satisfied that the subject works fall within the scope of exemptions prescribed in Class 26.
3. That with the exception of a perceived requirement for AA, the Council have satisfied themselves that there are no other restrictions having regard to Article 9 that would preclude use of Class 26 in this case.

That it is therefore evident that the sole basis for the Council's determination relates to a view that the subject works require AA.

Requirement for Appropriate Assessment

- They refer to Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001(as amended) and to the Council's Declaration.
- They provide that it has been demonstrated through the prepared AA Screening Report by Ecology Ireland that the proposed works are not dependent in any way on bespoke mitigation measures that would trigger the requirement for Stage 2 AA.
- The total length of the subject underground cabling is approx. 43m to be provided within an existing substation compound.
- They submit that there is no meaningful assessment of the subject works themselves or how they could conceivably give rise to significant effects on the nearest Natura 2000 site (Slaney River SAC) in the absence of mitigation.
- The submitted AA Screening clearly establishes that separate elements (remote from the subject works) of the cable under ABP-307891 included watercourse crossings with hydrological connectivity to designated sites with mitigation applied specifically in those cases.
- The subject works differ substantially to this being very limited in scale. Noting that no bespoke mitigation measures have been identified as being required.
- Just because a version of the subject works were described and assessed as part of the NIS prepared under the permitted ABP-307891, this does not preclude the subsequent consideration of exempted development provisions in this case.
- Planning permission was not sought for the subject works previously as the final means of connection to Kellis Substation was unknown.
- They did not form part of the application red-line boundary and the submitted planning application under ABP-307891 made clear that this would be further considered at the appropriate time under a separate statutory process once the final means of connection was known.

- They note reference to the O'Grianna judgment which dates from 2014 and relates to project splitting in the context of a completed EIA. Noting that the project is not a prescribed class of development for the purposes of EIA and that the proposal does not require EIA.
- In relation to AA they provide that as outlined a version of the subject cabling (based on the known information available at the time) was considered as part of the 'one-project' approach with reference to ABP-307891. However, planning permission was not sought for those works and did not form part of the detailed SID application.
- They provide that in the AA Screening Report prepared by Ecology Ireland, using the source-pathway receptor model, it has been objectively determined that the subject c. 43m of underground cabling will not result in potential significant effects on any European site. That the Screening Report concluded this also having regard to potential cumulative or in combination affects to European sites in the wider receiving environment.
- They provide that it cannot be reasonably applied that just because a previous component of a development required NIS, that it automatically follows that everything that subsequently interacts with the infrastructure requires an NIS.

Precedent Cases

They refer to the decisions made on the following cases which they consider set a precedent relevant to the layout of underground cables and having regard to AA:

- ABP-318071-20
- RL.92.RL.3436

They provide that it follows that no restrictions apply which would de-exempt the applicability of Class 26 in this case.

Other Matters

They refer to the Council's F.I request relative to S182E of the Planning and Development Act 2000 (as amended). They note that this matter is not raised further in the final Section 5 determination of the Council and that it is not a material consideration for assessment of the subject referral.

Conclusion

For the reasons outlined, they consider that the proposed underground cabling between the L30535 public road to a line bay in the Kellis 220kV substation constitutes development and is exempted development having regard to the provisions of:

- a) Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended);
- b) Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

The submit that use of Class 26 in this case is not restricted by the Planning and development Regulations 2001 (amended).

6.2. Planning Authority Response

They refer to the subject Referral relating to this Section 5 Ref. S5.23.41 & ABP-319600-24 and advise that they have no further comments to make at this time. They refer to the details and assessments set out in the planning reports and internal department reports in the Section 5 application. They provide that notwithstanding the content of the referral, the position of the Planning Authority remains as per the Planner's Report recommendation. They direct the Board to these details.

7.0 Statutory Provisions

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

Section 2(1)

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

Section 3(1)

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

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

- (a) Construct or operate a railway, canal, inland navigation dock, harbour or airport,
- (b) Provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) Provide services connected with or carry out works for the purposes of the carrying on of the activities of, any public undertaking.

Section 4 Exempted development

Section 4(1) (a) – (1C) 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:

4(1C) Development referred to in paragraph (a),(d), (e) or (g) shall not be exempted development, if an appropriate assessment of the development is required.

Section 4(2)(a)(i)

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

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

Section 4(4)

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 182 –Cables, wires and pipelines– Local Authority works

Section 182A - Electricity transmission lines – Undertaker works

An undertaker shall prepare, or cause to be prepared an application for approval of the development under section 182B and shall apply to the Board for such approval accordingly.

Section 182B (1)(a)(ii) – refers to appropriate assessment

Section 182D (1)(a)(ii) – includes reference to NIS

Section 182E (1)– Procedures in advance of seeking approval under Section 182B or 182D.

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

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.

Schedule 2 Part 1 Exempted Development

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. Case Law

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

High Court judgement on judicial review of a permission granted on appeal by the Board for a development comprising 6 wind turbines and associated infrastructure in County Cork. The High Court judgement, quashing the Board's decision, was based on the conclusion that the windfarm and grid connection constitute one single project and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Directive.

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

I would also draw the Boards attention to 2019/16/JR – Narconon Trust v ABP, in which a determination by the Board of a S.5 of identical substance to a previous unchallenged S 5 determination was quashed.

7.4. Precedent

I have examined the referrals database and have found the following, which while not relevant to the subject site, have some relevance to the subject matter of the current referral case:

ABP-310120-21: The Board determined that the provision of c.3834m of 38kv underground medium voltage grid connection cable between the consented Cleggill Solar Farm (Ref 17/47) to the nearest 38kv Longford substation is development and is exempted development. Townlands of Cleggill, Lismore, Cartrons, Moneylagan, Aghadegan and Minard, Co. Longford.

ABP-307927-20: The Board determined that the provision of c.5.1km underground grid connection from the permitted solar farm at Clondardis and Slane More Townlands, Walshestown, Mullingar, County Westmeath to the national grid via the existing ESB Mullingar 110kV substation at Irishtown Townland, Mullingar, County Westmeath is development and is exempted development.

As referenced in the Subject Referral:

ABP-308071-20: The Board determined that the laying of underground cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, Co. Limerick to the substation at Dromdeeveen for grid connection purposes is development and is exempted development.

ABP-302895-19 The Board determined that the provision of a medium voltage (20kV) underground grid connection between the permitted solar farm development at Dysart, Johnstownbridge, County Kildare and the Dunfirth ESB substation at Dunfirth, Johnstownbridge, County Kildare is development and is exempted development. The Board conclusion included that: *none of the restrictions on exempted development provided for under section 4(4) of the Planning and Development Act 2000, as amended, apply in this case.*

RL92.RL3436 The Board determined that the laying of underground 20kV electricity cable to link Turaheen and Glencarbry Wind Farms was development and exempted

development. The wind projects in question were the subject of a Stage 2 AA. Referring the AA Screening on the file, the Inspector screened out the need for an NIS. Of note the Board's conclusion included:

- (c) *the said underground cables do not come within the scope of section 4(4) of the Planning and Development Act, 2000, as amended. In this regard, the Board adopts the report of the Inspector in relation to an Environmental Impact Assessment and an Appropriate Assessment and, thereby, has carried out the necessary assessments to conclude that neither an Environmental Impact Assessment nor an Appropriate Assessment is required.*

RL3503: The Board determined that the provision of a connection between the 110kV substation of the Yellow Wind Windfarm granted under PA0032 and the National Grid at Rhode, Co. Offaly is development and is exempted development. The Board's conclusion includes: *the underground cables do not come within the scope of section 4(4) of the Planning and Development Act, 2000, as amended. In this regard, the Board adopts the report of the Inspector in relation to Environmental Impact Assessment and Appropriate Assessment and, thereby has carried out the necessary assessments to conclude that neither an Environmental Impact Assessment nor an Appropriate Assessment is required.*

RL2789 – The Board determined that the construction of a 110kV underground power-line for transmission at Knockacummer Wind Farm Development, Knockacummer, Co. Cork is development and is exempted development. In this case a small part of the power-line was to be laid in a section of an SPA. The Board concluded: *applying a purposive interpretation of the provisions of Article 9(1)(a) (vii) of the Planning and Development Regulations, 2001, as amended, the laying of the underground electricity cable is not affected by the restrictions on exempted development set out at the said Article 9(1)(a)(vii) of the said Regulations and comes within the exempted development provisions of the said Class 26 of Part 1 of Schedule 2 of the said Regulations.*

Copies of the Board decisions are included with this Report.

8.0 Assessment

8.1. Introduction

- 8.1.1. The planning merits as to whether or not the development should take place is not the basis on which to determine the referral. The sole purpose of a Section 5 Referral is to determine, when a question arises in any particular case, what is or is not development or what is or is not exempted development within the meaning of the Act. The purpose of a Section 5 Referral is therefore not to adjudicate on the particular planning merits associated with a case, or whether or not a proposal is in accordance with the proper planning and sustainable development of the area, but rather a referral under Section 5 of the Act is confined to a legal interpretation as to whether or not planning permission is required in accordance with the provisions of the Act and associated Regulations.
- 8.1.2. The issue is whether it is considered having regard to the legislation and based on the documentation submitted as to whether the grid connection as referred to the Board, would constitute development and would be exempted development.

8.2. Is or is not development

- 8.2.1. Section 2(1) of the Planning and Development Act 2000, (as amended) includes the definition of works as "...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....."
- 8.2.2. Section 3(1) of the Act states the following in respect of 'development', "in this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."
- 8.2.3. The works to be carried out in the laying of cables require excavation and removal of vegetation and constitutes development within the meaning of the Act. The question that is relevant in this instance is whether the works are or are not exempted development.

8.3. Is or is not exempted development

Statutory Undertaker

- 8.3.1. As regards Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is Class 26, Part 1 Schedule 2 of the Planning and Development Regulations, as amended.
- 8.3.2. Article 6 (1) of the Planning and Development Regulations 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 opposite the mention of that class in the said column 1.”
- 8.3.3. Class 26 refers to “*The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking.* I am satisfied that the proposal is “a development consisting of the laying underground of cables for the purposes of the undertaking”. There are no Conditions and Limitations and this is exempted development subject to Article 9.
- 8.3.4. I note the broad definition of “statutory undertaker” provided within the Planning and development Act 2000 as follows: “*statutory undertaker*” means a person, from the time being, authorised by or under any enactment or instrument under an enactment to- (b)Provide, or carry out works for the provision of, gas, electricity or telecommunications services”.
- 8.3.5. On the requirement for the development to be carried out by an “*undertaker authorised to provide an electricity service*”, I refer to Article 3(3) of the regulations which states that an electricity undertaking means an undertaker authorised to provide an electricity service.
- 8.3.6. In light of these definitions, I note the letter (dated 28th of November 2023) submitted with the Referral and am satisfied that Garreenleen Solar Farm Limited (relevant to the solar farm development and the Referrer to the Council in the subject case), falls within the category of statutory undertaker on foot of its authorisation under the Planning Act to construct a solar farm that is a project for the provision of electricity. In addition, the Council’s Declaration provides that the proposal does come within

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

8.4. Restrictions on exempted development

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

- 8.4.1. This states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would contravene a condition attached to a permission issued under the Act or if it would be inconsistent with any use specified in a permission under the Act.
- 8.4.2. Regard is had to the Planning History Section above. I note that Ref. ABP-307891-20 is the original permission relative to the solar farm. The description of development included that it would connect to the national grid on lands with a total area of c.127ha. Condition no.4 of this permission provides: *All mitigation measures set out in the Natura Impact statement shall be implemented by the developer in conjunction with the timelines set out therein.*
- 8.4.3. ABP-313139-22 refers more specifically to the 110kV substation between the proposed substation and the existing Kellis 220kV substation. Condition no. 2 of this permission provides: *All of the environmental, construction and ecological mitigation and monitoring measures set out in the Ecological Impact Assessment and the Natura Impact Statement, and other particulars submitted with the application shall be implemented by the undertaker in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order.*
- 8.4.4. I would consider that having regard to the Referral and to documentation submitted, and the Council's declaration that the pertinent issue in this case is as per the Council's Declaration i.e. (c) *Notwithstanding part (i) of the foregoing, it is considered that the restrictions on exemptions in Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001(as amended) would apply i.e. proposal comprises development which requires Appropriate Assessment.*
- 8.4.5. The Council's Section 5 Declaration noted that the proposal is for an extension to the underground cabling of an approved development. That in combination, the overall proposal, comprising the approved route plus the extended route, is subject to an

NIS, accordingly it is their view that the proposal may not be deemed exempted development pursuant to the above. That therefore that the restrictions on exemptions in Article 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, would apply i.e that the proposal comprises development which requires AA.

- 8.4.6. It is of note that while the Council's Declaration considers this to be the case, the Referrers case to the Board disagrees with the Council's Declaration, and considers this proposal comes within Class 26 of Part 1 Schedule 2 of the Regulations and is not restricted by Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended).

Context of Development

- 8.4.7. As noted in the Referral the proposed cabling is for an extension of underground cabling approved under ABP-313139-22 which starts at a solar farm permitted under ABP-307981-20 and terminates in front of the Kellis substation. This declaration relates solely to the 43m of additional underground cabling required to connect the approved cabling to the substation. From the documentation submitted it appears that this stretch of underground cabling as shown on the Site Layout Plan submitted with the Referral was not part of the original applications (Figure 01 of the Referral refers). However, the Referrer provides that it is considered as part of the overall solar farm and substation project, that have been permitted.
- 8.4.8. It is noted that both of the aforementioned permissions included an NIS. In both cases the Board concluded that it was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' conservation objectives.
- 8.4.9. In response to the Council's further information request, relative to the subject case, the Referrer submitted an Appropriate Assessment Screening Report. The HWP Planning F.I response noted that the reasons why the solar farm and permitted underground cable projects required the preparation of an NIS were related to elements to these projects which required work directly adjoining or intersecting with watercourses with hydrological links to downstream European designated sites. That the proposed 43m underground cable route does not adjoin or cross any watercourses and there are no Natura 2000 sites within the Zone of Influence of the works. They provide that given the nature, location and extent of the proposed grid

connection there is no likelihood of any significant effects on any designated European sites.

8.5. Screening for Appropriate Assessment

Compliance with Article 6(3) of the Habitats Directive

- 8.5.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U(9) of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.5.2. In accordance with the obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a European site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is 'screening'.
- 8.5.3. The methodology for screening for Appropriate Assessment as set out in EU Guidance and the Department of Environment, Heritage and Local Government is:
- 1) Description of the plan or project and local site or plan area characteristics.
 - 2) Identification of relevant European sites and compilation of information on their qualifying interests and conservation objectives.
 - 3) Assessment of likely significant effects-direct, indirect, and cumulative, undertaken on the basis of available information.
 - 4) Screening Statement with conclusions.
- 8.5.4. An AA Screening report by Ecology Ireland (dated 13th of March 2024) has been prepared on behalf of the Referrer and the objective information informs this screening determination. The purpose of this report is to examine the development for possible impacts on the integrity of the Natura 2000 network.

Step 1: Description of the project

- 8.5.5. Regard has been had to the Question raised in this Referral. As has been noted it concerns whether the proposed 110kV underground grid connection cabling

between the L30535 public road (to the north of the existing Kellis220kV substation) to a line bay in the substation constitutes development and is or is not exempted development. It concerns 43m of additional underground cabling required to connect the approved cabling to the approved Kellis substation.

- 8.5.6. As has been noted the proposed development forms an extension to the underground cabling of an approved solar farm project and permitted underground cable projects and that the wider project has been subject to NIS. The Screening Report provides that the reasons why the solar farm and permitted underground cable projects required NIS was related to elements of these projects which required work directly adjoining or intersecting with watercourses with hydrological links to downstream European designated sites.
- 8.5.7. Reference is had to the NIS carried out relevant to the permitted solar farm (ABP-307891 relates). Noting that this application considered three grid options from the solar farm towards the Kellis substation. Details are provided relative to the NIS then carried out. The Screening Report provides that the requirement for NIS for these previous applications was consistent: the potential for hydrological effects downstream through run-off and contamination and ex-situ disturbance of certain qualifying species in the vicinity of the proposed works. That these triggers do not exist in relation to the proposed undergrounding of 43m of cable at Kellis substation. That there are no credible pathways for such effects on the European designated sites in the wider receiving environment.
- 8.5.8. It provides that the proposed 43m underground cable route does not adjoin or cross any watercourses and there are no Natura 2000 sites within the Zone of Influence of the works. That given the nature, location and extent of the proposed grid connection there is no likelihood of any significant effects on any designated European sites.
- 8.5.9. Details are given of the Methodology applied in the Screening Report and of the documentation and guidelines referred to.

European Sites

- 8.5.10. The Screening Report has been completed and a desktop study noted that there are a number of European Sites within a 15km radius of the development site. This also provides that the National Parks and Wildlife website was consulted to review the Site Synopsis and Conservation Objectives for the identified European Sites.

This notes that there are no European designated sites located in the vicinity of the cable route. Table 2.1 notes the Distance of designated sites from the proposed development. Table 2.2 – Natura 2000 Site Summary.

The Qualifying Interests and General Conservation Objectives of these two Designated Natura 2000 sites are as shown on Table 1 below:

Site Name Site Code and Distance	List of Qualifying Interests/Special Conservation Interest	General Conservation Objectives	Connections (source, pathway, receptor	Considered in further screening Y/N
Slaney River Valley SAC 000781 4.7kms	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Atlantic salt meadows (Glauco- Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho- Batrachion vegetation [3260]	To maintain or restore the favourable conservation condition of the Annex I habitats(s) and/or the Annex II species for which the SAC has been selected.	No hydrological link and sufficient geographical separation	No

	<p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaiite Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p>			
--	---	--	--	--

	Phoca vitulina (Harbour Seal) [1365]			
River Barrow and River Nore SAC 002162 9.1kms	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Reefs [1170] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco- Puccinellietalia maritima) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho- Batrachion vegetation [3260] European dry heaths [4030] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430] Petrifying springs with tufa formation (Cratoneurion) [7220]	To maintain or restore the favourable conservation condition of the Annex I habitats(s) and/or the Annex II species for which the SAC has been selected.	No and sufficient geographical separation	No

	<p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaite Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p> <p>Margaritifera durrovensis (Nore</p>			
--	--	--	--	--

	Pearl Mussel) [1990]			
Blackstairs Mountains SAC 000770 14.9	Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030]	To maintain the favourable conservation condition of these qualifying interests.	No and sufficient geographical separation	No

Potential Impact-Receptor Pathway Summary

8.5.13. The Screening Report provides that no potential effects on the qualifying objectives of the Slaney River Valley SAC, River Barrow and River Nore SAC and the Blackstairs Mountains SAC have been identified and a Finding of No Significant Effects Report has been completed for these Natura 2000 sites (Appendix A).

Table 2-2 provides a Natura 2000 Summary providing a Conservation Summary relevant to the Qualifying Interests of each of the above Natura 2000 Sites.

Assessment of Likely Significant Effects on the European Sites

Direct/ Indirect Effects

8.5.14. The Screening Report provides that the proposed development is distant from any Natura 2000 site (>4.7km) and given the limited nature and scale of the project there is no potential for direct habitat effects on any of the European conservation sites. The works area is not part of any designated site nor does it require any resources from them; thereby ruling out any direct habitat loss at the conservation sites in question. That, there will be no indirect habitat loss of deterioration.

8.5.15. They provide details of the works and note that given the nature and scale of the proposed works there is no likelihood of any significant disturbance or displacement of qualifying species associated with the proposed project. They note that there is no obvious pathway by which run-off from the works area could result in significant effects on any European designated site. That the works will be completed over a

very short period of time (approx. 1 day) and the habitats directly impacted will be reinstated.

- 8.5.16. Details are given of the size, scale and land-take of the proposal, noting that the total length of the subject underground cabling is approx. 43m. It is provided that there is no likelihood of damaging emissions to the air, soil or water as a result of the construction or operation of the underground cable at this location.
- 8.5.17. As has been noted while the cable route is located within the Barrow catchment it is not situated proximate to any watercourse with hydrological linkages to any of the European sites located in the wider hinterland. That given the scale and nature of the works involved in laying of the cable there is no likelihood of any significant effects arising in relation to the River Barrow and River Nore SAC. That the works area lacks any suitable habitat for any of the QI species to be present and there is no likelihood of ex-situ effects on these species occurring in relation to the proposed undergrounding of cable at this location.

Cumulative and In-combination effects

- 8.5.18. The Screening Report provides that the proposed undergrounding of cable between the public road and the existing substation was considered as part of the previous applications as part of a 'One Project' assessment. That all aspects of the works required to construct and operate the solar farm, including the grid connection were evaluated. As already described, there were elements of the wider solar farm and substations project (i.e. that previously permitted as referred to in the Planning History Section above) that required mitigation to be applied. These in particular concerned works closely adjacent to or intersecting watercourses. They note that the permitted solar farm as well as the permitted underground cable route were subject to detailed ecological assessment and mitigation strategy. That these differed substantially from the works under consideration in the current report. Noting that the works to connect the cable from the L30535 to Kellis substation are very limited in extent and do not involve the crossing of any watercourses. They provide that no bespoke mitigation has been identified as being required in relation to the current proposed works to address any risks likely to result in any significant cumulative or in combination effects to European sites in the wider receiving environment.

Screening Report Conclusion

8.5.19. Taking the above into consideration, it is considered that no elements of the project are likely to impact on any Natura 2000 sites, alone or in combination with any other plan or project. The key considerations that contributed towards this conclusion are summarised as follows:

- The development site is not part of the Natura 2000 sites under consideration here and does not require any resources from it – thereby ruling out any direct habitat loss effects.
- There are no watercourses intersected by the 43m underground cable route and therefore no indirect hydrological effects on Natura 2000 sites are expected as a result of the proposed development due to the relatively minor scale of the works and distances to the designated sites.
- The construction and operation of the underground cabling will not cause ex.situ disturbance/displacement to the qualifying faunal species of any Natura 2000 sites as there are no habitats of ecological significance for these species in the vicinity of the works areas.
- Given the nature, location and extent of the proposed grid connection there is no likelihood of any significant effects on any designated European sites.

The Screening Report concludes: *That no significant effects arising from the proposed underground grid connection to Kellis 220kV substation are likely to occur alone, or in combination with any other plan or project, in relation to any Natura 2000 site.*

Finding of no significant effects

8.5.20. The proposed development, the subject of this Referral, was considered in light of the requirements of Section 177U(9) 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 would not be likely to give rise to significant effects on the aforementioned European Sites, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the substation, at Kellistown East, Co. Carlow constitutes development and is or is not exempted development:

AND WHEREAS Garreenleen Solar Farm Limited requested a declaration on this question from Carlow Council and the Council issued a declaration on the 3rd day of April, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Garreenleen Solar Farm Limited referred this declaration for review to An Bord Pleanála on the 24th day of April, 2024:

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

- (a) Sections 2, 3, 4, 177(U)(9) and 254 of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and article 9(1) including 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 26 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the solar farm, in particular An Bord Pleanála reference numbers ABP-307891-20 and ABP-313139-22,
- (e) the Inspector's Report,

- (f) the plans and particulars submitted, and
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the provision of the underground electricity connection and associated works involves the carrying out of works and, therefore, constitutes development, under sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) the underground electricity grid connection involves works carried out by an electricity undertaking, and, having regard to the nature of those works, would come within the scope of Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and would, therefore, constitute exempted development,
- (c) none of the restrictions on exempted development provided for under section 4 (4) of the Planning and Development Act 2000, as amended, apply in this case, and,
- (d) none of the restrictions on exempted development provided for under Article 9 (1)(a) (viiB) of the Planning and Development Regulations, 2001, as amended, apply in this case, and in particular, having regard to the Appropriate Assessment Screening Report submitted.
- (e) there are no other restrictions on exemption set out in the Planning and Development Act, 2000 and/or the Planning and Development Regulations, 2001 that would apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in

the substation, at Kellistown East, Co. Carlow is development and is exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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.

Angela Brereton
Planning Inspector

4th of April 2025