



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320609-24

<b>Development</b>	10 year permission for energy storage facility and associated works. Application is accompanied by a Natura Impact Statement (NIS).
<b>Location</b>	Scart, (Dunbell E.D.), Co. Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	2360419
<b>Applicant(s)</b>	Clara Energy Storage Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	William Smyth Stephen Keogh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18/10/2024
<b>Inspector</b>	Adrian Ormsby

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## 1.0 Site Location and Description

- 1.1. The site is located on the R712 Regional Road c. 5km southwest of Kilkenny next to an existing electrical substation development. The site presents as an existing agricultural field and gently slopes downwards from a south east to north west direction.
- 1.2. Speed limits at this section of the R712 regional road were 100kph with the road heavily trafficked at the time of the inspection and a double solid white line in the centre of the road. From my inspection of the site it would appear the hard shoulder of the R712 is dedicated as a cycle lane.
- 1.3. The entrance to the site is from an existing agricultural entrance gate to the east side of the existing substation. The main part of the site in which the proposed energy storage system (ESS) is to be located is to the south west of the existing substation. Access to the ESS will be along the side and rear of the existing substation to the subject field. The entrance is located c. 150m to the west of the N19 flyover connecting the M9 Motorway to Kilkenny. An existing telecommunications mast is located to the northeast of the entrance road.
- 1.4. A local watercourse<sup>1</sup> flows to the rear of the application site and is a tributary of the River Nore c 1.5km to the west of the application site.
- 1.5. The site has a stated area of 4.12ha as per the application form.

## 2.0 Proposed Development

- 2.1. The application seeks a 10 year permission comprising of-
  - An Energy Storage Facility including-
    - energy storage modules installed on concrete plinth foundations
      - these are 73 containers c. 2.9m high, by 6.1m long and c. 2.6m wide<sup>2</sup>
    - electrical inverters and transformers

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<sup>1</sup> This appears to be known as the Lyrath Stream. The IFI submission to refer to it as the Rathbourne Stream.

<sup>2</sup> As per section 2.2.2 of the Planning and Environmental Report- see also Figure 4 in report.

- underground electrical and communications cabling
- the upgrade of an existing agricultural entrance from the R712
- on-site access track
- security fencing and security gates (up to 2.95m high)
- pole-mounted security cameras (up to 3.5m high)
- an electrical control building (6.105 m high and c.119 sq.m)
  - with wastewater holding tank to be regularly maintained by an approved supplier
- a compensatory flood storage area (35m by 15m (at its base) and a depth of c. 1.5m and
- all associated and ancillary site development, drainage, landscaping and reinstatement works.

2.2. The operational lifetime of the proposed development is 35-years.

2.3. The application is accompanied by a number of documents including-

- a Planning and Environmental Report
  - including subthreshold Screening for EIA prepared by Galetch Energy Services (issue date 20/09/2023)
- an Appropriate Assessment Screening Report (AASR) prepared by Ecofact Environmental Consultants dated 14/09/2023
- a Natura Impact Statement (NIS) prepared by Ecofact Environmental Consultants dated 21/09/2023 including-
  - Appendix A- Description of the Proposed Development<sup>3</sup>
  - Appendix B- Surface Water Protection Measures
  - Appendix C- Site Synopsis
- a Hydrological/Hydrogeological Assessment Report prepared by Hydro-Environmental Services and dated 20/09/2023

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<sup>3</sup> This is titled as such; however section 7 of the NIS describes this as a 'Method Statement' which details how the works will be carried out in compliance with the mitigation measures.

- including Appendix 1- Stage II- Flood Risk Assessment
  - a Drainage and Earthworks Report prepared by Jennings O'Donovan & Partners Limited, and dated September 2023
- 2.4. The Planning Authority sought Further Information (FI) on the 16/11/2023 in relation to the following matters-
- Site visibility and traffic related concerns
  - Landscaping along the R712
  - Compliance with the EU Machinery Directive
  - Potential concerns in relation to fire safety risk
  - Archaeological heritage related matters
- 2.5. The Applicants submitted their Response to Further Information (RFI) on the 09/07/24. The response included-
- An Archaeological & Cultural Heritage Impact Assessment prepared by Horizon Archaeology and dated 08/07/2024
  - Test Trenching Report prepared by TARGET Archaeological Geophysics Ltd. dated May 2024.
- 2.6. The Planning Authority did not deem the RFI to be significant.

### 3.0 Planning Authority Decision

- 3.1. The Planning Authority decided to grant permission on the 02/08/2024 subject to 14 conditions generally of a standard nature. The following conditions are highlighted-
- C4-
    - a) The only access (vehicular or pedestrian) to the site from a public road shall be from the public road as shown on the Revised Site Layout Plan, Figure 5 Site Entrance Details, Site Entrance Elevation Drawings and relating documentation submitted on the 9th July 2024.*
    - b) Prior to the commencement of the main development the applicant shall submit proposals for the written approval of the Planning Authority*

*to permanently set back the existing hedge line, between the proposed developments access and the existing 110kv substation access, and to provide a new passively safe boundary treatment set back a minimum of 1m behind the sight visibility splay. Proposals shall take cognisance of the level difference between the public road and the electricity substation site. Consent to carry the proposed works shall also be provided.*

*c) All works to achieve the sight visibility splays shall be carried out prior to the commencement of the main development.*

*d) The boundary along the road frontage of the site shall be set back as necessary to achieve the required sightlines and the visibility splay shall be kept clear of all obstructions.*

*e) If relevant, any service poles/signs along the existing road frontage boundary shall be set back against the new boundary in consultation with the appropriate statutory body and at the applicants own expense*

*f) No surface water run-off from the site shall discharge onto the public road*

*g) Roads side drainage shall not be negatively impacted by the works. All surface water inlets off the public road shall be maintained and adequately protected*

*Reason: In the interests of traffic safety*

- C11-

*Prior to commencement, the applicant shall submit details, for approval by Kilkenny County Council, outlining the proposed source of water which maybe a requirement for firefighting at the proposed development*

*Reason: In the interests of proper planning and to provide for the protection of the environment.*

- C12-



*Prior to commencement, the applicant shall submit proposals, to Kilkenny County Council, detailing mitigation strategies to address a potential fire-event and the subsequent production of potential 'hazardous water' produced as a result of addressing any such fire.*

*Reason: In the interest of public health and for the protection of the environment*

*Footnote: In the event of a fire at the proposed development, where water is utilised as a fire mitigation measure, then it will be essential to detain this contaminated run-off and dispose of it at an approved and licenced facility. Applicants shall consult with the Kilkenny Chief Fire Officer with regard to the fire safety of this development. A Fire Safety Certificate shall be applied for and obtained prior to development commencing and shall comply with all fire safety measures / conditions set therein.*

- C13- Surface water protection including discharge from the proposed Compensatory Flood Storage Area into the Rathbourne Stream.
  - a) The storage, management and conveyance of materials on site must not permit any deleterious matter to reach surface water systems either directly or indirectly. All mitigation measures outlined in Section 7 and Appendix B of the Natura Impact Statement and Sections 4.2 and 4.3 of the Hydrological / Hydrogeological Assessment Report must be strictly adhered to. Works in or adjacent to waters must also comply with IFI's Guidelines on Protection of Fisheries during Construction Works in and adjacent to Waters. There should be no interference with the bed, gradient, profile or alignment of watercourses on or adjacent to the site without prior notification and the agreement of Inland Fisheries Ireland.*
  - b) Watercourses on or bordering the site must be maintained in their original state, their bankside vegetation preserved, and the existing line of the watercourse left unaltered.*
  - c) The applicant or the appointed contractor shall provide a site-specific method statement for the proposed discharge point from the proposed*

*Compensatory Flood Storage Area into the Rathbourne Stream before works commence. The method statement shall be provided at least ten working days before the works commence, and describe detail the method and the duration of the proposed works and the relevant mitigation measures. Instream works may only take place during the period 1 July to 30 September. Works taking place within the river channel must be completed in the dry. Where dewatering is proposed, electro-fishing may be required in advance. The headwall on the discharge point from the compensation flood storage area shall be set back from the stream and the discharge point designed so as not to permit the passage of fish. IFI also requests that surface water run-off from the site is routed through a hydrocarbon and silt interceptor before entry into the Flood Storage Area. This shall be maintained regularly so as not to allow a deterioration in the quality of water entering the flood storage area.*

*d) The Flood Storage Area shall be on suitable ground and provide sufficient retention time to attenuate potential contaminated water. Only clean, uncontaminated water shall be permitted to discharge from this area. During the construction phase, buffer zones shall be clearly marked in advance of works commencing to preserve their integrity. The proposed buffer zones should apply to any works, including routes for machinery, storage, drilling spoil or other material associated with the works. Machines shall not enter these zones except where it is unavoidable. Surface water management and mitigation measures shall be inspected and maintained at regular intervals to ensure their effectiveness. Silt curtains shall be in place before works commence and only be removed after works have ceased and vegetation has become established to prevent soil loss or suspended solids run-off in excess of greenfield run-off rates during rainfall.*

*e) The site compound and site welfare facilities shall be sited a minimum of 50metres from the nearest watercourse. Similar setback distances should be applied for the proposed concrete washout area. Routes of roads and tracks and the location of turning areas must be*

*planned to minimise the potential for environmental disturbance. Drainage associated with road construction shall be designed to divert water away from buffer zones. Drainage infrastructure should be installed during dry ground conditions. All drainage channels, including roadside drains, should taper out before entering the buffer zone. Works should be suspended during heavy rains or when there is high risk of pollutants entering surface waters.*

*f) No abstraction of water, either during the site development and construction phases or during the operation phase of the development shall take place from watercourses on or adjacent to the site. Fuels, oils or other hazardous substances on site must be stored in lockable bunded containers. Appropriately sized spill kits shall also be kept on site and staff trained in their use in case an incident occurs. Where temporary diesel or petrol driven pumps are required, they should be located within bunded units. Records shall be kept of any water monitoring and inspections of the surface water mitigation measures outlined in the NIS and CEMP. These records shall be available upon request to any person authorised under the Local Government (Water Pollution) Acts.*

*g) Before works commence the applicant or the appointed contractor shall appoint a suitably qualified person to oversee and implement environmental mitigation measures. Contact details shall be provided to Inland Fisheries Ireland. In the event of an environmental incident which threatens an aquatic zone, IFI must be informed immediately.....*

## **4.0 Planning Authority Reports**

### **4.1. Planning Reports**

- There are two Planners Reports on file which generally reflect the decision of the Planning Authority.
- In relation to EIA Screening the two reports detail-

- the proposal is not of a type or class of development listed at either Part 1 or Part 2 of Schedule 5 of the Regulations and accordingly, the preparation of an EIAR is not required.
- A preliminary examination of the nature, size and location of the proposed development has been carried out which determines that there is no real likelihood of significant effects on the environment arising from the proposed development. Accordingly, the preparation of an EIAR is not required.
- In relation to Appropriate Assessment the reports consider that the proposed development will not impact significantly on the River Barrow/River Nore SAC or River Nore SPA.
- The file report considers the FI submitted satisfactorily addresses all outstanding further information request items.
- The report details it is council policy that existing electrical / grid infrastructure should be used where possible in preference to erecting new grid infrastructure. The proposal is considered an extension of an existing ESB facility and is in accordance with development plan policy and the proper planning and sustainable development for the area.
- In relation to development contributions class 4 and 12 apply.

#### **4.2. Other Technical Reports**

- Roads
  - 07/11/23 (hard copy on file received by ABP 20/10/24)-
    - FI required in relation to sightlines and forward visibility
  - 31/07/24-
    - Condition required relating to achieving sightlines
- Fire Services-
  - 13/11/23- Fire Safety Certificate required. No objection subject to Condition requiring compliance with Building Regulations and fire safety matters.

- 19/07/24- generally as per above
- Environment-
  - 01/08/24-
    - Conditions recommended relation to noise, waste management, environmental management (CEMP), water supply and firefighting, surface water disposal from fire hazard

#### **4.3. Prescribed Bodies**

##### **4.3.1. Inland Fisheries Ireland (IFI)**

- 09/11/23- No objections raised with watercourse protection conditions recommended

##### **4.3.2. Department of Housing, Local Government and Heritage, Development Applications Unit (DAU)-**

- Heritage-
  - 13/11/23- recommended that an Archaeological and Cultural Heritage Impact Assessment (including Archaeological Geophysical Survey and Archaeological Test Excavation) be carried out as Further Information
  - 19/07/24- recommends that an Archaeological Impact Assessment, to include pre-development archaeological testing, be carried out in advance of construction and as a condition of planning- it aligns with Sample Condition C3 as set out in OPR Practice Note PN03: Planning Conditions (October 2022).
- Nature Conservation-
  - 19/07/24- recommends that all mitigation proposals in the NIS are included as conditions in any planning permission.

#### 4.4. Third Party Observations

- 4.4.1. Three submissions were received and generally include those matters as raised in the Appeal.

### 5.0 Planning History

#### 5.1. This Site-

- None recent/relevant

#### 5.2. Relevant applications- along the R712 to the front of the site

- **23/60382 and ABP-321024-24** Kilderry Solar Farm Ltd. **Current appeal file-** 10 year planning permission for the construction of a ground mounted solar array and all associated site works c. 5 km north of the subject site. Grid Connection runs to existing substation adjoining application site.

**Split decision** by Local Authority. In summary-

- Conditional Grant of Permission for solar farm
- Refusal of grid connection route due to potential detrimental impacts on
  - traffic and general safety and the amenities of local residents and road users generally.
  - capacity, safety or operational efficiency of the national and local road network in the vicinity of the site.

The development would constitute a traffic and general road safety hazard and accordingly would be prejudicial to road safety

- **22/487-** Grid connection route from solar farm pursuant to Planning Registration Reference 20/897 c. 4.5km southeast of subject site. **Grant** 19/12/22

## 6.0 Policy Context

### 6.1. National Policy

#### 6.1.1. Climate Action and Low Carbon Development (Amendment) Act 2015 as amended

6.1.2. This Act commits Ireland to a legally binding 51% reduction in overall greenhouse gas emissions by 2030 and to achieving net zero emissions by 2050. As part of its functions the Board must, in so far as practicable, perform its functions in a manner that is consistent with the most recent approved climate action plan, most recent approved national long term climate action strategy, national adaptation framework, sectoral plans, furtherance of the national climate objective and the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

#### 6.1.3. The Climate Action Plan 2024 (CAP 24)

6.1.4. This follows the commitment in the Climate Act and sets out the range of emissions reductions required for each sector to achieve the committed to targets.

#### 6.1.5. National Planning Framework (NPF)

6.1.6. The NPF is a high-level strategic plan to shape the future growth and development of the country to 2040. It is focused on delivering 10 National Strategic Outcomes (NSOs). NSO 8 focuses on the 'Transition to a Low Carbon and Climate Resilient Society' and recognises the need to harness both on-shore and off-shore potential from energy sources including solar with a

*".....strategic aim to increase renewable deployment in line with EU targets and national policy objectives out to 2030 and beyond".*

6.1.7. It is stated in the NPF (P.15) that-

*"new energy systems and transmission grids will be necessary for a more distributed, renewables-focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such*

*as wind, wave and solar and connecting the richest sources of that energy to the major sources of demand.”*

6.1.8. The following National Policy Objectives are relevant-

- NPO 54-

*“Reduce our carbon footprint by integrating climate action into the planning system in support of national targets for climate policy mitigation and adaptation objectives, as well as targets for greenhouse gas emissions reductions.”*

- NPO 55-

*“Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050”.*

6.1.9. **Government Policy Statement on Security of Electricity Supply, November 2021**

6.1.10. This Policy Statement details that electricity is vital for the proper functioning of society and the economy. It notes a reliable source of electricity is vital for consumers to have confidence in the transition to a net zero emissions future and that ensuring continued security of electricity supply is a priority at national level and within the overarching EU policy framework in which the electricity market operates.

6.1.11. The key challenges to ensuring security of electricity supply are set out in section 2 and include-

- *“ensuring adequate electricity generation capacity, storage, grid infrastructure, interconnection and system services are put in place to meet demand – including at periods of peak demand”; and*
- *“developing grid infrastructure and operating the electricity system in a safe and reliable manner”*

It also details-

*“.....sources of renewable energy are variable in nature and therefore will require other technologies to both support their operation and provide*



*electricity supplies when they are not generating. This will require ..... other technologies such as energy storage (e.g. batteries).....”*

6.1.12. Section 3 of the Policy Statement details the Government recognises that

- *“ensuring security of electricity supply continues to be a national priority as the electricity system decarbonises towards net zero emissions”....*
- *“there is a need for very significant investment in additional flexible conventional electricity generation, electricity grid infrastructure, interconnection and storage in order to ensure security of electricity supply”....*

6.1.13. It further details the Government has approved that-

- *“it is appropriate for additional electricity transmission and distribution grid infrastructure, electricity interconnection and electricity storage to be permitted and developed in order to support the growth of renewable energy and to support security of electricity supply”.*

#### 6.1.14. **National Biodiversity Action Plan (NBAP) 2023-2030**

6.1.15. The NBAP includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Board, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Board. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.

## 6.2. **Regional Policy**

### 6.2.1. **Regional Spatial and Economic Strategy (RSES) for the Southern Region 2020-2032**

6.2.2. Chapter 5 of the RSES deals with the Environment including responding to Climate Change. It states-

*“Environmental protection and enhancement is a core component of the RSES. The relevant Regional Strategic Outcome is: Low Carbon, Climate Resilient and Sustainable Society”.*

6.2.3. It acknowledges climate change as the most important long term challenge facing Ireland and states-

*“The Regional Assembly is committed to implement regional policy consistent with the Climate Action Plan.....”*

6.2.4. The RSES sets out a number of Regional Policy Objectives (RPO). The following are considered relevant-

- RPO 87 Low Carbon Energy Future

*The RSES is committed to the implementation of the Government’s policy under Ireland’s Transition to a Low Carbon Energy Future 2015-30 and Climate Action Plan 2019. It is an objective to promote change across business, public and residential sectors to achieve reduced GHG emissions in accordance with current and future national targets, improve energy efficiency and increase the use of renewable energy sources across the key sectors of electricity supply, heating, transport and agriculture.*

- RPO 89 Building Resilience to Climate Change-

*“It is an objective to support measures to build resilience to climate change throughout the Region to address impact reduction, adaptive capacity, awareness raising, providing for nature-based solutions and emergency planning.....”*

- RPO 95 Sustainable Renewable Energy Generation:

*“It is an objective to support implementation of the National Renewable Energy Action Plan (NREAP), and the Offshore Renewable Energy Plan and the implementation of mitigation measures outlined in their respective SEA and AA and leverage the Region as a leader and innovator in sustainable renewable energy generation.*

- RPO 219 New Energy Infrastructure:

*“It is an objective to support the sustainable reinforcement and provision of new energy infrastructure by infrastructure providers (subject to appropriate environmental assessment and the planning process) to ensure the energy needs of future population and economic expansion within designated growth areas and across the Region can be delivered in a sustainable and timely manner and that capacity is available at local and regional scale to meet future needs.”*

### 6.3. Local Policy

#### 6.3.1. Kilkenny City and County Development Plan 2021-2027

#### 6.3.2. The following is considered relevant-

- Chapter 10 Infrastructure and Environment-
  - Section 10.3- Energy-
 

*“The availability of energy is of critical importance to facilitate new development.”*
  - Section 10.3.1 The National Transmission/Distribution network
 

*“.....The Council recognises the need to increase electrical infrastructure capacity and security.”*

*“The Council will support the development of a safe, secure and reliable supply of electricity and to support and facilitate the development of enhanced electricity networks and facilitate new transmission infrastructure projects that might be brought forward in the lifetime of this plan”*
  - Section 10.3.2 Grid Development Management Requirements

### 6.4. Ministerial Guidelines

#### 6.4.1. Development Management Guidelines 2007-

- Section 7.8- Conditions relating to other codes-

- *“It is inappropriate, however, in development management, to deal with matters which are the subject of other controls unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. The existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes and it is entirely wrong to use the development management process to attempt to force a developer to apply for other some licence, approval, consent, etc. At best, the imposition of conditions in relation to matters that are the subject of other controls is an undesirable duplication. In practice, such an approach can give rise to conflict and confusion if the effect of a condition on a development is different from that of the specific control provision. In this context, it should be remembered that the Building Regulations require certification by the developer’s design team.”*

- **Section 7.8.3 Fire Conditions-**

- *“..... fire safety can only be considered where it is relevant to the primary purpose of the Acts, namely the proper planning and sustainable development of the area. For example, fire safety considerations may arise in respect of:*

*.....*

- *Fire service access for proposed development;*
- *Water supplies for fire fighting.*

*Under no circumstances should a condition be included in a permission requiring that “the developer shall consult with and comply with the requirements of the Fire Officer” (or other words to that effect), whether or not such requirements are known at the time the decision is made. This kind of condition is objectionable in principle, and probably invalid. In some cases, it may become apparent from the information provided in the planning application that a proposed development would also*

*require a fire safety certificate under the Building Control Regulations and, where this is made known to the planner, it may be appropriate to inform the applicant (e.g. by means of a cover letter with the planning decision).*

*Similarly, the information provided as part of a planning application may indicate that aspects of a proposed development could give rise to difficulties for the developer in obtaining a fire safety certificate, and the planner may need to discuss with the applicant whether any design modifications should be made before a planning decision issues.”*

## **6.5. Natural Heritage Designations**

The site is located-

- c. 1.5km east of-
  - River Barrow and River Nore SAC (002162)
  - River Nore SPA (004233)
- c. 5.5 km southeast of-
  - Newpark Marsh pNHA (000845)

## **6.6. Environmental Impact Assessment Screening**

- 6.6.1. The Applicants have submitted a Planning & Environmental Report which details the proposal is not of a type or class of development listed in either Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 as amended and the preparation of an EIAR is not required in this instance.
- 6.6.2. The report includes a sub-threshold EIA Screening Report (SR) which considers all of the environmental factors as required by Article 3 of the EIA Directive i.e. Population and Human Health, Biodiversity, Land and Soil, Water, Air and Climate, Landscape, Cultural Heritage, Noise & Vibration, Transport and Access, Material Assets and Interactions of the Foregoing. The SR concludes that the proposed development will not result in any significant effects on the environment.

6.6.3. The final Planning Authority 'Planners Report' details that a preliminary examination has been carried out and determine there is no real likelihood of significant effects on the environment arising from the proposed development and the preparation of an EIAR is not required.

6.6.4. Notwithstanding the above, the Applicants have submitted information in their Planning & Environmental Report that could reasonably be considered to include information set out in Schedule 7A of the Planning and Development Regulations e.g. in section 4.4 when dealing with 'Water' the applicants states-

*"...with the implementation of design and mitigation measures, the proposed development will not result in significant effects on surface waters groundwaters or water quality....."*

The implication here could be interpreted that in the absence of mitigation measures the proposal will result in significant effects on surface waters groundwaters or water quality.

6.6.5. It is therefore considered appropriate to also carry out an EIA Screening. The Board are referred to Appendix 2 of this report where I have completed a Screening Determination (Form 3) where I have determined the following:

6.6.6. Having regard to-

- The nature and scale of the proposed development, which is not a class of development set out in Schedule 5, Parts 1 and 2 of the Planning and Development Regulations 2001-24 (as amended)
- The location of the proposed residential development and its proximity to an existing substation, telecommunications mast and the N19 flyover
- The nature of the existing site and the pattern of existing and permitted development in the surrounding area;
- The proposals for water supply and wastewater disposal to serve the development;
- The location of the development outside of any sensitive location specified in Article 109(4)(a)(v) of the Planning and Development Regulations 2001, as revised;
- The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development',

issued by the Department of the Environment, Heritage and Local Government (2003);

- The criteria set out in Schedule 7 and 7A of the Planning and Development Regulations 2001, as amended, and;
- The features and measures proposed by the applicant intended to avoid or prevent adverse effects on the environment, including measures identified in the submitted Planning and Environmental Report, the Natura Impact Statement and the Hydrological/Hydrogeological Assessment Report

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report is not, therefore required.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

#### **7.1.1. Two third party appeals have been received from**

- William Smyth
- Stephen Keogh

The main grounds of these appeals can be summarised as follows-

- Procedural matters regarding submission of Further Information (FI) and absence of opportunity for involvement from the public. The FI response was extensive, considered significant and of material nature. At 4.5 ha It should have been readvertised. Breach of Aarhus Convention.
- The works included geophysical testing and trenching which are akin to construction and should be subject to Appropriate Assessment. As these have already been carried out without Appropriate Assessment it is not possible to conclude that the trenching did not of itself require stage 2 Appropriate Assessment. Precautionary principle must now apply.
- The scale and nature of the proposal which has significant connectivity to the River Nore and Rive Barrow SAC has fallen well short of the required

standard to prove beyond reasonable scientific doubt that the project could have significant impact on a qualifying interest.

- Other related developments present and planned have not been adequately assessed under cumulative development. The NIS is flawed.
- There are safety concerns regarding potential fires and chemical leaks and proximity to residential properties. Absence of a report from Fire Officer- refers to a refusal for similar development ABP-303611-19<sup>4</sup>.
- Environmental Impact Assessment must be conducted. Concerns regarding soil and water contamination.
- Lack of community consultation
- No reference to what renewable energy will utilise the facility.
- Potential noncompliance with EU Machinery directive
- Proximity to Clara Substation

## **7.2. Applicant Response**

7.2.1. The Applicants have submitted a response to the appeal from Mr. Stephen Keogh. This response can be summarised as follows-

- The Planning Authority chose not to request advertisement of the proposed FI submission.
- The Appellants have had the opportunity to review the FI submission and have exercised their entitlement to appeal the decision.
- The geophysical survey undertaken covers an area of c. 3.1 ha and not 4.5 ha.
- 4 no. archaeological test trenches were excavated with an overall linear distance of 582m. No archaeological features or artefacts were encountered.
- The archaeological investigations were carried out pursuant to license granted by National Monuments Service pursuant to Section 26 of the National

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<sup>4</sup> The Board will note 303611 was granted permission by ABP generally in accordance with the Inspector's recommendation



Monuments Act 1930 as amended (License No: 24E0703). This is an entirely separate statutory process and does not fall for consideration as part of this planning appeal.

- The following control measures were observed in undertaking the investigations-
  - A dry day was selected to remove any potential for surface water runoff to nearby water courses
  - All excavated material was side cast immediately adjacent to the test trenches and fully reinstated immediately upon the completion of the investigations;
  - The sod layer was retained and reinstated to remove any post-excavation potential for runoff; and,
  - All excavation works were undertaken at a minimum of 50 metres from any watercourse.
- The AA screening exercise and AA Screening Report concluded that the potential for significant effects on the River Barrow and River Nore SAC and River Nore SPA could not be excluded. A full NIS was prepared and submitted. Subject to mitigation measures the NIS concludes the proposal will not adversely affect the conservation objectives or integrity of any Natura 2000 site.
- Matters related to the avoidance, detection and suppression of fire incidents have been comprehensively addressed at Section 2.2.4 of the Planning & Environmental Report. The Applicant has committed to full compliance with all best practice design standards and guidance, preparation of a site-specific Fire Safety Risk Assessment and incident management plan or protocol, obtaining a Fire Safety Certificate and ongoing consultation and engagement with the Fire Prevention & Building Control Department of Kilkenny County Council.
- The Senior Assistant Chief Fire Officer, in correspondence dated 13<sup>th</sup> November 2023, confirmed that the Kilkenny Fire/Building Control Authority *"have no objection in principle from a fire safety point of view to the granting of*

*planning permission in respect of this application...*" subject to the inclusion of a number of conditions of consent.

- Energy storage systems are not a type or class of development listed at either Part 1 or Part 2 of Schedule 5. The completion of an EIA is not mandatory.
- The Applicant conducted a sub- threshold EIA screening in accordance with both Article 103 of the Regulations, Annex III of EIA Directive 2014/52/EU, and the Department of Environment, Culture and Local Government (DOECLG) Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development (2003). Having regard to the characteristics of the proposed development and those of the receiving environment, it was assessed that significant effects on the environment are unlikely to occur and, therefore, the preparation of an EIAR is not required.
- Notwithstanding the above, the likelihood of effects on land, soil and water particularly with regard to pollution and/or contamination have been assessed at Sections 4.3, 4.4 and Annex 2 of the submitted Planning & Environmental Report. In summary, there is no likelihood of significant effects on the environment and that any effects can be appropriately managed and mitigated through standard good-practice construction mitigation measures.
- The application was submitted in accordance with Section 34 of the Planning & Development Act 2000 as amended. There is no requirement for the applicant to undertake public consultation prior to submitting a planning application.
- The proposed development is not associated or affiliated with any existing, permitted or proposed renewable energy development. As described at Section 2.0 of the Planning Statement (Cover Letter) which accompanied the planning application, energy storage systems take electricity from the national network (i.e. charging of the energy storage system) during times when supply exceeds demand; for example, when there are high levels of renewable electricity generation or when there are low levels of demand (for example, during night-time hours); and then discharge this stored electricity to the national network during times when demand exceeds supply, (for

example, during peak demand hours) or when there are reduced levels of renewable energy generation.

- Requirements regarding the Machinery Directive were addressed in the FI submission. All electrical equipment and apparatus to be installed at the proposed development site will be manufactured by approved electrical equipment manufacturers and will be supplied and installed by an authorised electrical contractor who will ensure that all equipment conforms to the highest standards and is installed by suitably qualified and experienced personnel. Furthermore, the proposed energy storage system and ancillary equipment will conform with the requirements of the Machinery Directive (Directive 2006/42/EC), and any subsequent revisions) and as set out in the European Communities (Machinery) Regulations 2008.

### **7.3. Planning Authority Response**

7.3.1. The Planning Authority have submitted two responses to the appeals which can be summarised as follows-

- The Further Information (FI) submission was not deemed significant as the information submitted would not materially change the development, nor would it materially impact on the environment, local infrastructure, traffic, public health and safety and/or visual and community impact.
- Having regard to the site's location and temporary and minor nature of archaeological test works proposed, the Planning Authority did not consider that there would be potential for significant impact on the integrity of the River Barrow and River Nore SAC and River Nore SPA in view of the site's conservation objectives. The conservation status of Annex 1 Habitats and Annex II Species will not be compromised by the archaeological constructions or operational stage either directly, indirectly or cumulatively. The test trenching works are not likely to discharge pollutants or nutrients of a significant nature and/or amount to surface water discharge or give rise to reduction or fragmentation of habitat area or significant ecological disturbance. Significant impact on the Natura 2000 network associated with

the Archaeological & Cultural Heritage Impact Assessment and associated works can therefore be ruled out.

- It is considered the additional information received does not pose a potential significant effect on the environment. The environmental mitigation measures set out in the NIS, referral submission by Inland Fisheries and planning permission conditions cover all contractors/workers on site, proposes best environmental construction/excavation practices and are designed to protect the environment, watercourse located adjoining the northern boundary and Natura 2000 network and its qualifying interests.
- Regarding EIA a preliminary examination of the nature, size and location of the proposed development has been carried out which determines that there is no real likelihood of significant effects on the environment arising from the proposed development. Accordingly, the preparation of an EIAR is not considered required in this instance.
- Regarding Safety/Fire Risk- The application was assessed having regard to fire safety requirements which included review by the Kilkenny Chief Fire Officer and Kilkenny Environmental Engineer who both considered proposed development acceptable subject to a Fire Safety Certificate and relating conditions of the planning permission.
- The proposed development is considered to comply with national, regional and local development plan policy in relation to energy supply and energy security.
- The proposed development will not seriously injure the residential amenities of the area, would be acceptable in terms of visual, traffic, flood risk, fire safety impacts and with proposed environmental mitigation measures in place, would not negatively impact on the integrity of any Natura 2000 network site and/or the environment generally.

#### **7.4. Observations**

- None

## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. I have examined the application details and all other documentation on file, including the Appeals and Responses to the Appeal. I have inspected the site and viewed it from a number of locations along the R712 regional road. I have had regard to relevant local/regional/national policies and ministerial and other guidance where relevant.
- 8.1.2. I am satisfied the substantive issues for assessment relate generally to the matters arising from the grounds of both Appeals. I propose addressing these matters as follows-
- Procedural Matters regarding submission of Further Information
  - Principle of the Development
  - Duration of Permission
  - Archaeological related 'Works' carried out at FI stage and requirements for AA Screening.
  - Fire Safety related matters
  - Requirements for EIA and impacts to soil and water
  - Site Entrance and Condition 4 of the Planning Authority decision and
  - Other Matters
- 8.1.3. Matters regarding Appropriate Assessment including concerns regarding Archaeological Works and cumulative assessment will also be addressed in section 9 of this report.

### **8.2. Procedural Matters regarding submission of Further Information**

- 8.2.1. The Appellants have highlighted concerns regarding the Planning Authority's decision not to require the advertisement of the applicant's further information response and to accordingly invite public submissions on same. The Appellants contend that the information is significant, extensive and warranting of further public submission. In the absence of such submissions to permit the development is considered to be contrary to the provisions of the Aarhus Convention.

8.2.2. In the Planning Authority response to the submission they contend the FI submission was not deemed significant as the information submitted would not materially change the development, nor would it materially impact on the environment, local infrastructure, traffic, public health and safety and/or visual and community impact.

8.2.3. I have reviewed the FI submission in full and note it does not involve or contain any information or substantive change to the development as proposed that in my opinion can be considered as significant to an extent warranting advertisement of the application under Article 35 of the Regulations i.e.-

*“....information, evidence, revised plans, drawings or particulars received, as appropriate, contain significant additional data, including information in relation to effects on the environment.”*

8.2.4. Notwithstanding this, I consider the appellants have not been prejudiced in any way by the Planning Authority's decision and have subsequently submitted their appeals in accordance with the provisions of the Planning and Development Act of 2000 as amended and the Planning and Development Regulations 2001 as amended.

### **8.3. Principle of the Development**

8.3.1. The Board will note the Appeals raise concerns regarding the source of renewable energy that is intended to be utilised at the proposed development.

8.3.2. In their Response to the Appeal, the Applicants clearly explain that the proposal is not associated or affiliated with any existing, permitted or proposed renewable energy development. The proposed energy storage system will take electricity from the national network (i.e. charging of the energy storage system) during times when supply exceeds demand, for example, when there are high levels of renewable electricity generation or when there are low levels of demand (for example, during night-time hours) and then discharge the stored electricity to the national network during times when demand exceeds supply.

8.3.3. I have considered this in the context of National, Regional and Local policy including those as summarised in section 5 of this report and am entirely satisfied the development as proposed is consistent with such policies and objectives in principle and will help contribute to the country's obligations regarding its transition to a low

carbon and climate resilient society by helping address climate change and a shift from fossil fuel usage.

- 8.3.4. The site is located adjoining the existing 110kV Kilkenny substation and national grid. In this context, is an entirely suitable location for the proposal subject to normal planning considerations which will be addressed elsewhere in this assessment as relevant.

#### **8.4. Duration of Permission**

- 8.4.1. The applicants have also applied for a 10 year permission to complete the development. In section 6.0 of their cover letter they detail a 10 year period is considered appropriate for a development of this nature and scale so as to ensure that all required supplementary statutory consents can be put in place. Section 2.10 of the Planning & Environmental Report details the construction phase is likely to last approximately 15 months.
- 8.4.2. The requirement for 10 years has not been adequately justified. In the absence of any substantive justification a standard 5 year permission is recommended.

#### **8.5. Archaeological related Works carried out at FI stage and requirements for AA screening.**

- 8.5.1. The Appellants have raised concerns regarding archaeological related works that were carried out at FI stage but were not subject to Appropriate Assessment Screening. The appellants have not questioned the findings of the archaeological submission or the decision of the Planning Authority regarding same.
- 8.5.2. The Planning Authority sought further information on a number of matters including Archaeological Heritage related matters. In particular the Department of Housing, Local Government and Heritage, Development Applications Unit (DAU) recommended that an Archaeological and Cultural Heritage Impact Assessment (including Archaeological Geophysical Survey and Archaeological Test Excavation) be carried out at the FI stage.

8.5.3. In response the applicants submitted an Archaeological & Cultural Heritage Impact Assessment (ACHIA) prepared by Horizon Archaeology and a Test Trenching Report prepared by TARGET Archaeological Geophysics Ltd. These reports details-

- A geophysical survey was carried out at the site under Licence Number 24R0242. It concludes-

*“No responses indicative of archaeological settlement or activity are evident in the survey data, and no concentrations of response of significant archaeological potential have been recorded. Groups of small-scale positives and linear responses have been identified by the geophysical survey and these could be targeted by archaeological testing to confirm their exact origin. These anomalies are, however, not expected to be of archaeological significance.”*

- test trenching works were carried out at the site under Licence Number 24E0703. This involved-
  - four test trenches which were excavated using a 13-tonne machine fitted with a 1.80m wide flat bucket while under constant archaeological supervision.
  - Two further trenches were not excavated but will be if the proposal is permitted.

No archaeological features or artefacts were revealed in Trenches 1 – 4. Photographs of the trenches are included in the report.

- The report details the findings of the test trenching support the findings of the geophysical survey and no responses of archaeological significance were identified by the geophysical survey in the area of Trenches 4, 5 or 6.

8.5.4. The extent of the Appellant’s grounds of appeal would appear to question the fact that ‘works’ within the meaning of the Planning and Development Acts 2000 as amended have taken place. The Applicant’s in their response, detail the works were carried out pursuant to license granted by National Monuments Service under Section 26 of the National Monuments Act 1930 as amended which is an entirely separate statutory process and does not fall for consideration as part of this planning appeal.



- 8.5.5. While such ‘works’ were carried out under a separate consenting regime they do in my opinion constitute ‘works’ for the purpose of the Planning and Development Acts i.e.-

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.....*

It is clear excavation has taken place. In this regard, I refer the Board to exempted development provisions set out in Schedule 2 Part 1 of the Planning and Development Regulations 2001-24 as amended. Class 43 provides a specific exemption and states-

*“The excavation for the purposes of research or discovery-*

*(a) pursuant to and in accordance with a licence under section 26 of the National Monuments Act, 1930 (No. 2 of 1930), of a site, feature or other object of archaeological or historical interest, or*

*(b) of a site, feature or other object of geological interest.*

- 8.5.6. The Board will also be aware Article 9 of the same regulations provides restrictions on exempted development including Class 43. I refer the Board to Article 9 (1) (a) (viiB) which provides that development is not exempted if the carrying out of such a development 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”*

- 8.5.7. At this point, it is important to highlight the ‘development’ in question is the ‘works’ carried out by the applicant under their license permitted under Section 26 of the National Monuments Act 1930 and this development has already taken place.

- 8.5.8. The Appellants don’t appear to question the authorised nature of the works carried out under licence, but instead if the works actually require stage 2 Appropriate Assessment and in the absence of same the precautionary principle should now apply.

8.5.9. The Board will be aware they have no role to play in the enforcement process and concerns regarding same are a matter for the Planning Authority and the Courts where necessary.

8.5.10. In the applicant's response to the appeal they detail a number of control measures were observed during the licensed works including-

- A dry day was selected to remove any potential for surface water runoff to nearby water courses
- all excavated material was side cast immediately adjacent to the test trenches and fully reinstated immediately upon the completion of the investigations
- the sod layer was retained and reinstated to remove any post-excavation potential for runoff, and
- all excavation works were undertaken at a minimum of 50 metres from any watercourse.

8.5.11. I have considered these licenced 'works' in light of the requirements S177U (Screening for appropriate assessment) of the Planning and Development Act 2000 as amended. The subject site is located c. 1.5km east of the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233). Having considered the nature, scale, extent and location of the 'works', I am satisfied that they would not have had a likely significant effect on any European Site either alone or in combination with other plans or projects and a stage 2 Appropriate Assessment (under Section 177V) would not have been required.

8.5.12. In my opinion the works carried out under licence were exempted development under class 43 of Schedule 2 Part 1 of the Planning and Development Regulations as amended and they would not have been restricted by the provisions of Article 9 (1) (a) (viiB).

8.5.13. I note however the submitted ACHIA does detail that further trenching will be excavated should the subject ESS development be granted planning permission. While the extent of these works does not appear to be of a significant scale, it is considered appropriate in the context of the appeal, to consider same as part of in-combination considerations for the overall ESS development in section 8.0 of this

report. The Board will note the applicants have submitted a stage 2 Natura Impact Assessment.

8.5.14. Overall, it is my opinion the concerns of the Appellants in this regard are unfounded.

#### **8.6. Fire Safety related matters**

- 8.6.1. The Appeal includes vague concerns regarding potential for fires from the proposal and proximity to residential properties. They detail an absence of a report from the Local Authority's Fire Officer and refers to a decision by the Board for a similar development ABP-303611-19 in which permission was allegedly refused.
- 8.6.2. There are two existing houses located on the opposite side of the R712 regional road and c. 75m or more from the subject ESS facility. In this context, I do not consider the proposal to present significant residential amenity or fire related impacts to such properties or other properties in the wider area.
- 8.6.3. The Board will note ABP-303611-19 was for a similar type development but was granted permission by ABP. The Board will further note there are two reports on the subject file from Kilkenny County Council's Fire and Rescue Service dated 13/11/2023 and 16/07/2024. Both reports advise the proposal will require a fire safety certificate and detail no objection in principle subject to a number of conditions as set out which are generally relating to requirements of the Building Regulations.
- 8.6.4. The Applicant's response to the appeal details that matters related to the avoidance, detection and suppression of fire incidents have been comprehensively addressed at Section 2.2.4 of the submitted Planning & Environmental Report including the use of suppression-medium such as clean and inert gaseous agent which will negate any risk to surface or groundwaters through contaminated runoff. Section 4.3.2 further details the ESS containers and power conversion systems are fully self-contained and that there is no risk of leakages or soil contamination in the unlikely event of a failure or fire event. I have reviewed all these measures and consider them comprehensive and robust in the context of the development proposal and I do not share the concerns of appellants in this regard.
- 8.6.5. Section 7.8 and 7.8.3 of the Development Management Guidelines details the requirements for a fire safety certificate are under provisions separate to the

Planning Code. I am satisfied further consideration of fire related matter as vaguely raised in the appeals, is not required.

8.6.6. The Planning Authority have granted permission on the 02/08/2024 subject to 14 planning conditions. Condition 11 and 12 relate to fire and state-

- C11-

*“Prior to commencement, the applicant shall submit details, for approval by Kilkenny County Council, outlining the proposed source of water which maybe a requirement for firefighting at the proposed development*

*Reason: In the interests of proper planning and to provide for the protection of the environment.*

- C12-

*Prior to commencement, the applicant shall submit proposals, to Kilkenny County Council, detailing mitigation strategies to address a potential fire-event and the subsequent production of potential ‘hazardous water’ produced as a result of addressing any such fire.*

*Reason: In the interest of public health and for the protection of the environment*

*Footnote: In the event of a fire at the proposed development, where water is utilised as a fire mitigation measure, then it will be essential to detain this contaminated run-off and dispose of it at an approved and licenced facility. Applicants shall consult with the Kilkenny Chief Fire Officer with regard to the fire safety of this development. A Fire Safety Certificate shall be applied for and obtained prior to development commencing and shall comply with all fire safety measures / conditions set therein.*

8.6.7. Regarding condition 11, I note the applicants do not indicate a proposed water supply to the development<sup>5</sup>. In section 2.6 of the Planning and Environmental Report they detail that a dedicated water source is not required due to infrequent use and instead a rainwater harvesting system will be incorporated. Section 7.8 of the Development Management Guidelines 2007 suggests that water supply for

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<sup>5</sup> Question 20 of application form.

firefighting is relevant to proper planning and sustainable development and accordingly I am satisfied condition 11 or similar should be applied if the Board decide to grant permission.

- 8.6.8. Regarding condition 12, the application indicates surface water disposal ‘to watercourse and to ground’.<sup>6</sup> Section 2.7 of the Planning and Environmental Report details the site is located in an area at risk of flooding. A compensatory flood storage area is to be developed to the north of the site. Section 1 of the ‘Drainage and Earthworks Report’<sup>7</sup> details the proposed storm network will

*“allow storm water runoff to discharge into the proposed compensatory flood storage area which will have a hydro-break outfall into the Lyrath Stream, as shown on Drawing No. 6897-C300-004.”*

The report further details all storm water generated by the site will gravity flow to the outfall via a Klargestor NSBP004 petrol / oil interceptor or similar approved as shown on the drawing.

- 8.6.9. Section 3.1 of the report details

*“Site roads<sup>8</sup> and car park areas will have a stone finish and will therefore not generate storm water runoff”*

This suggests a permeable finish with discharge to ground.

- 8.6.10. Overall, the drainage report details storm drainage for the entire development has been designed in accordance with the Recommendations for Site Development Works for Housing Areas and also the recommendations of the Greater Dublin Strategic Drainage Study (GDSDS).

- 8.6.11. The Planning Authority have raised no specific surface water drainage concerns in this regard and granted permission with condition 12 as detailed above.

- 8.6.12. Ordinarily, I would suggest condition 12 is not required but given the site’s proximity to the local watercourse there is potential for effects to aquatic life. Therefore mitigation strategies to address such potential fire-events are considered relevant to proper planning and sustainable development and accordingly I am satisfied a

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<sup>6</sup> Also question 20 of application form.

<sup>7</sup> by Jennings O’Donovan & Partners Limited

<sup>8</sup> I am satisfied reference to ‘roads’ here is in fact the proposed access track.

condition similar to number 12 should be applied if the Board decide to grant permission.

#### **8.7. Requirements for EIA and impacts to soil and water**

- 8.7.1. One of the appeal grounds relates to the requirement for an Environmental Impact Assessment (EIA) to be carried out. In particular, vague concerns regarding potential for soil and water contamination have been highlighted.
- 8.7.2. The Board are referred to section 6.6 and Appendix 1 & 2 of this report where I have concluded the development as proposed is not of a class that falls within Schedule 5 Part 1 and Part 2 of the Planning and Development Regulations 2001 as amended nor would it be likely to have significant effects on the environment (See Form 3). Therefore, I am satisfied an EIA is not required.
- 8.7.3. Notwithstanding same, concerns as raised in the appeal regarding the potential for soil and water contamination are reasonable. The Applicants have detailed these have been addressed in Sections 4.3, 4.4 and Annex 2<sup>9</sup> of their submitted Planning & Environmental Report.
- 8.7.4. Sections 4.3 and 4.4 sets out a number of mitigation measures to ensure the land and water are adequately protected during construction and operation. I have reviewed these in full including the risks and mitigation measures identified in section 4 of the Hydrological & Hydrogeological Assessment Report. I also note the Applicants have submitted specific Surface Water Protection Measures in Appendix B of the submitted NIS. All measures are considered robust, comprehensive and typical best practise for such construction projects.
- 8.7.5. I am satisfied the Appellants concern in this regard are unfounded.

#### **8.8. Site Entrance and Condition 4 of the Planning Authority decision**

- 8.8.1. The Board should note condition 4 of the Planning Authority decision requires the permanent set back of the existing hedge line between the proposed development's access and the existing 110kv substation access in order to achieve the required sight visibility splay i.e. 160m.

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<sup>9</sup> Hydrological & Hydrogeological Assessment Report prepared by Hydro-Environmental Services

- 8.8.2. This requirement is based on the Council's Roads Report dated 31/07/24 which details-

*"In order to achieve the sight visibility to the south west of the development the applicant has proposed to face back the existing hedge line. Based on the submitted drawings and on further inspection of the site it would appear likely that entirety of the hedge would have to be removed to facilitate the 160m sight line thus requiring the provision of a new boundary treatment."*

This assessment appears to be of drawing no CLA\_PAS\_LAY\_003 Title- 'Figure 5: Site Entrance Details' dated 09/07/24.

- 8.8.3. Having considered this drawing it would appear that c. 20m of hedgerow may require removal and set back into the substation site. In a worst case scenario up to 150m (not including existing entrance area) could require removal and/or 'facing' but this is not considered likely.
- 8.8.4. The Board should note the hedgerow to be faced, removed or set back is not located within the red line site boundary or the blue line landholding map.
- 8.8.5. In the Applicants RFI submission dated 09/07/24 they detail they have engaged with ESB Networks (ESBN) with regard to certain works regarding achieving sight visibility from the entrance and written consent for the completion of same has been provided. This is provided in Annex 3 of the RFI submission and provides for the facing back of hedges between the Clara Energy Storage site entrance and the existing entrance into ESBN's Scart substation entrance.
- 8.8.6. It is clear that ESBN are amenable to works to facilitate the proposed development and I see no reason why they would not permit the removal, reinstatement and facing of hedgerow in order to facilitate the proposed development further. The applicants have also not sought to appeal the condition. I am satisfied the matter of achieving required sightlines can be addressed by condition similar to that of the Planning Authority's fourth condition.

## 8.9. Other Matters

- 8.9.1. Concerns raised regarding the EU Machinery Directive and the applications compliance with same are not considered one for the Planning Code or the Board.

- 8.9.2. I note concerns regarding lack of community consultation and the community's ability to voice their concerns. The Planning and Development Regulations 2001 as amended, sets out requirements regarding planning applications such as that proposed including requirements for public notices and provisions for public submissions. Public submissions have been received on the application as lodged with the Planning Authority. Two appeals have been received by An Bord Pleanála. I do not share the concerns of the Appellant in this regard.
- 8.9.3. Condition 13 of the Planning Authority decision to grant permission is generally a repeat of the recommendation set out in the submission of the IFI dated 09<sup>th</sup> of November 2023. I have considered all of the information on file including the mitigation measures as set out in the NIS. I am satisfied the applicants have indicated their intention to comply with IFI guidelines as well as the measures proposed in in Appendix B of NIS i.e. Surface Water Protection Measures. I consider the requirements of condition 13 are adequately addressed in the information on file as well as other typical conditions. Therefore I do not consider it necessary to apply condition 13.
- 8.9.4. I am satisfied all other conditions of the Planning Authority are adequately provided for as set out in section 11 and 12 of this report.

## **9.0 Appropriate Assessment**

### **9.1. Screening Determination**

- 9.1.1. Appropriate Assessment related concerns raised by Appellants regarding works carried out under Archaeological licence at further information stage have been addressed in section 8.4 of this Report. I do not intend to consider this concern further save for where appropriate.
- 9.1.2. In accordance with Section 177U(4) of the Planning and Development Act 2000 as amended and on the basis of objective information provided in the AA Screening Report and other application documents submitted by the Applicant, I conclude that the proposed development is likely to have significant effects on-
- Sea, Brook and River lamprey species, Salmon and Otter all qualifying interests of the River Barrow and River Nore SAC (002162) and



- the Kingfisher a qualifying Interest of the River Nore SPA (004233)

from effects associated with surface and ground water pollution and habitat disturbance /species disturbance during construction and operation. It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000 as amended is required on the basis of the effects of the project 'alone'.

9.1.3. It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000 as amended is required on the basis of the effects of the project 'alone'.

9.1.4. No measures intended to avoid or reduce harmful effects on European sites were considered in reaching this conclusion.

**See Appendix 3 for AA Screening.**

## **9.2. Appropriate Assessment**

9.2.1. The development of the proposed Energy Storage System with ancillary infrastructure including a compensatory flood storage area has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.

9.2.2. Having carried out screening for Appropriate Assessment of the project, it was concluded that the proposal may have significant effects on the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

9.2.3. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233) or any other European site, in view of the sites' Conservation Objectives.

9.2.4. This conclusion is based on a full and detailed assessment of all aspects of the proposed development including proposed mitigation measures in relation to the Conservation Objectives of the European sites and an assessment of likely in-

combination effects with other plans and projects. No reasonable scientific doubt remains as to the absence of adverse effects on the integrity of the European Sites.

**See Appendix 4 for Stage 2 Appropriate Assessment.**

## **10.0 Recommendation**

- 10.1. Having regard to the foregoing I recommend that permission for the proposed development be granted, subject to conditions, for the following reasons and considerations and subject to attached conditions.

## **11.0 Reasons and Considerations**

- 11.1. Having regard to the location of the site and its proximity to the national grid, it is considered that subject to compliance with the conditions set out below the proposed development would accord with European, National, Regional and Local planning and related policy, would be consistent with the provision of the Climate Action Plan 2024 and would make a positive contribution towards Ireland's renewable energy and security of energy supply requirements. The proposal would not have an unacceptable impact on the landscape, ecology or features of cultural heritage interest and would not seriously injure the visual or residential amenities of the area or of property in the vicinity. Subject to conditions the proposal would be acceptable in terms of traffic and public safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **12.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as supplemented by the information received on the 09<sup>th</sup> day of July 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out in accordance with the agreed particulars.

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

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

**Reason:** To protect the integrity of European Sites.

3. Water supply and drainage arrangements, including the compensatory flood storage area, attenuation and disposal of surface water and implementation of Sustainable Urban Drainage measures, shall all comply with the requirements of the planning authority for such works in respect of both the construction and operation phases of the proposed development.

**Reason:** In the interest of environmental protection and public health.

4. Prior to commencement, the applicant shall submit details, for approval by the planning authority, outlining the proposed source of water which may be a requirement for firefighting at the site of the development.

**Reason:** In the interests of proper planning and to provide for the protection of the environment

5. Prior to commencement, the applicant shall submit proposals, for approval by the planning authority, detailing strategies to address a potential fire-event and the subsequent production of potential 'hazardous water' produced as a result of addressing any such fire.

**Reason:** In the interest of public health and for the protection of the environment

6.

- a. The developer shall engage a suitably qualified licence eligible archaeologist (licensed under the National Monuments Acts) to carry

out pre-development Archaeological Geophysical Test Excavation at the development site and to submit an Archaeological Impact Assessment Report for the written agreement of the Planning Authority, following consultation with the Department/National Monuments Service, in advance of any site preparation works or groundworks, including site investigation works/topsoil stripping/site clearance and/or construction works.

- b. The report shall include an archaeological impact statement and mitigation strategy. Where archaeological material is shown to be present, avoidance, preservation in-situ, preservation by record [archaeological excavation] and/or monitoring may be required.
- c. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service of the Department, shall be complied with by the developer. No site preparation and/or construction works shall be carried out on site until the archaeologist's report has been submitted to and approval to proceed is agreed in writing with the planning authority. The planning authority and the National Monuments Service of the Department shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation [either in situ or by record] of places, caves, sites, features or other objects of archaeological interest.

- 7. During the operational phase of the proposed development the noise level shall not exceed (a) 55 dB(A) rated sound level between the hours of 0700 to 2300, and (b) 45 dB(A) 15min and 60 dB LAfmax, 15min at all other times, (corrected for a tonal or impulsive component) as measured at the nearest noise sensitive location. Procedures for the purpose of determining

compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

8. Prior to the commencement of development the applicant shall submit proposals for the written approval of the Planning Authority to permanently achieve sightlines from the entrance to the proposed development. The visibility splay shall be kept clear of all obstructions thereafter. The developer shall comply with all other transportation requirements of the planning authority and other relevant bodies for such works and services as appropriate.

**Reason:** In the interest of traffic and pedestrian safety.

9. A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters, and surface waters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

**Reason:** In the interest of environmental protection, residential amenities, public health and safety and to ensure the continued preservation of archaeological features or objects on the site.

10. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

11. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of proper planning and sustainable development.

12.

- a. The Landscaping Scheme drawing number LD.CLARA\_BEES\_RFI and the Landscaping Management & Maintenance Schedule scheme, as submitted to the planning authority on the 09<sup>th</sup> day of July, 2024 shall be implemented and carried out within the first planting season following substantial completion of construction works.
- b. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential and visual amenity.

13. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the

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

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

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

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Adrian Ormsby  
Senior Planning Inspector

22nd of November 2024

## 13.0 Appendix 1: Form 1 EIA Pre-Screening [EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP-320609-24			
<b>Proposed Development Summary</b>	Energy storage facility and associated works.			
<b>Development Address</b>	Scart, (Dunbell E.D.), Co. Kilkenny			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			<b>Yes</b>	✓
			<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>				
<b>Yes</b>	Tick/or leave blank	State the Class here.		
<b>No</b>	Tick or leave blank		✓ No further action required	
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>				
<b>Yes</b>	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required	
<b>No</b>	Tick/or leave blank		Proceed to Q4	
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>				
<b>Yes</b>	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)	
<b>5. Has Schedule 7A information been submitted?</b>				
<b>No</b>	Tick/or leave blank	Screening determination remains as above (Q1 to Q4)		
<b>Yes</b>	✓	Screening Determination required		

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

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



## 14.0 Appendix 2: Form 3 EIA Screening Determination

A. CASE DETAILS		
<b>An Bord Pleanála Case Reference</b>	ABP-320609-24	
<b>Development Summary</b>	Energy storage facility and associated works.	
	Yes / No / N/A	Comment (if relevant)
<b>1. Was a Screening Determination carried out by the PA?</b>	No	The final Planning Authority 'Planners Report' details that a preliminary examination of the nature, size and location of the proposed development has been carried out which determines that there is no real likelihood of significant effects on the environment arising from the proposed development and the preparation of an EIAR is not required.
<b>2. Has Schedule 7A information been submitted?</b>	Yes	<p>The Applicant has submitted information that could reasonably be interpreted to include Schedule 7A information including descriptions of what can be considered to be aspects of the environment likely to be significantly affected and the likely significant effects resulting from expected residues, emissions, waste and the use of soil, land, water and biodiversity.</p> <p>e.g. Section 4 of the Hydrological/Hydrogeological Assessment Report deals with 'Risk Assessment' and identifies risk and its impact during the construction stage from-</p> <ul style="list-style-type: none"> <li>Sediment in Site Runoff and Effects on Downstream Surface Waters-</li> </ul>

		<ul style="list-style-type: none"> <li>○ could affect the water quality and fish stocks of downstream water bodies such as the Lyrath Stream and River Nore.</li> <li>○ could also impact on the status of the waterbodies under the Water Framework Directive.</li> <li>• Potential Release of Hydrocarbons/Chemicals- <ul style="list-style-type: none"> <li>○ significant pollution risk to groundwater, surface water and associated ecosystems, and to terrestrial ecology.</li> </ul> </li> <li>• Release of Cement-Based Products <ul style="list-style-type: none"> <li>○ can have significant negative impacts on water quality.</li> </ul> </li> <li>• Impacts on River Barrow and River Nore SAC and River Nore SPA <ul style="list-style-type: none"> <li>○ hydrologically linked with this designated site via the Lyrath Stream into which the proposed site drains</li> </ul> </li> <li>• Effect on Surface and Groundwater Body WFD Status- <ul style="list-style-type: none"> <li>○ has the potential to negatively affect the WFD status of groundwater and surface water bodies in the vicinity and downstream of the proposed development.</li> </ul> </li> </ul> <p>The applicant then proposes a number of mitigation measures to ensure there are no significant effects.</p>
<b>3.</b> Has an AA screening report or NIS been submitted?	Yes	<p>An AA Screening Report and NIS have been submitted. The NIS concludes -</p> <p><i>“...with the implementation of the mitigation measures proposed; that the proposed development does not pose a risk adversely affecting the conservation objectives or integrity of any Natura 2000 site, either alone or in-combination with other plans or projects”</i></p>
<b>5.</b> Have any other relevant assessments of the effects on the environment which have a significant bearing on the project	Yes	<p>As part of the Kilkenny City &amp; County Development Plan 2021-2027-</p> <ul style="list-style-type: none"> <li>• Strategic Environmental Assessment Statement</li> <li>• Consolidated Natura Impact Report</li> </ul>

been carried out pursuant to other relevant Directives – for example SEA		<ul style="list-style-type: none"> <li>Consolidated Strategic Flood Risk Assessment</li> </ul>
<b>B. EXAMINATION</b>	<p>Where relevant, briefly describe the characteristics of impacts (i.e. the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect</p> <p>(having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)</p>	<p>Is this likely to result in significant effects on the environment?</p> <p>Yes/ No/ Uncertain</p>
<b>1. Characteristics of proposed development</b> (including demolition, construction, operation, or decommissioning)		
<b>1.1</b> Is the project significantly different in character or scale to the existing surrounding or environment?	<p>The site is an existing agricultural field gently falling from southeast to northwest towards the rear of the site and Lyrath Stream.</p> <p>The site is located directly to the southwest of an existing substation development.</p> <p>The site is located c.150m to the west of the N19 flyover connecting the M9 Motorway to Kilkenny.</p> <p>In the context of existing infrastructure in the area the</p>	<b>No</b>

	project is not significantly different in character or scale to its existing surrounding or environment.	
<b>1.2</b> Will construction, operation, decommissioning or demolition works causing physical changes to the locality (topography, land use, waterbodies)?	<p>The site appears as an agricultural field next to an existing substation development, near a telecommunications mast and in close proximity to the N19 flyover .</p> <p>The proposal includes an Energy Storage Facility with ancillary structures.</p> <p>The proposal will involve physical changes to the existing site but in the context of the wider locality these are not considered significant.</p>	<b>No</b>
<b>1.3</b> Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?	The proposal will require use of land and typical materials for such projects. These are not considered to be in short supply.	<b>No</b>
<b>1.4</b> Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?	<p>By its very nature the proposal involves electricity which can, if not managed responsibly, be harmful to human health and the environment.</p> <p>The proposal during construction will involve certain materials that could be harmful to human health or the environment e.g. including</p>	<b>No</b>

	<p>those risks set out in section 4 of the Hydrological/Hydrogeological Assessment Report.</p> <p>Subject to mitigation measures as proposed, standard best practise measures, normal operating procedures and suitable planning conditions these effects are not considered significant or likely.</p>	
<p><b>1.5</b> Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>These will generally be generated during construction and operation.</p> <p>Operational wastewater will be stored in a sealed tank and tankered off-site as required by a licensed waste collector</p> <p>Subject to mitigation measures proposed, typical best practise construction methods, site management and planning conditions effects are not considered significant or likely.</p>	<b>No</b>
<p><b>1.6</b> Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>A risk of contamination is typical at all such sites during construction and operation.</p> <p>Such risks are set out in section 4 of the</p>	<b>No</b>

	<p>Hydrological/Hydrogeological Assessment Report.</p> <p>However subject to mitigation measures proposed, standard best practise construction methods, site management and planning conditions these risks are not considered significant or likely.</p>	
<p><b>1.7</b> Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p>	<p>There is potential for impacts during both construction and operation.</p> <p>The risk of electromagnetic radiation is not considered likely and compliance with same is not considered a matter for the planning code.</p> <p>Subject to mitigation measures proposed, standard best practise construction methods, site management and planning conditions these are not considered significant or likely.</p>	<b>No</b>
<p><b>1.8</b> Will there be any risks to human health, for example due to water contamination or air pollution?</p>	<p>Subject to mitigation measures proposed, standard best practise construction methods, site management and planning conditions these risks are not considered significant or likely.</p>	<b>No</b>

<p><b>1.9</b> Will there be any risk of major accidents that could affect human health or the environment?</p>	<p>There are always such risks in such projects.</p> <p>Subject to mitigation measures proposed, standard best practise construction methods, site management and planning conditions these risks are not considered significant or likely.</p>	<p><b>No</b></p>
<p><b>1.10</b> Will the project affect the social environment (population, employment)</p>	<p>Notwithstanding the public submissions received on the application I don't consider the proposal will significantly impact the social environment.</p>	<p><b>No</b></p>
<p><b>1.11</b> Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p>	<p>It is reasonable to consider the proposal in the context of National, Regional and Local Policy support for electricity developments including development as detailed in section 4.0 Planning History of the main report- 23/60382 &amp; ABP-321024-24 (under appeal) and permitted 22/487.</p> <p>Together these could be considered to have a wider large scale change that could result in a cumulative effect on the</p>	<p><b>No</b></p>

	<p>environment and in particular the landscape.</p> <p>However, having regard to the sites location next to the existing substation, telecommunications mast, near the N19 flyover and as discussed in section 7.3 of the main report and subject to the mitigation measures proposed, standard best practise construction methods, site management and planning conditions cumulative effects on the environment are not considered significant or likely.</p>	
<b>2. Location of proposed development</b>		
<p><b>2.1</b> Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ul style="list-style-type: none"> <li>a) European site (SAC/ SPA/ pSAC/ pSPA)</li> <li>b) NHA/ pNHA</li> <li>c) Designated Nature Reserve</li> <li>d) Designated refuge for flora or fauna</li> <li>e) Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</li> </ul>	<p>I am satisfied the site is only connected to an extent where impacts could be likely or significant to the following-</p> <ul style="list-style-type: none"> <li>• River Barrow and River Nore SAC (002162) and the</li> <li>• River Nore SPA (004233)</li> </ul> <p>These European Sites are located c. 1.5km west of the site and are hydrologically connected via the Lyrath</p>	<b>No</b>



	<p>Stream which flows from east to west along the northern boundary of the site.</p> <p>The applicants have undertaken Stage 1 and Stage 2 Appropriate Assessment.</p> <p>I have carried out my own Stage 1 and Stage 2 Appropriate Assessment in section 8 of the main report.</p> <p>I have concluded that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233) or any other European site, in view of the sites' Conservation Objectives.</p>	
<p><b>2.2</b> Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?</p>	<p>I have considered all of the information on file including the contents of the Planning and Environmental Report and the AA Stage 1 and 2 Reports</p>	<p><b>No</b></p>

	I am satisfied that subject to the mitigation measures proposed, standard best practise construction methods, site management and planning conditions, no protected, important or sensitive species of flora or fauna which use areas on or around the site (including protected habitats, species, otter and the kingfisher will be significantly affected by the project.	
<b>2.3</b> Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?	<p>I have considered the contents of the Archaeological &amp; Cultural Heritage Impact Assessment and the Test Trenching Report submitted at Further Information stage as well as the reports of the DAU on file.</p> <p>Subject to mitigation measures proposed, standard best practise construction methods, site management and appropriate planning conditions, I do not consider the proposal likely to have significant affects to the</p>	<b>No</b>

	landscape, or historic, archaeological, or culturally importance features.	
<b>2.4</b> Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?	<p>The Lyrath River flows along the northern boundary of the site and is a tributary of the River Nore. I have considered all of the information on file including the contents of the submission from Inland Fisheries Ireland (IFI).</p> <p>Subject to mitigation measures proposed, standard best practise construction methods, site management and planning conditions I am satisfied fisheries (or any other resource detailed) will not be significantly affected as a result of the proposed development.</p>	<b>No</b>
<b>2.5</b> Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?	I have considered the sites proximity to the Lyrath River, the contents of the Hydrological/Hydrogeological Assessment Report, the Stage II-Flood Risk Assessment and Drainage and Earthworks Report including the proposed compensatory flood storage area.	<b>No</b>

	I am satisfied that subject to the mitigation measures proposed, standard best practise construction methods, site management and planning conditions, no water resource (as listed) will be significantly affected by the project particularly in terms of volume and flood risk.	
<b>2.6</b> Is the location susceptible to subsidence, landslides or erosion?	I have not identified any evidence to suggest such susceptibility.	<b>No</b>
<b>2.7</b> Are there any key transport routes (e.g. National primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?	<p>The site is located on the R712 Regional Road c. 5km southwest of Kilkenny.</p> <p>The entrance to the site is located c. 150m to the west of the N19 flyover connecting the M9 Motorway to Kilkenny.</p> <p>Section 4.9.1.1 and Table 5 of the Planning and Environmental Report discusses Construction Phase Traffic with 978 two way HGV movements estimated which over a 15 month construction period equates to a daily average of 3 HGV movements.</p> <p>The regional and national road network; the R712, N10 and M9; are all in close proximity to the site</p>	<b>No</b>

	<p>and will, accordingly; avoid the requirement for significant usage of local roads.</p> <p>Subject to mitigation measures proposed, standard best practise construction methods, site management and planning conditions the proposal is not likely to cause significant congestion or cause significant environmental problems to the transport routes identified.</p>	
<p><b>2.8</b> Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?</p>	<p>None identified in close proximity to the site.</p> <p>Notwithstanding public submissions received the closest one-off houses are located on the opposite side of the R712 road c. 75m from the site. No significant impacts identified.</p>	<b>No</b>
<p><b>3. Any other factors that should be considered which could lead to environmental impacts</b></p>		
<p><b>3.1 Cumulative Effects:</b> Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?</p>	<p>In their Response to the Appeal, the Applicants clearly explain that the proposal is not associated or affiliated with any existing, permitted or proposed renewable energy development.</p>	<b>No</b>

	<p>Notwithstanding this the potential for cumulative construction impacts is also considered having regard to the proposals detailed in section 4 of the main report.</p> <p>Cumulative landscape and visual impacts are likely but should be considered in the context of the existing substation and telecommunications mast adjoining the site and proximity to the N19 flyover.</p> <p>Subject to the mitigation measures and landscaping proposed, standard best practise construction methods, site management and planning conditions cumulative effects on the environment during construction and operation are not considered significantly adverse or likely.</p>	
<b>3.2 Transboundary Effects:</b> Is the project likely to lead to transboundary effects?	The proposal is contained wholly in Kildare and does not have potential for transboundary effects.	
<b>3.3</b> Are there any other relevant considerations?	<b>No</b>	<b>No</b>
<b>C. CONCLUSION</b>		
<b>No real likelihood of significant effects on the environment.</b>	<div style="border: 1px solid black; width: 100px; height: 40px; margin: 0 auto; text-align: center; line-height: 40px;">✓</div>	EIAR Not Required

Real likelihood of significant effects on the environment.	<div></div>	
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## D. MAIN REASONS AND CONSIDERATIONS

Having regard to-

- The nature and scale of the proposed development, which is not a class of development set out in Schedule 5, Parts 1 and 2 of the Planning and Development Regulations 2001-24 (as amended)
- The location of the proposed residential development and its proximity to an existing substation, telecommunications mast and the N19 flyover
- The nature of the existing site and the pattern of existing and permitted development in the surrounding area;
- The proposals for water supply and wastewater disposal to serve the development;
- The location of the development outside of any sensitive location specified in Article 109(4)(a)(v) of the Planning and Development Regulations 2001, as revised;
- The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- The criteria set out in Schedule 7 and 7A of the Planning and Development Regulations 2001, as revised, and;
- The features and measures proposed by the applicant intended to avoid or prevent adverse effects on the environment, including measures identified in the submitted Planning and Environmental Report, the Natura Impact Statement and the Hydrological/Hydrogeological Assessment Report

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report is not, therefore required.

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

**DP/ADP** \_\_\_\_\_ **Date:** \_\_\_\_\_



## 15.0 Appendix 3: AA Screening Determination

### 15.1. Introduction

15.1.1. I have considered the proposed Energy Storage System and ancillary works in light of the requirements of S177U of the Planning and Development Act 2000 as amended. An AA Screening Report (AASR) and Natura Impact Statement (NIS) have been submitted by the applicants. These reports have been prepared by Ecofact Environmental Consultants.

15.1.2. The AASR concludes-

*“there is the potential for significant impacts on the qualifying interest of Sea Lamprey, Brook Lamprey, River Lamprey and Otter in the River Barrow and River Nore SAC and for the Kingfisher in the River Nore SPA.”*

15.1.3. The following matters raised by prescribed bodies in relation to the application are considered pertinent-

- The Nature Conservation section of the DAU in their report dated 19/07/24 raised no concerns and recommends that all mitigation proposals in the NIS are included as conditions in any planning permission.
- The IFI, in their report dated 09/11/23 raised no concerns with typical watercourse protection conditions recommended by condition. The IFI request the watercourse to the north of the site be treated as a salmonid stream with numerous salmon spawning sites on tributaries downstream and upstream of the confluence with the River Nore.

### 15.2. Description of the Project

15.2.1. The subject site is located c. 5km to the east of Kilkenny City in a rural agricultural field area adjoining an existing 110kV substation and accessed from the R712 Regional Road. The Lyrath/Rathbourne stream generally flows from east to west along the northern boundary of the application site.

15.2.2. The proposed development, as described in section 3.0 of this report, in section 3 of the applicant's 'Screening for Appropriate Assessment' (AASR) and in section 3 of

the applicants Natura Impact Statement (NIS), generally comprises a Battery Energy Storage System which will take electricity from the national network during times when supply exceeds demand and then discharge the stored electricity to the national network during times when demand exceeds supply. The proposal also includes a compensatory flood storage area between the main compound and the stream bounding the site.

15.2.3. The application does not propose connecting to a public water supply nor does it propose a well. The application details a rainwater harvesting system will be used to supply water for toilet facilities and hand washing. Wastewater will be stored in a sealed tank and tankered off-site as required by a licensed waste collector.

15.2.4. A 'Planning and Environmental Report' has been submitted with the application. This report includes a sub-threshold EIA Screening which addresses a number of environmental factors typical to the EIA Directive i.e. Population and Human Health, Biodiversity, Land and Soil, Water, Air and Climate, Landscape, Cultural Heritage, Noise & Vibration, Transport and Access, Agriculture and Interactions of the Foregoing. The report concludes that the proposed development will not result in any significant effects on the environment.

15.2.5. The report describes the site as generally comprising

*“flat or gently undulating improved agricultural grassland; which is typical of the surrounding landscape; and is bordered by hedgerows and treelines. The Lyrath Stream forms northern boundary of the landholding and is a lower order tributary of the River Nore.”*

### **15.3. Potential impact mechanisms from the project**

15.3.1. The proposed development is not directly connected with or necessary to the management of a European site and therefore it needs to be determined if the development is likely to have significant effects on any European sites.

15.3.2. The proposed development is examined in relation to any possible interaction with European sites, i.e. designated Special Areas of Conservation (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

15.3.3. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following mechanisms are considered for examination in terms of implications for likely significant effects on European sites:

- Surface water or groundwater pollution or contamination from silt, chemicals, oils, hydrocarbons, etc. during construction resulting in changes to environmental conditions such as water quality/ habitat degradation
- Surface water or groundwater pollution arising during the operational stage
- Habitat disturbance /species disturbance during both construction and operational stages from humans, lighting and/or noise etc.

#### 15.4. European Sites at Risk

15.4.1. Figure 2 and page 13 of the applicant's AASR suggests the applicants have considered all European Sites within 15km of the application site. Figure 3 of the AASR identifies European Sites within 5km along with surrounding watercourses.

15.4.2. The Board are advised a 15km radius is no longer considered an appropriate basis to identify European sites. Instead, the application of the source-pathway-receptor model to determine connectivity is considered most appropriate<sup>10</sup>.

15.4.3. Table 2 of the submitted AASR identifies 3 sites-

- River Barrow and River Nore SAC (002162)
- River Nore SPA (004233) and
- Thomastown Quarry SAC (002252)

15.4.4. Using the Source Pathway Receptor Model I consider the following designated European sites as set out in Table 1 within the within a zone of influence of the proposed development i.e. there is an ecological connection or pathway-

Table 1: European Sites at risk from impacts of the proposed project			
European Site	Qualifying Interests (summary)	Distance	Connections
River Barrow	Estuaries [1130]	c. 1.5 km to west of	hydrological

<sup>10</sup> OPR Practice Note PN01 Appropriate Assessment Screening for Development Management

and River Nore SAC (002162)	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Reefs [1170]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculon fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation [3260]</p> <p>European dry heaths [4030]</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p> <p>Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220]</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p><i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Alosa fallax fallax</i> (Twaite Shad) [1103]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p>	application site	
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	Lutra lutra (Otter) [1355]		
	Trichomanes speciosum (Killarney Fern) [1421]		
River Nore SPA 004233	Kingfisher (Alcedo atthis) [A229]	c. 1.5 km to west of application site	Hydrological Air

15.4.7. Having considered the Source-Pathway-Receptor Model, I do not consider there to be any significant ecological connectivity with the Thomastown Quarry SAC (002252), located c. 11.5km to the south of the site, which warrants its inclusion in this screening exercise.

#### 15.5. Likely significant effects on the European sites ‘alone’

**Table 2: Could the project undermine the conservation objectives ‘alone’**

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?		
		Construction Surface and ground water pollution	Operational Surface and ground water pollution	Habitat disturbance /species disturbance (Construction and Operation)
River Barrow and River Nore SAC (002162)	<a href="https://www.npws.ie/protected-sites/sac/002162">https://www.npws.ie/protected-sites/sac/002162</a>	N	N	N
Estuaries	To maintain the favourable conservation condition	N	N	N
Mudflats and sandflats not covered by	To maintain the favourable conservation condition	N	N	N

seawater at low tide				
Reefs	Not stated	N	N	N
Salicornia and other annuals colonising mud and sand	To maintain the favourable conservation condition	N	N	N
Atlantic salt meadows	To restore the favourable conservation condition	N	N	N
Mediterranean salt meadows	To restore the favourable conservation condition	N	N	N
Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation	To maintain the favourable conservation condition	N	N	N
European dry heaths	To maintain the favourable conservation condition	N	N	N
Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels	To maintain the favourable conservation condition	N	N	N

Petrifying springs with tufa formation	To maintain the favourable conservation condition	N	N	N
Old sessile oak woods with Ilex and Blechnum in the British Isles	To restore the favourable conservation condition	N	N	N
Alluvial forests with Alnus glutinosa and Fraxinus excelsior	To restore the favourable conservation condition	N	N	N
Desmoulin's Whorl Snail	To maintain the favourable conservation condition	N	N	N
Freshwater Pearl Mussel	Currently under review	N	N	N
Nore freshwater pearl mussel	To restore the favourable conservation condition	N	N	N
White-clawed Crayfish	To maintain the favourable conservation condition	N	N	N
Sea Lamprey	To restore the favourable conservation condition	Y	Y	N
Brook Lamprey	To restore the favourable conservation condition	Y	Y	N
River Lamprey	To restore the favourable conservation condition	Y	Y	N

Twaite Shad	To restore the favourable conservation condition	N	N	N
Salmon	To restore the favourable conservation condition	Y	Y	Y
Otter	To restore the favourable conservation condition	Y	Y	N
Killarney Fern	To maintain the favourable conservation condition	N	N	N

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?		
		Construction Surface and ground water pollution	Operational Surface and ground water pollution	Habitat disturbance /species disturbance
River Nore SPA 004233	<a href="https://www.npws.ie/protected-sites/spa/004233">https://www.npws.ie/protected-sites/spa/004233</a>			
Kingfisher (Alcedo atthis) [A229]	to maintain or restore the favourable conservation status	Y	N	Y

15.5.5. Having considered all of the above, including the Applicants submitted AASR and the contents of the IFI submission, I conclude that the proposed development would have a likely significant effect 'alone' on-



- the three lamprey species, salmon and otter which all qualifying interests of the River Barrow and River Nore SAC (002162) from effects associated with surface and ground water pollution and habitat disturbance /species disturbance during construction and operation
- the Kingfisher a qualifying interest of the River Nore SPA (004233) from effects associated with surface and ground water pollution and habitat disturbance /species disturbance during construction.

15.5.6. An appropriate assessment is required on the basis of the effects of the project 'alone.' Further assessment in-combination with other plans and projects is not required at this time.

#### 15.6. **Overall Conclusion - Screening Determination**

- 15.6.1. In accordance with Section 177U(4) of the Planning and Development Act 2000 as amended and on the basis of objective information. I conclude that the proposed development is likely to have a significant effect on the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233) from effects associated with surface and ground water pollution and habitat disturbance /species disturbance during construction and operation. It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000 as amended is required on the basis of the effects of the project 'alone'.
- 15.6.2. No measures intended to avoid or reduce harmful effects on European sites were considered in reaching this conclusion.

## **16.0 Appendix 4: Appropriate Assessment**

### **16.1. Introduction**

16.1.1. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 as amended are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive,
- The Natura Impact Statement and associated documents, and
- Appropriate assessment of implications of the proposed development on the integrity of each European site.

### **16.2. Compliance with Article 6(3) of the EU Habitats Directive**

16.2.1. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

16.2.2. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

### **16.3. The Natura Impact Statement**

16.3.1. The application included a Natura Impact Statement by Ecofact Environmental Consultants dated the 21<sup>st</sup> of September 2023, which examines and assesses potential adverse effects of the proposed development on the following European Sites.

- the River Barrow and River Nore SAC (002162) and
- the River Nore SPA (004233)

16.3.2. The applicant's NIS concludes that-

*“.....following an examination, analysis and evaluation of the relevant information; including in particular the nature of the predicted impacts from the proposed development and with the implementation of the mitigation measures proposed; that the proposed development does not pose a risk adversely affecting the conservation objectives or integrity of any Natura 2000 site, either alone or in-combination with other plans or projects.*

16.3.3. Having reviewed the documents, submissions and all other information on file, I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the following European sites alone, or in combination with other plans and projects:

- the River Barrow and River Nore SAC (002162) and
- the River Nore SPA (004233)

#### **16.4. Appropriate Assessment of implications of the proposed development**

16.4.1. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field as presented in the NIS. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

The following Guidance was considered in my assessment:

- OPR (2021) Practice Note PN01 Appropriate Assessment Screening for Development Management
- DoEHLG (2009) Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service.

- EC (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC.
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC].

## 16.5. European Sites

16.5.1. The following sites are considered in the Appropriate Assessment:

- the River Barrow and River Nore SAC (002162)
- the River Nore SPA (004233)

16.5.2. The Lyrath/Rathbourne Stream flows generally from east to west along the northern boundary of the site where it meets the River Barrow and Nore SAC c. 1.5km west of the site.

16.5.3. The Applicant's NIS considers potential impacts to these sites from water quality, invasive species<sup>11</sup>, wildlife disturbance and habitat degradation.

16.5.4. I am satisfied the qualifying interests of the two European Sites potentially affected are-

- SAC- Sea, Brook and River Lamprey, Salmon and Otter
- SPA- Kingfisher

## 16.6. Mitigation Measures

16.6.1. The Applicant has proposed a series of mitigation measures in section 7 of their NIS to avoid adverse effects on both European Sites. A summary assessment of these measures is provided in Table 1 below.

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<sup>11</sup> This was not identified in the submitted AASR nor have I identified any evidence of such species within or near the site as detailed within the submitted Planning and Environmental Report or any other documentation on file.

**Table 1: Summary of assessment of mitigation measures**

<b>Mitigation Measures</b>	<b>Assessment</b>	<b>Implementation</b>	<b>Monitoring</b>
Method Statement submitted in Appendix A of NIS and	<p>Details how the works will be carried out in compliance with other identified mitigation measures.</p> <p>Addresses adverse water quality, invasive species, disturbance and habitat degradation impacts.</p>	Applicant/Contractor	Applicant/Contractor/ Appointed Environmental Manager
Construction and Environmental Management Plan (CEMP) to be prepared in advance of works	<p>Typical requirement for such developments including compliance with IFI guidelines for protection of Fisheries and Biosecurity Protocols, NRA Guidance on Invasive Species and CIRIA Best Practise for Control of Water Pollution and Environmental Good Practice.</p> <p>Addresses adverse water quality, invasive species, disturbance and habitat degradation impacts.</p>	Applicant/Contractor following agreement with Planning Authority.	Applicant/Contractor/ Appointed Environmental Manager
CEMP to include Traffic Management Plan (TMP)	Construction phase approx. 15 months, six days per week, typical operating hours, traffic management, site entrance works, internal	Applicant/Contractor following agreement with Planning Authority.	Applicant/Contractor/ Appointed Environmental Manager

	<p>tracks, site reinstatement works etc.</p> <p>Addresses adverse water quality, invasive species, disturbance and habitat degradation impacts.</p>		
<p>Avoidance- Footprint of works and Timing</p>	<p>Limited footprint, fencing, limited use of lighting cowled to avoid spillage,</p> <p>Daylight hours to avoid disturbance to Otter etc</p> <p>Addresses adverse water quality, invasive species, disturbance and habitat degradation impacts.</p>	<p>Applicant/Contractor following agreement with Planning Authority.</p>	<p>Applicant/Contractor/ Appointed Environmental Manager</p>
<p>Water Quality Protection- Surface Water Protection Measures (SWPM) submitted in Appendix B of NIS to prevent water quality issues arising during construction and operation</p> <p>A Sustainable Urban Drainage Systems (SuDS) approach is proposed during operation.</p>	<p>Reduce potential of adverse effects to the local water course and ground waters etc from potential release of hydrocarbons/chemicals/ other pollutants arising including from machinery or refuelling activities on site</p> <p>Addresses adverse water quality, disturbance and habitat degradation impacts.</p>	<p>Applicant/Contractor following agreement with Planning Authority.</p>	<p>Applicant/Contractor/ Appointed Environmental Manager</p>
<p>Biosecurity/Invasive Species</p>	<p>No invasive species were recorded at the site during the site survey, but precautions</p>	<p>Applicant/Contractor following agreement with Planning Authority.</p>	<p>Applicant/Contractor/ Appointed Environmental Manager</p>

	<p>proposed to ensure that no invasive species are introduced.</p> <p>Addresses adverse water quality, invasive species, disturbance and habitat degradation impacts.</p>		
Landscaping	<p>Planting to include native species and pollinator-friendly plants. This will enhance the habitats present on the site.</p> <p>Use of ecologically safe herbicide / weed killer.</p> <p>Addresses adverse water quality, invasive species, disturbance and habitat degradation impacts.</p>	Applicant/Contractor following agreement with Planning Authority.	Applicant/Contractor/ Appointed Environmental Manager
Waste Management	<p>Excavated material to be re-used on site but if not will be disposed of by a licensed facility</p> <p>Waste storage including landscaping and maintenance works will be retained away from watercourse</p> <p>Addresses adverse water quality, invasive species, disturbance and habitat degradation impacts.</p>	Applicant/Contractor following agreement with Planning Authority.	Applicant/Contractor/ Appointed Environmental Manager
Decommissioning- Appendix A of NIS.	35 year operational phase proposed.	Applicant/ operator of facility following	Applicant/ operator of facility

Plan to be agreed with Planning Authority at the time.	Addresses long term potential for adverse water quality, invasive species, disturbance and habitat degradation impacts.	agreement with Planning Authority	
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## 16.7. In-Combination Effects

16.7.1. There is potential for adverse impacts as identified from the project alone and in combination with other plans and projects to undermine the conservation objectives of the Natura 2000 network.

16.7.2. Section 6 of the applicant's NIS discusses the potential for in-combination effects. It identifies the following threats and pressures as identified by the NPWS-

- impacting the SAC-
  - a high negative impact from agricultural intensification, dykes and flooding defence in inland water systems, erosion, modifying structures of inland water courses, and pollution to surface waters
  - a medium negative from changes in abiotic conditions, dredging/ removal of limnic sediments, fishing and harvesting aquatic resources, forest and plantation management & use, forestry activities not referred to above, human induced changes in hydraulic conditions, intensive cattle grazing, invasive non-native species, peat extraction, reduction in migration/ migration barriers, use of fertilisers (forestry) and water abstractions from surface waters
- impacting the SPA-
  - medium impacts from landfill, land reclamation and drying out (general) and port areas

16.7.3. The NIS identifies a number of small scale developments granted planning permission. It refers to a grant of permission in January 2023 for a grid connection route from a solar farm pursuant to Planning Registration Reference 20/897. I have



also considered 23/60382 and ABP-321024-24 Kilderry Solar Farm which has not yet been determined.

- 16.7.4. The NIS also discusses the potential grid connection from the proposed development to the national grid. Although not applied for in this application it is detailed that the connection will be from the site using an 'under-the-fence' connection to the existing Kilkenny 110kV substation adjoining the application site. There is potential for related construction activities to act in combination with operational and construction phase impacts identified for the currently proposal. Given the proximity of the site to its point of connection and the extent of works likely I do not consider there to be potential for significant in combination effects given the overall mitigation measures proposed.
- 16.7.5. I have considered the extent of works that may be required as per archaeological conditions recommended by the DAU. I do not consider these significant and likely to have any significant in-combination effect. I am satisfied the proposed mitigation measures would address risks to surface waters in any event.
- 16.7.6. Overall likely in-combination effects can be described as those already identified for the proposed development 'alone' i.e. water quality, invasive species, wildlife disturbance and habitat degradation. Having considered the mitigation measures as proposed with the subject development I am satisfied significant adverse in-combination effects to designated European Sites are not likely.

## **16.8. Integrity Test**

- 16.8.1. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233) in view of the Conservation Objectives of these sites.

## **16.9. Appropriate Assessment Conclusion**

- 16.9.1. I note concerns raised by appellants regarding works already carried out under Archaeological licence and subsequent Appropriate Assessment implications. I am satisfied the works carried out for this purpose at Further Information Stage do not have a significant bearing on AA considerations at this stage. Furthermore, works

resulting from archaeological related conditions are adequately addressed by mitigation measures proposed.

- 16.9.2. The development of the proposed Energy Storage System with ancillary infrastructure including a compensatory flood storage area has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.
- 16.9.3. Having carried out screening for Appropriate Assessment of the project, it was concluded that the proposal may have a significant effect on the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.
- 16.9.4. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233) or any other European site, in view of the sites' Conservation Objectives.
- 16.9.5. This conclusion is based on a full and detailed assessment of all aspects of the proposed development including proposed mitigation measures in relation to the Conservation Objectives of the European sites and an assessment of likely in-combination effects with other plans and projects. No reasonable scientific doubt remains as to the absence of adverse effects on the integrity of the European Sites.