



An  
Bord  
Pleanála

## Inspector's Report ABP-321404-24

<b>Development</b>	Renewable energy solar PV installation and all associated work.
<b>Location</b>	Banna-Mountain, Banna, Ardfert, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	24158
<b>Applicant(s)</b>	Banna Beach Resort
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Peter Sweetman.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	06 March 2025
<b>Inspector</b>	Hugh O'Neill

## Contents

1.0 Site Location and Description .....	2
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	3
4.0 Planning History.....	5
5.0 Policy Context.....	6
6.0 The Appeal .....	10
7.0 Assessment.....	11
8.0 AA Screening.....	12
9.0 Recommendation.....	13
10.0 Reasons and Considerations .....	14
11.0 Conditions .....	17
Appendix 1 – EIA Pre-Screening	
Appendix 2 - Screening for Appropriate Assessment	

### 1.0 Site Location and Description

- 1.1. The 1.184 ha application site is within a rural, coastal location approximately 650 metres due east of dunes associated with Banna beach (QI for SAC).
- 1.2. The site is associated with and located to the rear (south) of the Banna Beach holiday resort which consists of circa 110 Holiday Homes with a leisure centre, bar, diner and a shop.
- 1.3. The site is accessed from a recessed entrance from the public road with adequate sightlines via a riverside track which crosses a double culvert crossing of Dineen's stream at its confluence with the Tyshe River, all within the declared ownership of the applicant.
- 1.4. The northern boundary of the proposed development site is defined by a watercourse/drain (3m + wide) named in the application as Dineen's stream. This water course forms the southern boundary of and separates the application site from

the holiday village. The eastern boundary of the application site is defined by the River Tyshe (5m+ wide), which is part of the Banna Drainage district with Kerry County Council having a statutory duty to maintain this Drainage District. Both Dineens stream and the Tyshe river into which it flows are noted as being of poor Ecological Status or Potential, both have been determined to be at risk by the EPA, and as Priority area for action due to ecological status.

- 1.5. The site consists of lands currently in use as maintenance access tracks to the watercourses and a conifer plantation with areas of marsh.

## **2.0 Proposed Development**

- 2.1. Construct circa 3591 square meter solar array consisting of circa 1500no. panels fixed to ground mounted metal frames with 810kW potential for a period of 25 years as described in plans and particulars submitted to Kerry County Council on 17/04/2024, 02/10/2024, 18/10/2024 and 22/10/2024.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission granted subject to 5 conditions in accordance with the planner's recommendation. The requirement for EIA was screened out. It was determined that stage 2 AA was not required.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planning report sets out an assessment of the application including further information submitted which was deemed to be significant. The report sets out the physical and policy context of the proposal and summaries internal reports and submissions received including a submission from the appellant as set out below.

The planning report states that the comments raised in the 3<sup>rd</sup> party submission were duly noted and taken into consideration. The consideration of specific points raised or results of those consideration are explicit.

#### **3.2.2. Other Technical Reports**

- County Archaeologist – no mitigation required.
- Fire Services Department – no objection.
- Biodiversity/ Environmental Assessment Unit (EAU) – repeat of NPWS and IFI, FI requested. On receipt of the response it was concluded that an NIS was not required and that there will be no impacts on biodiversity.
- Environment section – no objection, subject to standard conditions and that a new wastewater treatment system be commissioned prior to commencement.

### 3.2.3. Conditions

The 5 conditions are generally of a standard nature other than the following conditions:

Condition number	Environmental	
3	No	Permission limited to a period of 25 years
4	Yes	No increase of ground level, infilling of marsh or interference with Tyshe River channel other than planting of native species for stabilisation.
5 i	Yes	All environmental mitigation measures as proposed to be fully implemented
5 ii	Yes	No works to be undertaken until such a time as an alternative infiltration area for the WWTS is fully commissioned.
5 iii, iv, v, vi, vii	Yes	Surface water protection measures

### 3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage – screening for AA required survey for Annex IV species including Otter required.

Inland Fisheries Ireland – notes condition of Tyshe River and designation as salmonoid river, poor WFD status and as a Priority area for action (PAA). Water courses to be protected, no machinery to operate in waterlogged areas, SUDS measures to be implemented and no lighting.

### 3.4. Third Party Observations

A single 3<sup>rd</sup> party submission to the application was received which was from the appellant. The submission makes general statements and sets out details repeated in the appeal. The points raised therein are for that reason considered within the grounds of appeal section of this report.

## 4.0 Planning History

The following history relates only to the Banna Mountain Holiday Development of which the proposal forms part. The following summary provides a sample of the planning history to give context in consideration of above referenced condition 5ii of the of permission subject of this appeal.

**012683** permission granted subject to 24 conditions for a caravan park of 40 mobile homes and 20 touring caravans with reedbed wastewater treatment system.

**021437** permission granted subject to 24 conditions for 10 chalets.

**031429** permission granted subject to 36 conditions for alterations to planning reg. ref. 2683/01, including 38 holiday homes office, service road and wastewater treatment system

**03636** application for permission to alter and extend hotel to include retail and fast-food outlet withdrawn following request for further information.

**031433** permission granted subject to 35 conditions to construct 10 semi-detached holiday chalets.

**031453** permission granted subject to 8 conditions for demolition of a bedroom block and construction of 6 holiday units.

**032799** permission granted subject to 8 conditions for demolition of nightclub and leisure centre and retention of new lobby.

**063371** permission refused for 2 reasons relating to Waste Water Treatment for 4 holiday homes.

**072771** permission granted subject to 4 conditions to construct a ground and first floor 10 guest bedroom extension.

**16255** application to construct 10 no. hardstandings for modular holiday homes. Application deemed withdrawn as no response was submitted to a Further information request which sought inter alia details of compliance of existing consented WWTS.

## 5.0 Policy Context

### 5.1. National policy

#### **Climate Action and Low Carbon Development Act, 2015, as amended.**

The Act commits Ireland to the objective of becoming a carbon-neutral economy by 2050, reducing emissions by 51% by the end of the decade. Section 17 of the Climate Action and Low Carbon Development (Amendment) Act, 2021 amends the principle act such that Section 15(1) requires:

*“(1) A relevant body shall, in so far as practicable, perform its functions in a manner consistent with—*

- a) the most recent approved climate action plan,*
- b) the most recent approved national long term climate action strategy,*
- c) the most recent approved national adaptation framework and approved sectoral adaptation plans,*
- d) the furtherance of the national climate objective, and*
- e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State”.*

“Relevant body” means a prescribed body or a public body.

#### **Climate Action Plan, 2024**

This Plan seeks to tackle climate breakdown and it commits Ireland to a legally binding target of net-zero greenhouse gas emissions by 2050, an emissions reduction of 75% and to meet up to 80% of electricity demand from renewables by 2030. In line with the emerging EU frameworks, the action plan requires that renewable energy generation projects, and associated infrastructure, to be

considered in overriding public interest. All relevant public bodies to carry out their functions to support the achievement of the 80% renewable electricity target.

### **National Planning Framework 2018-2040 (NPF)**

National Strategic Outcome 8 seeks to transition Ireland to a low carbon and climate resilient society. Objective 54 seeks to reduce our carbon footprint by integrating climate action into the planning systems. National Policy Objective 55 promotes renewable energy use and generation at appropriate locations within the built and natural environment to meeting national objectives towards achieving a low carbon economy by 2050. Ireland's national energy policy is focused on three pillars: (1) sustainability, (2) security of supply and (3) competitiveness. Ireland must reduce greenhouse gas emissions from the energy sector by at least 80% (compared to 1990 levels) by 2050, while ensuring security of supply of competitive energy sources. The transition to a low carbon energy future requires a shift to predominantly renewable energy.

The NPF states;

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

### **National Development Plan 2021-2030 (NDP)**

The NDP sets out investment priorities underpinning the implementation of the NPF. Chapter 13 deals with NSO 8 Transition to a Climate-Neutral and Climate Resilient Society. Public capital investment choices must contribute to a 51% reduction in greenhouse gas emissions by 2030 and lay the pathway to achieve net-zero greenhouse gas emissions by 2050. This will require grid-scale renewable electricity generation and storage.

### **National Biodiversity Action Plan 2023 – 2030 (NBAP)**

Ireland's 4th NBAP sets the biodiversity agenda for the period 2023 – 2030. The NBAP has a list of Objectives which promotes biodiversity as follows, Objective 1

Adopt a whole of government, whole of society approach to biodiversity; Objective 2 Meet urgent conservation and restoration needs; Objective 3 Secure nature's contribution to people; Objective 4 Enhance the evidence base for action on biodiversity; Objective 5 Strengthen Ireland's contribution to international biodiversity initiatives.

### **National Energy Security Framework (April 2022)**

The Framework addresses Ireland's energy security needs in the context of the war in Ukraine. It coordinates energy security work across the electricity, gas and oil sectors. The Framework takes account of the need to decarbonise society and the economy, and of targets set out in the Climate Action Plan to reduce emissions.

Theme 3 - Reducing our Dependency on Imported Fossil Fuels, focusses on three areas of work:

7.1 Reducing demand for fossil fuels.

7.2 Replacing fossil fuels with renewables, including solar energy.

7.3 Diversifying fossil fuel supplies.

Under 7.2, the statement notes that prioritising renewables is in line with the requirements of the recast Renewable Energy Directive and the EC REPowerEU action statement. The Commission has called on Member States to ensure that renewable energy generation projects are considered to be in the overriding public interest, and the interest of public safety, and the Government supports this request.

### **5.2. Regional Policy**

Southern Regional Economic & Spatial Strategy 2020: The RSES supports the delivery of the programme for change set out in the National Planning Framework and the National Development Plan. It sets out a strategic vision and policy objectives for climate change, sustainable development and renewable energy.

The RSES also focuses on the economic role of the rural economy, and while it remains dependent on traditional sectors of agriculture, forestry, construction and fishing, there is a need to focus on rural diversification, optimising the many opportunities offered by tourism, leisure and recreation and renewable energy production.



### **5.3. Kerry County Development Plan 2022-2028**

Section/chapter 2 deals with Climate Change & Achieving a Sustainable Future and includes the following policy provisions:

*KCDP 2-13 Promote energy conservation, energy efficiency and the use of renewable energy sources in existing buildings, including retro fitting of energy efficiency measures in the existing building stock, energy efficiency in traditional buildings and initiatives to achieve Nearly Zero-Energy Buildings (NZEB) standards in line with the Energy Performance of Buildings Directive (EPBD).*

#### **Section/chapter 11, environment contains policy and objectives relating to landscape.**

The subject site is zoned a visually sensitive area in the development plan. Section 11.6.3.1 states that in these areas, development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area. The following policies are considered relevant to the subject case:

*KCDP 11-67 Liaise with the OPW on all issues involving river drainage and flood relief, especially when dealing with any development consent applications in the vicinity of important drainage channels, benefiting lands and in maintaining access for OPW.*

*KCDP 11-77 Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.*

*KCDP 11-78 Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.*

#### **Section 12 Addresses energy including renewables and sets out a policy framework including the following provisions:**

*KCDP 12-1 Support and facilitate the sustainable provision of a reliable energy supply in the County, with emphasis on increasing energy supplies derived from renewable resources whilst seeking to protect and maintain biodiversity,*

*archaeological and built heritage, the landscape and residential amenity and integration of spatial planning and energy planning in the county.*

*KCDP 12-14 Maximise the development of all renewable energies at appropriate locations in a manner consistent with the proper planning and sustainable development of the County.*

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

The dune systems associated with Banna beach are located circa 660m east of the proposal are designated as pNHA and SAC for the dune and associated habitats. IFI report that the Tyshe River is a salmonoid river. The beach and outfall of the River Tyshe are part of the Tralee Bay complex SPA with winter populations of birds and wetland and waterbirds as qualifying interests.

## **6.0 The Appeal**

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

- The appeal states Appropriate Assessment is required.
- The appeal quotes a number of paragraphs from various court cases pertaining to Appropriate Assessment. Extracts presented in the appeal relate to the light trigger for Appropriate Assessment, consideration of mitigation at screening and the necessity for the absence of all reasonable scientific doubt in reaching a determination.
- The appeal states that where the standard set by the court precedents regarding screening for Appropriate Assessment have not been met the planning authority do not have the legal jurisdiction to grant permission.
- The appeal states the imperative for an assessment for compliance with the Water Framework Directive Assessment.
- The appeal concludes with an unreferenced extract from what appears to be a ECJ ruling setting out the position that for the purposes of interpreting article 6(3) of the Habitats Directive the grazing of cattle and application of fertiliser in the vicinity of a Natura 2000 site may be classified as a project. This extract

follows the statement that the development must be assessed for compliance with the requirements of the Water Framework Directive.

## **6.2. Applicant Response**

- None on file.

## **6.3. Planning Authority Response**

- None on file

## **6.4. Observations**

- None on file

## **6.5. Further Responses**

- None on file

# **7.0 Assessment**

I have inspected the appeal site, considered the receiving environment, examined the application details, relevant national guidance and local planning policies and all other documentation on file and I consider the issues arising are:

- Principle of development/ planning assessment
- Planning Authority Conditions
- Flood Risk Assessment
- Appropriate Assessment
- Water Framework Directive

## **7.1. Principle of the development /planning assessment**

The proposed development complies with national, regional and local planning and environmental policy which supports a move to a low carbon future. No constraints arising from policy or the receiving environment have been identified in the assessment of the proposal.

Taking account of the sensitive landscape designation of the wider costal area in the Kerry Development Plan 2022-2028, the topography and natural and built environment in the vicinity I consider the receiving environment has capacity for the proposed development without a significant negative impact on the landscape quality.

## **7.2. Planning Authority Conditions**

As noted in section 3.2.3 of this report the grant of permission by the Planning Authority included condition 5ii which seeks to restrict commencement of the proposed development until such a time as an alternative infiltration area for the WWTS is fully commissioned. Having investigated the relevant planning history including extensive compliance correspondence on the planning register I cannot exclude anomalies regarding compliance with previous consents. It appears this condition seeks to resolve these issues. The resolution of such issues rest outside the competence of An Bord Pleanála. I recommend that this condition not be repeated in the event of a grant of permission.

## **7.3. Flood risk assessment**

Following extensive review of datasets, the submitted SSFRA concludes that subject to the panels and electrical infrastructure being mounted above predicted 0.5%AEP flood level as proposed that the development is classified as water compatible. I agree with this contention. This is a position supported by precedent in the consideration of flood risk in ground mounted solar developments by An Bord Pleanála.

## **7.4. Water Framework Directive**

The subject site is in WFD catchment ID 23 Tralee Bay, sub catchment ARDFERT\_OUGHTER\_SC\_010 and is located immediately adjacent to waterbody TYSHE\_020 EU\_CD IE\_SH\_23T020500.

The proposed development comprises a ground mounted solar PV array with 810KW potential.

No water deterioration concerns as a result of the proposal were raised in the planning appeal.

I have assessed the proposal having regard to the objectives as set out in Article 4 of the Water Framework Directive to protect and, where necessary, restore surface and ground waterbodies in order to reach good status (meaning both good chemical and good ecological), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or ground waterbodies arising as a result of the proposal.

The reason for this conclusion is as follows:

- Nature of works, being of relatively small in scale, with minimal excavation required
- The project includes no abstraction from or emission to any water body.
- The proposal includes as part of the preliminary Construction and Environmental Management Plan standard good practice construction measures to protect waters from construction related emissions.

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any waterbody (rivers, lakes, groundwaters, transitional and coastal) either on a temporary or permanent basis and consequently can be excluded from further assessment in this regard.

## **8.0 EIA Screening**

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

## **9.0 AA Screening**

### **Finding of no likely significant effects**

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I

conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on Akeragh, Banna and Barrow Harbour SAC (00332) in view of the conservation objectives of this site and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- The nature and extent of the works.
- The nature of the application site.
- The location of the application site at circa 650m from and without ecological connection to the Fixed dunes with herbaceous vegetation (‘grey dunes’) and at a channel distance of circa 2.8km from 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) both qualifying interests of Akeragh, Banna and Barrow Harbour SAC (00332).
- The exclusion of a source or pathway for the project to impact on the SAC or any other European site.

## **10.0 Recommendation**

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

## **11.0 Reasons and Considerations**

The Board performed its functions in relation to the making of its decision, in a manner consistent with Section 15(1) of the Climate Action and Low Carbon Act 2015, as amended by Section 17 of the Climate Action and Low Carbon Development (Amendment) Act 2021, (consistent with the most recent approved, climate action plan, national long term climate action strategy, national adaptation framework and approved sectoral adaptation plans, the 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);

And in coming to its decision, the Board had regard to the following:

- (a) European, national, regional and local planning, energy, climate and other policy of relevance, including in particular the following:

**European Policy/Legislation** including:

Directive 2014/52/EU amending Directive 2011/92/EU (Environmental Impact Assessment Directive);

Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directive);

Directive 2000/60/EC (Water Framework Directive)

**National Policy and Guidance** including:

Project Ireland 2040 - National Planning Framework (2018);

National Development Plan (2021-2030);

The objectives and targets of the National Biodiversity Action Plan 2023-2030;

Long-term Strategy on Greenhouse Gas Emissions Reduction (2024);

Policy Statement on Security of Electricity Supply (November 2021);

National Energy Security Framework (April 2022);

National Energy and Climate Action Plan (2021-2030);

**Regional and Local Planning Policy**, including in particular:

Southern Regional Economic & Spatial Strategy 2020

Kerry County Development Plan, 2022-2028.

- (b) The nature and scale of the proposed development
- (c) The pattern of development within the area and the context of the receiving environment
- (d) Measures proposed for the construction, operation and decommissioning of the development
- (e) The submissions received in relation to the appeal

### **Appropriate Assessment Stage 1 Screening Determination**

It is considered that subject to compliance with the conditions set out below, the proposed development, would be in accordance with European, national, and regional renewable energy policies and with the provisions of the Kerry County Development Plan 2022-2028, would not seriously injure the visual or residential amenities of the area or otherwise of property in the vicinity or have an unacceptable

impact on the character of the landscape or on cultural or archaeological heritage, would not have a significant adverse impact on ecology, would be acceptable in terms of traffic impacts and safety and would make a positive contribution to Ireland's renewable energy and security of energy supply requirements. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on Akeragh, Banna and Barrow Harbour SAC (00332) in view of the conservation objectives of this site and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- The nature and extent of the works.
- The nature of the application site.
- The location of the application site at circa 650m from and without ecological connection to the Fixed dunes with herbaceous vegetation (`grey dunes`) and at a channel distance of circa 2.8km from 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) both qualifying interests of Akeragh, Banna and Barrow Harbour SAC (00332).

The exclusion of a source or pathway for the project to impact on the SAC or any other European site

### **EIA screening determination**

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.



## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. (a) The permission shall be for a period of 25 years from the date of the first commissioning of the solar array. All structures, shall then be removed and the site reinstated unless, prior to the end of that period, planning permission shall have been granted for their retention for a further period.  
  
(b) Prior to the commencement of development, a detailed Site Restoration Plan providing for the removal of the solar arrays and all ancillary structures, and a timescale for its implementation, shall be submitted to and agreed in writing with the planning authority.  
  
(c) On decommissioning or if the solar array ceases operation for a period of more than one year the solar arrays and all ancillary structures shall be dismantled and removed permanently from the site. The site shall be restored in accordance with the agreed Site Restoration Plan and all decommissioned structures shall be removed from the site within 6 months of decommissioning.

**Reason:** To enable the planning authority to review the operation of the solar array over the stated time period, having regard to the circumstances then prevailing, and in the interest of landscape restoration upon cessation of the project.

3. (a) No artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission;  
  
(b) the solar panels shall have driven or screw pile foundations only, unless otherwise authorised by a separate grant of planning permission;

(c) any CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road.

(c) The transformers/ inverters shall be dark green in colour.

**Reason:** In the interest of clarity, visual amenity, and to minimise impacts on drainage patterns and surface water quality.

4. All of the environmental, construction and ecological mitigation measures, as set out in the Ecology report, , Site Specific Flood risk Assessment, Construction Management and Decommissioning Plan, and a revised Landscaping Plan, (containing a detailed schedule of location specific fencing, vegetation control and habitat creation/mitigation/monitoring) to be agreed with the Planning Authority and other particulars submitted with the application, shall be implemented by the developer in conjunction with the timelines and monitoring set out therein, except as may otherwise be required in order to comply with the conditions of this Order.

**Reason:** in the interest of visual amenity, protection and conservation of the environment including flora and fauna, the prevention of environmental pollution and the protection of waters.

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

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

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

- a) Fenced buffer zones from water bodies so as to exclude construction machinery whilst retaining the required access by the competent authority for maintenance of the arterial drainage channel;
- b) Measures to ensure that no machinery to operate in waterlogged areas;
- c) location of the site and materials compound(s);

- d) location of areas for construction site offices and staff facilities;
- e) details of site security fencing and hoardings;
- f) details of on-site car parking facilities for site workers during the course of construction;
- g) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of any abnormal loads to the site;
- h) measures to obviate queuing of construction traffic on the adjoining road network;
- i) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained; such bunds shall be roofed to exclude rainwater;
- l) off-site disposal of construction/demolition waste
- m) details of on-site re-fuelling arrangements, including use of drip trays;
- n) details of how it is proposed to manage excavated soil;
- o) means to ensure that surface water run-off is controlled such that no deleterious levels of silt or other pollutants enter local surface water drains or watercourses.
- p) hours of construction.

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

6. 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 dwelling. 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 amenities of property in the vicinity of the site

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

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

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

**Reason:** In the interest of traffic safety and the proper planning and sustainable development of the area

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

referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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

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Hugh O'Neill

Senior Planning Inspector

02 April 2025

# Appendix 1

## Form 1 EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	ABP-321404-254		
<b>Proposed Development Summary</b>	Installation and operation of a PV Array on ground mounted frames. The development requires removal of an area of conifer plantation, excavation of trenches and laying of cables.		
<b>Development Address</b>	Banna Mountain, Ardfert, Co. Kerry		
<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>	X
		<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>			Proceed to Q3.
<b>No</b>	X	Solar energy development is not listed as a class of development for the purposes of EIA under Part 2 of Schedule 5, within the Planning and Development Regulations, 2001 (as amended). Having regard to the purpose, nature and to the limited extent of the works, the proposed development would not constitute rural restructuring under Class 2 of Part 2 of Schedule 5 or relate to private roads under Class 10 of Part 2 of Schedule 5.	
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			
<b>No</b>	X		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		Preliminary examination required (Form 2)
<b>5. Has Schedule 7A information been submitted?</b>			

<b>No</b>	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
<b>Yes</b>		

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

## Appendix 2

## Template 2

Screening for Appropriate Assessment Test for likely significant effects					
<b>Step 1: Description of the project and local site characteristics</b>					
<b>Brief description of project</b>		Construction of up to 3591 square meters of solar array, circa 1500 m panels on ground mounted metal frames with 810kW potential yield. The project will require removal of trees, excavation of cable trenches and piling for fixing of frames.			
<b>Brief description of development site characteristics</b>		<p>The 1.184Ha application site is in a rural, coastal location approximately 100 metres due east of dunes associated with Banna beach (SAC).</p> <p>The northern boundary of the proposed development site is defined by a watercourse/drain named in the application as Dineen's stream. The report notes this drain was cleared in 2024 replacing a reed and large swamp.</p> <p>The eastern boundary of the application site is defined by the River Tyshe which is part of the Banna Drainage district. Both Dineen's stream and the Tyshe river into which it flows are noted as being of poor Ecological Potential, determined to be at risk by the EPA, and a Priority area for conservation due to its ecological status. (Tyshe Priority Area for Action Desk Study (AFA0175))</p> <p>The site is characterised by maintenance access tracks adjacent to the watercourses and a poorly established longstanding conifer plantation. The area is subject to an identified flood risk.</p>			
<b>Potential impact mechanisms</b>		<p>Potential hydrological connectivity is via 2.8km of the River Tyshe to the estuary which falls within both the Akeragh, Banna and Barrow Harbours and the Tralee Bay Complex SPA.</p> <p>Release of contaminants to surface waters in the course of construction and decommissioning activities represent a potential impact.</p> <p>Disturbance of species utilising the beach and dunes is a potential impact, particularly to birds.</p>			
<b>Screening report</b>		Y			
<b>Natura Impact Statement</b>		N			
<b>Relevant submissions</b>		Appellant (Peter Sweetman) is of the view that Appropriate Assessment is required. Appeal emphasises the light trigger for Appropriate Assessment. No specific reasons were not provided in the appeal.			
<b>Step 2. Identification of relevant European sites using the Source-pathway-receptor model</b>					
The submitted screening report references all natura sites within a 15km buffer. However the following table sets out a list of European sites which I consider fall within the potential zone of influence of the development for the purpose of step 2 of this screening:					
European Site (code)		Qualifying interests Link to conservation objectives (NPWS, date)	Distance from proposed development	Ecological connections	Consider further in screening Y/N
0033 2	Akeragh , Banna	Annual vegetation of drift lines [1210]	0.66 km straight line	Tyshe river,	Y



	and Barrow Harbour SAC	Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Humid dune slacks [2190] European dry heaths [4030] Dated Jan 2017 <a href="https://www.npws.ie/protected-sites/sac/000332">https://www.npws.ie/protected-sites/sac/000332</a>	distance to SAC boundary of dunes system.	hydrological connection .	
4188	Tralee Bay Complex SPA	Dated April 2014 <a href="https://www.npws.ie/protected-sites/spa/004188">https://www.npws.ie/protected-sites/spa/004188</a>	1.06 km straight line to closest point (beach). 2.8 km of channel for hydrological connection	By virtue of the existing site condition conifer plantation and on review of the QI's no connection has been established .	N

**Step 3. Describe the likely effects of the of the project (if any, alone or in combination) on European Sites**

The submitted AA Screening Report concludes that by virtue of the project not requiring extensive foundations or excavation that there is little likelihood of significant amounts of sediment escaping the site to the adjacent water courses and that there is no likelihood that this development will have a significant impact on the integrity and functioning of the Natura 2000 site network or on the conservation objectives for any site.

No consideration was given in the submitted AA screening report or elsewhere in the application to clearance of trees or cable trenching. I am however of the opinion that subject to the standard construction phase surface water controls as set out in the CEMP along with appropriate conditions in the event of a grant of permission there will be no likely significant effects on surface waters.

**AA Screening matrix**

Site name Qualifying interests	Possibility of significant effects (alone) in view of the conservation objectives of the site*	
	Impacts	Effects
Akeragh, Banna and Barrow Harbour SAC	Direct: None	Potential changes to the functioning of the mudflats

Dated Jan 2017 Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> ) [1330] Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410] Dated Jan 2017 <a href="https://www.npws.ie/protected-sites/sac/000332">https://www.npws.ie/protected-sites/sac/000332</a>	Indirect: Possible negative impacts (temporary) on surface water/water quality due to construction related emissions including increased sedimentation and construction related pollution. Taking account of construction phase surface water controls any such impacts are considered unlikely.	meadows in the SAC as a result of changes to water quality from construction related emissions. Atlantic Saltmarsh meadows and other annex habitats are mapped in McCorry and Ryle 2009 as referenced in the CO's only upstream of the outfall of the river Tyshe. Effects of any emissions to the river Tyshe on any conservation objectives for the site can for that reason be excluded.
Likelihood of significant effects from proposed development (alone):	None	
Likelihood of significant effects from proposed development (in combination):	Following review of the planning register in the area I have identified no projects or plans with potential to give rise to significant effects in combination with the proposal.	
<b>Step 4 Conclude if the proposed development could result in likely significant effects on a European site</b> I conclude that the proposed development alone would not result in likely significant effects on Akeragh, Banna and Barrow Harbour SAC (00332). The proposed development would have no likely significant effect in combination with other plans and projects on any European sites. No further assessment is required for the project.		
<b>Screening Determination</b> <b>Finding of no likely significant effects</b> In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on Akeragh, Banna and Barrow Harbour SAC (00332) in view of the conservation objectives of this site and is therefore excluded from further consideration. Appropriate Assessment is not required. This determination is based on: <ul style="list-style-type: none"><li>• The nature and extent of the works.</li><li>• The nature of the application site.</li><li>• The location of the application site at circa 650m without ecological connection to the Fixed dunes with herbaceous vegetation (‘grey dunes’) and at a channel distance of circa 2.8km from 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) both qualifying interests of Akeragh, Banna and Barrow Harbour SAC (00332).</li><li>• The exclusion of a source or pathway for the project to impact on the SAC or any other European site.</li></ul>		