

13<sup>th</sup> March 2024

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ISO 9001:2015  
ISO 14001:2015  
ISO 45001:2018

**Re: S5.23.41: Request for Declaration under Section 5 of the Planning and Development Act 2000:**

*"Whether the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the substation constitutes development and is or is not exempted development?"*

Dear Sir/Madam,

We act on behalf of Garreenleen Solar Farm Limited who have requested a declaration from Carlow County Council on whether the proposed 110kV underground grid connection cabling between the L30535 public road (to the north of the existing Kellis 220kV substation) to a line bay in the Kellis 220kV substation constitutes development and is or is not exempted development. On the 15<sup>th</sup> December 2023, Carlow County Council sought further information in respect of this request.

The following plans and particulars accompany this request:

- 2 no. copies of this planning cover letter response;
- 2 no. copies of Appropriate Assessment Screening Report by Ecology Ireland.

In the interests of clarity, we will respond to the matters raised in the order they were requested.

**01. Request for Further Information Response**

***"The Planning Authority notes that the proposed development forms an extension to the underground cabling of an approved solar farm project. The wider project has been subject to a Natura Impact Statement which included mitigation measures to ensure the protection of qualifying interests associated with the SAC. Accordingly, it is considered that the proposed development, in combination with projects within the vicinity, may require appropriate assessment. In this regard, Section 4(4) of the Planning and Development Act 2000 (as amended) provides states that "Notwithstanding any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required".***

This matter has been reviewed in full by the project ecologists, Ecology Ireland, with a dedicated Screening Report in support of the Appropriate Assessment process enclosed with this response.

The reasons why the solar farm and permitted underground cable projects required the preparation of a Natura Impact Statement were related to elements of these projects which required work directly

adjoining or intersecting with watercourses with hydrological links to downstream European designated sites. The proposed 43m underground cable route does not adjoin or cross any watercourses and there are no Natura 2000 sites within the Zone of Influence of the works. Given the nature, location and extent of the proposed grid connection there is no likelihood of any significant effects on any designated European sites.

The screening assessment objectively concludes that no significant effects arising from the proposed underground grid connection to Kellis 220kV substation are likely to occur alone, or in combination with any other plan or project, in relation to any Natura 2000 site. It has been demonstrated that the provisions of Section 4(4) of the Planning and Development Act 2000 do not apply in this case.

***“Further, the proposed works have previously been subject to a pre-application consultation under Section 182E of the Planning and Development Act 2000 (as amended) in which it was concluded that a planning application should be made in the first instance to Carlow County Council”.***

***Having regard to the foregoing, you are afforded an opportunity to respond to the issues highlighted above.***

The provisions of Section 182A of the Planning and Development Act do not provide for An Bord Pleanála to adjudicate on whether any works constitute exempted development or not, rather the sole consideration for pre-consultation engagement under this part of the legislation is for the Board to determine if any proposed development constitutes ‘strategic infrastructure development’. In their determination dated 24<sup>th</sup> July 2023, An Bord Pleanála confirmed that the final part of the connection works to the Kellis 220kV substation, inclusive of the subject underground cable connection, do not fall within the scope of section 182A of the Act. The inclusion of any general reference that a planning application should be made to in the first instance to Carlow County Council cannot be inferred to mean that planning permission is needed for the subject works. A review of the inspector report under ABP-316205-23 confirms that the inspector has not considered any matters related to whether the subject underground grid connection cabling constitutes development and is or is not exempted development. As outlined, this is normal and wholly appropriate, as it does not fall within the remit of Section 182A to consider this. The reference to making an application to Carlow County Council is general in nature and exists only to make a clear distinction that any planning consenting process (where required) should not be made to An Bord Pleanála in the first instance. This position can be confirmed with An Bord Pleanála by means of a phone call to their Strategic Infrastructure Development section.

Independent of this matter, we note that under ABP-316205-23 the An Bord Pleanála Inspector confirms his view that *“the small scale and nature of the proposed development are equivalent to that already within the substation”* and *“the proposed development is ancillary to the main works relating to electricity generation in this instance, namely the permitted Garreenleen Solar Farm”*. There is an acknowledgement that the subject works are relatively small in nature. In addition to the statutory points above, the non-applicability of the need for a planning application for consent for a 110kV underground grid connection cabling is established by numerous precedent cases which confirm that such development can constitute exempted development. This includes, but is not limited to the following:

#### **RL3503**

The Board determined that the provision of a 110kV connection between the 110kV substation of the Yellow River Windfarm granted under PA0032 & the National Grid is development and is exempted development at Rhode, Co. Offaly

#### **RL2789**

The Board determined that the laying of a 110kV underground electricity cable forming the grid connection to windfarm at Knockacummer Co Cork is development and is exempted development.

## ABP 307927-20

The Board determined that the provision of a circa. 5.1 km underground grid connection within the corridor of public roads and private lands which links a permitted solar farm at Clondardis and Slane More Townlands, Walshestown, Mullingar, Co. Westmeath to the existing ESB Mullingar 110kV substation at Irishtown, Co. Westmeath is development and is exempted development.

Based on the foregoing, it is not inferred in any way under ABP-316205-23 that planning permission is required for the subject works and that the subject works cannot be considered under exempted development provisions. Further, planning precedent confirms that An Bord Pleanála themselves have determined that equivalent development to that proposed can constitute exempted development.

## 02. Conclusions

We trust that the contents of this response address the queries of Carlow County Council and allow for positive issue of the requested declaration.

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

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

We would be grateful for an acknowledgement of this request and please do not hesitate to contact us if you have any further queries.

Yours sincerely



Conor Frehill  
HW Planning

Enclosures

- Screening Report in support of the Appropriate Assessment Process by Ecology Ireland