



Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
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James Metcalfe

19th June 2024

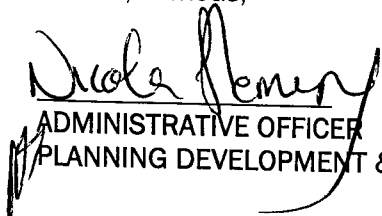
RE: Declaration in accordance with Section 5 of the Planning & Development Act 2000 (As Amended) – EX50/2024 – Barry Metcalfe

A Chara,

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,


ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.





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Ruth Treacy
WSP Ireland Consulting Ltd
Town Centre House
Nass
Co. Kildare

19th June 2024

RE: Declaration in accordance with Section 5 of the Planning & Development Act
2000 (As Amended) – EX50/2024 – Barry Metcalfe

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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Barry Metcalfe

Location: Ballylion Lower, Donard, Co. Wicklow W91 C5T8

CHIEF EXECUTIVE ORDER NO. CE/PERD/839/2024

A question has arisen as to whether “the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/subsoil which are a by-product” at Ballylion Lower, Donard, Co. Wicklow W91 C5T8

Having regard to:

- a) Section 5 application details submitted.
- b) An Bord Pleanála References ABP-315532-2, RL 3609, RL3540, RL2987 and RL3034
- c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- d) Article 8 C , Article 9, and Schedule 2 : Part 3: Class 11 of the Planning and Development Regulations 2001(as amended)

Main Reasons with respect to Section 5 Declaration:

- i. The importation and spreading of soil/ subsoil for the purpose of reclamation / re-contouring of land constitutes works, and is, therefore, development as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended,
- ii. the proposed works would not comply with Condition and Limitation number 1 of Class 11 of Part 3 of Schedule 2 (Land Reclamation) of the Planning and Development Regulations, 2001, as amended.
- iii. the development does not come within the scope of the provisions of Article 8C of the Planning and Development Regulations, 2001(as amended) as the development involves the bringing in of soils/ subsoils from outside of the farm holding, and the material proposed to be imported is a waste material noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended),
- iv. the location of the works are both within and adjoining the Slaney River Valley SAC a Natura 2000 site, it is considered that the infilling of this area would result in negative impacts on the qualifying interest of this Natura

Tá an doiciméad seo ar fáil i bhforinnead eile ar iarratas

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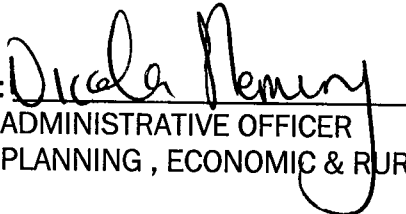
Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe.
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development.



2000 site, and therefore such works would require Appropriate Assessment, and therefore would not be exempted development having regard to Section (4) (4) of the Planning and Development Act 2000(as amended) which provides that :-

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

The Planning Authority considers that “the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/subsoil which are a by-product” at Ballylion Lower, Donard, Co. Wicklow. W91 C5T8 is development and is NOT exempted development.

Signed: 
ADMINISTRATIVE OFFICER
PLANNING , ECONOMIC & RURAL DEVELOPMENT

Dated  June 2024

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/839/2024

Reference Number: EX50/2024

Name of Applicant: Barry Metcalfe

Nature of Application: Section 5 Referral as to whether "the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/subsoil which are a by-product" is or is not development and is or is not exempted development.

Location of Subject Site: Ballylion Lower, Donard, Co. Wicklow W91 C5T8

Report from Edel Bermingham, SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/subsoil which are a by-product" at Ballylion Lower, Donard, Co. Wicklow W91 C5T8 is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- (a) Section 5 application details submitted.
- (b) An Bord Pleanála References ABP-315532-2, RL 3609, RL3540, RL2987 and RL3034
- (c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- (d) Article 8 C , Article 9, and Schedule 2 : Part 3: Class 11 of the Planning and Development Regulations 2001(as amended)

Main Reasons with respect to Section 5 Declaration:

- i. The importation and spreading of soil/ subsoil for the purpose of reclamation / re-contouring of land constitutes works, and is, therefore, development as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended,
- ii. the proposed works would not comply with Condition and Limitation number 1 of Class 11 of Part 3 of Schedule 2 (Land Reclamation) of the Planning and Development Regulations, 2001, as amended.
- iii. the development does not come within the scope of the provisions of Article 8C of the Planning and Development Regulations, 2001(as amended) as the development involves the bringing in of soils/ subsoils from outside of the farm holding, and the material proposed to be imported is a waste

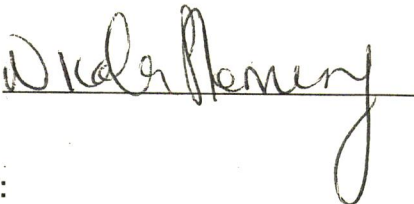
material noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended),

- iv. the location of the works are both within and adjoining the Slaney River Valley SAC a Natura 2000 site, it is considered that the infilling of this area would result in negative impacts on the qualifying interest of this Natura 2000 site, and therefore such works would require Appropriate Assessment, and therefore would not be exempted development having regard to Section (4) (4) of the Planning and Development Act 2000(as amended) which provides that :-

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

Recommendation:

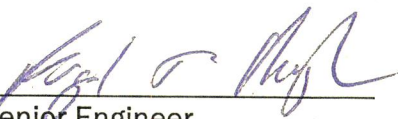
The Planning Authority considers that “the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/subsoil which are a by-product” at Ballylion Lower, Donard, Co. Wicklow W91 C5T8 is development and is NOT exempted development as recommended in the planning reports.

Signed: 

Dated 19th day of June 2024

ORDER:

I HEREBY DECLARE that “the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/subsoil which are a by-product” at Ballylion Lower, Donard, Co. Wicklow W91 C5T8 is development and is NOT exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: 
Senior Engineer
Planning, Economic & Rural Development

Dated 19th day of June 2024

Section 5 Application : EX 50/2024

Date : 17th June 2024

Applicant : Barry Metcalfe

Address : Ballylion Lower, Donard, Co. Wicklow W91 C5T8

Exemption Whether or not :

the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/ subsoil which are a by-product

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

Relevant Legislation

Planning and Development Act 2000 (as amended)

Section 2 of the Planning and Development Act 2000:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins, or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and "agricultural" shall be construed accordingly;

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

Section 3 :

3.—(1) In this Act, "development" means, except where the context otherwise requires "development" means

(a) the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land, or

(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021)

(2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

Section 4(1) The following shall be exempted developments for the purposes of this Act—

(l) development consisting of the carrying out of any of the works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced or works consisting of land reclamation or reclamation of estuarine marsh land and of callows, referred to in section 2 of that Act.]

Section 4 (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

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

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.

Planning and Development Regulations 2001 (as amended).

Article 8

8 Works specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found necessary by the Commissioners or their agent or partner in the course of the works, shall be exempted development

8C Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development

Article 9(1) Note see Regulations for full Article

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

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

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

CLASS 11

Development consisting of the carrying out of drainage and/or reclamation of wetlands

Limitations

1. The area to be affected shall not exceed 0.1 hectares.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

Relevant Referrals

ABP-315532-23

An Bord Pleanála concluded that the construction of an agricultural shed (194.5 square metres) with access roadway and land improvement works that involve importing 9000 cubic metres of topsoil and subsoil (stated to be imported from building sites) over a two year period used to raise the site by up to 500 millimetres and all associated services at Cloghaun, Claregalway, County Galway is development and is not exempted development as

- As the intended agricultural structure, as measured on the submitted site layout plan, would be sited closer than 100 metres of the closest house, where there is no evidence that it is the house of the person providing the agricultural shed structure and where the consent of either the owner or occupier or person in charge thereof has not been provided, this element of the development set out in the referral question does not come within the Condition and Limitation 6 of Class 6 of Part 3 of Schedule 2 to article 6 of the Planning and Development Regulations 2001, as amended, and therefore, the proposed agricultural shed is not exempted development,
- No evidence has been provided in relation to effluent storage facilities being adequate and therefore, it cannot be ascertained that Condition and Limitation 3 of Class 6 of Part 3 of Schedule 2 to article 6 of the Planning and Development Regulations 2001, as amended is met and therefore, the new agricultural shed is not exempted development,

- The works comprising infilling of land, by importing material (stated to be topsoil and subsoil from building sites) does not include any evidence that the material is not a 'waste' and is, therefore, presumed as comprising a waste and the importation of a waste material does not come within the meaning of the term 'land reclamation', as set out in article 8C of Part 2 of the Planning and Development Regulations, 2001, as amended, and therefore, the importation of soils and stone material from building sites as described does not constitute exempted development
- As the possibility exists that the construction of the stated proposed land improvements through importation of material (stated to be topsoil and subsoils from building sites and hereby presumed to be waste) to the site may lead to a loss of water quality in the Lough Corrib Special Area of Conservation and Special Protection Area, under the precautionary principle, appropriate assessment cannot be excluded, and therefore, under section 4(4) of the Planning and Development Act 2000, as amended, these improvements are not exempted development.

RL 3609

An Bord Pleanála concluded that the spreading of clean topsoil and subsoil on lands for agricultural use and the importing of that soil for recontouring of land at Oldcourt Lane, Oldcourt, Ballycullen, Dublin is development and is not exempted development:

- (a) the importation and spreading of soil for the purpose of recontouring land constitutes works, and is, therefore, development as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended,
- (b) the proposed works would not comply with Condition and Limitation number 1 of Class 11 of Part 3 of Schedule 2 (Land Reclamation) and with the provisions set out within Article 6(3) of the Planning and Development Regulations, 2001, as amended. The proposed works would not, therefore, comprise exempted development under Article 6(3),
- (c) having regard to the nature of the proposed development, which entails the importation of material to the site which the Board is not satisfied is not waste material, the development does not come within the scope of the provisions of Article 8C of the Planning and Development Regulations, 2001, as amended, in respect of Land Reclamation, and does not, therefore, comprise exempted development under Article 8C, and
- (d) land reclamation comes within the scope of works referred to in the Land Reclamation Act, 1949, and would normally constitute exempted development as set out in section 4(1)(l) of the Planning and Development Act, 2000, as amended. However, the works in question, comprising infilling of land, by imported material which the Board is not satisfied is not waste material, do not come within the meaning ascribed to land reclamation, as set out in article 8C of the Planning and Development Regulations, 2001, as amended, and therefore, do not constitute exempted development under section 4(1)(l) of the Act.

RL 3540

An Bord Pleanála, has concluded that the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area at Dunancory, Virginia, County Cavan is development and is not exempted development for the following reasons :

- (a) the importation of soil for the purpose of infilling a low lying area of land constitutes 'works' and alteration of that land, and therefore 'development' as defined in section 2 and section 3, respectively, of the Planning and Development Act, 2000, as amended,
- (b) the development does not come within the scope of the exemption set out under section 4(1)(l) of the Planning and Development Act 2000, as amended by the Environment (Miscellaneous Provisions) Act 2011,
- (c) the development does not come within the scope of the exemption set out in Article 8C of the Planning and Development Regulations, 2001, as amended, in respect of Land Reclamation, because it is proposed to import material from outside the landholding in order to carry out the development, and furthermore the material proposed to be imported is a waste material (noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended),
- (d) the development does not come within the scope of Class 11 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, (Land Reclamation - infilling of wetlands) because of non compliance with the Conditions and Limitations Column 1 of that Class, as the area in question exceeds the 0.1 hectares, and
- (e) as no exemptions are available for the development in question, it is not necessary for the Board to examine whether appropriate assessment issues or traffic hazard issues arise:

RL2987 –

WHEREAS a question has arisen as to whether the importation of inert soils and overburden materials for spreading on agricultural land at Barntick, Clarecastle, County Clare is or is not development or is or is not exempted development:

An Bord Pleanála, concluded that the said importation of inert soils and overburden materials for spreading on agricultural land at Barntick, Clarecastle, County Clare is development and is not exempted development as

- (a) the importation of soils and overburden for spreading on agricultural land constitutes development as defined in Section 3 of the Planning and Development Act 2000, as amended, and
- (b) the soils and overburden materials to be imported to the farm holding constitute 'waste'. The activity does not, therefore, come within the scope of Article 8 (c) of the Planning and Development Regulations, 2001, as amended:

RL 3034

WHEREAS the question has arisen as to whether works involving the re-contouring of land for the purposes of land reclamation for agricultural purposes, is or is not development and is or is not exempted development

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the importation of soil for infilling on lands constitutes "works" as defined in section 2(1) of the Planning and Development Act 2000,
- (b) the infilling of soil constitutes development by reference to section 3(1) of the Planning and Development Act, 2000,
- (c) Article 8C of the Planning and Development Regulations 2001, as amended, does not provide an exemption for the importation of soil to a farm holding for the purposes of re-contouring of land from external sources. The exemption under Article 8C of the Planning and Development Regulations, 2001, as amended, is confined to land reclamation works including infilling of soil (but not waste material) within a farm holding, and
- (d) it is not possible to state beyond reasonable doubt that the infilling of soil on this particular site would not have a significant negative impact on European Sites. The proposed infilling of soil on this site may not be considered to be exempted development by reference to section 17(1)(b) of the Environmental (Miscellaneous Provisions) Act 2011, which amends section 4(4) of the Planning and Development Act, 2000.

Designations

Slaney River Valley SAC

Qualifying Interests -

Estuaries [1130]

Mudflats and sandflats not covered by seawater at low tide [1140]

Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]

Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

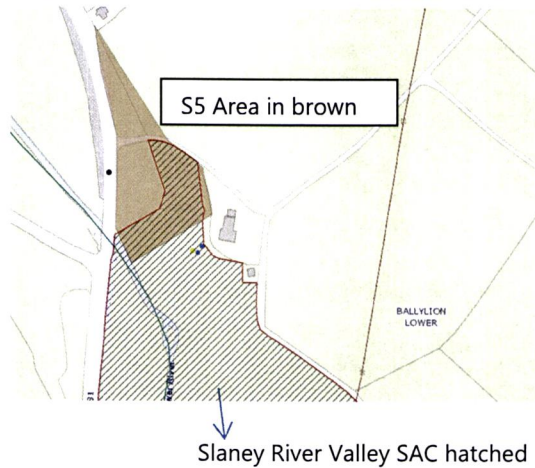
Lampetra fluviatilis (River Lamprey) [1099]

Alosa fallax fallax (Twite Shad) [1103]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

Phoca vitulina (Harbour Seal) [1365]



Slaney River Valley Wetlands
Coolharbour Lower Wetlands

Submission :

Declaration sought for reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding. Previously a short section (c. 90m) of the N81 ran through this section of land and realignment of the N81 have been completed rendering this section of road redundant. Lands are very uneven with a sharp dip in elevation each side of the old section of road and is. Improvement of this section of the field is required through the importation of clean soil and stone as by-product to infill the low lying areas and to grade the land to a gradient that can be traversed by heavy agricultural machinery safely.

Teagasc report submitted - indicating levels to be raised by 1m.

Indicated that the works are sub-threshold the requirements for screening for re-contouring (within a farm holding) of greater than 2 hectares.

Assessment :

The declaration queries whether the reclamation and re-contouring of lands 0.5ha that are part of landowners agricultural holding by infilling of lands with clean soil/ subsoil which are a by-product is or is not exempted development. From a measurement of the site the area involved as outlined in the site location and site conditions mapping has an overall area is c. 1ha, and not 0.5ha as stated, and therefore the query is amended to reflect this i.e.

whether the reclamation and re-contouring of lands c. 1 ha that are part of landowners agricultural holding by infilling of lands with clean soil/ subsoil which are a by-product is or is not exempted development.

The lands in question are located in the townland of Ballylion Lower, and adjoin the N81. Furthermore, part of the lands are within the Slaney River Valley SAC which is also identified as wetlands under the Wicklow Wetlands Survey, and the lands would adjoin the Carrigower River.

The first question to be asked is whether reclamation/ re-contouring of lands is or is not development. In this regard soils/subsoil are being brought onto site, and ground levels are being raised by c. 1m, such operations would come within the definition of work as set out in Section 2 of the Planning and Development Act 2000(as amended), and would therefore fall within the definition of development as set out in Section 3 of that Act.

Section 4 (1)(l) provides that the following shall be exempted development -

development consisting of the carrying out of any of the works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced or works consisting of land reclamation or reclamation of estuarine marsh land and of callows, referred to in section 2 of that Act.

As the works are for reclamation of lands, they would not come within the provisions of Section 4(1)(l).

Article 8C of the Planning and Development Regulations 2001(as amended) provides that

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development

From the referrals to An Bord Pleanála of similar works of infilling/ reclamation it is evident that the exemption provided for by Article 8C of the Regulations, only applies to soils sourced within the same farm-holding, which is not the case in this instance (RL 3540 and RL 3034). In addition the use of a by-product i.e. soils/ subsoils even where an Article 27 Notification has issued would still be considered a waste, as identified in Referrals ABP-315532-23, RL 3609, RL3540 and RL2987. In this regard An Bord Pleanála has identified that the bringing in of soils / subsoil would be considered a waste material as the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended).

The works would not come within the provisions of Schedule 2: Part 3: Class 11, as the works involve an area of wetland in excess of 0.1ha.

In addition to the above, as the location of the works are both within and adjoining the Slaney River Valley SAC a Natura 2000 site, it is considered that the infilling of this area would result in negative impacts on the qualifying interest of the SAC, and therefore there is a need for a Stage 2 Appropriate Assessment. As set out in Section (4) of the Planning and Development Act 2000(as amended)

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

As appropriate assessment is required the works would not be exempted development.

Conclusion :

Having regard to the assessment above, it is considered that the works of reclamation/ re-contouring with soil/ subsoil by-product for land improvement works is development and is not exempted development.

Recommendation :

With respect to the query under Section 5 of the Planning and Development Act 2000(as amended), as to whether

the reclamation and re-contouring of lands c. 1ha that are part of landowners agricultural holding by infilling of lands with clean soil/ subsoil which are a by-product at Ballylion Lower, Donard, Co. Wicklow

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

The Planning Authority consider that :

the reclamation and re-contouring of lands c. 1 ha that are part of landowners agricultural holding by infilling of lands with clean soil/ subsoil which are a by-product **is Development and is Not Exempted Development**

Main Considerations with respect to Section 5 Declaration :

- (a) Section 5 application details submitted .
- (b) An Bord Pleanála References ABP-315532-2, RL 3609, RL3540, RL2987 and RL3034
- (c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- (d) Article 8 C , Article 9, and Schedule 2 : Part 3: Class 11 of the Planning and Development Regulations 2001(as amended)

Main Reasons with respect to Section 5 Declaration :

- i. The importation and spreading of soil/ subsoil for the purpose of reclamation / re-contouring of land constitutes works, and is, therefore, development as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended,
- ii. the proposed works would not comply with Condition and Limitation number 1 of Class 11 of Part 3 of Schedule 2 (Land Reclamation) of the Planning and Development Regulations, 2001, as amended.
- iii. the development does not come within the scope of the provisions of Article 8C of the Planning and Development Regulations, 2001(as amended) as the development involves the bringing in of soils/ subsoils from outside of the farm holding, and the material proposed to be imported is a waste material noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is

identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended),

- iv. the location of the works are both within and adjoining the Slaney River Valley SAC a Natura 2000 site, it is considered that the infilling of this area would result in negative impacts on the qualifying interest of this Natura 2000 site, and therefore such works would require Appropriate Assessment, and therefore would not be exempted development having regard to Section (4) (4) of the Planning and Development Act 2000(as amended) which provides that :

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

Seán Buntingham SP.

17/6/2024

*Issue decision as recommended
Regl to High SP
19/06/2024*

MEMORANDUM

WICKLOW COUNTY COUNCIL

**TO: Edel Bermingham
Senior Executive Planner**

**FROM: Peggy King
A/A Staff Officer**

**RE:- Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended).
EX50/2024**

I enclose herewith application for Section 5 Declaration received 05th
May2024.

The due date on this declaration is 02nd July 2024.



**A/Assistant Staff Officer
Planning Development & Environment**



Comhairle Contae Chill Mhantáin Wicklow County Council

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.i
Sulomh / Website: www.wicklow.ie

**Barry Metcalfe
c/o Ruth Treacy
WSP Ireland Consulting Ltd
Town Centre House
Naas
Co Kildare**

05th June 2024

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX50/2024 for Barry Metcalfe.

A Chara

I wish to acknowledge receipt on 05/06/2024 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 03/072024.

Mise, le meas

Peggy King

**A/Assistant Staff Officer
Planning, Economic & Rural Development**



Wicklow County Council
County Buildings
Wicklow
0404 20100

04/06/2024 14 28 08

Receipt No L1/0/330093

***** REPRINT *****

BARRY MEDCALFE
BALLYLION LOWER
DONARD
CO WICKLOW
W91C558

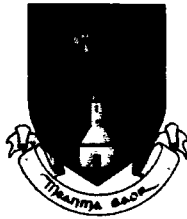
| | |
|---------------------------|-------|
| PLANNING APPLICATION FEES | 80 00 |
| GOODS | 80 00 |
| VAT Exempt/Non-vatable | |

Total 80 00 EUR

Tendered
Credit Card 80 00
WSP IRI LTD CONSUL

Change 0 00

Issued By Cindy Driver
From Customer Service Hub
Vat reg No 0015233H



Wicklow County Council
County Buildings
Wicklow
Co Wicklow
Telephone 0404 20148
Fax 0404 69462

Office Use Only

Date Received _____

Fee Received _____

**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

- (a) Name of applicant: Barry Metcalfe _____
Address of applicant: Ballylion Lower, Donard, Co Wicklow, W91 C5T8

Note Phone number and email to be filled in on separate page.

2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable) Ruth Treacy _____
Address of Agent : WSP Ireland Consulting Ltd,
Town Centre House, Naas, Co. Kildare

Note Phone number and email to be filled in on separate page.

3. Declaration Details

i. Location of Development subject of Declaration: Ballylion Lower, Donard, Co. Wicklow

ii. Are you the owner and/or occupier of these lands at the location under i. above ?
Yes/ No.

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier: James Metcalfe
Ballylion Lower
Donard
Co. Wicklow

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, an payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration.

A declaration of exempt development is sought for reclamation and recontouring of lands (<0.5ha) that are part of the landowners agricultural holding. Previously, a short section (approx. 90m) of the N81 ran through this section of land and realignment works of the N81 have been completed rendering this section of road redundant. The lands where the old redundant road is located within an agricultural holding under the ownership of the applicants father who operates a dairy farm and tillage enterprise. The lands are very uneven with a sharp dip in elevation each side of the old section of road and it is not practical or safe to access this area of land to prepare for agricultural cultivation. Improvement of this section of the field is required through the importation of clean soil and stone as by-product to infill the low-lying areas and to grade the land to a gradient that can be traversed by heavy agricultural machinery safely. Please see additional information provided that shows imagery of the character of the site.

Additional details may be submitted by way of separate submission.

- v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration.

Article 8C. Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Additional details may be submitted by way of separate submission.

- vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ? NO _____

- vii. List of Plans, Drawings submitted with this Declaration Application
Site Location Plan
Site Layout Plan – existing conditions

- viii. Fee of € 80 Attached Paid to Wicklow County Council Cash Office - 04/06/2024

Signed : _____ Dated : 04/06/2024

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.
- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.
- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

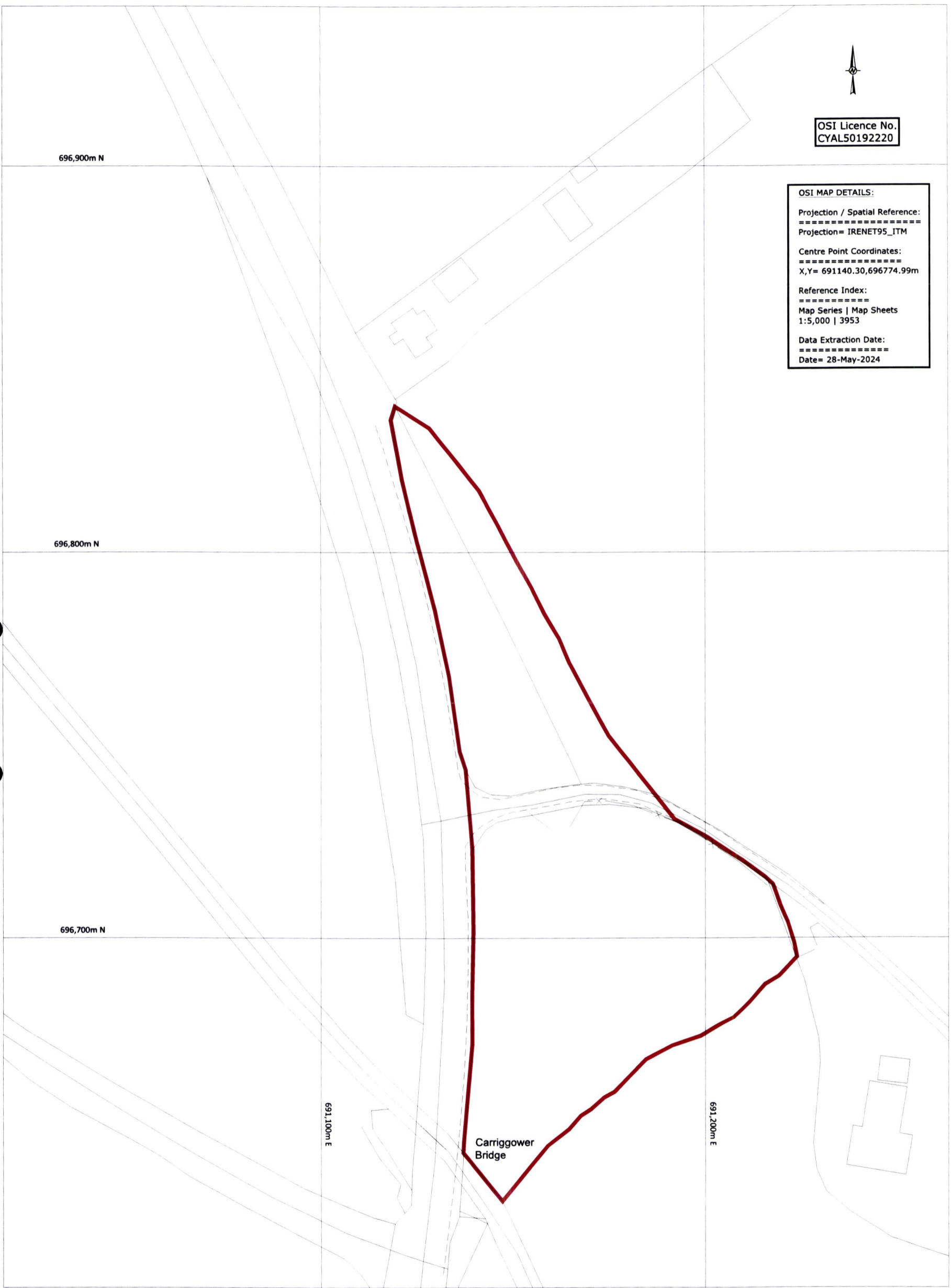
C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.



OSI Licence No.
CYAL50192220

OSI MAP DETAILS:
 Projection / Spatial Reference:
 =====
 Projection= IREN95_ITM
 Centre Point Coordinates:
 =====
 X,Y= 691140.30,696774.99m
 Reference Index:
 =====
 Map Series | Map Sheets
 1:5,000 | 3953
 Data Extraction Date:
 =====
 Date= 28-May-2024



LEGEND:
 ——— SITE BOUNDARY



CLIENT
BARRY METCALF

CONSULTANT



YYYY-MM-DD 2024-May-30
 PREPARED POB
 DESIGN POB
 REVIEW RT
 APPROVED RT

PROJECT
**LAND RECLAMATION,
 BALLYLION, DONARD, Co. WICKLOW**

TITLE
SITE LOCATION PLAN

PROJECT No.
40000252

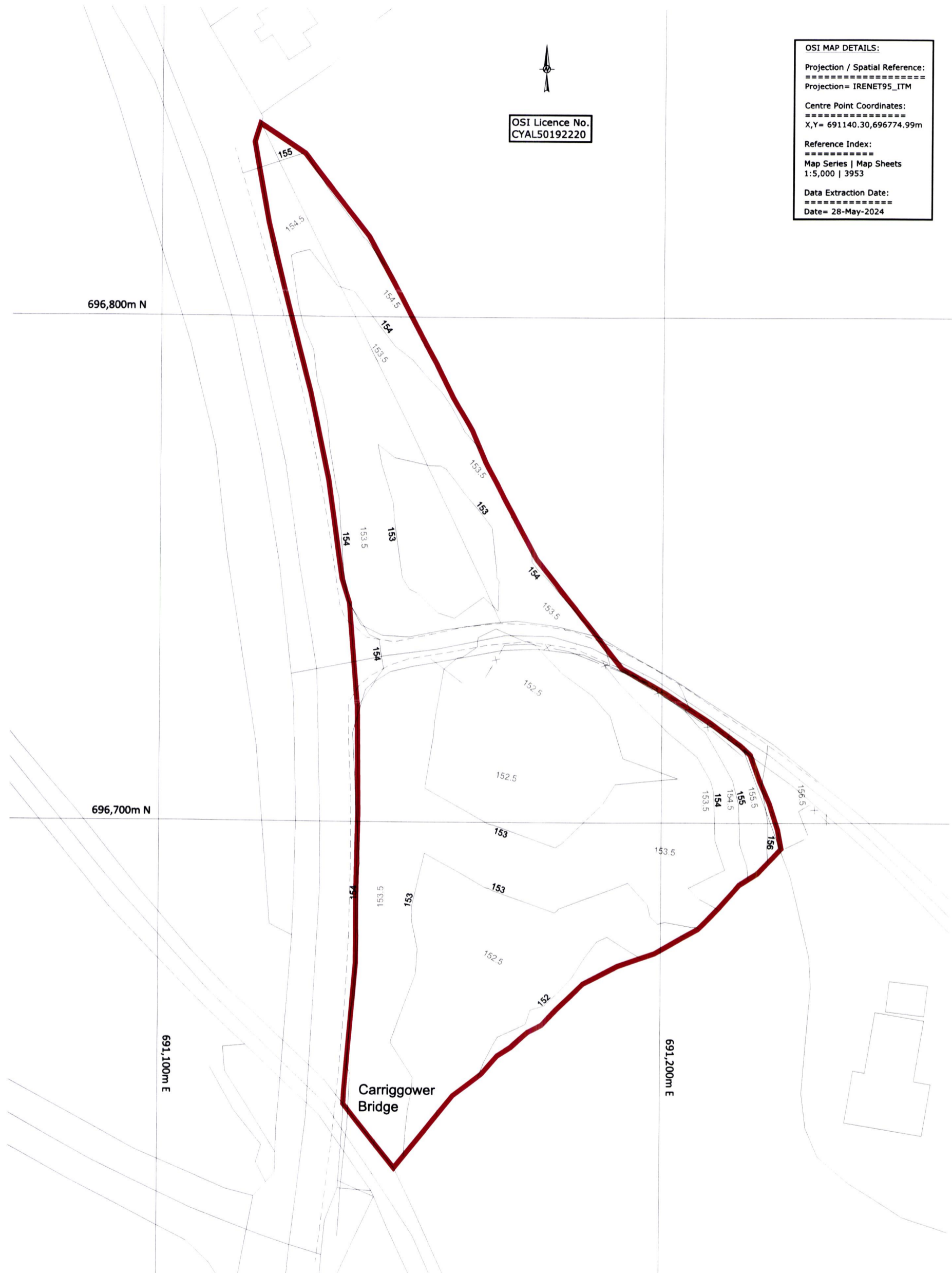
DRAWING No.
01

Rev.
A

SCALE
1:1,000 A3

OSI MAP DETAILS:
 Projection / Spatial Reference:
 =====
 Projection= IREN95_ITM
 Centre Point Coordinates:
 =====
 X,Y= 691140.30,696774.99m
 Reference Index:
 =====
 Map Series | Map Sheets
 1:5,000 | 3953
 Data Extraction Date:
 =====
 Date= 28-May-2024

OSI Licence No.
 CYAL50192220



LEGEND:
 SITE BOUNDARY
 EXISTING GROUND CONTOUR (mOD)

NOTES:
 GRID REFERENCES ARE IN METRES
 & TO ITM COORDINATES.
 LEVELS ARE IN METRES
 & TO O.S. DATUM.
 DIMENSIONS ARE IN METRES.



CLIENT
BARRY METCALF



CONSULTANT
 YYYY-MM-DD 2024-May-30
 PREPARED POB
 DESIGN POB
 REVIEW RT
 APPROVED RT

PROJECT
**LAND RECLAMATION,
 BALLYLION, DONARD, Co. WICKLOW**

TITLE
EXISTING SITE CONDITIONS

PROJECT No. 40000252 DRAWING No. 02 Rev. A SCALE 1:750 A3

6th June 2023

RE: Land Reclamation

To Whom It May Concern:

Barry Metcalfe proposes to raise the level of a field corner at Ballylion Lower, Donard, Co. Wicklow.

Presently, there is a sharp drop off from the cropped part of the field to the area in question. Currently this area is unsuitable for growing crops and is unsightly adjoining the N81. The field is also below the level of the N81.

The sudden drop off from the agricultural field to this hollow is also a safety hazard, and a local contractor was lucky to escape harm when harvesting maize as his trailer slipped into the hollow and turned over.

Mr. Metcalfe proposes to raise the level of this hollow by 1 meter and return it to agricultural use. This corner will then join seamlessly in with the rest of the field and will also allow for the safe turning of farm machinery at the lower end of the field.

Trusting this is in order, if you have any queries in relation to this do not hesitate to contact me on 087 1227639.

Yours sincerely,



Paul Keogh M.Agr.Sc.

Teagasc Dairy Advisor



TECHNICAL NOTE 1

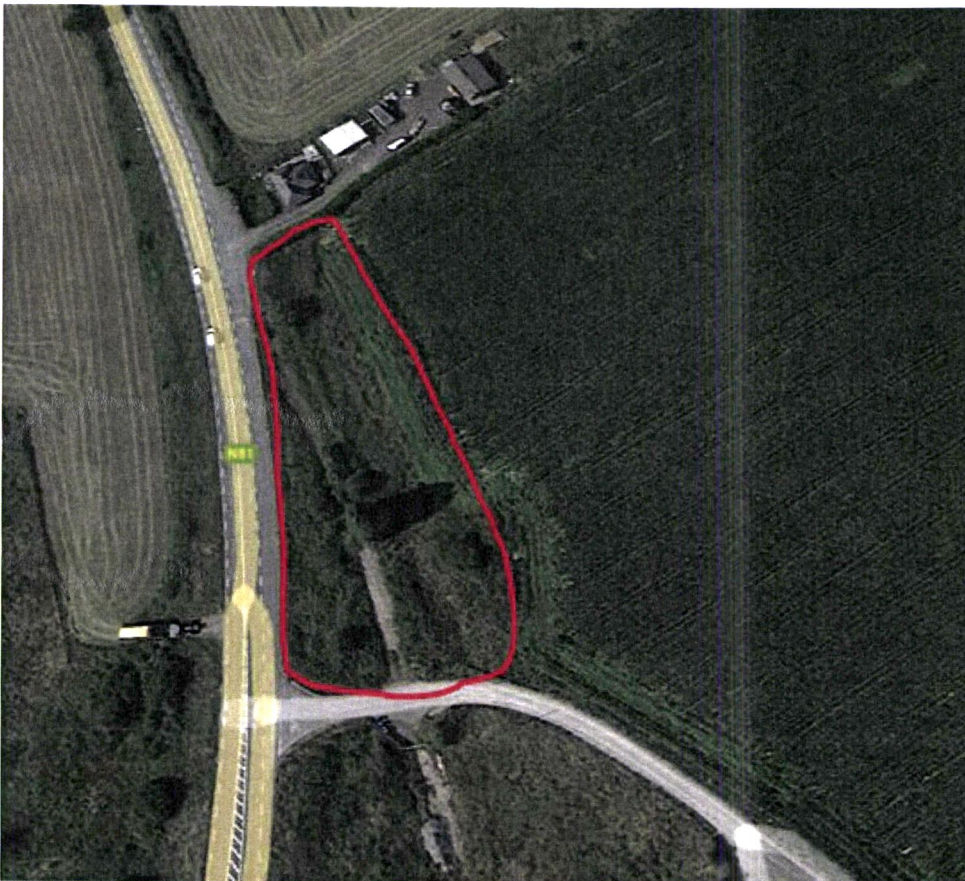
| | | | |
|-----------------|--|-------------------------|-------------|
| DATE: | 28 May 2024 | CONFIDENTIALITY: | Public |
| SUBJECT: | Declaration of Exemption- Agricultural reclamation | | |
| PROJECT: | Ballylion | AUTHOR: | Ruth Treacy |
| CHECKED: | T. Montague | APPROVED: | T. Montague |

SUPPORTING INFORMATION

Character of the Land

The applicant is seeking a declaration of exemption for the reclamation of <0.5ha of land located within an agricultural land holding at Ballylion Lower, Donard, Co. Wicklow. The area to be reclaimed previously contains part of the old N81 road which has been subject to re-alignment (pre-1995) rendering this section of the old road redundant and is now part of the Metcalfe agricultural landholding (Folio No. WW 2978F).

The character of the surrounding lands are agricultural in nature. The area generally comprises relatively low lying agricultural lands which act as a natural transition between the lower more rural lands and more elevated lands to the east. Google earth image below indicates the proposed reclamation area within an agricultural setting. The reclamation levels will be in keeping with the surrounding ground elevations to support trafficability of agricultural machinery.



A letter from the the applicants agricultural advisor is attached to this application.



TECHNICAL NOTE 1

| | | | |
|-----------------|--|-------------------------|-------------|
| DATE: | 28 May 2024 | CONFIDENTIALITY: | Public |
| SUBJECT: | Declaration of Exemption- Agricultural reclamation | | |
| PROJECT: | Ballylion | AUTHOR: | Ruth Treacy |
| CHECKED: | T. Montague | APPROVED: | T. Montague |

European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011.

It is noted that the provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation. The EIA (Agriculture) Regulations are also applicable. The regulations require screening of certain agricultural works to determine whether EIA applies and whether consent is required. Schedule 1, Part A sets out the types of activity and threshold levels where screening for EIA is required.

Schedule 1 Part A- Thresholds for screening applications under regulation 7.

SCHEDULE 1

Part A — Thresholds for screening applications under Regulation 7

| Type of on-farm Activity | | Screening Required |
|---|---|--------------------|
| Restructuring of rural land holdings | Length of field boundary to be removed | Above 500 metres |
| | Re-contouring (within farm-holding) | Above 2 hectares |
| | Area of lands to be restructured by removal of field boundaries | Above 5 hectares |
| Commencing to use uncultivated land or semi-natural areas for intensive agriculture | | Above 5 hectares |
| Land drainage works on lands used for agriculture | | Above 15 hectares |

The proposed works are sub-threshold the requirements for screening for re-contouring (within farm holding) of greater than 2 hectares. The are proposed is <0.5ha and is well below the threshold for screening and does not require consent. The nature and type of reclamation is not considered to pose a significant environmental impact.

Nothwithstanding above, advice will be sought from the department in this regard should a declaration of exemption be determined by Wicklow County Council.