



# Comhairle Contae Chill Mhantáin Wicklow County Council

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

Áras An Chontae / County Buildings  
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*jm*  
10 April 2025

MacCabe Durney Barnes  
27 Fitzwilliam Place  
Dublin 2  
D02 YV58

**RE: Declaration in accordance with Section 5 of the Planning & Development Acts  
2000 (As Amended) – EX35/2025 – Pat Cooke**

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 ECONOMIC & RURAL DEVELOPMENT





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

Applicant: Pat Cooke

Location: Drumbawn, Newtownmountkennedy, Co. Wicklow

Reference Number: EX35/2025

#### CHIEF EXECUTIVE ORDER NO. CE/PERD/2025/350

Section 5 Declaration as to whether “the infilling and re-profiling of land by 25,000 tonnes of by-product (non-waste)” at Drumbawn, Newtownmountkennedy, Co. Wicklow constitutes exempted development within the meaning of the Planning and Development Act, 2000(as amended).

#### Having regard to:

- a) Section 5 application details, Reference Report, Environmental Impact Screening, and Appropriate Assessment Screening submitted on the 18<sup>th</sup> March 2025.
- b) An Bord Pleanála References ABP-315532-23, , RL 3609, RL3540, RL2987, RL3034, RL 3604, ABP-301484-18
- c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- d) Article 8 C of the Planning and Development Regulations 2001(as amended)

#### Main Reasons with respect to Section 5 Declaration:

- i. The importation and deposition of soil/ subsoil from development sites for the purpose of infilling/re-profiling 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. Structure means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined. The deposition of soil/ subsoil on lands is not considered to come within the definition of a structure, as it is considered to be a class of operation of its own type and kind i.e. ‘sui generis’.
- iii. The infilling / re-profiling of land would not come within the provisions Section 4(1)(h) or Section 4(1) (l) of the Planning and Development Act 2000(as amended).
- iv. 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 which is outside the remit of Article 8C. In addition the material proposed to be imported has not been shown not to be 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).
- v. It cannot be established that Appropriate Assessment is not required, or the development would not require an Environmental Impact Assessment, as the information submitted has not clearly addressed the haul route or traffic

*In an docimeáil seo, tá fóin bhforbairt le fáil arís.*  
*This document is available in alternative formats on request*

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



movements to the site. There is an alternative access to the infill site from the L-1041-0 and the boundary of Carrigower Bog SAC is located along a significant length of this public road in the vicinity of the infilling operations. Access to this route is not restricted, and given this is an extremely narrow road, where large vehicles would use this route as part of the infilling, impacts on the SAC could occur from vehicles pulling in on soft margins to allow for passing or turning movements. Therefore both the need for Stage 2 Appropriate Assessment and EIA cannot be screened out, as it is considered that the infilling of this area may result in negative impacts on the qualifying interest of this Carrigower Bog SAC.

**The Planning Authority considers that “the infilling and re-profiling of land by 25,000 tonnes of by-product (non-waste)” at Drumbawn, Newtownmountkennedy, Co. Wicklow is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).**

Signed:   
ADMINISTRATIVE OFFICER  
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated  April 2025



**WICKLOW COUNTY COUNCIL**  
**PLANNING & DEVELOPMENT ACTS 2000 (As Amended)**

**SECTION 5**

**CHIEF EXECUTIVE ORDER NO. CE/PERD/2025/350**

Reference Number: EX35/2025

Name of Applicant: Pat Cooke

Nature of Application: Section 5 Declaration request as to whether or not: -  
"the infilling and re-profiling of land by 25,000 tonnes of by-product (non-waste)" is or is not development and is or is not exempted development.

Location of Subject Site: Drumbawn, Newtownmountkennedy, Co. Wicklow

Report from Edel Bermingham, SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "the infilling and re-profiling of land by 25,000 tonnes of by-product (non-waste)" at Drumbawn, Newtownmountkennedy, Co. Wicklow 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, Reference Report, Environmental Impact Screening, and Appropriate Assessment Screening submitted on the 18<sup>th</sup> March 2025.
- (b) An Bord Pleanála References ABP-315532-23, , RL 3609, RL3540, RL2987, RL3034, RL 3604, ABP-301484-18
- (c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- (d) Article 8 C of the Planning and Development Regulations 2001(as amended)

**Main Reason with respect to Section 5 Declaration:**

- i. The importation and deposition of soil/ subsoil from development sites for the purpose of infilling/re-profiling 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. Structure means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined. The deposition of soil/ subsoil on lands is not considered to come within the definition of a structure, as it is considered to be a class of operation of its own type and kind i.e. 'sui generis' .
- iii. The infilling / re-profiling of land would not come within the provisions Section 4(1)(h) or Section 4(1) (l) of the Planning and Development Act 2000(as amended).
- iv. 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 which is outside the remit of Article 8C. In addition the material proposed

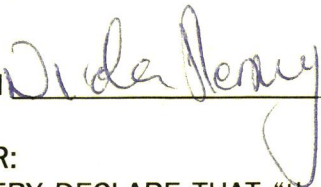
to be imported has not been shown not to be a waste material noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended).

- v. It cannot be established that Appropriate Assessment is not required, or the development would not require an Environmental Impact Assessment, as the information submitted has not clearly addressed the haul route or traffic movements to the site. There is an alternative access to the infill site from the L-1041-0 and the boundary of Carrigower Bog SAC is located along a significant length of this public road in the vicinity of the infilling operations. Access to this route is not restricted, and given this is an extremely narrow road, where large vehicles would use this route as part of the infilling, impacts on the SAC could occur from vehicles pulling in on soft margins to allow for passing or turning movements. Therefore both the need for Stage 2 Appropriate Assessment and EIA cannot be screened out, as it is considered that the infilling of this area may result in negative impacts on the qualifying interest of this Carrigower Bog SAC.

**Recommendation:**

The Planning Authority considers that “the infilling and re-profiling of land by 25,000 tonnes of by-product (non-waste)” at Drumbawn, Newtownmountkennedy, Co. Wicklow is development and is NOT exempted development as recommended in the report by the SEP.

Signed

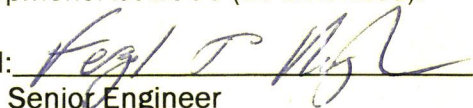
  
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Dated 10<sup>th</sup> day of April 2025

**ORDER:**

I HEREBY DECLARE THAT “the infilling and re-profiling of land by 25,000 tonnes of by-product (non-waste)” at Drumbawn, Newtownmountkennedy, Co. Wicklow is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed:

  
\_\_\_\_\_  
Senior Engineer  
Planning, Economic & Rural Development

Dated 10<sup>th</sup> day of April 2025

## **Section 5 Application : EX 35/2025**

Date : 4<sup>th</sup> April 2025.

Site Inspection: 28<sup>th</sup> March 2025 & 4<sup>th</sup> April 2025.

Applicant : Pat Cooke

Address : Drumbawn, Newtownmountkenny

Exemption Whether or not :

Infilling and reprofiling of land

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

### Designation –

Carrigower Bog SAC

Qualifying Interest - Transition mires and quaking bogs

### **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;

“land” includes any structure and any land covered with water (whether inland or coastal);

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—  
(a) where the context so admits, includes the land on, in or under which the structure is situate, and  
(b) in relation to a protected structure or proposed protected structure, includes—  
(i) the interior of the structure,  
(ii) the land lying within the curtilage of the structure,

- (iii) any other structures lying within that curtilage and their interiors, and
- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

"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 in, on, over or under land, or the making of any material change in the use of any land or structures situated on 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—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

(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.

### **Land reclamation Act 1949**

S(1)

works" refers to the following or any of them:—

- (a) field drainage;
- (b) land reclamation;
- (c) the construction and improvement of watercourses;
- (d) the removal of unnecessary fences;
- (e) the construction of new fences and the improvement of existing ones;
- (f) improvement of hill grazing;
- (g) reclamation of estuarine marsh land and of callows;
- (h) any operations ancillary to the foregoing.

### **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.

#### RL3604

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the reinstatement of land by the importation of 94,683 cubic metres of non-waste/by-product soil and stones, consisting of 43,900 cubic metres of topsoil and 50,783 cubic metres of subsoil, sourced from greenfield development sites in the Dublin Region at Basketstown, Summerhill, County Meath is development and is not exempted development as

- (a) the importation of soil and subsoil for infilling on lands constitutes 'works' as defined in Section 2(1) of the Planning and Development Act, 2000, as amended and is, therefore, development,
- (b) it has not been established that the soil and subsoil does not constitute 'waste' and, therefore, the development does not fall within the scope of Section 4 (1)(l) of the Planning and Development Act, 2000, as amended, and does not come within the meaning of the term 'land reclamation' as set out in Article 8 of the Planning and Development Regulations, 2001, as amended,
- (c) in such circumstances, the development would require environmental impact assessment and would come within the scope of Section 4 (4) of the Planning and Development Act, 2000, as amended, and would, therefore, not be exempted development,
- (d) if it could be established that the soil and subsoil was not waste, then the development in question would be classified as land reclamation, but would not come within the scope of Article 8C of the Planning and Development Regulations, 2001, as amended, because this exemption relates only to land reclamation works including infilling of soil within a farm holding and does not provide an exemption for importation of soil to a farm holding for the purposes of re-contouring of land from external sources (as in the current case), and, therefore, the development in question would not be exempted development:

#### ABP-301484-18

An Bord Pleanála hereby decides that the laying of crushed stone to a depth of 100 millimetres and the laying of gravel above the crushed stone to a depth of 50 millimetres constitutes development which is exempted development as

- (a) the excavation of lands and the laying of crushed stone and gravel constitutes works under the definition of the Act,
- (b) the act of excavation and the laying of crushed stone and gravel fell within the definition of structure as set out in the Act,

- (c) the excavation and layout of crushed stone and gravel constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h) of the said Act and having regard to the nature, scale, extent and location of the said works these works do not materially affect the external appearance of the existing windfarm so as to render the appearance inconsistent with the character of the windfarm and that of neighbouring structures,
- (d) having regard to the nature, scale and extent of the proposed storage area in the context of the existing windfarm any change of use in the said lands are not considered to be material in the context of the existing windfarm,
- (e) the proposed works would not be likely to have a significant effect, either individually or in combination with other plans and projects on any European Sites and therefore do not require an appropriate assessment. (f) Furthermore, having regard to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, the proposed works undertaken do not require the submission of an Environmental Assessment Report.

**Submission :**

Section 5 Reference Report Mac Cabe Durney Barnes  
 Environmental Impact Assessment Screening  
 Appropriate Assessment Screening

Summary

Proposal comprise the filling and reprofiling of land within the applicants farm holding . Lands are not wetland in nature. Proposal will enable the efficient usage of these lands. Development should be assessed in accordance with the EPA Guidance to Planners, Planning Authorities and An Bord Pleanála on the Management of Excess Soil and Stone from Developments and Guidance on Soil and Stone By-Products

Soil is uncontaminated and can be used directly on the application site without further processing. Applicant with the material producer will clearly demonstrate that the material is a notified by-product.

Ultimately, it is within the EPA's remit to determine whether inert soil is deemed as a by-product, and not of the Planning Authority.

Considered that works undertaken are also exempt under the provisions of Section 4(1)(h) having regard to ABP Ref. 301484-18 case which found that the works were development and were exempted development, in response to the question of "whether the laying of crushed stone to a depth of 700 millimetres and the overlaying of gravel at a depth of 50 millimetres to accommodate a storage area for on-going works at Gartnaneane Wind Farm, in the townlands of Gartnaneane, Bailieborough, County Cavan is or is not development or is or is not exempted development"

The Inspector found:

*"It is clear in my opinion that the above definition which includes the act of "excavation" falls within the definition of structure. Furthermore, the infill of gravel material on site as proposed could reasonably be construed as "or other thing constructed or made on, in or under any land" as set out in the definition of "structure". The works proposed to be undertaken could in my view be classed as a structure as defined in the Act. Therefore, in the context of Section 4(1)(h) it could be reasonably*

*argued that the provision of a small area of hardstanding for storage would not materially affect the external appearance of the structure i.e. the lands in question or the wind turbines nor would they render the appearance inconsistent with the character of the structure or neighbouring structure having regard to the overall size of the site, the existence of agricultural buildings, access tracks, turbines and electricity substations all of which are located in the vicinity of the site."*

*" the excavation and layout of crushed stone and gravel constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h) of the Planning and Development Act 2000, as amended, and having regard to the nature, scale, extent and location of the works, these works do not materially affect the external appearance of the existing windfarm so as to render the appearance inconsistent with the character of the windfarm and that of neighbouring structures,"*

In relation to the subject works, the works do not materially affect the external appearance of the structure, as the appearance of this overall area is effectively unchanged, notwithstanding the infilling and redistribution of soil given the differing surface levels.

In addition the details identify that

- Area involved 4.85ha
- Infill material will not exceed 25,000 tonnes per year.
- Site operational for 5 years.
- Access from the L 1236 ( Environmental Impact Assessment Screening)
- Wheel wash to be provided at entrance.
- Total volume of fill 95,619m<sup>3</sup>
- The main access is from the R765 ( from AA document)
- The material will come from a greenfield residential construction site in Newtownmountkennedy and will be delivered by a contractor with a waste transport permit.
- Infilling Level changes range from difference 0.18 to 7.37m from drawings.

## **Assessment :**

The declaration queries whether the infilling and reprofiling of land by 25,000 tonnes of by-product (non-waste) is or is not development or is or is not exempted development.

The site in question is c. 4.85ha , and involves infilling at a total of not more than 25,000 tonnes per annum for 5 years. The site is located in Drumbawn, within an elevated area in the lands. Whilst there are some rocky outcrops within the site, the area in the main consists of greenfields at present. The landscape designation is Area of High Amenity : North East Mountain Lowlands.

The first question to be asked is whether infilling/ reprofiling of lands is or is not development. In this regard soils/subsoil are to be brought onto site, and ground levels are being raised by between 0.18m to 7.37m , such operations would come within the definition of work as set out in Section 2 of the Planning and Development Act 2000 (as amended) as it involves the alteration of ground levels. Such works would be development as defined in Section 3(1)(a) of the Planning and Development Act 2000 (as amended).

The submitted documents indicate that this development would be exempted by reference to Section 4(1)(h) i.e.

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

The agent refers to An Bord Pleanála Reference ABP Referral 301484-18 with emphasis on the fact that the inspectors report on that reference identified that excavation and layout of crushed stone and gravel constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h), with the inspector in that instance considering that "excavation" falls within the definition of structure, and the infill of gravel material on site as proposed could reasonably be construed as "or other thing constructed or made on, in or under any land" The referral and related inspectors report is noted.

The definition of structure as set out in Section 2 of the Planning and Development Act 2000 (as amended) means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined.

In this instance the works are not for excavation, but are for the deposition of clean soil/ subsoil. It is not considered that the deposition of soils/ subsoil would come within the meaning of constructed or made on any land. Furthermore, it is considered the legislation sets out a clear separate exemption under Section 4 which refers to land reclamation i.e.

*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.*

This separation of works of land reclamation, clearly identifies this as it being in a class by itself, and is a separate and distinct operation, and would be considered 'sui generis'

This conclusion is supported by the assessments by An Bord Pleanála in respect to ABP-315532-23, RL 3609, RL 3540, RL2987, RL 3034 clearly show that assessment of such works would not be seen as coming within Section 4 (1)(h). In addition and as concluded in the referenced declarations by An Bord Pleanála as the works are for reclamation of lands, they would not come within the provisions of Section 4(1)(l).

The Planning and Development Regulations under Article 8C provide for the following exemption-

*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).

#### Screening for EIA/ AA

A Screening document for EIA and also a screening report for Appropriate Assessment have been submitted.

The screening for EIA states that the development would not fall under any of the classes of development listed in Part 1 and Part 2 of Schedule of 5 of the P& D Regulations and a mandatory EIA is not applicable. The report further states that Part 2, Class 1 states that the project screened in this report does not fall within the scope of the projects listed under this class. The statement is noted, and it appears to identify that the development does not come within the description of any project, if this is the case then the need for a Screening process is moot.

However, Part 2 of Schedule 5 : Other Projects requires that EIA is required for

(b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

Thus screening is required as previously identified it has not been established that the materials are not a waste.

Whilst the contents of both Screening documents are noted, it is considered both documents have failed to provide information in respect to traffic volumes/ haul routes within the lands, and clear confirmation as to the location of where the materials are to be generated. It is noted that



the reports state the main access will be from the R765, this route from the entrance off the R765 to the infill site is c. 1.82 kilometers in length. There is an access to the site from the L-1041-0 which is shorter but the road network adjoining this route is excessively narrow, and the Carrigower Bog SAC runs to the road boundary opposite the entrance and for a considerable length along that route. The concern in respect to use of alternative routes is compounded by the lack of evidence to show that the applicant has the consent to access from the R765 given that the only land ownership submitted relates solely to the area pertaining to the infilling. Therefore, it is considered that where vehicles were to utilise the L-1041-0, vehicles could impact on the Natura 2000 site, where they pulled in on the soft margins to allow vehicles to pass, or reversing arose, and similarly turning out of the entrance area is likely to give rise to negative impacts on the Carrigower Bog. Therefore, it is not considered that negative impacts on Carrigower Bog can be ruled out, and therefore both the need for Stage 2 Appropriate Assessment and EIA cannot be screened out.

#### **Conclusion :**

Having regard to the assessment above, it is considered that the Infilling and reprofiling of land by 25,000 tonnes of by-product (non-waste) 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

Infilling and reprofiling of land by 25,000 tonnes of by-product (non-waste) at Drumbawn, Newtownmountkennedy, Co. Wicklow

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

The Planning Authority consider that :

Infilling and reprofiling of land by 25,000 tonnes of by-product (non-waste) at Drumbawn, Newtownmountkennedy, Co. Wicklow **is Development and is Not Exempted Development**

Main Considerations with respect to Section 5 Declaration :

- (a) Section 5 application details, Reference Report, Environmental Impact Screening, and Appropriate Assessment Screening submitted on the 18<sup>th</sup> March 2025.
- (b) An Bord Pleanála References ABP-315532-23, , RL 3609, RL3540, RL2987, RL3034, RL 3604, ABP-301484-18
- (c) Section 2,3 and 4 of the Planning and Development Act 2000(as amended)
- (d) Article 8 C of the Planning and Development Regulations 2001(as amended)

Main Reasons with respect to Section 5 Declaration :

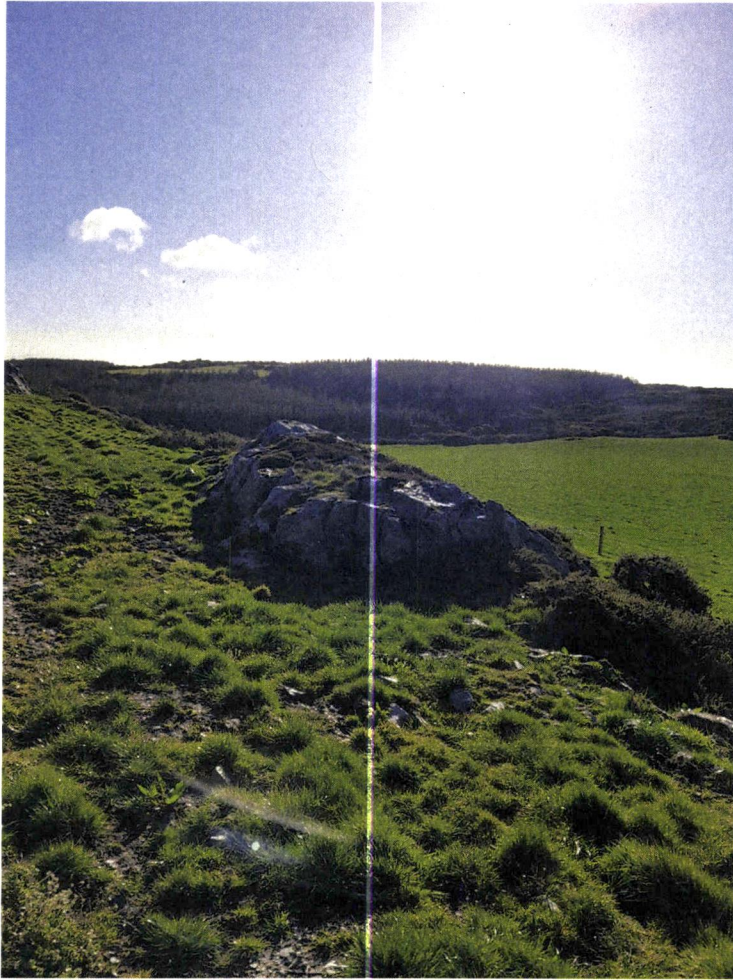
- i. The importation and deposition of soil/ subsoil from development sites for the purpose of infilling/ reprofiling of land constitutes works, and is, therefore, development as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended,
- ii. Structure means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined. 7
- iii. The deposition of soil/ subsoil on lands is not considered to come within the definition of a structure, as it is considered to be a class of operation of its own type and kind i.e. 'sui generis'.
- iv. The infilling / reprofiling of land would not come within the provisions Section 4(1)(h) or Section 4(1) (l) of the Planning and Development Act 2000(as amended).
- v. 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 which is outside the remit of Article 8C. In addition the material proposed to be imported has not been shown not to be 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).
- vi. It cannot be established that Appropriate Assessment is not required, or the development would not require an Environmental Impact Assessment, as the information submitted has not clearly addressed the haul route or traffic movements to the site. There is an alternative access to the infill site from the L-1041-0 and the boundary of Carrigower Bog SAC is located along a significant length of this public road in the vicinity of the infilling operations. Access to this route is not restricted, and given this is an extremely narrow road, where large vehicles would use this route as part of the infilling, damage to the SAC could occur from vehicles pulling in on soft margins to allow for passing or turning movements. Therefore both the need for Stage 2 Appropriate Assessment and EIA cannot be screened out, as it is considered that the infilling of this area may result in negative impacts on the qualifying interest of this Carrigower Bog Natura 2000 site.

Edel Cunningham

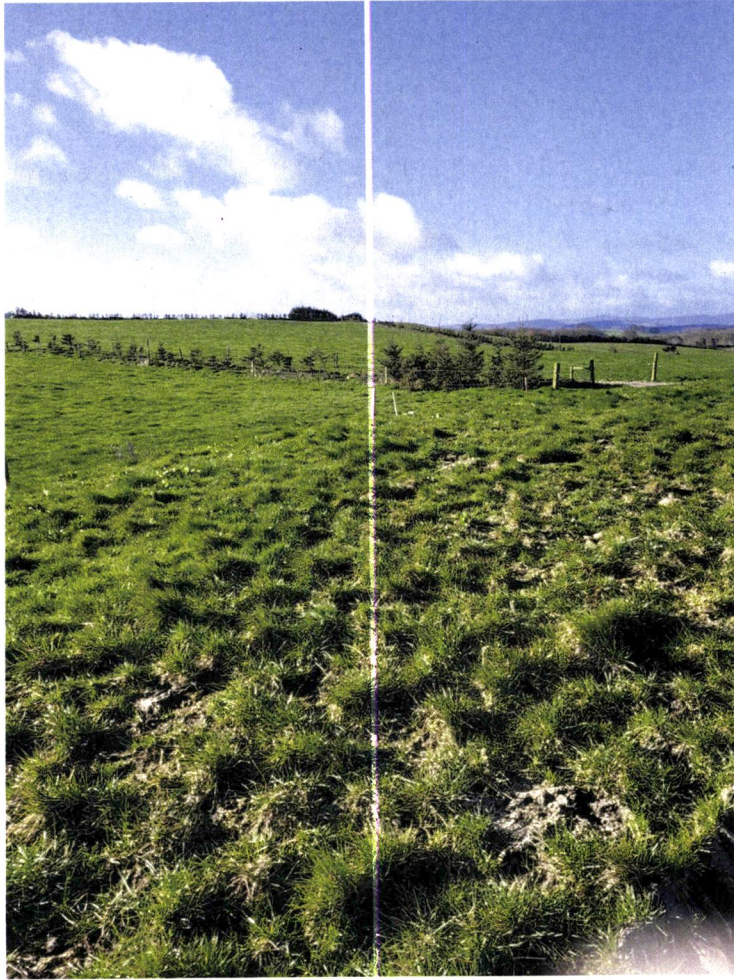
4/4/2025

Issue declaration of modified  
legal to Hwy L 12  
10/04/25

Note: The use of Article 27 by product declared materials for deposition on lands is regularly put forward as not being a waste. However, such assertions do not take account of what are the materials being used for, or more specifically what is the reason for the deposition by the person holding the materials. In most of the "get rid" operations, the reason/purpose of the deposition is to get rid of the materials => they are then a waste. ~~they are then a waste.~~









**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  
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Rphost / Email: [plandev@wicklowcoco.ie](mailto:plandev@wicklowcoco.ie)  
Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

**MEMORANDUM**

**WICKLOW COUNTY COUNCIL**

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**TO: Edel Bermingham**  
**Senior Executive Planner**

**FROM: Nicola Fleming**  
**Staff Officer**

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**RE:- Application for Certificate of Exemption under Section 5 of the**  
**Planning and Development Acts 2000 (as amended).**  
**EX36/2025**

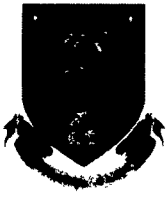
I enclose herewith application for Section 5 Declaration received completed on 14/03/2025.

The due date on this declaration is 10<sup>th</sup> April 2025.

---

**Staff Officer**  
**Planning, Economic & Rural Development**





**Comhairle Contae Chill Mhantáin**  
**Wicklow County Council**

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

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**MacCabe Durney Barnes**  
**27 Fitzwilliam Place**  
**Dublin 2**  
**D02 YV58**

20<sup>th</sup> March 2025

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX35/2025 for Pat Cooke**

A Chara

I wish to acknowledge receipt on 18/03/2025 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 14/04/2025.

Mise, le meas

---

**Nicola Fleming**  
**Staff Officer**  
**Planning, Economic & Rural Development**



20 Fitzwilliam Place t + 353 1 6762594  
Dublin 2 f + 353 1 6762310  
D02 YV58 e: planning@mdb.ie  
w: www.mdb.ie

# MACCABE DURNEY BARNES

PLANNING | ENVIRONMENT | ECONOMICS

Our Ref: 2296

Planning Department,  
Wicklow County Council,  
County Buildings,  
Whitegates,  
Wicklow Town,  
Co. Wicklow

13/03/2025

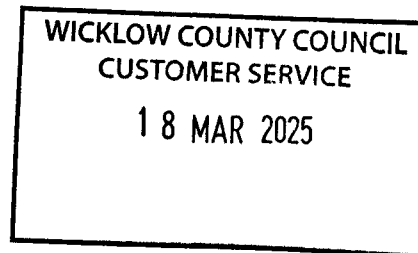
**Re: Section 5 application**

Dear Planning,

Pat Cooke of Tithewer, Ballyduff Cross, Co. Wicklow, we, MacCabe Durney Barnes have been appointed to prepare this Section 5 referral for a declaration pursuant to Section 5 of the Planning and Development Act 2000 as amended, where a declaration is sought from the Planning Authority on the following: *"Whether the infilling and reprofiling of land by 25,000 tonnes of by-product (non-waste) is or is not development or is or is not exempted development."*

Please find a copy of the following documents:

1. Cover letter (this document)
2. Application form
3. Section 5 Reference report
4. EIA screening report
5. AA screening report
6. Proposed Site Location Plan
7. Cut and Fill Analysis Site Plan
8. Site Sections
9. A cheque for €80 is herewith enclosed

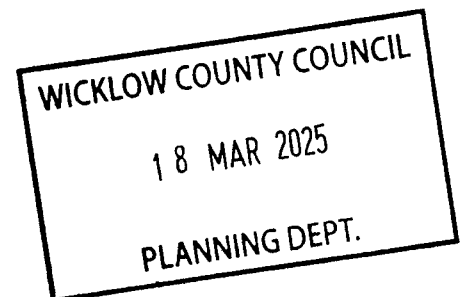


Yours sincerely,

*MacCabe Durney Barnes*

---

**MACCABE DURNEY BARNES**





Wicklow County Council  
Council Buildings  
Wicklow  
0404-20100

18/03/2025 09:45:09

Receipt No: L11/0/342425

Mac CABE DURNLEY BARNEIS  
20 FITZWILLIAM PLACE  
DUBLIN 2  
D02 YV58

EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total 80 00 EUR

Tendered  
Cheque 80 00

Change 0 00

Issued By VANESSA PORTER  
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: Pat Cooke  
Address of applicant: Tithewer, Ballybuff Cross, Co. Wicklow

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

**2. Agents Details (Where Applicable)**

- (b) Name of Agent (where applicable): MacCabe Durney Barnes  
Address of Agent : 20 Fitzwilliam Place, Dublin 2, D02 YV58

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

**3. Declaration Details**

- i. Location of Development subject of Declaration: Lands located in the townland of Drumbawn, Newtown Mount Kennedy, Co. Wicklow.

- ii. Are you the owner and/or occupier of these lands at the location under i. above ?  
No.
  
- iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier: Refer to question 1(a)
  
- 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, on 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.

This is a Section 5 Reference application in relation to the following:

*Whether the infilling and reprofiling of land by 25,000 tonnes of by-product (non-waste) is or is not development or is or is not exempted development.*

Please refer to accompanying documentation.

*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

Section 4(1)(h) and Section 4(1)(l) of the Planning and Development Act 2000 (as amended).

Please refer to the accompanying section 5 Report prepared by MacCabe Durney Barnes.

*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  
Section 5 Planning Report  
EIA Screening  
AA Screening  
This application form  
Site Sections  
Cut and Fill Analysis Plan  
Site Location Drawing
- viii. Fee of € 80 Attached ? Yes

Signed : *MacCabe Dunne Barnes*

Dated : 06/03/2025

**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.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.

**ENVIRONMENTAL IMPACT ASSESSMENT**  
**SCREENING**

**Drumbawn,  
Newtown Mount Kennedy,  
Co. Wicklow.**



**ROSS SWIFT ECOLOGY LTD**



<b>DOCUMENT CONTROL SHEET</b>	
<b>DOCUMENT REFERENCE</b>	<b>RSE_EIA SCREENING_060125</b>
<b>DOCUMENT TITLE</b>	<b>ENVIRONMENTAL IMPACT ASSESSMENT SCREENING PROPOSED INFILL AT DRUMBAWN, NEWTOWN MOUNT KENNEDY, CO. WICKLOW.</b>
<b>DATE OF ISSUE</b>	<b>13<sup>TH</sup> MARCH 2025</b>

<b>DOCUMENT AUTHOR</b>	
<b>AUTHOR</b>	<b>DR ROSS DONNELLY-SWIFT</b>
<b>QUALIFICATIONS</b>	<b>BSc (HONS) BIOLOGY MSc ENVIRONMENTAL SCIENCE PHD BIOSYSTEMS ENGINEERING</b>
<b>ROSS SWIFT ECOLOGY LTD.</b> <a href="mailto:rse@outlook.ie">rse@outlook.ie</a> <a href="tel:+353851865905">+353 85 1865905</a>	





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## 1.0 INTRODUCTION

This Environmental Impact Assessment (EIA) Screening report has been prepared for the proposed infill at Drumbawn, Newtown Mount Kennedy, Co. Wicklow. The purpose of this report is to undertake a screening of the proposed development to establish whether or not it requires an EIA and as a result, if an Environmental Impact Assessment Report (EIAR) should be prepared in respect of it.

The proposed development is for the infilling and reprofiling of land by 25,000 tonnes of inert material that is classified as soil and subsoil.

This EIA Screening has been prepared with reference to Schedules 5 and 7 of the Planning and Development Regulations 2001, as amended. The first step in screening is to determine whether a project is listed in either Part 1 or Part 2 of Schedule 5, which describes the thresholds of Part 1 projects, which require a mandatory EIAR, or Part 2 projects which may have the potential to pose a risk to the environment and require screening to determine if an EIAR is required.

Sub-threshold projects in Schedule 5 Part 2 require screening for EIA, except in cases where the likelihood of significant effects can be readily excluded.

Schedule 7 is to be used in the case of screening determination (i.e., information to be provided by the developer on projects listed in Part 2). Schedule 7A details the criteria for determining whether a sub-threshold development would or would not be likely to have significant effects on the environment.

### RELEVANT GUIDANCE FOR EIA SCREENING INCLUDES;

- EIA Guidance for Consent Authorities regarding sub-threshold development (DEHLG, 2003).
- Guidelines for Planning Authorities and An Bord Pleanála on carrying out EIA (DEHLG, 2018).
- OPR Practice Note PN02 Environmental Impact Assessment Screening (Office of the Planning Regulator, 2021).



- European Union (EU) Guidance including Interpretation of definitions of project categories of Annex I and II of the EIA Directive (EU, 2015)
- Environmental Impact Assessment of Projects - Guidance on Screening (EU, 2017). Planning and Development Act 2000 (as amended).
- Planning and Development Regulations 2018 (as amended).
- Directive 2011/92/EU.
- Directive 2015/52/EU.
- Guidance for Consent Authorities regarding Sub-threshold Development (2003; DoEHLG).

EIA requirements are derived from legislation set by the EU in the form of EIA Directive 2011/92/EU, as amended by Directive 2014/52/EU, collectively titled: '*on the assessment of the effects of certain public and private projects on the environment*'. These directives set out the principles for the environmental impact assessment of projects by introducing minimum requirements regarding:

- The type of projects subject to assessment.
- The main obligations of developers.
- The content of the assessment.
- The participation of competent authorities.

A preliminary examination is undertaken, based on professional expertise and experience, and having regard to the '**Source – Pathway – Target**' model, where appropriate. The competent authority concludes that, having considered the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment, this should be recorded with reasons for this conclusion stated, and no EIA required, or formal determination made. The recording of the competent authority's view should be brief and concise, but adequate to inform the public (OPR, 2021).

**MANDATORY EIAR REVIEW**

**Table 1.1** below is a list of activities requiring mandatory EIA;

Crude-oil refineries and installations for the gasification and liquefaction of materials
Thermal power and nuclear power stations
Installations for the processing of irradiated nuclear fuel
Integrated works for the initial smelting of cast iron and steel, and installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials
Integrated works for the initial smelting
Integrated chemical installations
Construction of railway lines, airports, motorways, express roads, construction of new road with four or more lanes
Inland waterways and ports, trading ports, and piers
Construction of railway lines, airports, motorways, express roads, construction of new road with four or more lanes
Inland waterways and ports, trading ports, and piers
Waste disposal installations for the incineration and chemical treatment
Works for the transfer of water resources between river basins
Waste water treatment plants
Extraction of petroleum and natural gas for commercial purposes
Dams and other installations designed for the holding back or permanent storage of water
Pipelines with a diameter of more than 800 mm of more than 40 km
Installations for the intensive rearing of poultry or pigs
Industrial plants
Quarries and open-cast mining
Construction of overhead electrical power lines
Storage sites
Installations for the intensive rearing of poultry or pigs
Installations for the capture of CO <sup>2</sup> streams for the purposes of geological storage



The development would not fall under any of the classes of development listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and a mandatory EIA is not applicable.

Part 2, Class 1 Agriculture, Silviculture and Aquaculture projects. The project screened in this report does not fall within the scope of the projects listed under this class;

*(a) Projects for the restructuring of rural land holdings, where the area to be restructured would be greater than 100 hectares.*

*(b) The use of uncultivated land or semi-natural areas for intensive agricultural purposes, where the area to be used for such purposes would be greater than 100 hectares.*

*(c) Water management projects for agriculture, including irrigation and land drainage projects, where the catchment area involved would be greater than 1,000 hectares, or where more than 20 hectares of wetland would be affected.*

*(d) (i) Initial afforestation which would involve an area of 50 hectares or more. (ii) Replacement of broadleaf high forest by conifer species, where the area involved would be greater than 10 hectares. (iii) Deforestation for the purpose of conversion to another type of land use, where the area to be deforested would be greater than 10 hectares of natural woodlands or 70 hectares of conifer forest.*

*(e)(i) Installations for intensive rearing of poultry not included in Part 1 of this Schedule which would have more than 40,000 places for poultry. (ii) Installations for intensive rearing of pigs not included in Part 1 of this Schedule which would have more than 2,000 places for production pigs (over 30 kilograms) in a finishing unit, more than 400 places for sows in a breeding unit or more than 200 places for sows in an integrated unit.*

*(f) Seawater fish breeding installations with an output which would exceed 100 tonnes per annum; all fish breeding installations consisting of cage rearing in lakes; all fish breeding installations upstream of drinking water intakes; other freshwater fish breeding installations which would exceed 1 million smolts and with less than 1 cubic metre per second per 1 million smolts low flow diluting water.*

*(g) Reclamation of land from the sea, where the area of reclaimed land would be greater than 10 hectares*

Part 2 of Schedule 5 notes that sub-threshold development applies to any project that may have likely significant effects which does not equal or exceed or, as the case may be, a quantity, area or other limit specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001 as amended in respect of the relevant class of development. *Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development, but which would be likely to have significant*

*effects on the environment, having regard to the criteria set out in Schedule 7.* It is considered that the proposed development is a sub-threshold development for the purposes of EIA Screening.

The Annex III EIAR screening criteria of Directive 2014/52/EU are transposed into Irish law as Schedule 7, (parts 1 to 3) of the Irish Planning and Development Regulations 2001. Schedule 7 sets out the Irish Member States criteria used for determining the likelihood of significant impacts from a development on the environment. Schedule 7A of the Planning and Development Regulations sets out Information to be provided by the Applicant or Developer for the Purposes of Screening Sub-threshold Development for Environmental Impact Assessment.

**Table 1.2 Criteria for the Purposes of Sub-Threshold Development**

**1. Characteristics of proposed development**

The characteristics of proposed development, in particular to:

- (a) the size and design of the whole of the proposed development,
- (b) cumulation with other existing development and/or development the subject of a consent for proposed development for the purposes of section 172(1A) (b) of the Act and/or development the subject of any 118 [296] development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment,
- (c) the nature of any associated demolition works,
- (d) the use of natural resources, in particular land, soil, water, and biodiversity,
- (e) the production of waste,
- (f) pollution and nuisances,
- (g) the risk of major accidents, and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge, and
- (h) the risks to human health

**2. Location of proposed development**

The environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to;

- (a) the existing and approved land use,



(b) the relative abundance, availability, quality, and regenerative capacity of natural resources (including soil, land, water, and biodiversity) in the area and its underground,

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:

- (i) wetlands, riparian areas, river mouths;
- (ii) coastal zones and the marine environment,
- (iii) mountain and forest areas,
- (iv) nature reserves and parks,
- (v) areas classified or protected under legislation, including Natura 2000 areas designated pursuant to the Habitats Directive and the Birds Directive and;
- (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in legislation of the European Union and relevant to the project, or in which it is considered that there is such a failure,
- (vii) densely populated areas,
- (viii) landscapes of historical, cultural, or archaeological significance

### **3. Types and characteristics of potential impacts**

The potential significant effects of projects in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:

- (a) the magnitude and spatial extent of the impact (for example, geographical area and size of the population likely to be affected).
- (b) the nature of the impact.
- (c) the transboundary nature of the impact.
- (d) the intensity and complexity of the impact.
- (e) the probability of the impact.
- (f) the expected onset, duration, frequency, and reversibility of the impact.
- (g) the cumulation of the impact with the impact of other existing and/or development the subject of a consent for proposed development for the purposes of section 172(1A) (b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment, and
- (h) the possibility of effectively reducing the impact.



Ross Swift Ecology (RSE) Ltd. has been appointed to prepare the relevant Environmental Impact Assessment (EIA) Screening, relative to the proposed development at Drumbawn, Newtown Mount Kennedy, Co. Wicklow. This EIA Screening report will identify, describe, and assess the direct and indirect significant effects of the project on specified environmental factors to enable the competent authority to assess the environmental impact from the proposed development.

The proposed development is for the infill and levelling/reprofiling of land by 25,000 tonnes of inert soil and subsoil. The site is currently used for livestock grazing. The surrounding landscape is a predominately agricultural with forestry along the north west boundary.

### **1.1 STATEMENT OF AUTHORITY**

This report was undertaken by Dr Ross Donnelly-Swift who has a BSc (Hons) in Biology from Maynooth University NUI, an MSc in Environmental Science from Trinity College Dublin, and a PhD in Biosystems Engineering from University College Dublin. Ross has extensive environmental knowledge gained from academic research and the completion of scientific and environmental reports for a wide range of developments. Ross has completed EIA Screenings and EIAR in a wide range of industries including land infilling and agricultural developments. Ross has also completed Construction Environmental Management Plans (CEMP) for large- and small-scale developments.



## 2.0 CHARACTERISTICS OF THE PROPOSED DEVELOPMENT SITE

Having regard to the criteria set out **Table 1.2** this section of the report addresses the assessment of sub-threshold development under the Characteristics of Proposed Development. See **Appendix** for proposed site levels and infill levels within the site area as completed by engineering company **Meinhardt**. **Figure 2.1** below shows the outline of the proposed infill levels.



**Figure 2.1:** Area of proposed infill and levels (image cropped from Appendix)

SURFACE LEVEL DIFFERENCE					
NUMBER	MINIMUM LEVEL (m)	MAXIMUM LEVEL (m)	COLOUR	AREA (m <sup>2</sup> )	VOLUME (m <sup>3</sup> )
1	-1.00	0.00	Red	451.103	43.689
2	0.00	1.00	Light Green	5334.261	17156.778
3	1.00	2.00	Medium Green	4215.548	12668.367
4	2.00	3.00	Dark Green	5033.115	7812.537
5	3.00	4.00	Very Dark Green	1678.657	4520.838
6	4.00	5.00	Black	1150.721	3218.086
7	5.00	6.00	Dark Green	1083.806	2113.918
8	6.00	7.00	Black	816.492	1140.301
9	7.00	8.00	Dark Green	756.506	298.688
10	8.00	9.00	Dark Green	4.790	0.506

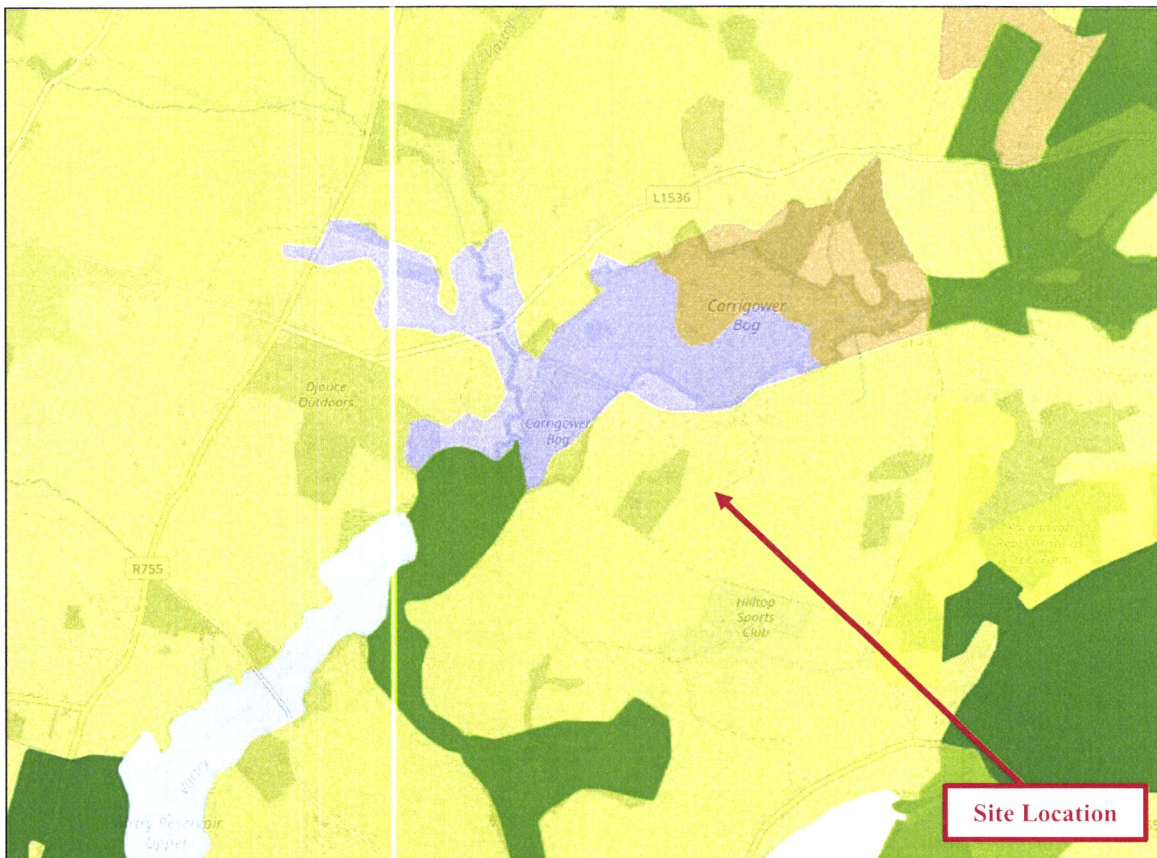




## 2.2 LOCATION OF THE PROPOSED DEVELOPMENT & LAND USE

The proposed development is for infill of a site with inert fill, levelling of a depressed area and returning to agricultural use at Drumbawn, Newtown Mount Kennedy, Co. Wicklow. See location of development site in **Figure 2.3** below. The centre coordinates are (ITM: E722769.65, N706888.89). See **Figure 2.5** for redline boundary of proposed infill working area.

The CORINE data series shows that the infill site and the land within the immediate vicinity of the proposed development is Agricultural Areas (Code: 23) – Pastures (Code: 231). In the wider landscape is Inland wetlands - Inland marshes (Code: 411) and Heterogeneous agricultural areas – (Land principally occupied by agriculture with significant areas of natural vegetation) (Code: 243) are located to the north. Forest and semi-natural areas (Code: 31) is to the west. Heterogeneous agricultural areas (Code: 242) is to the east. See **Figure 2.2** below for CORINE Land Cover map. See **Appendix** for Corine Land Cover Classes Index.



**Figure 2.2:** Location of infill site and CORINE Land Use.

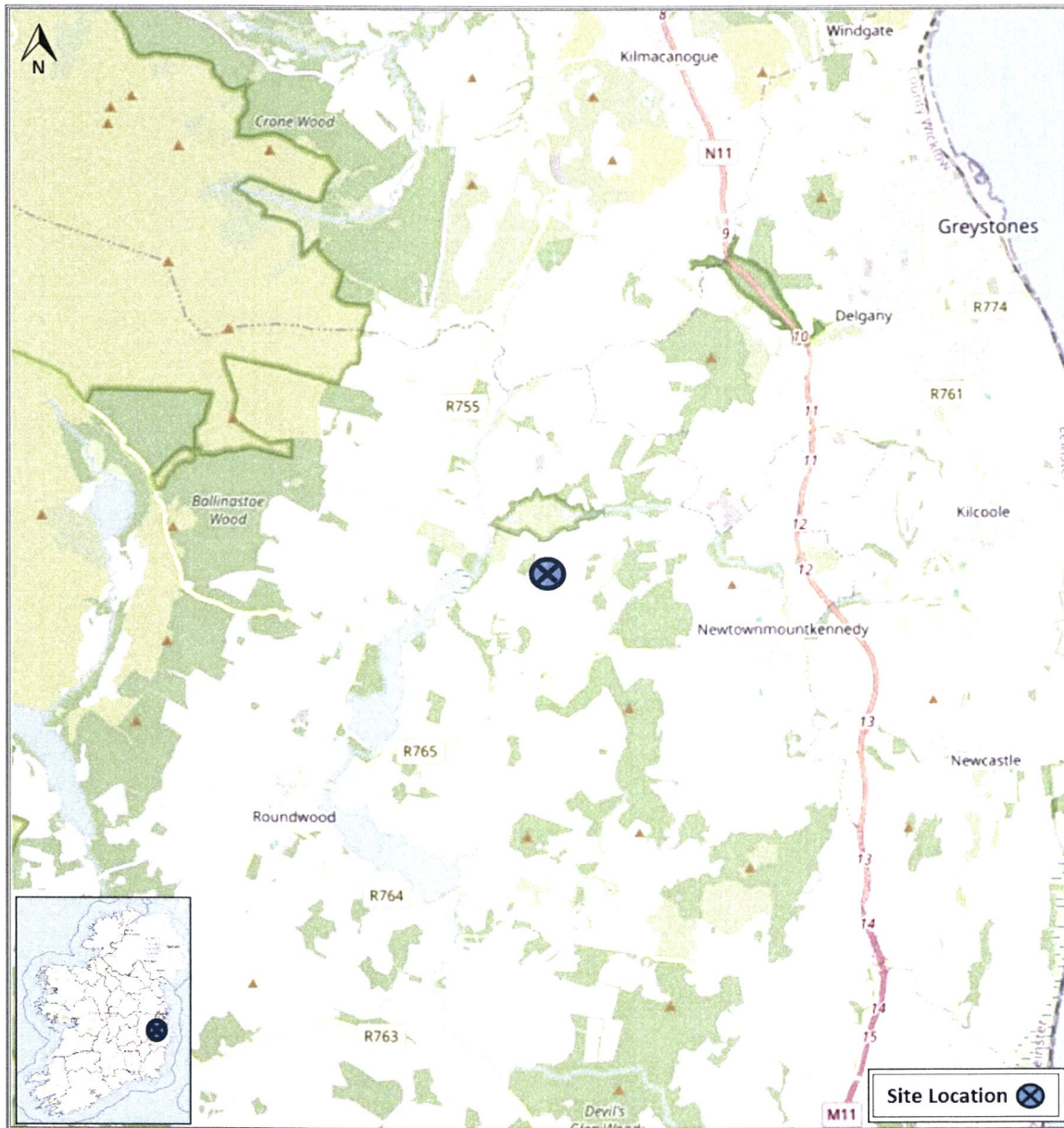


Figure 2.3: Location of proposed infill site (Open Street Map ©)

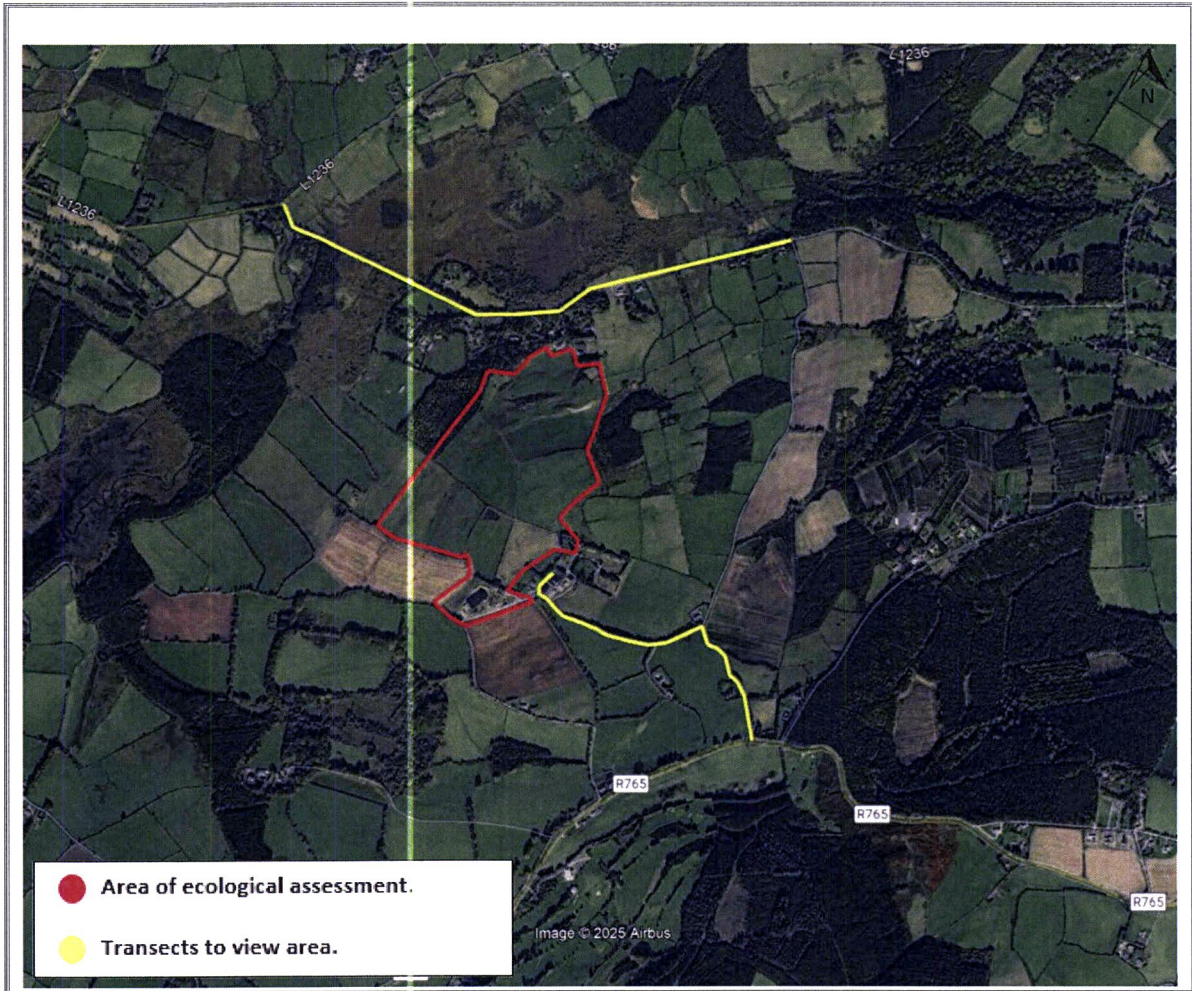


Figure 2.4: Areas of site assessment (Google Images ©)



Figure 2.5: Working area of proposed Infill (Google Images ©)



A survey of the proposed infill and surrounding landscape was done in November and December 2024 and in January 2025. See **Figure 2.4** for area assessed. The transect line to the north of the site (along Glendarragh Lane) was to observe protected habitats (Transition mires and quaking bogs [7140]). There is significant treeline cover from this road towards the proposed infill site. There are residential dwellings along this roadway. Approximately 16 dwellings (Source: Eircode Finder Map) along 1km of this road to the north of the proposed infill. The proposed infill field has been a feature of the landscape for a considerable length of time. Infilling at this site would not alter existing land uses as the site would be restored to agricultural use. The proposed infill of the site would not impede the use of surrounding lands for pasture, forestry or other uses. The most prevalent environmentally sensitive aspect of the geographical area is the amenity of existing residential units. However, these sensitivities would be expected to be mediated by the reseeded of the site for agricultural grassland and measures outlined further in this report.

### 2.3 CULTURAL HERITAGE

As per Wicklow County Development Plan 2022-2028;

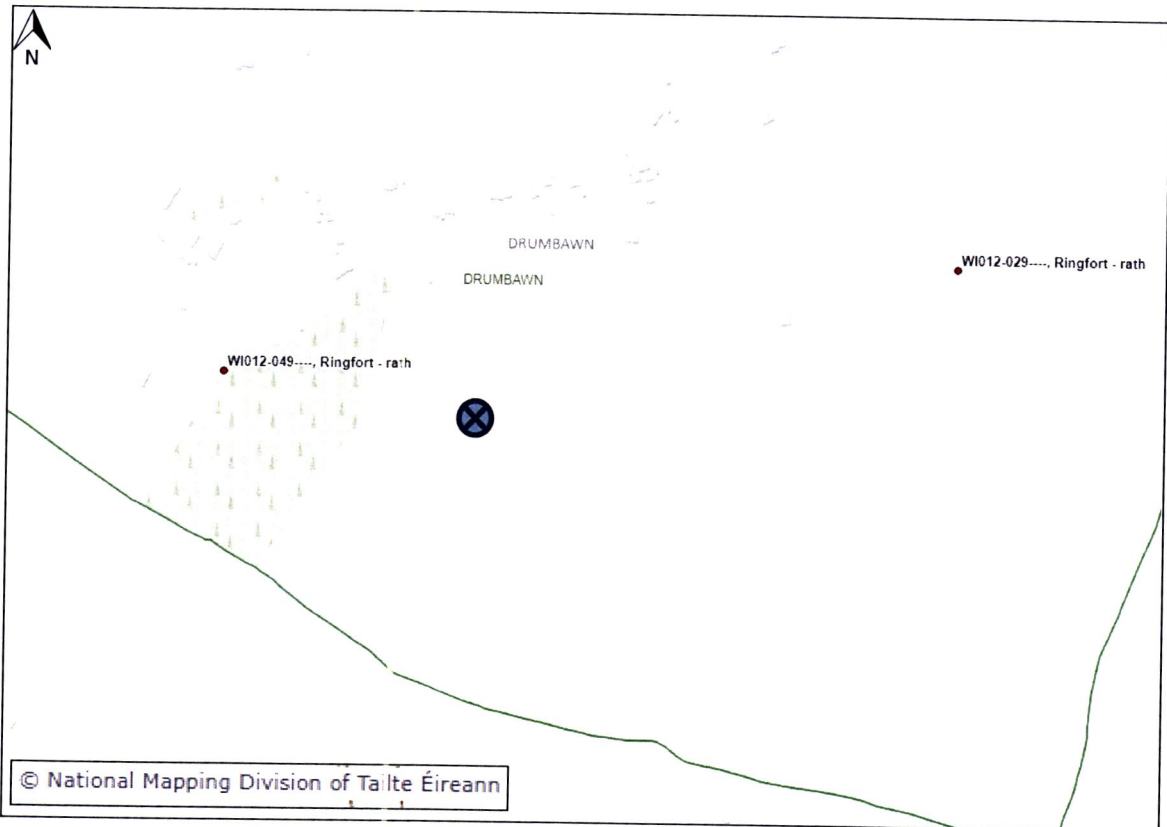
**CPO 8.1:** *To secure the preservation of all archaeological monuments included in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act, 1994, and of sites, features and objects of archaeological interest generally. In the development management process, there will be a presumption of favour of preservation in-situ or, as a minimum, preservation by record. In securing such preservation, the Planning Authority will have regard to the advice and recommendations of the National Monuments Service of the Department of Housing, Local Government and Heritage.*

**CPO 8.2:** *No development in the vicinity of a feature included in the Record of Monuments & Places (RMP) or any other site of archaeological interest will be permitted which seriously detracts from the setting of the feature or which is seriously injurious to its cultural or educational value.*

The proposed development is not located in an Architectural Conservation Area (ACA). An ACA is a place, area, group of structures or townscape, taking account of building lines and heights, which is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or that contributes to the appreciation of a Protected Structure. The objective of an ACA designation is to protect the special character of an area through control and positive management of any changes made to the built environment. Owners and



occupiers of non-protected structures in any ACA should be aware that works which in the opinion of the planning authority would materially affect the character of the area as outlined here would require planning permission. There are no protected monuments or sites within the location of the proposed development.



**Figure 2.4:** Recorded sites and monuments (red dots) within the proximity to the development site (blue X)

As per **Figure 2.4** the National Monuments Service has records of the following Sites and Monuments Records;

WI012-049: Ringfort - rath: DRUMBAWN: Situated on a very gentle NE-facing slope. Oval area (max. diam. c. 25m) defined by a very stony bank (Wth 3m; int. H 0.3-0.5m; ext. H 0.5-0.9m) with evidence for a revetment of small boulders. There is a probable entrance (Wth 2m) at the SE, and a small hut site (diam. 4.5m) attached to the outside of the bank at the NE. No trace of a fosse or internal features.

WI012-029: Ringfort - rath: DRUMBAWN: Situated at a break on a marked NW-facing slope. Roughly circular area (dims. 40m N-S; 42m E-W) defined by an earth and stone bank (Wth 3m at the E and W - 6m at the N; H 1m) and an external fosse (Wth 3m from E-NE - 5m at the W). No indication of an entrance or internal features.



### 3.0 WASTE, POLLUTION AND HEALTH

The material to be used in the proposed infill will be inert soils. The lifetime of the infill will be 5 years with a maximum of 25,000 tonnes per year. A wheel wash will be installed at the site entrance, any water lost from the wheel-washes due to vehicles and evaporation and would be topped up if needed from the existing farm water supply. Any excess run off from the wheel wash area will be directed into temporary sump manholes which will be monitored regularly and be designed to account for overflow in the event of rain. There is existing drainage along the farm access lanes which will provide access to the proposed infill site. The existing farm laneways have capacity for machinery for the proposed infill as the laneways are used regularly by farm machinery. The site will be secured from livestock access during the infill. Welfare facilities are available at the adjoining farm with existing facilities. Refuelling of machinery will also take place within the existing farmyards to ensure no contamination of soils. The volume of fuels or oil present at the site during this time would be minor.

The current site will be infilled with material consisting of subsoil, soils and finished with topsoil. This will then be seeded with agricultural grass. Once the soil has established and the sward has established, the risk of poaching from livestock will be minimised and the site can be used for livestock foraging. It is acceptable for the infill site to receive material unless there is a risk of contamination from chemicals or solid materials. There will be no risk of contaminated material. The material must only be used for the purpose of infilling if it is not classified as waste material. It can only be inert subsoils and soil. When the material arrives at the site a visual check is required to verify that the material is greenfield soil and stone. A record of visual checks should be maintained. Transfer records for each shipment of inert soil/material must be kept by the site.

As per the EPA guidelines inert material must be;

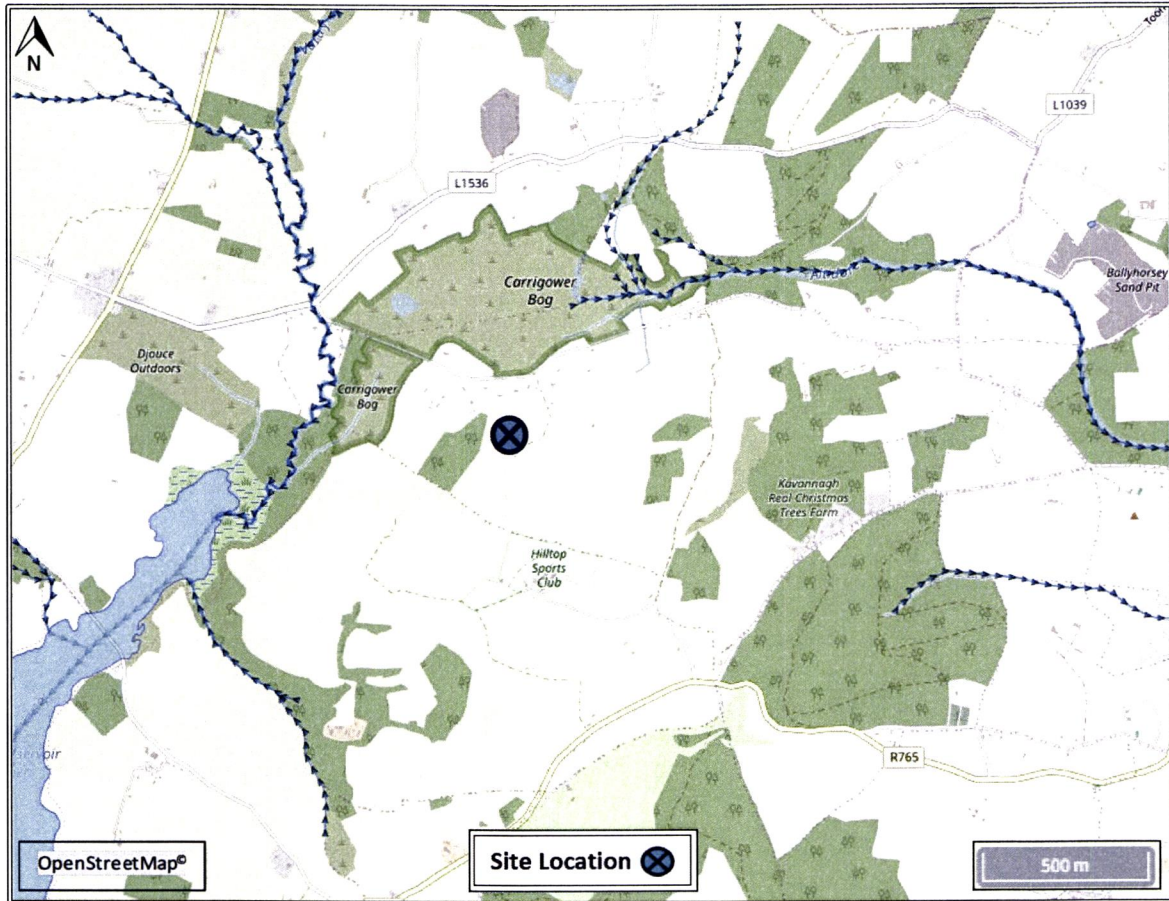
*“Waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular must not endanger the quality of surface water and/or groundwater.”*



#### 4.0 SURFACE & GROUNDWATER

There are no mapped watercourses within the site boundary. There is drainage ditch along the field boundary approximately 180m to east of the proposed infill area. The overall elevation of the infill area slopes in the opposite direction to this drainage ditch as water will flow in a north west direction. The proposed infill is located within the Ovoca-Vartry (Sub catchment: Newcastle [Wicklow]\_SC\_010). The nearest mapped watercourse to the proposed development is the Drumbawn (EPA Code: 10D08 – Order 1) it is approximately 465m from the site boundary. The Drumbawn flows for approximately 350m and joins the Newtownmountkennedy (EPA Code: 10N02 – Order 2). The Newtownmountkennedy flows for approximately 9.5km and discharges into Kilcoole Marsh (EPA Code: IE\_EA\_120\_0100). A further 800m the Newtownmountkennedy discharges into the Southwestern Irish Sea - Killiney Bay. The Environmental Protection Agency (EPA) monitors the ecological status of the Newtownmountkennedy *“Satisfactory ecological conditions were observed at four of the five stations surveyed on the Newtownmountkennedy Stream in June 2024. The diversity and abundance of pollution sensitive macroinvertebrate taxa indicated high ecological conditions in the upper reaches (0100, 0150) while the dominance of pollution tolerant macroinvertebrate taxa continues to indicate unsatisfactory ecological conditions downstream of the village (0500).*

The proposed development is located within the Ovoca-Vartry (Sub catchment: Dargle\_SC\_010). The nearest watercourse to the proposed development is the Rathmichael (EPA Code: 10R18 – Order 2) it is approximately 11m from the site boundary. The Rathmichael flows for approximately 390m and discharges into the Southwestern Irish Sea - Killiney Bay. The Dargle (EPA Code: 10D01 – Order 5) is approximately 580m to the south of the site boundary. This river flows into Dargle Estuary (EPA Code: IE\_EA\_110\_0100) at Bray Harbour. The Environmental Protection Agency (EPA) does not monitor the ecological status of the Rathmichael watercourse. The Dargle river is monitored with the most recent assessment: *The macroinvertebrates continues to indicate satisfactory ecological conditions at the three sites surveyed in June 2024. The reduced diversity and abundance of pollution sensitive macroinvertebrate taxa indicated a decline with a return to good ecological conditions just upstream of the Glencullen river confluence (0100).*



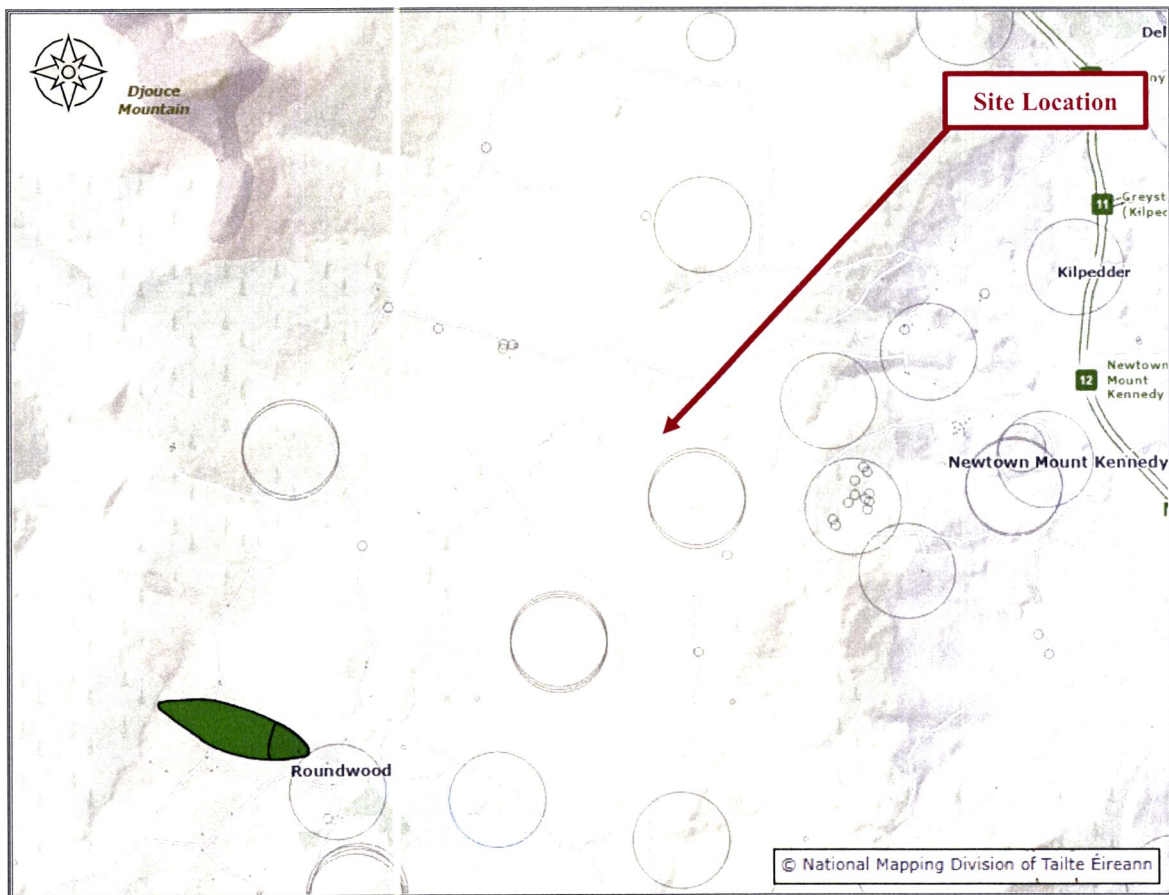
**Figure 4.1:** Mapped surface waterbodies in proximity to the proposed infill

The Groundwater status of the Wicklow ground waterbody (Code: IE\_EA\_G\_076) is listed as “At Risk”. The Groundwater Vulnerability is classed as “Moderate Vulnerability.” There are no groundwater source protection areas within the vicinity of the site (See **Figure 4.2**). The closest groundwater source protection area to the site is the Roundwood Public Water Supply Scheme which is located approximately 4.7km to the southwest. Vartry Reservoir Upper which supplies water to South Dublin is located approximately 1.3km to the west of the proposed infill site. The Geological Survey Ireland has no records for groundwater abstractions within the site. There is a domestic Borehole (3219NWW013 – Moderate Yield) located to the south east. There would be no significant volumes of fuels, oils or other chemicals used or stored during the construction or operational phases of the project that will significantly impact on groundwater. The operational phase of the project will be for an agricultural grassland field that will be in compliance with the Nitrates Directive (91/676/EEC) and S.I. No. 605/2017 - European Union (Good Agricultural Practice for Protection of Waters)





Regulations 2017. An aquifer is an underground body of water-bearing rock or unconsolidated materials (gravel or sand) from which groundwater can be extracted in useful amounts. The proposed infill site is located over a “Poor Aquifer” with “Bedrock which is Generally Unproductive except for Local Zones”. GSI Vulnerability is listed as X - Rock at or Near Surface. It is not anticipated that there would be a significant risk to groundwater during the operational phase of the proposed development and this would not be anticipated to require an EIAR for further assessment.

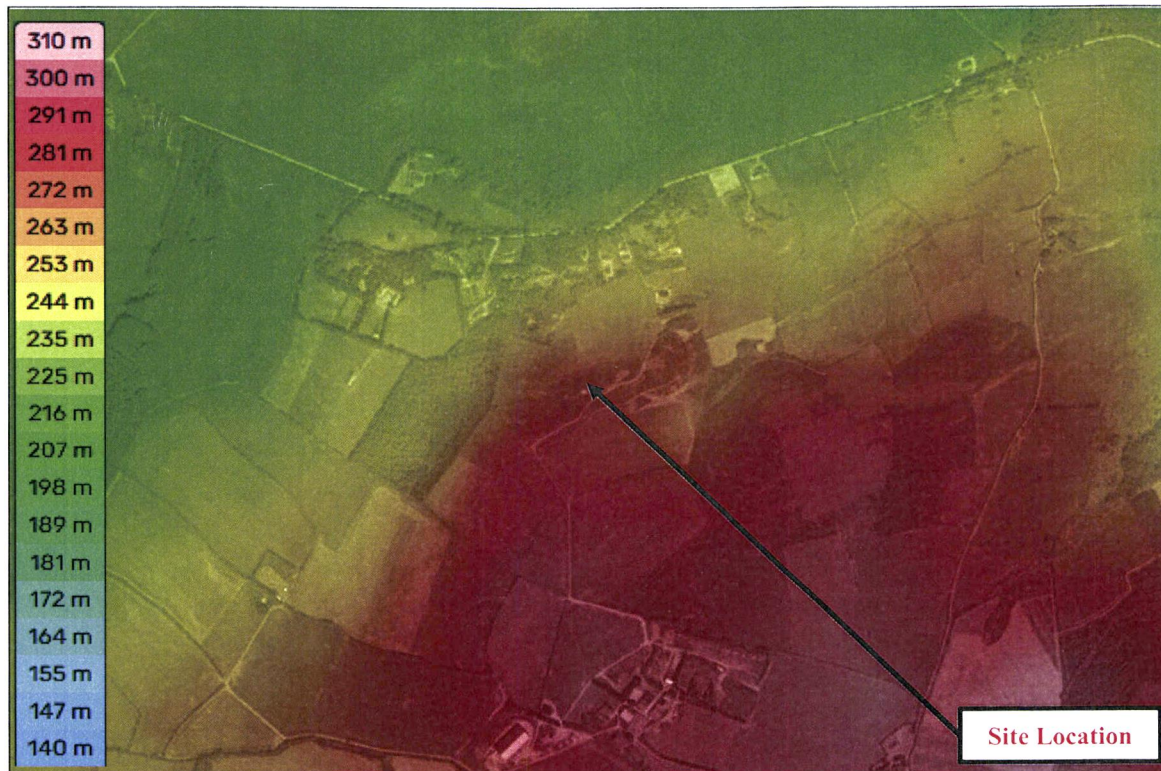


**Figure 4.2:** Group Scheme and Public Supply Protection Zones (Green) and Groundwater Wells and Springs (Grey Circles) (Source: Geological Survey Ireland ©)

According to the Preliminary Flood Risk Assessment (PFRA) Mapping tool by the OPW, the proposed development site is not located within an area of fluvial or pluvial flood, indicative of 10% AEP (10-yr) event, 1% AEP (100-yr) event or 0.1% AEP (1000-yr) event. However, it should be noted that this map is based on broad-scale simple analysis and may not be



accurate for a specific location. There is no history of flooding at the proposed infill site. Given the site elevation and lack of habitats to indicate a wetland the proposed infill is unlikely to flood. There is a considerable drop in elevation from the proposed infill site to Carrigower Bog to north. See **Figure 4.3** below for site topography.



**Figure 4.3:** Site Topography (Source: TessaDEM).

No drainage works or concrete will be required as part of the proposed infill. During the operational phase there would be no significant impact to the existing surface water quality and absorption capacity of the Ovoca-Vartry catchments. During the infill phase general control measures will be implemented to ensure there is no impact to water quality (surface and groundwater). The infill contractor would adhere to the guidance on the protection of the water quality during the construction phase and ensure compliance. There will be no significant impact on water quality from the operational phase of the infill as the field will be reseeded for agricultural grassland. There will be no significant pollutants with all surface water to percolate to ground. It is considered that risks of water pollution (surface and ground) is not significant and does not require an EIAR for further assessment.



## 5.0 BIODIVERSITY

A site characterisation assessment was undertaken on the 7<sup>th</sup> of November 2024, 23<sup>rd</sup> of December 2024 and 17<sup>th</sup> of January 2025 to examine the ecological context of the development site, by systematically walking the proposed site and boundaries and determining the habitats present. The habitat survey was undertaken in accordance with the standard methodology outlined in Fossitt's "A Guide to Habitats in Ireland", a hierarchical classification scheme based upon the characteristics of vegetation present. The Fossitt system also indicates when there are potential links with Annex I habitats of the E.U. Habitats Directive (92/43/EEC). Cognisance was also taken of the Heritage Council guidelines, "Best Practice Guidance for Habitat Survey and Mapping", (Smith *et al.*, 2011). Any species found on The Flora (Protection) (S.I. No. 235 of 2022), or Third Schedule Invasive Flora will be noted and discussed in detail if found. During the site assessment the following habitats were observed;

The majority of the proposed development site is classified as improved agricultural grassland (**GA1**). This habitat is dominated by ryegrasses (*Lolium* spp.), with occasionally recorded Buttercup (*Ranunculus* spp.), Dandelion (*Taraxacum* spp.), Ribwort Plantain (*Plantago lanceolata*), Dock (*Rumex* spp.), Thistle (*Cirsium* spp.), Nettle (*Urtica dioica*), Common Mouse-ear (*Cerastium fontanum*), Greater Plantain (*Plantago major*), Sticky Mouse-ear (*Cerastium glomeratum*), and White Clover (*Trifolium repens*). Along the boundary is hedgerows (**WL1**) habitat with tree species such as Ash (*Fraxinus excelsior*), Sycamore (*Acer pseudoplatanus*), Blackthorn (*Prunus spinosa*), Hawthorn (*Crataegus monogyna*), Elder (*Sambucus nigra*), Elm (*Ulmus* sp.), and Oak (*Quercus* spp.). Other species commonly found in this habitat are Bramble (*Rubus fruticosus*), Cow Parsley (*Anthriscus sylvestris*), Dog-rose (*Rosa canina* agg.), Gorse (*Ulex europaeus*), Hogweed (*Heracleum sphondylium*), Honeysuckle (*Lonicera periclymenum*), Ivy (*Hedera helix*), and Nettle (*Urtica dioica*). Along the site entrance and field boundaries are treeline (**WL2**) habitat with Alder (*Alnus* spp.), Sycamore (*Acer pseudoplatanus*), Ash (*Fraxinus excelsior*), Beech (*Fagus sylvatica*), Cypress (*Cupressus* spp.) and Oak (*Quercus* spp.). There are areas of exposed siliceous stone (**ER1**) habitat with Holly (*Ilex aquifolium*), Common Polypody (*Polypodium vulgare*) and Buckler-fern (*Dryopteris* spp.). There are areas of scrub (**WS1**) dominated by Gorse (*Ulex europaeus*) with Bent grasses



(*Agrostis* spp.). The site assess is classified as building and artificial surfaces (**BL3**) with little vegetation cover. There is a drainage ditch (**FW4**) to east of the field boundary. There are no protected or Third Schedule invasive species found within the site boundary or directly along the boundary.

The identified habitats at the proposed development site, as per the Fossitt habitat classification scheme, are summarised in **Table 5.1** below. See the ecological assessment within the accompanying Appropriate Assessment (AA) Screening for a detailed habitat description of the existing development site and boundaries (Document Reference: **RSE AA SCREENING 060125**). There were no protected habitats or species within or along the site boundary. There was no evidence of Badger (*Meles meles*) (including setts or latrines). There are no trees for removal as part of the proposed development. No protected habitat or species will be significantly impacted by the proposed development. There are no Natural Heritage Areas (NHA) within the Zone of Influence of the proposed development. Carriggower Bog proposed NHA (Code:000716) is located approximately 210m to the north. Vartry Reservoir pNHA (Code:001771) is located approximately 1.2km west of the proposed infill site. Any potential impact to Carriggower Bog pNHA will be assessed in the AA Screening.

**Table 5.1:** Summary of Habitats Identified at the Proposed Development Site

HABITAT CLASSIFICATION HIERARCHY		
LEVEL 1	LEVEL 2	LEVEL 3
<b>E</b> Exposed rock and disturbed ground	<b>ER</b> Exposed rock	<b>ER1</b> Exposed siliceous rock
<b>F</b> Freshwater	<b>FW</b> Watercourses	<b>FW4</b> Drainage ditch
<b>W</b> Woodland and scrub	<b>WS</b> Scrub / transitional woodland	<b>WS1</b> Scrub
	<b>WL</b> Linear woodland / scrub	<b>WL1</b> Hedgerows <b>WL2</b> Treelines
<b>G</b> Grassland and marsh	<b>GA</b> Improved grassland	<b>GA1</b> Improved agricultural grassland
<b>B</b> Cultivated and built land	<b>BL</b> Built land	<b>BL3</b> Buildings and artificial surfaces



An **Appropriate Assessment Screening** of the proposed development was done to determine whether or not it would result in a significant likely effect on the Natura 2000 site network. It has been determined that the proposed development would not result in significant impacts on Natura 2000 sites and, therefore, Appropriate Assessment is not required. There is no potential for the proposed infill to significantly impact on the habitats and species of any SAC and SPA. There will be no significant impact on water quality, air quality, disturbance to species or spread of invasive species from the proposed development site to the Natura 2000 network. There will be no importation of material that contains invasive species of concern. It is considered that risks to biodiversity is not significant and does not require an EIAR for further assessment.



Figure 5.1: Protected habitats and areas of high ecological status



## 6.0 NOISE, DUST & AIR QUALITY

The proposed activities to be carried out at the site are the importation and levelling of subsoil and topsoil at varying depths to the infill working site measuring c. 4.85 hectares within the boundary over the lifetime of the infill. The site will be operational for 5 years. The proposed infill material will not exceed 25,000 per year. See Appendix A for the levels of the site.

### Noise

The EPA 'Guidance Note on Noise (NG4)' (2016) is a commonly used noise guidance note for the control of noise in Ireland.

Machinery can include excavator, loader and dumper truck would likely be operating at any one time. In-fill operational would work within the "working area" while deliveries would during normal site opening hours.

At its closest, the "working area" is 95 metres from two residential properties with more located 120m – 150m away.

The following table details the typical noise levels at NSL's from plant operation in the working area and the material storage area based upon distance alone:

$$\text{Receptor SPL Level} = \text{Source SPL} - (20 \log_{10} (d/d_0)) + 3$$

Where:

- d** is the distance from the source to the receiver (m)
- d<sub>0</sub>** is the distance from the source to the recorded noise location (10 m)
- 3** is a source directivity (Q) correction for reflective ground.

**Table 6.1:** Predicted Sound Pressure Levels at Receptor Locations

Receptor	Source (BS5228) *	Distance (m)	Adjustment (dB)	Receptor SPL (Lp dBA)	Required Reduction (dB)
NSL1	Excavator (79 dB)	50	-11	68 dBA	13 dB
NSL2	Loader (71 dB)	45	-10	61 dBA	6 dB
NSL1	Excavator (79 dB)	70	-14	65 dBA	10 dB
NSL2	Loader (71 dB)	40	-9	62 dBA	7 dB

\*Source (BS5228) typical values assigned for machinery

The contractor would ensure compliance with guidelines to limit infill related noise and follow best practicable means to control noise. All machinery and equipment will comply with the noise limits quoted in the relevant European Commission Directive 2000/14/EC. No out of hours infill work will be undertaken.

Impacts associated with noise would not be likely to be significant and would not be considered to require an EIA.

### **Vibration**

It is not anticipated that there would be a significant risk of vibration impacts as a result of the in-fill. There is no proposed blasting, piling, drilling or rock crushing activities carried out.

Impacts associated with vibration would not be likely to be significant and would not be considered to require an EIA.

### **Air and Dust**

Generally, the primary potential air quality impact or nuisance associated with infill activities is dust. Earth moving operations may generate quantities of dust, particularly in drier weather conditions. The extent of any infill dust generation depends on the soil composition of the material (soils, sands, gravels, stones, etc.) and the infill/levelling activity. The potential for construction dust dispersion depends on the local meteorological conditions such as rainfall, wind speed and wind direction. Dust is normally defined as particulate matter in the size range of 1 - 75µm in diameter, with particles less than 1µm being classified as smoke or fumes.

Measures to prevent dust during the infill;

- All dusty activities will be damped down, especially during dry weather;
- While loading or moving material, keep it close to the ground or to the back of the truck.
- Material should not be left in large, exposed heaps for long periods of time but levelled out after arrival to the site;

## **6.1 TRAFFIC AND TRANSPORTATION**

During the infill phase of the proposed development, there will be additional traffic movements to/from the site from haulage of inert material. In order to transport infill material to the site in the most efficient and environmentally sensitive manner appropriate



routes need to be identified. Having considered the site location, it is proposed that all traffic accesses will be via the entrance L1236 road. It is not expected that the haulage of soils will result in a material deterioration of existing road conditions.

After the implementation of mitigation measures the potential impact on Traffic and Transportation are short term and not significant for the infill phase.

Construction works have the potential to impact upon traffic volumes in the area, which may subsequently impact upon the generation of noise and dust emissions. To ensure this impact is not significant the following measures will be implemented;

**The haulage contractor would ensure the following:**

- Deliveries to the site will be via suitably contained vehicles, with sheeting and covers as required. No material (soils and subsoils) must be spilled on the local road network;
- The infill haulage traffic will be required to coordinate and schedule all deliveries to the site, ensure that all access roads are kept clear of mud and debris;
- Lowering the speed of the vehicle on the unpaved roads can be a big benefit. Limiting the appropriate speed will reduce dust emission;
- Haulage contractors must plan an appropriate route to and from the site, and to adhere to good traffic management principles;
- Where possible, large-scale vehicle movements will be timed outside peak hours on the local road network and not during the hours of school opening/closing;
- Deliveries to the site will be scheduled during the construction hours of 9:00am to 6:00pm Monday to Friday, and 9:00am to 1:00pm on Saturdays;
- Adherence will be taken of the National Roads Authority's "*Guidelines for the Treatment of Noise and Vibration in National Road Schemes*", the British Standard 5228: Part 1 "*Code of practice for Noise Control on Construction and Open Sites*" and the CIRIA 2015 "*Environmental Good Practice on Site*";
- Care will be taken when unloading vehicles to minimise noise disturbance. Materials should be lowered, not dropped, insofar as practicable and safe;
- Regular visual inspections will be undertaken around the proposed site boundary and local road network to monitor the effectiveness of dust control measures;

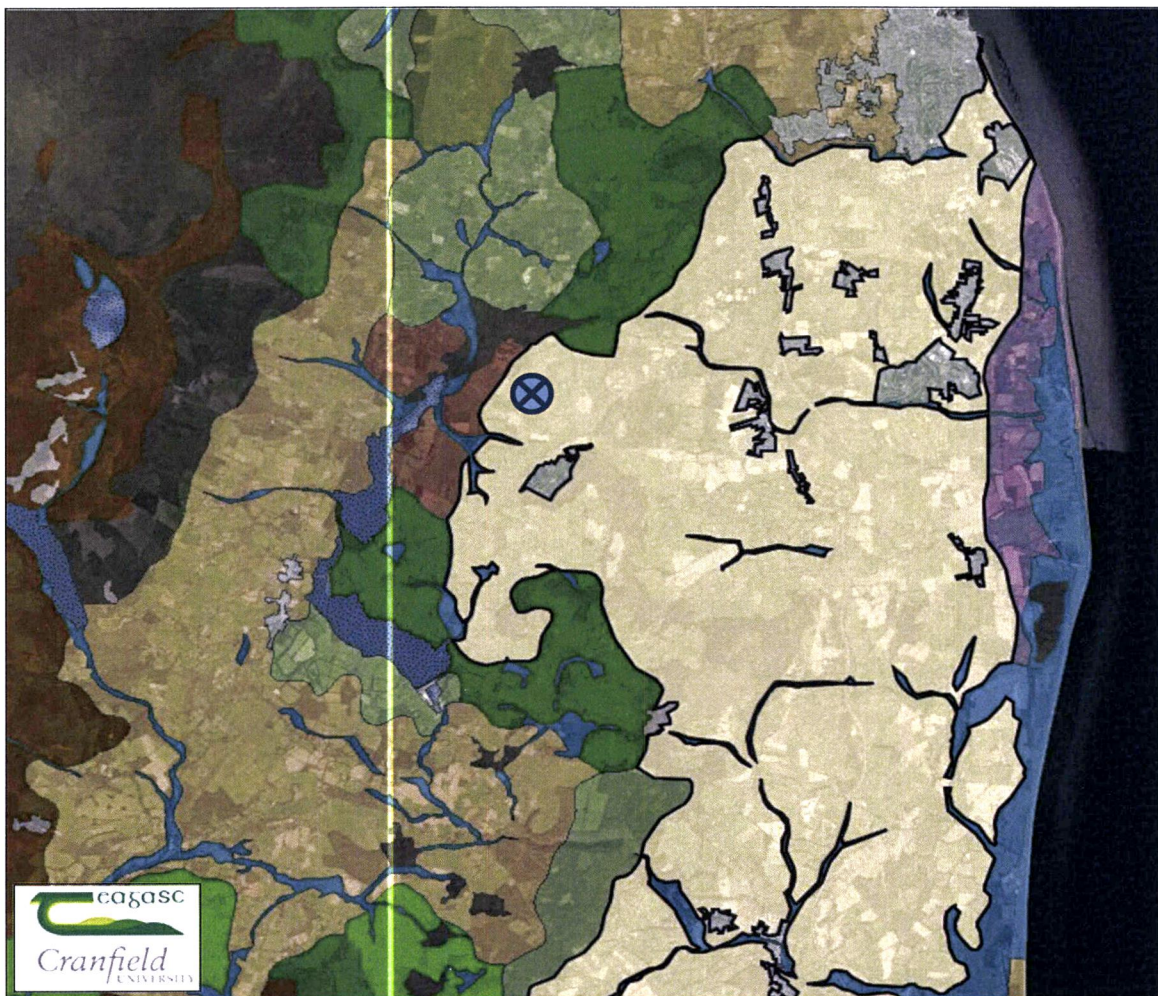
It is therefore considered that, due to the proposed mitigation measures, there would be no significant risk to air quality from traffic and dust on the environment.





## 7.0 VISUAL IMPACTS & MATERIAL ASSETS

The material to be used in the infill consists of uncontaminated virgin ground made up of clays and topsoil. As such the material is inert which implies no physical, chemical or biological change will occur in the material even if exposed to water. Any discharges of water through the fill into groundwater at operational phase is therefore not deemed likely to have a negative impact on local groundwater sources or soil quality. The proposed soils to be used will come from Newtown Mount Kennedy and therefore will be of the same origin and Soil association. Therefore, there will be no significant impact on soil structure and composition in the area.



**Figure 7.1:** The proposed infill is located on Fine loamy drift with siliceous stones (Source: Irish Soils Information System) – Site location indicated by blue X.



The proposed development would be anticipated to have no significant negative impact on the visual amenity of the area. As per Wicklow County Development Plan 2022-2028 it will not block views of any heritage building or site of conservation value. There are Views of Special Amenity Value or Special Interest located in Newtown Mount Kennedy and at Vartry Reservoir. These views will not be impacted by the proposed infill. The view from the local road network is predominately obscured by mature treelines and conifer plantations surrounding the site. The site is visible in the wider area but the change in levels at the site will not significantly alter the visual character of the site as it will be returned to agricultural grassland. The infill will happen gradually over five years therefore parts of the infill will be reseeded and will not be directly visible from the surrounding landscape as exposed soil. The views at the proposed infill site were assessed during the site assessments (Nov 24 – Jan 25). The infill site has also been assessed for visual impact using imagery from Google Earth Street Viewer.

It is considered that additional investigation within an EIAR of visual and landscape impacts from the development would not be required.



**Plate 1:** View of infill from field to the S

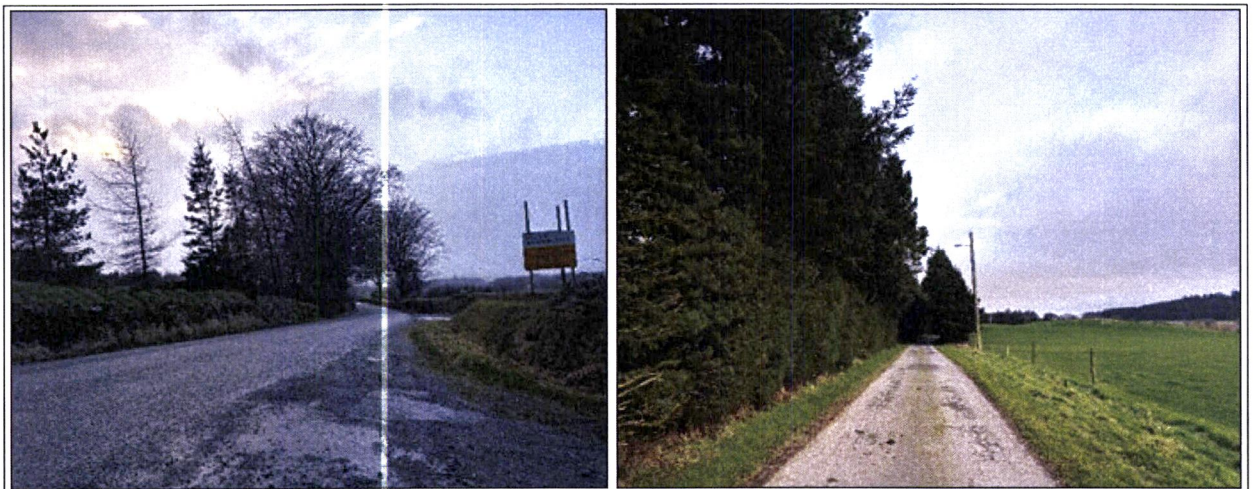
**Plate 2:** View from top of infill towards the N



**Plate 3:** View towards Carriggower Bog SAC      **Plate 4:** View from top of infill towards the NE



**Plates 5 and 6:** View from Glendarragh Lane towards site



**Plates 7** Site Entrance from L1236

**Plate 8** Access farm lane



Plates 9 View of site from facing W



Plate 8 View of site from base of infill field

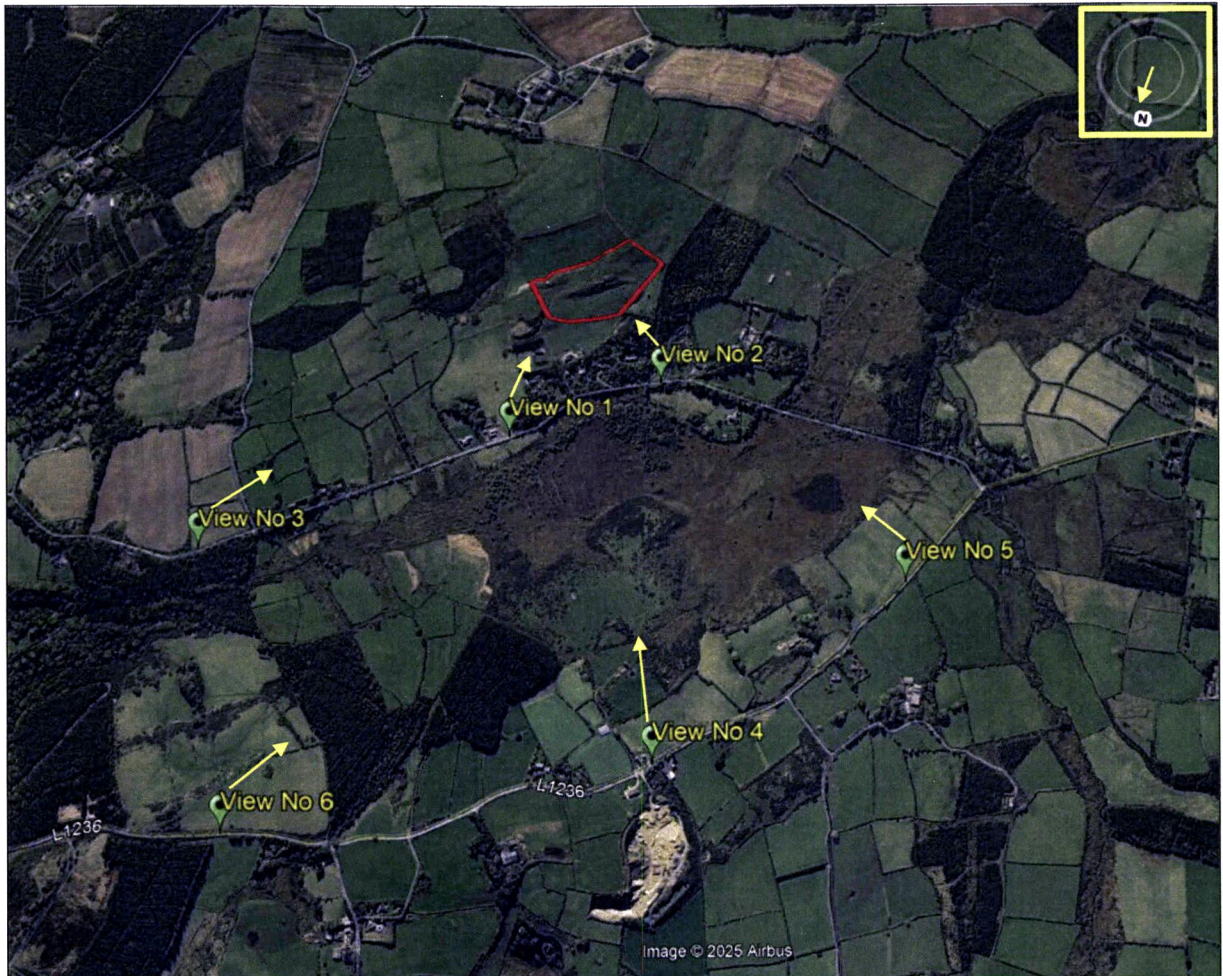


Figure 7.2.1: View of proposed infill from local roads (Google Earth Street View) – North

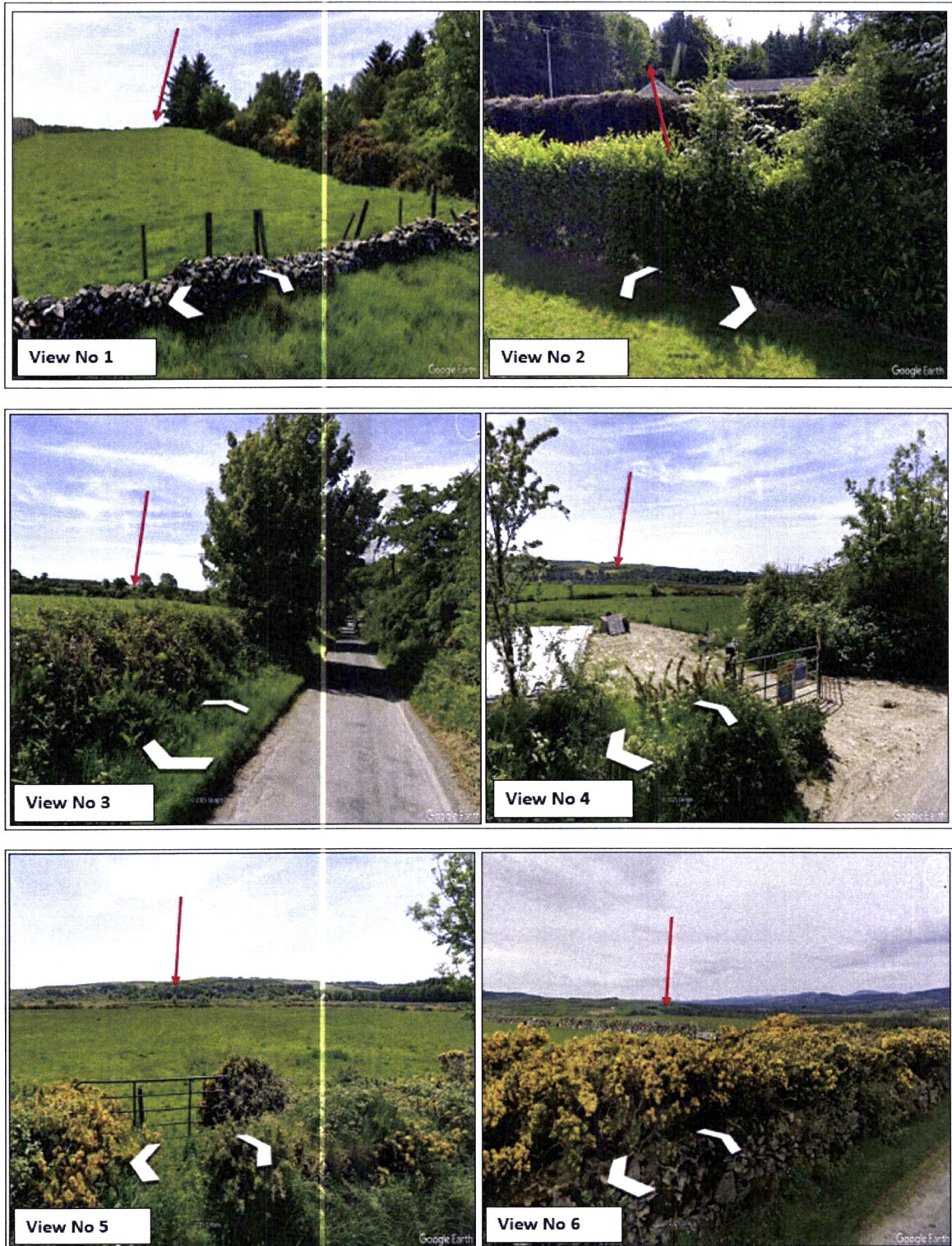


Figure 7.2.2: View of proposed infill from local roads (Google Earth Street View) – Red Arrow indicates the approx. location of the proposed infill.



## 8.0 POTENTIAL IMPACTS

Potential impacts are anticipated as negligible given the nature and scale of the proposed development. The proposed development will be contained within existing agricultural land. Therefore, there are no significant interactions with any landscape or archaeological features. The Appropriate Assessment Screening report submitted as part of the planning application concludes that the proposed development will not give rise to any likely significant impact on any European sites, alone or in combination with other plans or projects. Air quality, vibration, dust, noise, and water pollution impacts associated with the proposed infill are anticipated to be negligible with standard control measures outlined in the report. The existing condition of the majority of habitats at the existing site as well as the moderate scale and nature of the proposed development will not significantly alter the area. During the infill, noise and air (dust) pollution have a low probability of occurrence in the absence of any environmental control measures. However, given the scale of and the location of the infill activities the potential impact on the surrounding environment is considered to be low and temporary. The potential impacts due to risk of accidents and/or disasters are anticipated to be negligible given the nature of the proposed development and the standard construction safety procedures that will be implemented at this location. The risks to human health are anticipated to be negligible given the material is inert soil and subsoil. The operational phase will return the site to agricultural grassland. The local road network is anticipated to be sufficient to accommodate infill related traffic. Sightlines from the existing site entrance road entrance are sufficient for safe ingress/egress to the site.

During the operational phase there will not be a significant intensification of use on site. The location of the proposed development on zoned agricultural land. The development will not alter the use of this site. Part of the area to be infilled and levelled is steeply sloping ground with scrub (gorse) habitat that will be reseeded as grassland.

Cumulation of the impact with the impact of other existing and / or approved projects is not significant. The proposed infill is bordered by a forest and agricultural land. There are no proposed developments of a similar kind within the vicinity of the site. All developments in proximity are for residential or agricultural associated buildings. Plans were reviewed on the National Planning Application Database for the previous five years.



Given the nature of third-party activities (farming and forestry) in the area, it is considered that there would be a limited likelihood of cumulative environmental impacts, and the proposed infill is unlikely to contribute significantly to environmental impacts within the vicinity. Inter-relationship between the different factors as per the sections above it is considered that any of the previously identified relatively minor impacts would not in themselves be considered significant nor would they cumulatively result in a likely significant effect on the environment.

## 9.0 SUMMARY TO DETERMINE THE REQUIREMENT FOR EIA

<b>1. Characteristics of proposed development</b>		
Description	Yes/No	Is this likely to result in a significant impact. Yes/No - Reason
The size and design of the whole of the proposed development?	No	No (Sub threshold)
Potential for impacts from project in culmination with other existing and/or approved projects?	No	No significant impact with other projects
The nature of any associated demolition works?	No	No demolition works required
Use of natural resources in particular land, soil, water, and biodiversity?	No	No – habitats will not be adversely impacted with implementation of control measures
The production of waste?	No	No waste will be generated
Pollution and nuisances?	No	Not a significant impact
Risk of major accidents and/or disasters relevant to the project including those caused by Climate Change in accordance with scientific knowledge?	No	No potential risk from accidents or disasters
Risks to human health	No	No – Emissions or discharges
<b>2. Location of proposed development</b>		
Environmental Sensitivity of project in relation to existing and approved land use?	No	No – Site will remain agricultural
Relative abundance, availability, quality, and regenerative capacity of natural resources (including	No	No significant impact to natural resources.



soil, land, water, and biodiversity) in the area and its underground?		
Absorption capacity of the natural environment including wetlands, riparian areas, river mouths, coastal zones and the marine environment, mountain, and forest area?	No	No significant impact to natural environment.
Potential of works to impact directly or indirectly on sites designated for nature conservation (NHA/SAC/SPA)?	No	No - See accompanying AA Screening for assessment of impact to Natura 2000 sites.
Potential for impacts directly or indirectly on Habitats or Species listed on Annex I, II and IV of the Habitats Directive?	No	No - See accompanying AA Screening for assessment of impact to Natura 2000 sites.
Potential for impacts on breeding places of any species protected under the Wildlife Act?	No	No – Habitats at site are of low ecological value
Potential to impact directly or indirectly on any listed ACA in the County Development Plan?	No	No – development does not contain any protected buildings.
Potential to impact directly or indirectly on any protected structure or recorded monuments and places of Archaeological Interest?	No	No – No monuments recorded. Site will be infilled with inert soil.
Potential to impact directly or indirectly on listed or scenic views or protected landscape in the County Development Plan?	No	No – Development will not obstruct views of historical or visual importance.
Potential to impact on areas in which there has already been a failure to meet the environmental quality standards and relevant to the project, or in which it is considered that there is such a failure?	No	No – Development has been sensitive to the cultural and biodiversity sensitive nature of the surrounding environment.
Potential to impact on densely populated areas?	No	No – Development is sensitive to surrounding environment.
<b>3. Types and characteristics of potential impacts</b>		
Human Beings	No	No - Minor and localised impacts are during the infill phase.
Flora and Fauna	No	No – Area will be returned to agricultural
Soils and Geology	No	No - Development will not impact on site regenerative capacity for



ENVIRONMENTAL IMPACT ASSESSMENT SCREENING  
 DRUMBAWILL, HELENTOWN MOUNT KENNEDY, CO. WICKLOW



		natural resources (including soil, land, water, and biodiversity) in the area and its underground.
Hydrology	No	No – surface water will percolate to ground therefore no change
Air and Climate	No	None No significant impact on air quality by the proposed development. Dust will be controlled during infill.
Noise and Vibration	No	None Noise and Vibration levels will be controlled during the infill works, no potential impacts during the operational phase.
Material Assets	No	None The proposed development will not have any significant impact on material assets including public utilities and natural resources.
Cultural Heritage	No	None The proposed development will not have any significant impact on Cultural Heritage.
Interaction of Foregoing	No	No significant effects likely to arise associated with the characteristics of the potential impacts.



## 10.0 CONCLUSION

It is considered that the proposed development does not come within the scope of any class of project prescribed in Schedule 5 of the Regulations (SI 600 of 2001 as amended). Having considered the nature, scale, and location of the proposal, having regard to the characteristics and location of the proposed development, and having regard to the characteristics of potential impacts it is considered that the project is unlikely to give rise to significant environmental impacts. The development is below the mandatory threshold required for an EIAR, outlined in the Planning and Development Regulations. This sub-threshold EIA screening assessment has been carried out in accordance with the criteria listed in Schedule 7 and Schedule 7A of the Planning Regulations, in cognizance of the sensitivities of the area.

In conclusion, it is considered that the proposed development will not have any significant impacts on the environment. All recommended mitigation measures and standard practices will be employed throughout the construction and operation phase of the development to ensure that the proposed development will not create any significant impacts on the quality of the surrounding environment. Therefore, there is no requirement for an Environmental Impact Assessment Report to be prepared for the proposed development at Drumbawn, Newtown Mount Kennedy, Co. Wicklow.



**FOR APPROVAL**











NO.	DESCRIPTION	DATE	BY
01	ISSUED FOR APPROVAL	11/15/20	MM
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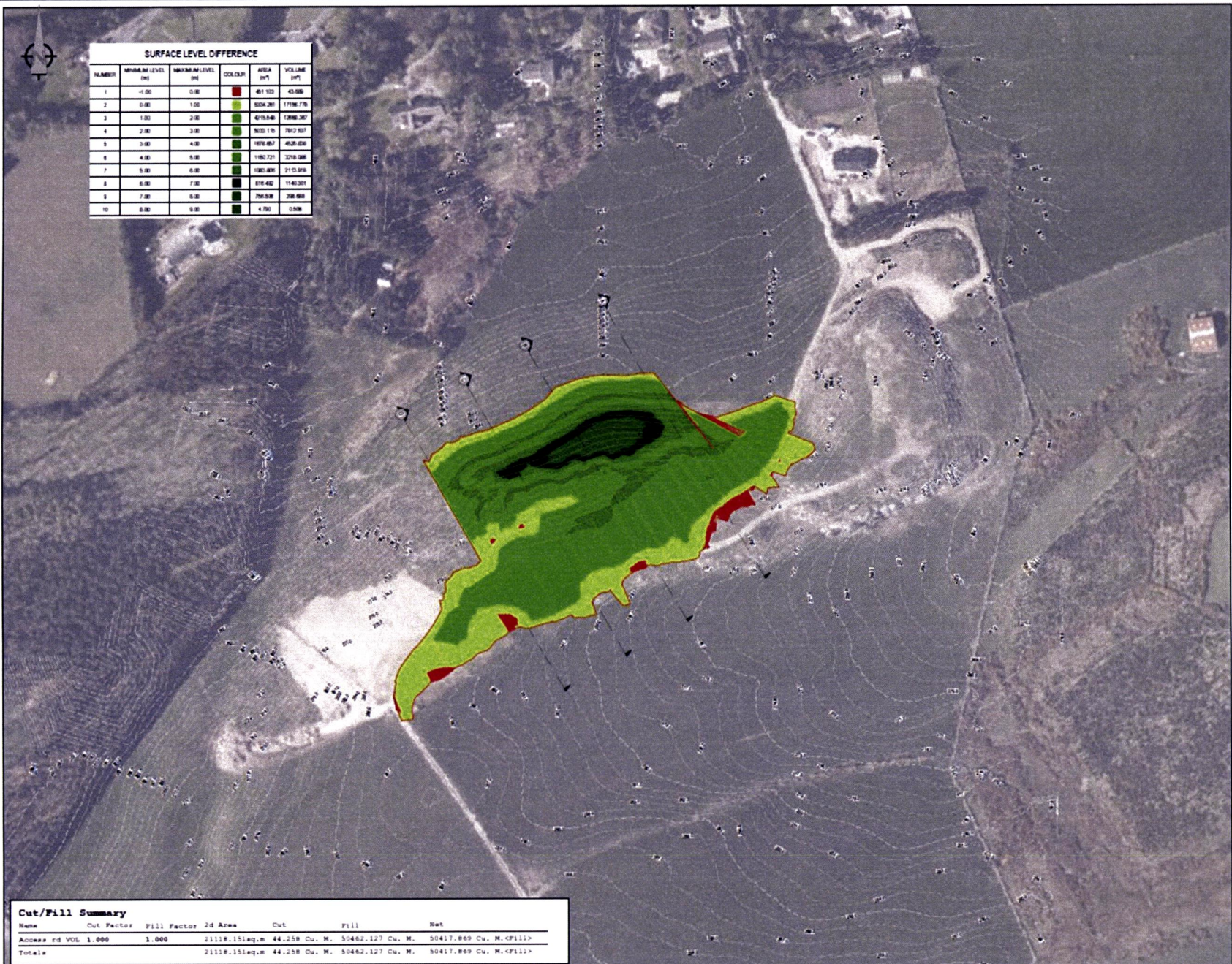
**NOTES:**

**KEY:**

	EXISTING GROUND CONTOURS
	PROPOSED SURFACE CONTOURS
	SITE BOUNDARY

**SURFACE LEVEL DIFFERENCE**

NUMBER	MINIMUM LEVEL (ft)	MAXIMUM LEVEL (ft)	COLOR	AREA (sq ft)	VOLUME (cu ft)
1	-1.00	0.00		461,103	43,880
2	0.00	1.00		304,261	177,917.6
3	1.00	2.00		475,546	139,367
4	2.00	3.00		303,170	79,527
5	3.00	4.00		167,867	40,826
6	4.00	5.00		116,271	32,928
7	5.00	6.00		180,308	71,579
8	6.00	7.00		676,402	114,311
9	7.00	8.00		758,508	208,869
10	8.00	9.00		4,790	9,580



**Cut/Fill Summary**

Name	Cut Factor	Fill Factor	2d Area	Cut	Fill	Net
Access rd VOL	1.000		21118.151sq.m	44.258 Cu. M.	50462.127 Cu. M.	50417.869 Cu. M.<Fill>
<b>Totals</b>			<b>21118.151sq.m</b>	<b>44.258 Cu. M.</b>	<b>50462.127 Cu. M.</b>	<b>50417.869 Cu. M.&lt;Fill&gt;</b>



PROJECT:  
**INFILL DEVELOPMENT NTMK**

DATE:  
**DRES**

TYPE:  
**CUT & FILL ANALYSIS, PLAN**

SCALE	DATE	BY	APPROVED
CIVIL			1:1000
MM	MM	BM	BM
PROJECT:	XXXX-MHT-JX-ZZ-DR-C-0600		REV
			P01

FILE LOCATION: C:\EARTH\PROJECTS\MEINHARDT\INFILL\1818\PROJECTS\EXHIBITS\EXHIBIT 0001.DWG (PLOT) DATE: 11/15/2020 09:12:00 BY: C-0600



**ROSS SWIFT ECOLOGY LTD.**

**APPROPRIATE ASSESSMENT SCREENING**

**Drumbawn,  
Newtown Mount Kennedy,  
Co. Wicklow**





DOCUMENT CONTROL SHEET	
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DATE OF ISSUE	13 <sup>TH</sup> MARCH 2025

DOCUMENT AUTHOR	
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## 1.0 INTRODUCTION

Ross Swift Ecology Ltd. has been appointed to prepare the relevant Appropriate Assessment (AA) Screening, for the proposed development, which will allow the competent authority, to undertake AA of the proposed development at Drumbawn, Newtown Mount Kennedy, Co. Wicklow. This AA Screening Report presents the assessment of the likely significant effects, if any on designated European Sites as a result of the construction or operational phase of the proposed development.

### 1.1 DESCRIPTION OF DEVELOPMENT

The proposed development is for infill of a site with inert fill, levelling of a depressed area and returning to agricultural use at Drumbawn, Newtown Mount Kennedy, Co. Wicklow as shown in **Figure 1.1** below. The development will involve the importation of 25,000 tonnes of inert material per annum to be used for the infilling and levelling of a field for agricultural use. The proposed infill working site will measure c. 4.85 hectares. The 25,000 tonnes of inert material that is classified as soil and subsoil will be imported to the site over the course of five years. The material will come from a green field residential construction site in Newtown Mount Kennedy will be delivered by a contractor with a waste transport permit. The proposed development is for the infilling and reprofiling of land by 25,000 tonnes of inert material that is classified as soil and subsoil. The main access to the site is via the local R765 road. The infill is approximately 4.5km from Newtown Mount Kennedy. Surface water from the proposed development will percolate to ground through the inert infill material. No infill will occur within proximity to any watercourse or drainage ditch. Existing subsoil will not be disturbed as part of the infill. The proposed infill site slopes in a northern direction.

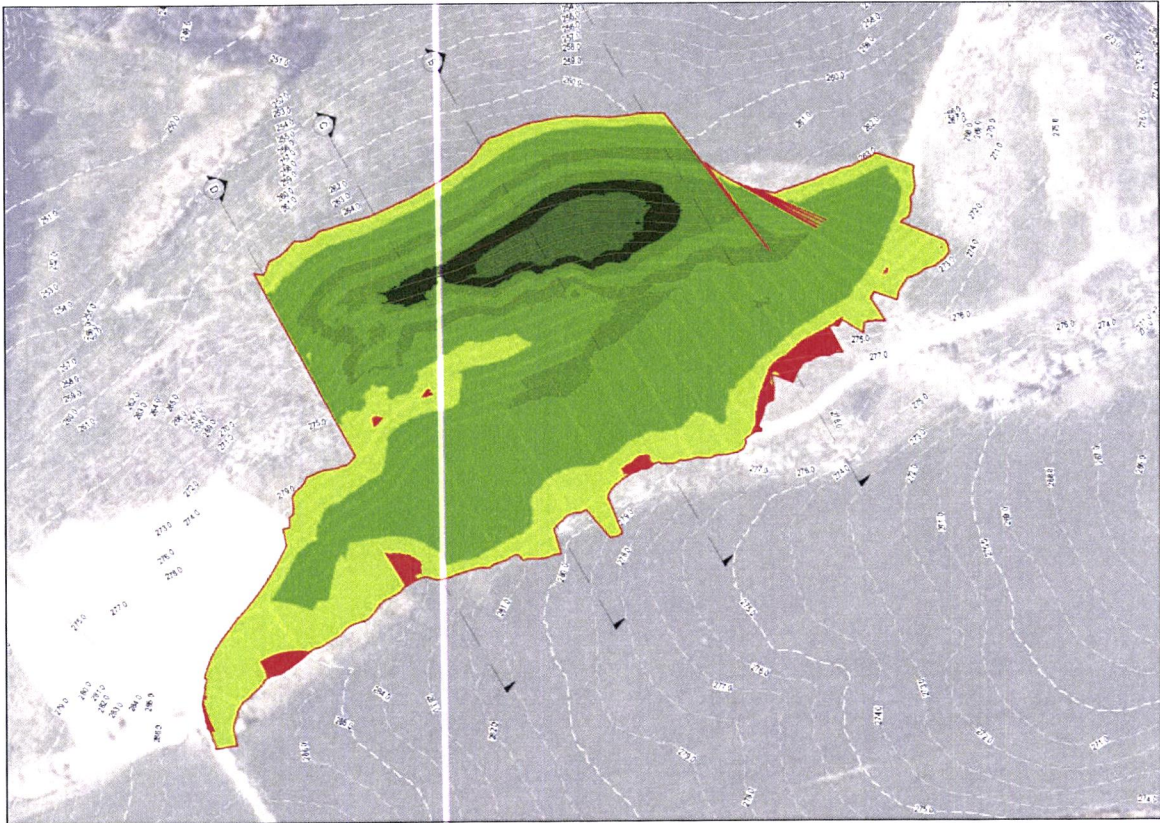


Figure 2.1: Area of proposed infill and levels (image cropped from Appendix)

SURFACE LEVEL DIFFERENCE					
NUMBER	MINIMUM LEVEL (m)	MAXIMUM LEVEL (m)	COLOUR	AREA (m <sup>2</sup> )	VOLUME (m <sup>3</sup> )
1	-1.00	0.00	Red	451.103	43.689
2	0.00	1.00	Light Green	5334.261	17156.778
3	1.00	2.00	Medium Green	4215.548	12668.367
4	2.00	3.00	Dark Green	5033.115	7812.537
5	3.00	4.00	Very Dark Green	1678.657	4520.838
6	4.00	5.00	Black-Green	1150.721	3218.086
7	5.00	6.00	Black	1083.806	2113.918
8	6.00	7.00	Black	816.492	1140.301
9	7.00	8.00	Black	756.506	298.688
10	8.00	9.00	Black	4.790	0.506

As per **Wicklow County Development Plan 2022 - 2028** the proposed development will be done with regard to the following policies and objectives;

**CPO 17.4;** To contribute, as appropriate, towards the protection of designated ecological sites including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs); Wildlife Sites (including proposed Natural Heritage Areas); Salmonid Waters; Flora Protection Order sites; Wildfowl Sanctuaries (see S.I. 192 of 1979); Freshwater Pearl Mussel catchments; and Tree Preservation Orders (TPOs). To contribute towards compliance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines, including but not limited to the following and any updated/superseding documents: EU Directives, including the Habitats Directive (92/43/EEC, as amended), the Birds Directive (2009/147/EC), the Environmental Liability Directive (2004/35/EC), the Environmental Impact Assessment Directive (2011/92/EU, as amended), the Water Framework Directive (2000/60/EC), EU Groundwater Directive (2006/118/EC) and the Strategic Environmental Assessment Directive (2001/42/EC); EU 'Guidance on integrating ecosystems and their services into decision-making' (European Commission 2019); EU Directives, including the Habitats Directive (92/43/EEC, as amended), the Birds Directive (2009/147/EC), the Environmental Liability Directive (2004/35/EC), the Environmental Impact Assessment Directive (2011/92/EU, as amended), the Water Framework Directive (2000/60/EC), EU Groundwater Directive (2006/118/EC) and the Strategic Environmental Assessment Directive (2001/42/EC); EU 'Guidance on integrating ecosystems and their services into decision-making' (European Commission 2019); National legislation, including the Wildlife Acts 1976 and 2010 (as amended)<sup>9</sup>, European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018, the Wildlife (Amendment) Act 2000, the European Union (Water Policy) Regulations 2003 (as amended), the Planning and Development Act 2000 (as amended), the European Communities (Birds and Natural Habitats) Regulations 2011 (SI No. 477 of 2011), the European Communities (Environmental Liability) Regulations 2008 (as amended)<sup>10</sup> and the Flora Protection order 2015; National policy guidelines (including any clarifying circulars or superseding versions of same), including 'Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment' (2018), 'Guidance for Consent Authorities regarding Sub-Threshold Development' (2003), 'Tree Preservation Guidelines', 'Landscape and Landscape Assessment' (draft 2000), 'Appropriate Assessment Guidance' (2010); Catchment and water resource management plans, including the National River Basin Management Plan 2018-2021 (including any superseding versions of same); Biodiversity plans and

guidelines, including National Biodiversity Action Plan 2017-2021 (including any superseding versions of same) and the County Wicklow Biodiversity Action Plan; Ireland's Environment – An Integrated Assessment 2020 (EPA), including any superseding versions of same), and to make provision where appropriate to address the report's goals and challenges.

**CPO 17.5;** Projects giving rise to adverse effects on the integrity of European sites (cumulatively, directly or indirectly) arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall not be permitted on the basis of this plan.

**CPO 17.6;** Ensure that development proposals, contribute as appropriate towards the protection and where possible enhancement of the ecological coherence of the European Site network and encourage the retention and management of landscape features that are of major importance for wild fauna and flora as per Article 10 of the EU Habitats directive. All projects and plans arising from this Plan will be screened for the need to undertake Appropriate Assessment under Article 6 of the Habitats Directive.

## **1.2 STATEMENT OF AUTHORITY**

This report and assessment were undertaken by Dr Ross Donnelly-Swift who has a BSc (Hons) in Biology from Maynooth University NUI, an MSc in Environmental Science from Trinity College Dublin, and a PhD in Biosystems Engineering from University College Dublin. In addition, Ross lectured on soil and hydrology at Dundalk IT and was a Research Fellow in the School of Natural Science at Trinity College Dublin. Ross has extensive ecological knowledge gained from academic research and field work, from protected species surveys (birds, otter, badger, bats, flora) and habitat surveys (terrestrial and aquatic) for the completion of scientific and ecological reports (including AA Screening and NIS) to support planning applications and compliance for projects both small and large in a range of areas such as industrial, commercial, agricultural, residential, amenity, and recreational developments.

## 2.0 APPROPRIATE ASSESSMENT

The Habitats Directive (92/43/EEC) seeks to conserve natural habitats and wild fauna and flora by the designation of Special Areas of Conservation (SACs) and the Birds Directive (2009/147/EEC) seeks to protect birds of special importance by the designation of Special Protection Areas (SPAs). It is the responsibility of each member state to designate SPAs and SACs, both of which will form part of Natura 2000, a network of protected sites throughout the European Community. SACs are selected for the conservation of Annex I habitats (including priority types which are in danger of disappearance) and Annex II species (other than birds). SPAs are selected for the conservation of Annex I birds and other regularly occurring migratory birds and their habitats. The annexed habitats and species for which each site is selected correspond to the qualifying interests of the sites; from these the conservation objectives of the site are derived. The Habitats Directive promotes a hierarchy of avoidance, mitigation and compensatory measures. This approach aims to avoid any effects on European sites by identifying possible effects early in the plan making process and avoiding such effects. An 'Appropriate Assessment' (AA) is a required assessment to determine the likelihood of significant impacts, based on best scientific knowledge, of any plans or projects on Natura 2000 sites. A screening for AA determines whether a plan or project, either alone or in combination with other plans and projects, is likely to have significant effects on a Natura 2000 site, in view of its conservation objectives. This AA Screening has been undertaken to determine the potential for significant effects on relevant Natura 2000 sites. The purpose of this assessment is to determine, the appropriateness, or otherwise, of the proposed development in the context of the conservation objectives of such sites.

Article 6(3) of the Habitats Directive establishes the requirement for appropriate assessment when planning new developments that might affect a Natura 2000 site. Article 6(3) of the Habitats Directive states; *"Any plan or project not directly connected with, or necessary to the management of the site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site, and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."*

*Article 6(4) states: If, in spite of a negative assessment of the implications for the [European] site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, Member States shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.*

The screening determination must be based on scientific information relevant to the likely effects on the conservation objectives of the relevant European sites. The information should be up-to-date and based on the best available techniques and methods to estimate the presence and extent of effects. This is because if there is any scientific uncertainty as to the absence of significant effects, the project must be screened in for appropriate assessment.

Screening for Appropriate Assessment involves:

- Description of the project and area characteristics (existing environment).
- Identification and description of Natura 2000 sites that could potentially be affected, and compilation of information on their qualifying interests and conservation objectives.
- Assessment of likely effects – direct, indirect, and cumulative, undertaken on the basis of availability of objective information as necessary.
- Screening statement with conclusions.

The following project elements of the proposed development have been examined for relevance to possible effects on the Natura 2000 sites;

- Earthworks & Excavation
- Sediment & Hydrocarbon Runoff
- Stormwater & Waste Water
- Disturbance to Protected Species
- Impact on Protected Habitats
- Dust and Noise
- Invasive Species



## OVERVIEW OF SCREENING AND APPROPRIATE ASSESSMENT

### STAGE 1 Screening

Screening should be undertaken without the inclusion of mitigation measures. If the effects are deemed to be significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 AA.

### STAGE 2 Appropriate Assessment

The Second stage of the AA process assesses the impact of the project or plan (either alone or in combination with other projects or plans) on the integrity of the Natura 2000 site, with respect to the conservation objectives of the site and its ecological structure and function. A Natura Impact Statement (NIS) containing a professional scientific examination of the project or plan is required and includes any mitigation measures to avoid, reduce significant negative impacts.

### STAGE 3 Assessment of Alternative Solutions

If the outcome of Stage 2 is negative with adverse impacts to the sites cannot be scientifically ruled out with the inclusion of mitigation measures, the plan or project should proceed to Stage 3 or be abandoned. This stage examines alternative solutions to the proposal.

### STAGE 4 Assessment where no alternative solutions exist and where adverse impacts remain.

The final stage is the main derogation process examining whether there are imperative reasons of overriding public interest (IROPI) for allowing a plan or project to adversely affect a Natura 2000 site, where no less damaging solution exists.

## 2.1 GUIDELINES AND LEGISLATION FOR APPROPRIATE ASSESSMENT

This Appropriate Assessment Screening has been carried with reference to the following guidelines:

- OPR Practice Note PN01 (2021) Appropriate Assessment Screening for Development Management Office of the Planning Regulator;



- Appropriate Assessment of Plans and Projects in Ireland. Guidelines for Planning Authorities. DoEHLG, 20010;
- Article 6 of the Habitats Directive – Rulings of the European Court of Justice. Final Draft September 2014;
- Circular NPWS 1/10 & PSSP 2/10 Appropriate Assessment under Article 6 of the Habitats Directive: Guidance for Planning Authorities;
- Communication from the Commission on the precautionary principle. European Commission (2000);
- Managing Natura 2000 sites – The Provisions of Article 6 of The Habitats Directive 92/43/EEC. European Commission, 2000;
- EC Natura 2000 Spatial Planning. European Commission (2017);
- Assessment of Plans and Projects Significantly Affecting Natura 2000 sites. Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. European Commission, 2002;
- Commission Notice “Managing Natura 2000 sites; The provisions of Article 6 of the Habitats Directive 92/43/EEC. European Commission, 21.11.2018;
- CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.3. Chartered Institute of Ecology and Environmental Management, Winchester.

## **2.2 DATA AND DESKTOP REVIEW**

An ecological desktop study was completed for this report by Identification of European Sites within the Zone of Influence (ZoI) of the proposed site boundary. The NPWS database was reviewed for the site synopsis and conservation objectives for European Sites identified to be in the Zone of Influence. Desktop research was carried out to gather information relating to European sites and to the habitats and species that they support. The following data sources were consulted;

- Tailte Éireann mapping and aerial photography;
- National Parks and Wildlife Service (NPWS);
- Google and Bing aerial imagery;
- Environmental Protection Agency (EPA) Envision Maps;
- National Biodiversity Data Centre (NBDC);
- National Planning Application Database;
- Water Quality Data from the EPA;
- Geological Survey of Ireland;
- Wetland Maps of Ireland;
- Wicklow County Development Plan 2022-2028.

### **3.0 BACKGROUND AND DESCRIPTION OF SITE ENVIRONMENT**

*As per Wicklow County Development Plan (CDP) 2022 – 2028; The key areas within Wicklow’s rural economy that present these opportunities fall within the agriculture, food and forestry sectors. The objectives are focused on the forms of rural development that are employment and wealth generating. A Strategic Objective CPO is to encourage the continued operation of farming and its associated uses where it already exists, and to facilitate the diversification of the agricultural economy through the support of appropriate alternative farm enterprise sources.*

Drumbawn is a rural area of Co. Wicklow and is where the proposed infill and levelling will occur. Drumbawn covers an area 169.05 hectares. The closest large urban centre is Newtown Mount Kennedy located approximately 3.6km to the east.

According to the Preliminary Flood Risk Assessment (PFRA) Mapping tool by the OPW, the proposed development site is not located within an area of fluvial or pluvial flood, indicative of 10% AEP (10-yr) event, 1% AEP (100-yr) event or 0.1% AEP (1000-yr) event. However, it should be noted that this map is based on broad-scale simple analysis and may not be accurate for a specific location. There is no history of flooding at the proposed site. There is unlikely to be flooding at the site given the topography and elevated site location.

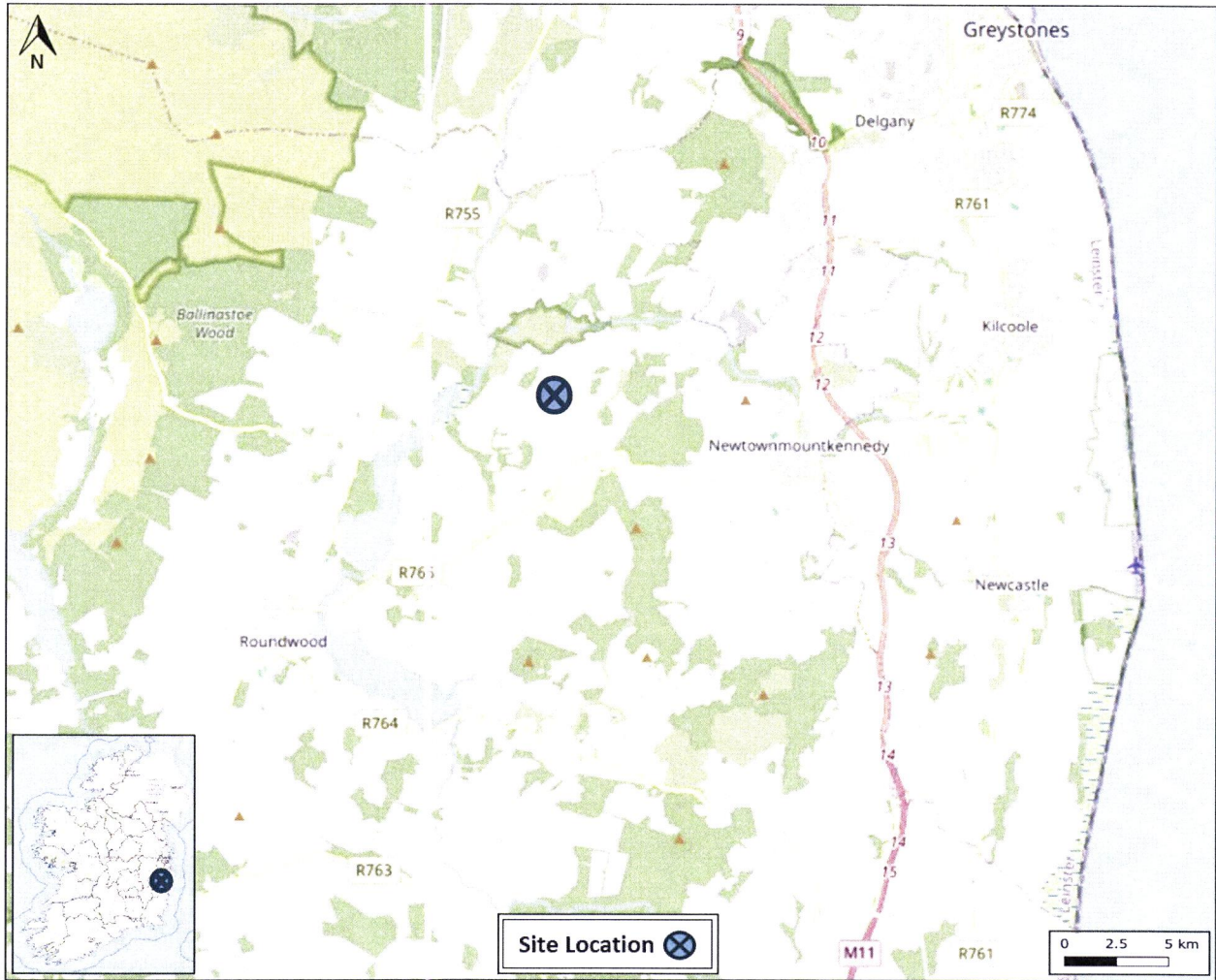


Figure 3.1: Location of proposed development site (Open Street Map ©)



Figure 3.2: Working area of proposed Infill (Google Images ©)



### 3.1 WATERBODIES

The proposed development is located within the Ovoca-Vartry (Sub catchment: Newcastle [Wicklow]\_SC\_010). The nearest watercourse to the proposed development is the Drumbawn (EPA Code: 10D08 – Order 1) it is approximately 465m from the site boundary. The Drumbawn flows for approximately 350m and joins the Newtownmountkennedy (EPA Code: 10N02 – Order 2). The Newtownmountkennedy flows for approximately 9.5km and discharges into Kilcoole Marsh (EPA Code: IE\_EA\_120\_0100). A further 800m the Newtownmountkennedy discharges into the Southwestern Irish Sea - Killiney Bay. The Environmental Protection Agency (EPA) monitors the ecological status of the Newtownmountkennedy *“Satisfactory ecological conditions were observed at four of the five stations surveyed on the Newtownmountkennedy Stream in June 2024. The diversity and abundance of pollution sensitive macroinvertebrate taxa indicated high ecological conditions in the upper reaches (0100, 0150) while the dominance of pollution tolerant macroinvertebrate taxa continues to indicate unsatisfactory ecological conditions downstream of the village (0500).”* **Table 3.1** shows the surface waterbodies and the Water Framework Directive (WFD) Status. **Table 3.2** shows the operational monitoring stations on the Dargle. **Figure 3.4** shows the location of the site and WFD water quality from the last monitoring programme. The Groundwater statues of the Wicklow ground waterbody (Code: IE\_EA\_G\_076) is listed as “Good”.

TABLE 3.1 SURFACE & COASTAL WATERBODIES AND WFD STATUS		
EPA NAME	NAME	WFD STATUS
NEWTOWNMOUNTKENNED_010	Drumbawn	Review
NEWTOWNMOUNTKENNED_010	Newtownmountkennedy	Review
Kilcoole Marsh	Kilcoole Estuary	Review
Southwestern Irish Sea - Killiney Bay	Killiney Bay	Not at risk

TABLE 3.2 MONITORING STATIONS			
EPA NAME	STATION CODE	Q VALUE STATUS	APPROX. LOCATION FROM SITE
NEWTOWNMOUNTKENNED_010	RS10N020100	High	2.2km NE
NEWTOWNMOUNTKENNED_010	RS10N020150	High	2.6km E
NEWTOWNMOUNTKENNED_020	RS10N020400	Good	3.8km SE
NEWTOWNMOUNTKENNED_020	RS10N020500	Moderate	5.3km E
NEWTOWNMOUNTKENNED_020	RS10N020600	Good	6.7km E

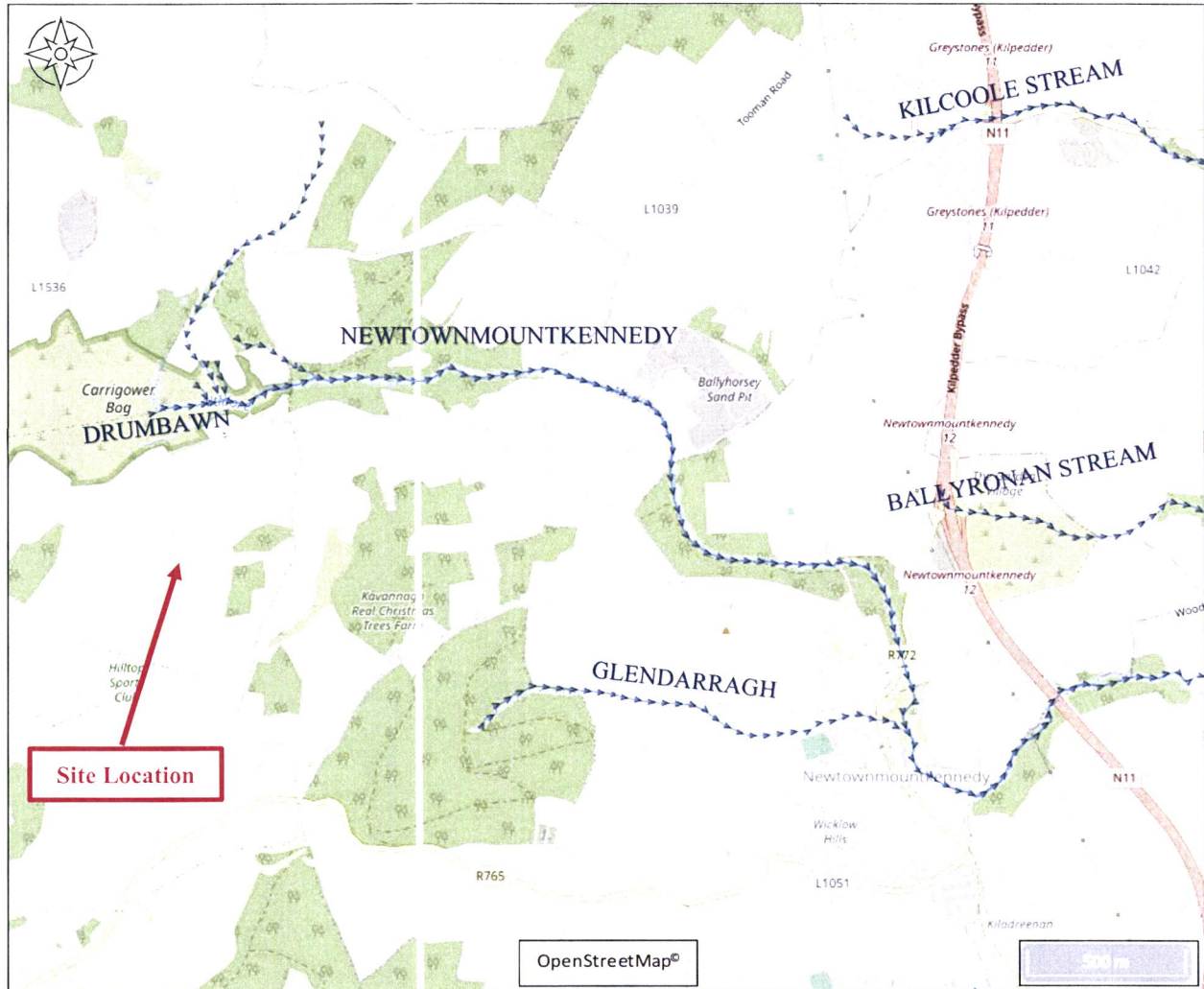


Figure 3.3: Mapped waterbodies within proximity to development site

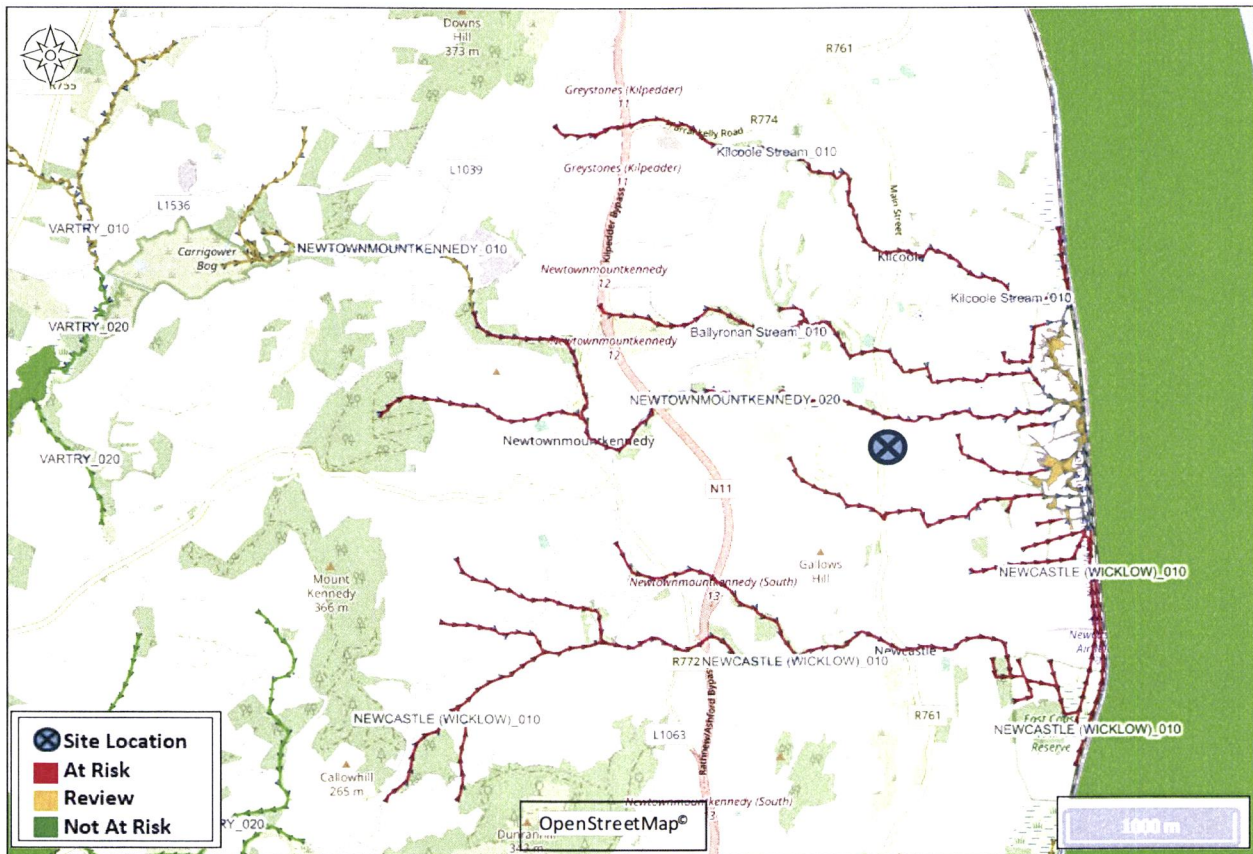


Figure 3.4: Water Quality Monitoring Programme

### 3.2 HABITATS

A site characterisation assessment was undertaken on the 7<sup>th</sup> of November 2024, 23<sup>rd</sup> of December 2024 and 17<sup>th</sup> of January 2025 to examine the ecological context of the development site, by systematically walking the proposed site and boundaries and determining the habitats present. The habitat survey was undertaken in accordance with the standard methodology outlined in Fossitt’s “*A Guide to Habitats in Ireland*”, a hierarchical classification scheme based upon the characteristics of vegetation present. The Fossitt system also indicates when there are potential links with Annex I habitats of the E.U. Habitats Directive (92/43/EEC). Cognisance was also taken of the Heritage Council guidelines, “*Best Practice Guidance for Habitat Survey and Mapping*”, (Smith *et al.*, 2011). Any species found on The Flora (Protection) (S.I. No. 235 of 2022), or Third Schedule Invasive Flora will be noted and discussed in detail if found. During the site assessment the following habitats were observed; The majority of the proposed development site is classified as improved agricultural grassland (**GA1**). This habitat is dominated by ryegrasses (*Lolium* spp.), with occasionally recorded Buttercup

(*Ranunculus* spp.), Dandelion (*Taraxacum* spp.), Ribwort Plantain (*Plantago lanceolata*), Dock (*Rumex* spp.), Thistle (*Cirsium* spp.), Nettle (*Urtica dioica*), Common Mouse-ear (*Cerastium fontanum*), Greater Plantain (*Plantago major*), Sticky Mouse-ear (*Cerastium glomeratum*), and White Clover (*Trifolium repens*). Along the boundary is hedgerows (**WL1**) habitat with tree species such as Ash (*Fraxinus excelsior*), Sycamore (*Acer pseudoplatanus*), Blackthorn (*Prunus spinosa*), Hawthorn (*Crataegus monogyna*), Elder (*Sambucus nigra*), Elm (*Ulmus* sp.), and Oak (*Quercus* spp.). Other species commonly found in this habitat are Bramble (*Rubus fruticosus*), Cow Parsley (*Anthriscus sylvestris*), Dog-rose (*Rosa canina* agg.), Gorse (*Ulex europaeus*), Hogweed (*Heracleum sphondylium*), Honeysuckle (*Lonicera periclymenum*), Ivy (*Hedera helix*), and Nettle (*Urtica dioica*). Along the site entrance and field boundaries are treeline (**WL2**) habitat with Alder (*Alnus* spp.), Sycamore (*Acer pseudoplatanus*), Ash (*Fraxinus excelsior*), Beech (*Fagus sylvatica*), Cypress (*Cupressus* spp.) and Oak (*Quercus* spp.). There are areas of exposed siliceous stone (**ER1**) habitat with Holly (*Ilex aquifolium*), Common Polypody (*Polypodium vulgare*) and Buckler-fern (*Dryopteris* spp.). There are areas of scrub (**WS1**) dominated by Gorse (*Ulex europaeus*) with Bent grasses (*Agrostis* spp.). The site assess is classified as building and artificial surfaces (**BL3**) with little vegetation cover. There are no Third Schedule invasive species found within the site boundary or directly along the boundary. See **Table 3.3** for summary for habitats located at the proposed development. See **Appendix** for Photo Log of the site. All habitats within the site boundary are of lower ecological value with no flora of conservation significance. The habitats within the site do have any links to Annex I habitats.

**Table 3.3:** Summary of Habitats Identified during the site assessment

HABITAT CLASSIFICATION HIERARCHY		
LEVEL 1	LEVEL 2	LEVEL 3
E Exposed rock and disturbed ground	ER Exposed rock	ER1 Exposed siliceous rock
F Freshwater	FW Watercourses	FW4 Drainage ditch
W Woodland and scrub	WS Scrub / transitional woodland	WS1 Scrub
	WL Linear woodland / scrub	WL1 Hedgerows WL2 Treelines
G Grassland and marsh	GA Improved grassland	GA1 Improved agricultural grassland

HABITAT CLASSIFICATION HIERARCHY		
LEVEL 1	LEVEL 2	LEVEL 3
<b>B</b> Cultivated and built land	<b>BL</b> Built land	<b>BL3</b> Buildings and artificial surfaces

Bird species noted during the site walkover included Rook (*Corvus frugilegus*), Blackbird (*Turdus merula*), Blue Tit (*Parus caeruleus*), Woodpigeon (*Columba palumbus*), Pied Wagtail (*Motacilla alba*), House Sparrow (*Passer domesticus*), Goldfinch (*Carduelis carduelis*), Mistle Thrush (*Turdus viscivorus*), Starling (*Sturnus vulgaris*), Pheasant (*Phasianus colchicus*), Long-tailed Tit (*Aegithalus caudatus*) and Magpie (*Pica pica*). No bird is red listed. House Sparrow and Starling are amber listed. None of the bird species recorded are listed under Annex I of the E.U. Birds Directive. Evidence of Rabbit (*Oryctolagus cuniculus*) was observed. Fallow Deer (*Dama dama*) were disturbed and observed going towards the Conifer Woodland outside site boundary. No other evidence of mammals was observed within the site boundary. Fauna typical of that found throughout the rest of Ireland which would be expected to be found in the area would include; Bat species, Badger (*Meles meles*), Otter (*Lutra lutra*), Fox (*Vulpes vulpes*), Pine Marten (*Martes martes*), Stoat (*Mustela erminea hibernica*), American Mink (*Mustela vison*), Irish Hare (*Lepus timidus hibernicus*), Hedgehog (*Erinus europaeus*), Red Squirrel (*Sciurus vulgaris*), Grey Squirrel (*Sciurus carolinensis*), Wood Mouse (*Apodemus sylvaticus*) and Pygmy Shrew (*Sorex minutus*). There was no evidence of Badger (including setts or latrines), or Otter (including spraints, holts or slides) at the proposed development site or along the boundary assessed. There are no trees for removal as part of the proposed development.

In addition to the site walkover, flora and fauna records for previous 30 years were reviewed on the National Biodiversity Data Centre (NBDC) website for the proposed development site and vicinity 10km square (**O20**) in which the proposed development site is located. Threatened flora are River Water-crowfoot (*Ranunculus fluitans*) and Yellow Archangel (*Lamiastrum galeobdolon*). Protected fauna species are Common Frog (*Rana temporaria*), Smooth Newt (*Lissotriton vulgaris*), Brown Long-eared Bat (*Plecotus auritus*), Daubenton's Bat (*Myotis daubentonii*), Badger (*Meles meles*), Pygmy Shrew (*Sorex minutus*), Red Squirrel (*Sciurus vulgaris*), Otter (*Lutra lutra*), Lesser Noctule (*Nyctalus leisleri*), Natterer's Bat (*Myotis nattereri*), Pine Marten (*Martes martes*), Common Pipistrelle (*Pipistrellus pipistrellus sensu lato*), Red Deer (*Cervus elaphus*), Soprano Pipistrelle (*Pipistrellus pygmaeus*) and Hedgehog (*Erinaceus europaeus*). Invasive species are Brown Rat (*Rattus norvegicus*),



Rabbit (*Oryctolagus cuniculus*), Fallow Deer (*Dama dama*), Sika Deer (*Cervus nippon*) and Eastern Grey Squirrel (*Sciurus carolinensis*).

Bird species of note include Barn Owl (*Tyto alba*), Barn Swallow (*Hirundo rustica*), Black-headed Gull (*Larus ridibundus*), Black-legged Kittiwake (*Rissa tridactyla*), Common Coot (*Fulica atra*), Common Goldeneye (*Bucephala clangula*), Grasshopper Warbler (*Locustella naevia*), Kestrel (*Falco tinnunculus*), Kingfisher (*Alcedo atthis*), Linnet (*Carduelis cannabina*), Pochard (*Aythya ferina*), Quail (*Coturnix coturnix*), Common Redshank (*Tringa totanus*), Common Sandpiper (*Actitis hypoleucos*), Shelduck (*Tadorna tadorna*), Snipe (*Gallinago gallinago*), Starling (*Sturnus vulgaris*), Swift (*Apus apus*), Curlew (*Numenius arquata*), Teal (*Anas crecca*), Tree Sparrow (*Passer montanus*), Wigeon (*Anas penelope*), Woodcock (*Scolopax rusticola*), Golden Plover (*Pluvialis apricaria*), Gadwall (*Anas strepera*), Goosander (*Mergus merganser*), Great Bittern (*Botaurus stellaris*), Great Black-backed Gull (*Larus marinus*), Great Cormorant (*Phalacrocorax carbo*), Great Crested Grebe (*Podiceps cristatus*), Great Northern Diver (*Gavia immer*), Greater Scaup (*Aythya marila*), Hen Harrier (*Circus cyaneus*), Herring Gull (*Larus argentatus*), House Martin (*Delichon urbicum*), House Sparrow (*Passer domesticus*), Jack Snipe (*Lymnocyptes minimus*), Lesser Black-backed Gull (*Larus fuscus*), Little Egret (*Egretta garzetta*), Little Grebe (*Tachybaptus ruficollis*), Mallard (*Anas platyrhynchos*), Merlin (*Falco columbarius*), Mew Gull (*Larus canus*), Mute Swan (*Cygnus olor*), Northern Lapwing (*Vanellus vanellus*), Northern Shoveler (*Anas clypeata*), Northern Wheatear (*Oenanthe oenanthe*), Peregrine Falcon (*Falco peregrinus*), Red Kite (*Milvus milvus*), Red-necked Phalarope (*Phalaropus lobatus*), Rock Pigeon (*Columba livia*), Ruddy Duck (*Oxyura jamaicensis*), Sand Martin (*Riparia riparia*), Sky Lark (*Alauda arvensis*), Spotted Flycatcher (*Muscicapa striata*), Tufted Duck (*Aythya fuligula*), Water Rail (*Rallus aquaticus*), Whinchat (*Saxicola rubetra*), Whooper Swan (*Cygnus cygnus*) and Yellowhammer (*Emberiza citrinella*).

#### 4.0 NATURA 2000 SITES WITHIN THE ZONE OF INFLUENCE

As per *Appropriate Assessment Screening for Development Management* (OPR, 2021) the Zone of Influence (Zol) is the criteria for screening any potential impact on the Natura 2000 network. A Zone of Influence (Zol) for a project is established on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors within vicinity of the proposed development. The Zol takes into account the potential for connectivity to ecological receptors through the Source- Pathway-Receptor (S-P-R) model and assesses potential impacts of the proposed development on both immobile and mobile qualifying interests of identified European sites. Functional pathways can include the use of an application site for foraging by a QI/SCI species of an SAC or SPA. The Natura 2000 sites within the potential Zol are shown in **Figure 4.1**.

**Table 4.1:** List of European Sites Within Potential Zone of Influence

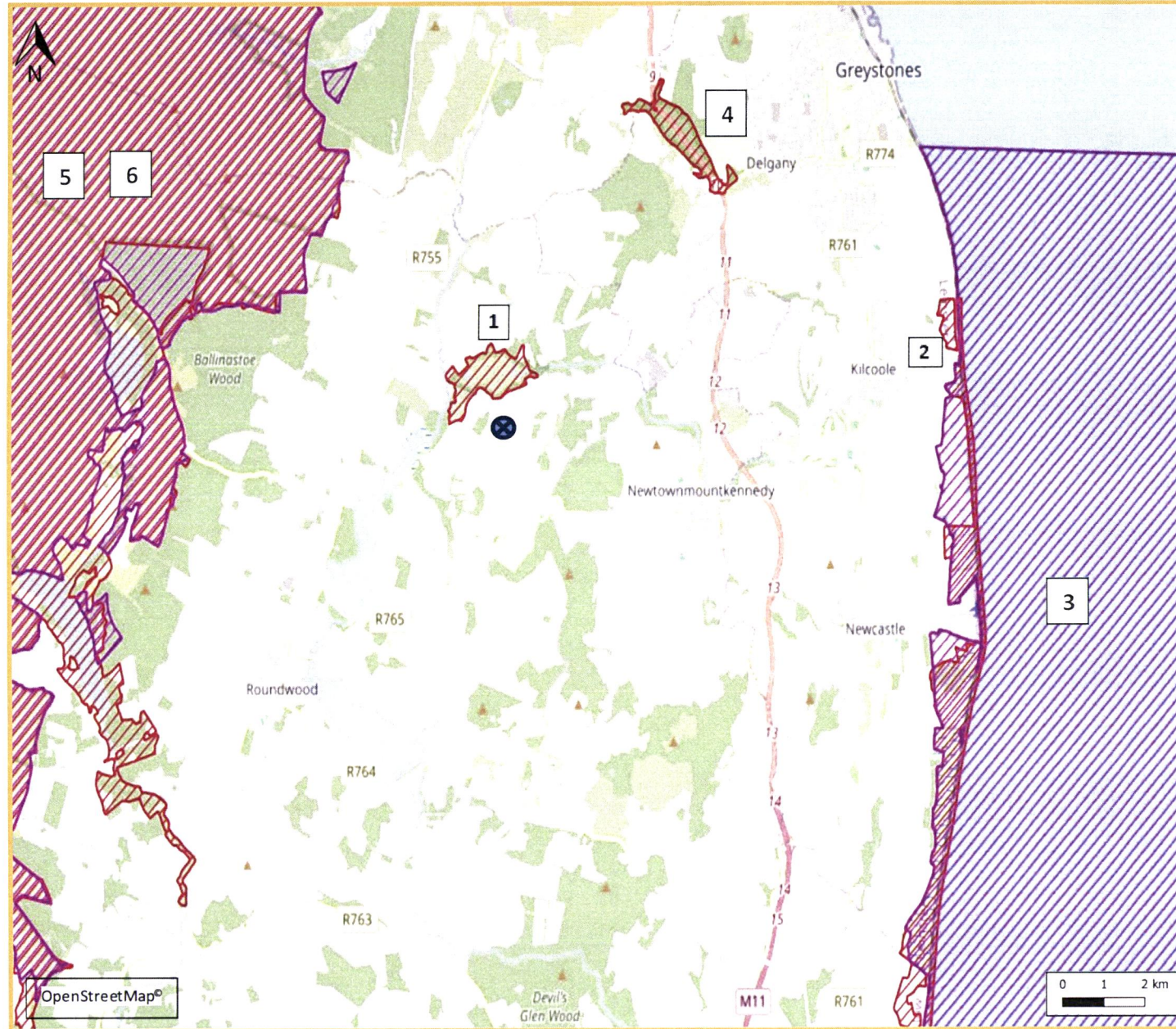
SITE NAME	DESIGNATION	SITE CODE	DISTANCE	S-P-R	FIGURE 4.1
Carriggower Bog	SAC	000716	210m	Yes	1
The Murrough Wetlands	SAC	002249	8km E	Yes	2
The Murrough	SPA	004186	7.8km E	Yes	3
Glen of the Downs	SAC	000719	4.9km NE	No	4
Wicklow Mountains	SAC	002122	4.3km NW	No	5
Wicklow Mountains	SPA	004040	4.3km NW	No	6


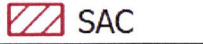
For this assessment, the sites considered to be within the potential Zone of Influence of the proposed development is Carriggower Bog SAC (Site Code: 000716), The Murrough Wetlands SAC (Site Code: 002249) and The Murrough SPA (Site Code: 004186) due to the distance and the potential hydrological link and will be assessed further.


The proposed development is not hydrologically connected to Glen of the Downs SAC (Site Code: 000719) nor does the development site contain Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]. There is no S-P-R between the proposed development and the Wicklow Mountains SAC (Site Code: 002122) and Wicklow Mountains SPA (Site Code: 004040). The Newtownmountkennedy watercourse does not flow directly from the Wicklow Mountains but from Carriggower Bog. The development site does not contain any habitats associated with this SAC nor does it contain habitats suitable for protected fauna such as otter (*Lutra lutra*) [1355] or suitable nesting sites for Merlin (*Falco columbarius*) [A098] or Peregrine (*Falco peregrinus*) [A103] associated with the Wicklow Mountains SPA. Therefore, the project has been screened out for a likely significant

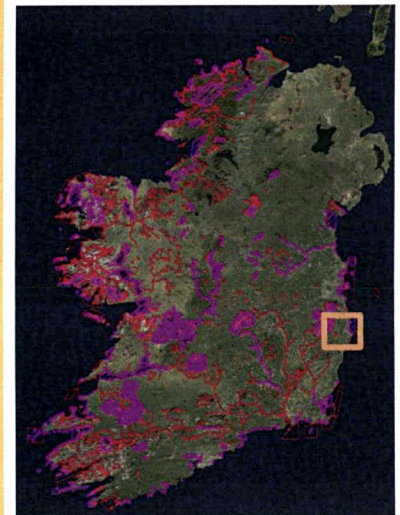
impact on Glen of the Downs SAC, Wicklow Mountains SAC and Wicklow Mountains SPA and Rockabill to Dalkey Island SAC.

There is no Source- Pathway-Receptor with any other Natura 2000 site given the type of development (infill), distance and no significant hydrological or potential to impact the Qualifying Interests of any other Natura 2000 sites, therefore the project has been screened out. In **Figure 4.1** below are the Natura 2000 sites within proximity to the development with **Table 4.1** indicating the assigned reference number for this report.



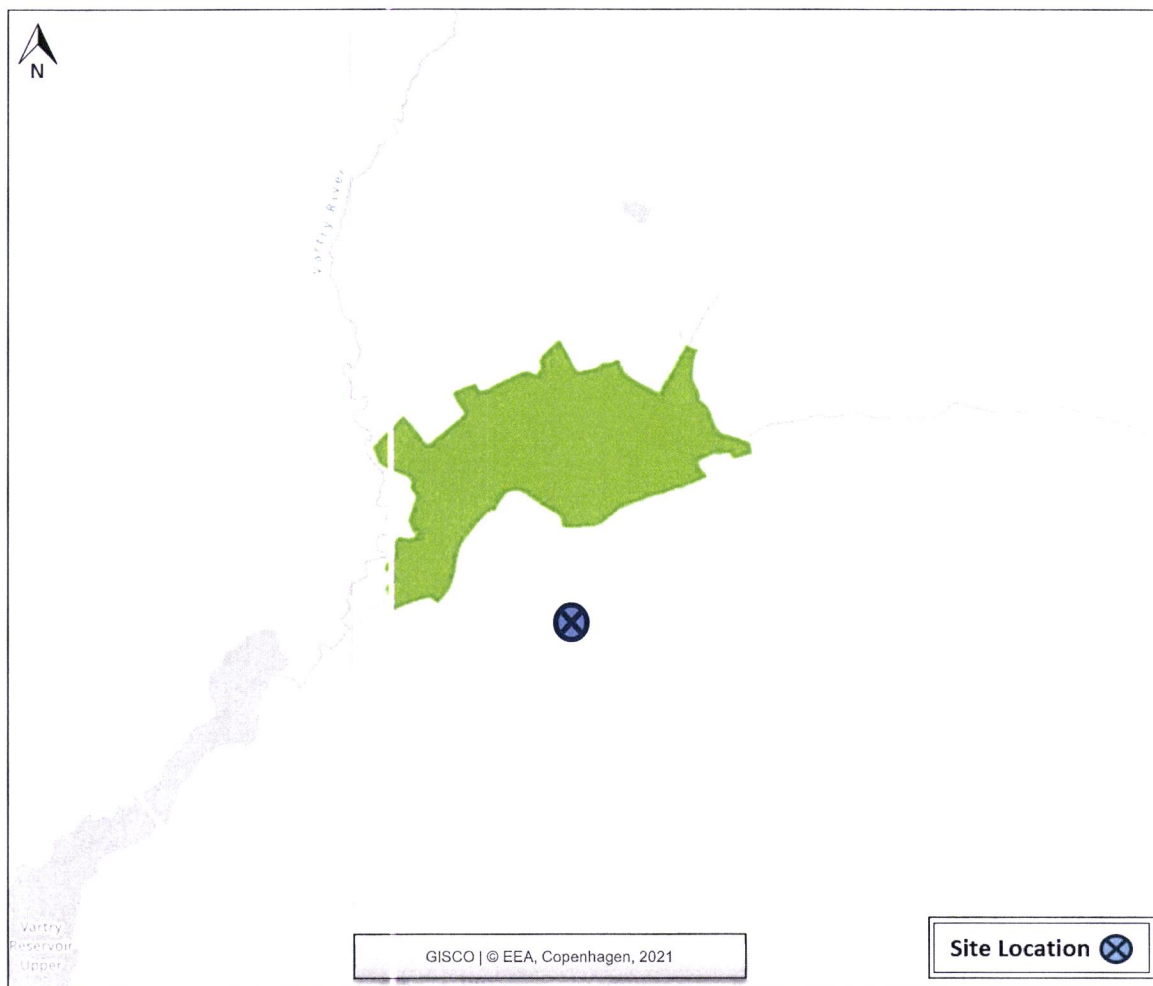
-  SPA
-  SAC

Site Location 



Location of proposed development at Drumbawn, Newtown Mount Kennedy, Co. Wicklow and the Natura 2000 Network





**Figure 4.2:** Full Map Carrigower Bog SAC (highlighted in light green)

#### 4.1 CARRIGOWER BOG (SITE CODE: 000716)

Carrigower Bog is situated on Calary plateau at the eastern edge of the Wicklow Mountains. The site is an area of wet bog and poor fen, flanked by the Vartny River on the south-western side. See **Figure 4.2**. This site is of conservation importance because it shows a good transition between fen and bog vegetation (with the fen being colonised by characteristic bog species). Transition mire, which is present at the site, is listed in Annex I of the E.U. Habitats Directive. The area holds a rich and varied flora, and it provides a habitat for some rare invertebrates. Carrigower Bog is the last remaining site in Wicklow from which some of these invertebrates are recorded. It also has ornithological interest, being an important site for Jack Snipe. The site is a SAC selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (\* = priority; numbers in brackets are Natura 2000 codes):

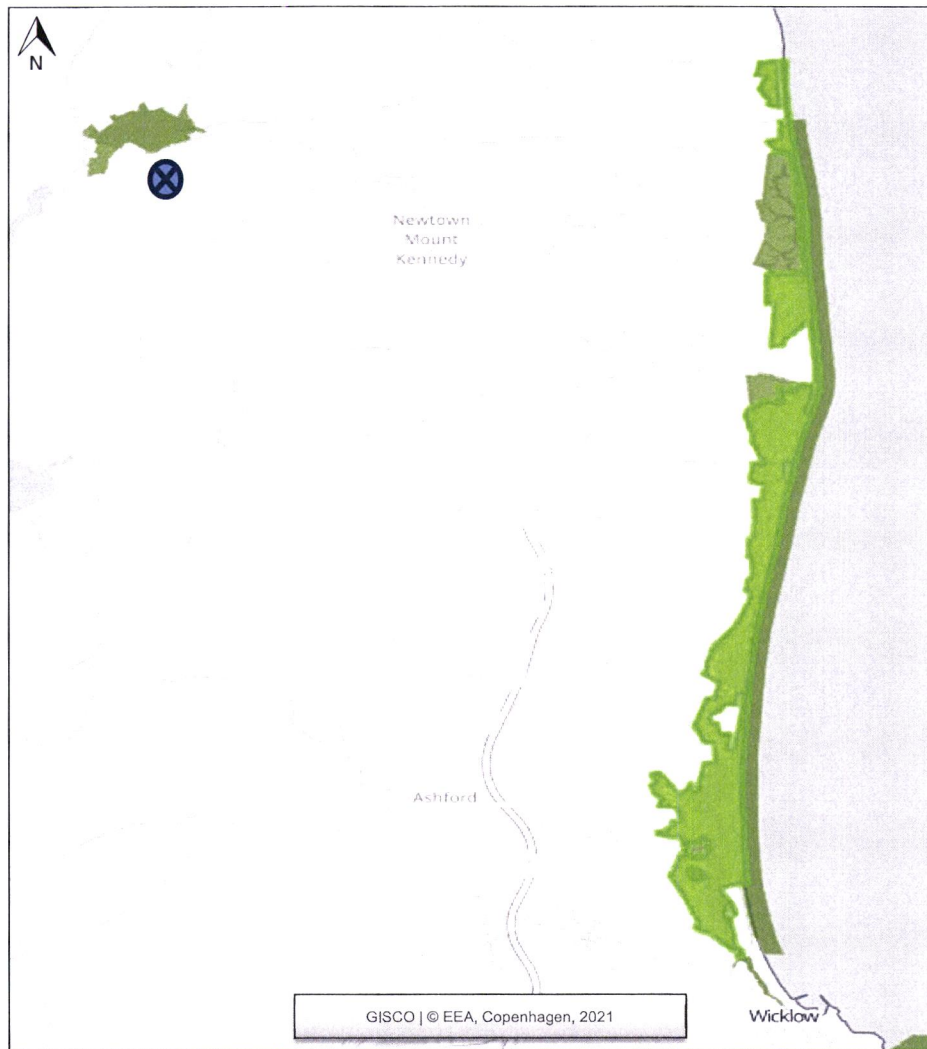
2

QUALIFYING INTERESTS OF CARRIGGOWER BOG SAC
Habitats
Transition Mires [7140]

#### 4.2 THE MURROUGH WETLANDS SAC (SITE CODE: 002249)

The Murrough is a coastal wetland complex which stretches for 15km from Ballygannon to north of Wicklow town, and in parts, extends inland for up to 1km. A shingle ridge stretches the length of the site and carries the mainline Dublin Wexford railway. See **Figure 4.3**. This site is of importance as it is the largest coastal wetland complex on the east coast of Ireland. Although much affected by drainage, it still contains a wide range of coastal and freshwater habitats, including six listed on Annex I of the E.U. Habitats Directive, some of which contain threatened plants. Areas on the site contain a rich invertebrate fauna, including several rarities. It is an important site for both wintering and breeding birds and supports a variety of species listed on Annex I of the E.U. Birds Directive. The site is a SAC selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (\* = priority; numbers in brackets are Natura 2000 codes):

QUALIFYING INTERESTS OF THE MURROUGH WETLANDS SAC
Habitats
Annual vegetation of drift lines [1210]
Perennial vegetation of stony banks [1220]
Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> ) [1330]
Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410]
Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i> [7210]
Alkaline Fens [7230]



**Figure 4.3:** Full Map of The Murrough Wetlands SAC (highlighted in light green)

#### **4.3 THE MURROUGH SPA (SITE CODE: 004186)**

The Murrough SPA comprises a coastal wetland complex that stretches for 13km from Kilcoole Station, east of Kilcoole village in the north to Wicklow town in the south and extends inland for up to 1km in places. The site includes an area of marine water to a distance of 200m from the low water mark. A shingle ridge runs along the length of the site and carries the Dublin-Wexford railway line. See **Figure 4.4**. The Murrough SPA is an important site for wintering waterbirds, being internationally important for Light-bellied Brent Goose and nationally important for Red-throated Diver, Greylag Goose, Wigeon, Teal, Black-headed Gull and Herring Gull. It is probably the most important site in the country for nesting Little Tern.

The site is a SPA under the E.U. Birds Directive, of special conservation interest for the following species:

<b>QUALIFYING INTERESTS OF THE MURROUGH SPA</b>
<b>Species</b>
Red-throated Diver ( <i>Gavia stellata</i> ) [A001]
Greylag Goose ( <i>Anser anser</i> ) [A043]
Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046]
Wigeon ( <i>Anas penelope</i> ) [A050]
Teal ( <i>Anas crecca</i> ) [A052]
Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179]
Herring Gull ( <i>Larus argentatus</i> ) [A184]
Little Tern ( <i>Sterna albifrons</i> ) [A195]
Wetland and Waterbirds [A999]



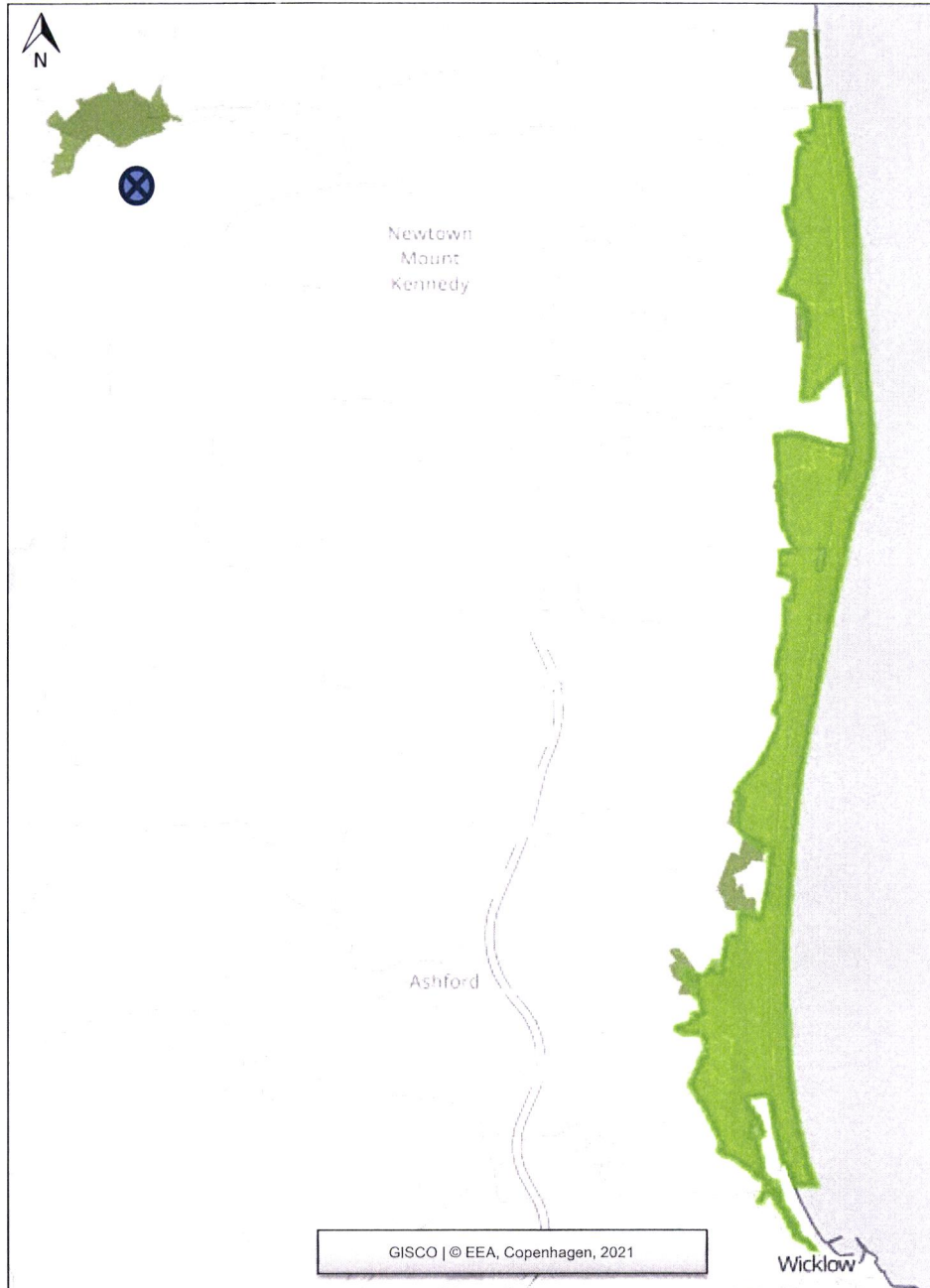


Figure 4.4: Full Map of The Murrough SPA (highlighted in light green)



#### 4.4 NATIONAL CONSERVATION STATUS OF QUALIFYING INTERESTS

As per the Habitat's Directive, favourable conservation status of a habitat is achieved when: its natural range and areas it covers within that range are stable or increasing, and the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and the conservation status of its typical species is favourable as defined below. As per the Habitat's Directive, favourable conservation status of a species is achieved when: Population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis. To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC/SPA has been selected. The conservation status of each habitat and species is listed in **Table 4.5** below;

QUALIFYING INTERESTS	CONSERVATION STATUS
<b>Carriggower Bog SAC</b>	
[7140] Transition Mires	Bad
<b>The Murrough Wetlands SAC</b>	
[1210] Annual vegetation of drift lines	Inadequate
[1220] Perennial vegetation of stony banks	Inadequate
[1330] Atlantic salt meadows	Inadequate
[1410] Mediterranean salt meadows	Inadequate
[7210] Calcareous fens	Inadequate
[7230] Alkaline fens	Bad
<b>The Murrough SPA</b>	
[A001] Red-throated Diver ( <i>Gavia stellata</i> )	Amber List
[A043] Greylag Goose ( <i>Anser anser</i> )	Amber List
[A046] Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> )	Amber List
[A050] Wigeon ( <i>Anas penelope</i> )	Amber List
[A052] Teal ( <i>Anas crecca</i> )	Amber List
[A179] Black-headed Gull ( <i>Chroicocephalus ridibundus</i> )	Amber List
[A184] Herring Gull ( <i>Larus argentatus</i> )	Amber List
[A195] Little Tern ( <i>Sterna albifrons</i> )	Amber List

Sourced from the Status of EU Protected Habitats and Species in Ireland (NPWS, 2019a) and Birds of Conservation Concern in Ireland 2020-2026 (G. Gilbert, A. Stanbury & L. Lewis, 2021)

## 5.0 ASSESSMENT OF POTENTIAL IMPACTS TO NATURA 2000 SITES

The threats to the integrity of the European sites and the lists of potential impacts that could arise as a result of the policy groupings, the impacts were grouped into the following categories which will be used to scope the potential impact on the QI of each site within the Zone of Influence. See Tables below (**Table 5.1** - All Qualifying Interests) and (**Table 5.2** - Qualifying Interests Within the Project Zone of Interest). Impacts on a Natura 2000 site can be from the following examples;

- Direct Habitat Loss within European site (development occurring on undeveloped sites).
- Indirect effects on the ecological networks supporting European sites (developments that cut off ecological corridors).
- Indirect threat to quality including changes to surface and ground water quality.
- Direct/Indirect threats to European sites by invasive species.

Under Regulation 49(2) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), save in accordance with a licence granted under paragraph (7), any person who plants, disperses, allows, or causes to disperse, spreads or otherwise causes to grow in any place specified in relation to any plant which is included in Part 1 of the Third Schedule shall be guilty of an offence. Materials containing invasive species such are considered “controlled waste”, and, as such, there are legal restrictions on their handling and disposal. Under Regulation 49(7) of the European Communities (Birds and Natural Habitats) Regulations 2011, it is a legal requirement to obtain a license to move “vector materials” listed in the Third Schedule, Part 3. The following Third Schedule Invasive Flora were recorded in the NBDC (Hectad **O20**); Canadian Waterweed (*Elodea canadensis*), Japanese Knotweed (*Fallopia japonica*), Rhododendron ponticum, Sea-buckthorn (*Hippophae rhamnoides*), Spanish Bluebell (*Hyacinthoides hispanica*) and Three-cornered Garlic (*Allium triquetrum*). There are no Third Schedule Invasives Species within the site boundary. The proposed development will be in compliance with S.I. No. 374/2024 - European Union (Invasive Alien Species) Regulations 2024.



There will be no likely significant disturbance to the habitats of the Carriggower Bog SAC, The Murrough Wetlands SAC and The Murrough SPA or any other Natura 2000 site. The proposed development is for an infill with inert material (soils and subsoil) and will be completed for agricultural use. The site is currently in agricultural use (grassland). There will be no likely significant disturbance of any watercourse such as the Newtownmountkennedy watercourse during the operational phase. The proposed works will require earth works, however impact on air from dust or from noise will not cause a likely significant impact to foraging fauna along the Newtownmountkennedy watercourse or the wider environment. There will be no likely significant impact on the Carriggower Bog SAC, The Murrough Wetlands SAC and The Murrough SPA or any other Natura 2000 site during the operational phase as the development given the nature of the development (agricultural). There will be no spread of invasive species as the operational phase will be an agricultural development that will not require materials that will likely contain invasive species that could potentially impact on the Natura 2000 network. There is no Third Schedule invasive species within the site boundary.



TABLE 5.1 ALL QUALIFYING INTERESTS			
QUALIFYING INTEREST	DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE	POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT	LISTED FOR FURTHER EXAMINATION
<b>Carrigower Bog SAC</b>			
<p>[7140] Transition mires</p> <p>Conservation Objective; To maintain favourable conservation condition of Transition mires in Carrigower Bog SAC.</p>	<p>Transition mires and quaking bogs are physically unstable peat-forming communities, typically occurring as swards or floating mats over saturated peat or open water. There is usually an abundant bryophyte layer. Vegetation ranges from extensive floating mats of small to medium sedges with Sphagnum on open water, to localised basic flushes over acid peat with base-tolerant Sphagnum and brown mosses. Aquatic and semi-aquatic vegetation is frequently present. (NPWS, 2019a).</p> <p>The proposed development is located within the current known distribution, current range, and favourable reference range of this qualifying interest (NPWS, 2019b). The nearest example of this qualifying interest is located approximately 210m from the proposed infill site. Given the distance and lack of direct hydrological connection it is not anticipated that the proposed development would have direct or indirect negative impacts upon this qualifying interest.</p>	<b>Yes</b>	<b>Yes</b>
<b>The Murrough Wetlands SAC</b>			
<p>[1210] Annual vegetation of drift lines</p> <p>Conservation Objective; To restore favourable conservation condition of Annual Vegetation of Drift</p>	<p>Drift lines occur on sandy or shingle substrate at the upper part of the strand, around the high tide mark. Water-borne material including organic matter is deposited on the shore and provides nutrients and a seed source for vegetation. The vegetation predominantly consists of annual species, such as orache species (<i>Atriplex</i> spp.), sea rocket (<i>Cakile maritima</i>) and prickly saltwort (<i>Salsola kali</i>), which are highly specialised to deal with the harsh conditions of high salinity, wind exposure and drought (NPWS, 2019a).</p> <p>The proposed development is located outside the current known distribution, current range, and favourable reference range of this qualifying interest (NPWS, 2019b). The nearest example of this qualifying interest is located approximately 8.5km from the proposed infill site. It is important to</p>	<b>None</b>	<b>No</b>



**TABLE 5.1 ALL QUALIFYING INTERESTS**

QUALIFYING INTEREST	DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE	POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT	LISTED FOR FURTHER EXAMINATION
<p style="text-align: center;">Lines in The Murrough Wetlands SAC</p>	<p>note that due to natural coastal processes, area and distribution are dynamic and subject to change from year to year. There are no conservation objectives set for the QI that are directly associated with water or air quality. Given the distance and lack of direct hydrological connection it is not anticipated that the proposed development would have direct or indirect negative impacts upon this qualifying interest. There will no likely significant impact from water quality, dust or air quality from the proposed infill.</p> <p>There will be no operational phase activities associated with the grassland site that will significantly impact on water or air quality. Therefore, the proposed development screens out for a likely significant impact on this qualifying interest.</p>		
<p>[1220] Perennial Vegetation of Stony Banks</p> <p style="text-align: center;">Conservation Objective; To restore favourable conservation condition of Perennial Vegetation of Stony Banks in The Murrough Wetlands SAC</p>	<p>Vegetated shingle occurs along the coast where shingle (cobbles, pebbles, and gravel <math>\geq 2\text{mm}</math> wide) has accumulated to form elevated ridges or banks above the high tide mark. On the upper beach the pioneer community of this vegetation type can be characterised by perennial species. At the top of the beach and moving inland, a wider range of vegetation types can be found at larger shingle sites, including a lichen-rich community and coastal forms of grassland, heath and scrub. The majority of the grassland and scrub communities are rooted within soil, whereas the pioneer community is usually rooted in gravel, sand or organic matter, such as decomposing seaweed and other plant material (NPWS, 2019a).</p> <p>The proposed development is located outside the current known distribution, current range, and favourable reference range of this qualifying interest (NPWS, 2019b). The nearest example of this qualifying interest is located approximately 8.5km from the proposed infill site. It is important to note that due to natural coastal processes, area and distribution are dynamic and subject to change from year to year. There are no conservation objectives set for the QI that are directly associated with water or air quality. Given the distance and lack of direct hydrological connection it is not anticipated that the proposed development would have direct or indirect negative</p>	<b>None</b>	<b>No</b>



TABLE 5.1 ALL QUALIFYING INTERESTS			
QUALIFYING INTEREST	DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE	POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT	LISTED FOR FURTHER EXAMINATION
	<p>impacts upon this qualifying interest. There will no likely significant impact from water quality, dust or air quality from the proposed infill.</p> <p>There will be no operational phase activities associated with the grassland site that will significantly impact on water or air quality. Therefore, the proposed development screens out for a likely significant impact on this qualifying interest.</p>		
<p>[1330] Atlantic Salt Meadows</p> <p>To restore favourable conservation condition of Atlantic Salt Meadows in The Murrrough Wetlands SAC</p>	<p>Atlantic salt meadows generally occupy the widest part of the saltmarsh gradient. They also contain a distinctive topography with an intricate network of creeks and salt pans occurring on medium and large-sized saltmarshes. Atlantic salt meadows contain several distinctive zones that are related to elevation and submergence frequency. Atlantic salt meadows are distributed around most of the coastline of Ireland (NPWS, 2019a). This habitat is also important for other wildlife including wintering waders and wildfowl (NWPS, 2019b).</p> <p>The proposed development is located outside the current known distribution, current range, and favourable reference range of this qualifying interest (NPWS, 2019b). The nearest example of this qualifying interest is located approximately 11.8km from the proposed infill site. It is important to note that due to natural coastal processes, area and distribution are dynamic and subject to change from year to year. There are no conservation objectives set for the QI that are directly associated with water or air quality. Given the distance and lack of direct hydrological connection it is not anticipated that the proposed development would have direct or indirect negative impacts upon this qualifying interest. There will no likely significant impact from water quality, dust or air quality from the proposed infill.</p> <p>There will be no operational phase activities associated with the grassland site that will significantly impact on water or air quality. Therefore, the proposed development screens out for a likely significant impact on this qualifying interest.</p>	None	No

<b>TABLE 5.1 ALL QUALIFYING INTERESTS</b>			
<b>QUALIFYING INTEREST</b>	<b>DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE</b>	<b>POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT</b>	<b>LISTED FOR FURTHER EXAMINATION</b>
<p>[1410] Mediterranean Salt Meadows</p> <p>To restore favourable conservation condition of Mediterranean Salt Meadows in The Murrrough Wetlands SAC</p>	<p>Mediterranean salt meadows occupy the upper zone of saltmarshes and usually occur adjacent to the boundary with terrestrial habitats. They are widespread on the Irish coastline; however, they are not as extensive as Atlantic salt meadows. There are still areas of unmapped habitat in the country, mostly in the form of narrow fringes along the shoreline in places (NPWS, 2019a).</p> <p>The proposed development is located outside the current known distribution, current range, and favourable reference range of this qualifying interest (NPWS, 2019b). The nearest example of this qualifying interest is located approximately 12.5km from the proposed infill site. It is important to note that due to natural coastal processes, area and distribution are dynamic and subject to change from year to year. There are no conservation objectives set for the QI that are directly associated with water or air quality. Given the distance and lack of direct hydrological connection it is not anticipated that the proposed development would have direct or indirect negative impacts upon this qualifying interest. There will no likely significant impact from water quality, dust or air quality from the proposed infill.</p> <p>There will be no operational phase activities associated with the grassland site that will significantly impact on water or air quality. Therefore, the proposed development screens out for a likely significant impact on this qualifying interest.</p>	<p><b>None</b></p>	<p><b>No</b></p>
<p>[7210] Cladium Fens*</p> <p>To restore favourable conservation condition of Cladium Fens in The Murrrough Wetlands SAC</p>	<p>Cladium fens refers to Cladium mariscus beds which are in contact with species-rich vegetation of small-sedge fens. They occur where there are species-rich open swards of Cladium mariscus with elements of small-sedge fen, fen meadow and tall-herb fen. These may be naturally species-rich or managed to prevent dominance of Cladium mariscus. However, this habitat can also occur where species-poor or mono-dominant stands of Cladium mariscus transition to species-rich alkaline fen vegetation types at their margins or occur in a mosaic of species-poor and species-rich vegetation. This latter situation tends to be more common in Ireland. In these instances, the whole stand of Cladium mariscus, including areas that support species-poor vegetation, qualifies</p>	<p><b>None</b></p>	<p><b>No</b></p>





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<b>QUALIFYING INTEREST</b>	<b>DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE</b>	<b>POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT</b>	<b>LISTED FOR FURTHER EXAMINATION</b>
	<p>as Cladium fen habitat (NPWS, 2019a).</p> <p>The proposed development is located outside the current known distribution, current range, and favourable reference range of this qualifying interest (NPWS, 2019b). The nearest example of this qualifying interest is located approximately 8km from the proposed infill site. The SAC still contains one of the best examples of coastal fen in the country. Given the distance, influence of the coastal environment and lack of direct hydrological connection it is not anticipated that the proposed development would have direct or indirect negative impacts upon this qualifying interest. There will no likely significant impact from water quality, dust or air quality from the proposed infill.</p> <p>There will be no operational phase activities associated with the grassland site that will significantly impact on water or air quality. Therefore, the proposed development screens out for a likely significant impact on this qualifying interest.</p>		
<p>[7230] Alkaline Fens</p> <p>Conservation Objective; To restore favourable conservation condition of Alkaline fens in The Murrrough Wetlands SAC.</p>	<p>Alkaline fens are groundwater-fed, generally peat-forming systems with extensive areas of species-rich small sedge and brown moss communities. They occur in areas where there is a high-water table and a base-rich, often calcareous water supply. Alkaline fens can develop in areas where vertical water movement predominates such as poorly drained basins or hollows and open water transitions or where horizontal water movement is also important (soligenous), such as flushes, valley fens and the lags of raised bogs (2019a). The proposed development is located outside the current known distribution but within the current range and favourable reference range of these qualifying interests (NPWS, 2019b). The full extent of this qualifying interests has not yet been mapped (NPWS, 2024). As per the Conservation Objectives the habitat is associated fens occur mostly between Five Mile Point and Six Mile Point, particularly in the townland of Blackditch, and have also been reported from the Leamore, Grange, Castlegrange and</p>	<p>None</p>	<p>No</p>

TABLE 5.1 ALL QUALIFYING INTERESTS			
QUALIFYING INTEREST	DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE	POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT	LISTED FOR FURTHER EXAMINATION
	<p>Killoughter. The nearest example of this qualifying interest is located approximately 8km of the proposed infill site. The SAC still contains one of the best examples of coastal fen in the country. Given the distance, influence of the coastal environment and lack of direct hydrological connection it is not anticipated that the proposed development would have direct or indirect negative impacts upon this qualifying interest. There will no likely significant impact from water quality, dust or air quality from the proposed infill.</p> <p>There will be no operational phase activities associated with the grassland site that will significantly impact on water or air quality. Therefore, the proposed development screens out for a likely significant impact on this qualifying interest.</p>		
<b>The Murrrough SPA</b>			
Red-throated Diver ( <i>Gavia stellata</i> ) [A001]  Conservation Objective; To maintain the Favourable conservation condition of Red-throated Diver in The Murrrough SPA	Red-throated Divers are the smallest of the divers found in Ireland. Red-throated Diver is a generalist opportunistic feeder but pelagic schooling fish that have a high energetic value might be favoured. Diet is small fish such as sprats, sand eels, codling and flatfish. Other food items include fish spawn, frogs, shrimps, molluscs, water insects and annelids. Very few pairs breed in Ireland, and these are restricted to Co. Donegal. This species is most numerous in Irish coastal waters out of the breeding season. This species is strongly migratory. Highly vulnerable to oil spills, especially in wintering areas where large concentrations form. Roosting is a critical ecological requirement for the wintering population. Red-throated Diver typically roost in similar habitats to where they forage, preferring shallow coastal waters, especially sheltered bays, estuaries and nearshore waters. A lack of sufficient and suitable roosting habitats can result in increased mortality risk.	Yes	Yes
Greylag Goose ( <i>Anser anser</i> ) [A043]	The national population of wild (Icelandic) Greylag Goose wintering in Ireland declined by 21% from 1999 – 2018. Distribution encapsulates the number of locations and area of potentially suitable habitat for the wintering population and its availability for use. The suitability and	Yes	Yes



<b>TABLE 5.1 ALL QUALIFYING INTERESTS</b>			
<b>QUALIFYING INTEREST</b>	<b>DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE</b>	<b>POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT</b>	<b>LISTED FOR FURTHER EXAMINATION</b>
<p>Conservation Objective; To restore the Favourable conservation condition of Greylag Goose in The Murrrough SPA,</p>	<p>availability of habitat areas are likely to vary throughout the season, for example, due to variation in land management practices or the abundance of resources available. This species is primarily a grazer. Key foraging habitats include marshes, grasslands (particularly wet grasslands) and other wetland habitats, cereal stubble, estuaries, and lakes. Key forage resources are herbaceous plant materials accessible at ground level in terrestrial areas or from the surface of water bodies, including roots (of rushes and sedges, for example), grasses and other leaves, stems, tubers (such as potatoes), and (spilled) grain.</p>		
<p>[A046] Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</p> <p>Conservation Objective; To restore the Favourable conservation condition of Light-bellied Brent Goose in The Murrrough SPA</p>	<p>Wintering species mostly found on coastal estuaries. During the winter, it feeds mostly on eelgrass, which grows on muddy estuaries, and also on grasslands, usually when coastal supplies have been depleted at estuarine sites. The impact of any significant disturbance (direct or indirect) to the wintering population will ultimately affect the achievement of targets for population trend and/or spatial distribution. Light-bellied Brent Goose are mostly found on coastal estuaries during the non-breeding (wintering) period. Light-bellied Brent Goose are grazers and are known for their strong preference for foraging in intertidal areas on eelgrass (<i>Zostera</i> spp.). The wintering population can make extensive use of suitable habitats in important areas outside the SPA for foraging and roosting. The extent, availability and quality of these supporting habitats may be of importance for the resilience of the SPA population.</p>	<b>Yes</b>	<b>Yes</b>
<p>[A050] Wigeon (<i>Anas Penelope</i>)</p> <p>Conservation Objective; To maintain the Favourable</p>	<p>Wintering species shows a preference for coastal saltmarshes, freshwater, brackish and saline lagoons, flooded grasslands, estuaries, intertidal mudflats and other sheltered marine habitats. Its diet is leaves, seeds, stems and root bulbs of pond weeds and fine grasses. This dabbling duck feeds primarily on aquatic vegetation, at surface level in waterbodies or at ground level in wetland habitats. Wigeon rely primarily on wetlands or waterbodies for roosting. Roosting is a critical ecological requirement for the wintering population. When roosting, this species typically</p>	<b>Yes</b>	<b>Yes</b>



**TABLE 5.1 ALL QUALIFYING INTERESTS**

QUALIFYING INTEREST	DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE	POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT	LISTED FOR FURTHER EXAMINATION
conservation condition of Wigeon in The Murrough SPA	utilises a similar range of habitats as noted for foraging. The wintering population can make extensive use of suitable habitats in important areas outside the SPA for foraging and roosting.		
<p>[A052] Teal (<i>Anas crecca</i>)</p> <p>Conservation Objective; To maintain the Favourable conservation condition of Teal in The Murrough SPA</p>	<p>Wintering species along the coast on saline or brackish lagoons with abundant submergent vegetation, saltmarshes, tidal creeks, intertidal mudflats, river deltas, estuarine waters and sheltered coastal bays with a preference for marshes with mud flats. Its diet is seeds of aquatic plants, grasses, sedges and agricultural grain. Teal utilise a wide range of foraging habitats and have a broad diet. Key food sources are small seeds of sedges, grasses and aquatic vegetation; aquatic invertebrates, including larvae, such as molluscs and crustaceans; as well as algae. Roosting is a critical ecological requirement for the wintering population. When roosting, Teal primarily utilise permanent waterbodies, marsh, wide ditches, wet grassland and wetlands.</p>	Yes	Yes
<p>[A179] Black-headed Gull (<i>Chroicocephalus ridibundus</i>)</p> <p>Conservation Objective; To maintain the Favourable conservation condition of Black-headed Gull in The Murrough SPA</p>	<p>Wintering species is most common in coastal habitats and tidal inshore waters, showing a preference for inlets or estuaries with sandy or muddy beaches, and generally avoiding rocky or exposed coastlines. It may also occur inland during this season, frequenting ploughed fields, moist grasslands, urban parks, sewage farms, refuse tips, reservoirs, ponds and ornamental waters. Its diet consists predominantly of aquatic and terrestrial insects, earthworms and marine invertebrates (e.g. molluscs, crustaceans and marine worms) although it may also take fish (usually dead or sick), rodents, and agricultural grain. Roosting is a critical ecological requirement for the wintering population. Black-headed Gull rely primarily on wetlands or waterbodies for roosting. Open areas adjacent to such areas may also be important. Daytime roosting is also a common behaviour, where birds minimise activity levels to conserve energy, while benefitting from the vigilance of other flock members. The wintering population can make extensive use of suitable habitats in important areas outside the SPA for foraging and roosting.</p>	Yes	Yes



TABLE 5.1 ALL QUALIFYING INTERESTS			
QUALIFYING INTEREST	DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE	POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT	LISTED FOR FURTHER EXAMINATION
[A184] Herring Gull ( <i>Larus argentatus</i> )  Conservation Objective; To maintain the Favourable conservation condition of Herring Gull in The Murrrough SPA	During the non-breeding season, Herring Gull are widely distributed in Ireland and utilise a broad range of habitat types across marine, freshwater and terrestrial environments, from coastal waters (mainly in the littoral and shallow sub-littoral zone) to inland waterbodies, farmland and a range of human-altered habitats. The species is omnivorous and employs a mix of foraging strategies, including predation, scavenging and kleptoparasitism. When foraging, the species can target a range of sources in both marine and terrestrial areas, including natural (e.g. fish, crustaceans, earthworms) and anthropogenic (e.g. refuse in urban areas). During the non-breeding season, the species typically forages within 100km of roost sites. Roosting is a critical ecological requirement for the wintering population. Similar to foraging habitat preferences, Herring Gull can use a variety of roosting habitats across marine, terrestrial and freshwater environments, including a mixture of anthropogenically modified and natural habitats	Yes	Yes
[A195] Little Tern ( <i>Sterna albifrons</i> )  Conservation Objective; To maintain the Favourable conservation condition of Little Tern in The Murrrough SPA	Breeding species where the nest is a bare scrape positioned on the ground in less than 15 % vegetation cover on beaches of sand, pebbles, shingle, shell fragments, coral fragments or rock above the high tideline and often only a few metres away from shallow clear water. Alternatively, in more marshy habitats (e.g. coastal saltmarshes), the species may build a nest of shells or vegetation. The species nests in small loose colonies, with neighbouring nests usually placed more than 2 m apart. Little tern nest in well-camouflaged shallow scapes on sand and shingle beaches, spits or inshore islets. The Little Tern has the smallest foraging range of seabirds breeding in Ireland. Waters ecologically connected to the colony provide an important foraging area for this species.	Yes	Yes
[A999] Wetlands  Conservation Objective;	Any significant loss to the wetland habitat within the SPA would likely negatively impact the regularly occurring migratory waterbirds that utilise this wetland habitat. Such loss of wetland habitat would likely reduce the diversity and abundance of waterbird species that the wetland can support. Any significant impact on the quality, functioning and accessibility of the wetland	Yes	Yes



<b>TABLE 5.1 ALL QUALIFYING INTERESTS</b>			
<b>QUALIFYING INTEREST</b>	<b>DESCRIPTION AND LOCATION IN THE NATURA 2000 SITE RELATIVE TO APPLICATION SITE</b>	<b>POTENTIAL FOR IMPACTS FROM THE DEVELOPMENT</b>	<b>LISTED FOR FURTHER EXAMINATION</b>
To maintain the Favourable conservation condition of Wetland habitats in The Murrough SPA	habitat within the SPA would likely negatively impact the regularly occurring migratory waterbirds that utilise this wetland habitat. Impacts on wetland quality, functioning and accessibility would likely reduce the diversity and abundance of waterbird species that the wetland can support. This habitat is approximately 7.8km from the infill site.		

Additional information sourced from **Birdwatch Ireland** and **Birdlife International**.

<b>TABLE 5.2 QUALIFYING INTERESTS WITHIN THE ZONE OF INFLUENCE</b>			
<b>CONSERVATION OBJECTIVES</b>	<b>THREATS AND PRESSURES (NPWS 2019)</b>	<b>KEY ENVIRONMENTAL CONDITIONS</b>	<b>POTENTIAL IMPACTS FROM THE DEVELOPMENT</b>
<b>Carriggower Bog SAC</b>			
[7140] Transition mires	<ul style="list-style-type: none"> <li>• Conversion to forest from other land uses, or afforestation (High)</li> <li>• Mixed source pollution to surface and ground waters (High)</li> <li>• Drainage (High)</li> <li>• Modification of hydrological flow (High)</li> <li>• Abandonment of grassland management (Medium)</li> </ul>	<p>The Conservation Objectives for this qualifying interest include water and soil quality attributes. Mesotrophic and Water Framework Directive (WFD) 'good' status targets apply.</p> <ul style="list-style-type: none"> <li>• Maintain soil pH and nutrient status within natural ranges.</li> <li>• In order for peat to form, water levels need to be slightly below or above the soil surface for c.90% of the time.</li> <li>• Maintenance of a permanently high-water level, remaining close to the peat surface all year, with water level</li> </ul>	<p><b>No</b></p> <p>No potential for a likely significant impact on water quality as there is no potential for significant surface water runoff or contamination from the proposed development. There is no drainage ditch or watercourse within the vicinity of the infill site.</p>



**TABLE 5.2 QUALIFYING INTERESTS WITHIN THE ZONE OF INFLUENCE**

CONSERVATION OBJECTIVES	THREATS AND PRESSURES (NPWS 2019)	KEY ENVIRONMENTAL CONDITIONS	POTENTIAL IMPACTS FROM THE DEVELOPMENT
	<ul style="list-style-type: none"> <li>• Intensive grazing or overgrazing by livestock (Medium)</li> <li>• Peat extraction (Medium)</li> <li>• Abstraction from groundwater, surface water or mixed water (Medium)</li> <li>• Natural succession resulting in species composition change (Medium)</li> </ul>	<p>fluctuations within natural ranges, is required for this wetland habitat.</p> <ul style="list-style-type: none"> <li>• Maintenance, both within and surrounding the habitat, of topography and flow patterns within natural ranges is essential in order to ensure the hydrological integrity of this wetland habitat.</li> <li>• Maintain appropriate water quality to support the natural structure and functioning of the habitat.</li> </ul>	<p>There will be no changes to hydrological flow (surface or groundwater).</p> <p>There is mature woodland along the boundary of agricultural field to the north and mature treelines. There will be no likely significant impact from dust that would impact on this habitat given the distance and woodland barrier.</p> <p>There will be no operational phase activities (grassland) that will impact on this habitat.</p>
<b>The Murrough SPA</b>			
<ul style="list-style-type: none"> <li>• <b>Red-throated Diver</b> (<i>Gavia stellata</i>) [A001]</li> <li>• <b>Greylag Goose</b> (<i>Anser anser</i>) [A043]</li> <li>• <b>Light-bellied Brent Goose</b></li> </ul>	<ul style="list-style-type: none"> <li>• Deterioration &amp; loss of habitat</li> <li>• Hunting</li> <li>• Over fishing of food source</li> <li>• Impact on water quality</li> <li>• Disturbance of nesting birds</li> <li>• Residential or recreational activities and structures generating marine pollution</li> </ul>	<p>A significant impact on water quality could indirectly impact upon these qualifying interests by causing a reduction in prey populations and availability.</p> <p style="text-align: center;"><u>Key Conservation Measures</u></p> <ul style="list-style-type: none"> <li>• Reduce/eliminate marine pollution from marine aquaculture.</li> </ul>	<p>No potential for a likely significant impact on water quality as there is no potential for significant surface water runoff or contamination from the proposed infill development.</p>



**TABLE 5.2 QUALIFYING INTERESTS WITHIN THE ZONE OF INFLUENCE**

CONSERVATION OBJECTIVES	THREATS AND PRESSURES (NPWS 2019)	KEY ENVIRONMENTAL CONDITIONS	POTENTIAL IMPACTS FROM THE DEVELOPMENT
<p>(<i>Branta bernicla hrota</i>) [A046]</p> <ul style="list-style-type: none"> <li>• <b>Wigeon</b> (<i>Anas penelope</i>) [A050]</li> <li>• <b>Teal</b> (<i>Anas crecca</i>) [A052]</li> <li>• <b>Black-headed Gull</b> (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>• <b>Herring Gull</b> (<i>Larus argentatus</i>) [A184]</li> <li>• <b>Little Tern</b> (<i>Sterna albifrons</i>) [A195]</li> <li>• <b>Wetland and Waterbirds</b> [A999]</li> </ul>	<p>Long term SPA population trend is stable or increasing – to be maintained or restored for all species listed for this SPA.</p>	<ul style="list-style-type: none"> <li>• Protect from hunting and disturbance.</li> <li>• Protect habitat for foraging and nesting birds.</li> <li>• Reduce/eliminate point source pollution to surface or ground waters from industrial, commercial, residential and recreational areas and activities.</li> <li>• No disturbance of roosting or nesting birds.</li> <li>• No removal of habitat.</li> <li>• No significant impact on the quality or functioning of the wetland habitat within the SPA, other than that occurring from natural patterns of variation.</li> </ul>	<p>Waterfowl are not likely to forage and nest in/around the proposed infill site. During site survey no waterfowl or grazing geese were observed resting or foraging in proximity to the infill.</p> <p>There will be no operational phase activities associated with the proposed development to significantly impact on these protected birds.</p>





## 6. IN COMBINATION EFFECTS

Plans, programmes, and projects related to sectors outside of local authority land use planning will also undergo Appropriate Assessment as required. Such procedures associated with this are overseen by the relevant governmental competent authority. The proposed development does not contain any habitats or species associated with the Carriggower Bog SAC, The Murrough Wetlands SAC and The Murrough SPA or any other protected site. There will be no impact on water quality, air quality, disturbance to species or any other significant impact that would cause a significant effect on the qualifying interests of these protected sites. On the Wicklow County Council planning system there are residential and agricultural developments within the vicinity of proposed development. As there are no anticipated significant risks from the proposed development and the type of works, given the scale and nature of recent nearby developments, the type of proposed development (infill for agricultural) it is considered that there would be no potential in-combination that will cause a significant impact to the Natura 2000 network. The following plans and projects were reviewed and considered for in-combination effects with the proposed development. All projects have been granted within the previous 5 years.

<b>TABLE 6.1: DEVELOPMENTS IN PROXIMITY</b>			
<b>Application No.</b>	<b>Development Type</b>	<b>Outcome</b>	<b>Approx. Distance from Development</b>
2460441	The construction of a new dwelling, new garage, wastewater treatment unit and polishing filter, new well, new domestic entrance onto existing laneway which leads to an existing entrance onto the public road and associate works	Submitted for planning	70m NW
22672	1) construction of new single storey dwelling, (2) on site effluent treatment system, (3) bored well (4) new entrance to site from existing access laneway from public road, (5) associated works	Granted/ Conditional.	135m N
19498	Straw and grain storage farm shed with a total area of circa 430 sqm and include an overground rainwater storage tank all together with associated site works	Granted/ Conditional.	207m S
19116	Slatted cattle farm shed with a total area of c2120 sqm to include over ground rainwater storage tanks all together with associated site works	Granted/ Conditional.	290m SW



TABLE 6.1: DEVELOPMENTS IN PROXIMITY			
Application No.	Development Type	Outcome	Approx. Distance from Development
20182	Extensions / elevational changes to existing 147.2 sqm detached bungalow, proposed works include (1) demolition of existing 9.3 sqm rear sunroom, proposed extensions totalling 144 sqm to include new front porch, two storey side extension, raising of existing ridge level to provide first floor habitable dormer accommodation, proposed upgrade of on-site wastewater system, all of the above works together with ancillary site works	Granted/ Conditional.	380m NE
2271	Dwelling, garage, installing a new entrance on to public road, wastewater treatment unit, soil polishing filter, new well and associate works	Granted/ Conditional.	400m NE
19698	Dwelling, well, secondary treatment system with percolation area, all to current EPA guidelines, garage, entrance and all associated site works	Granted/ Conditional.	460m NE

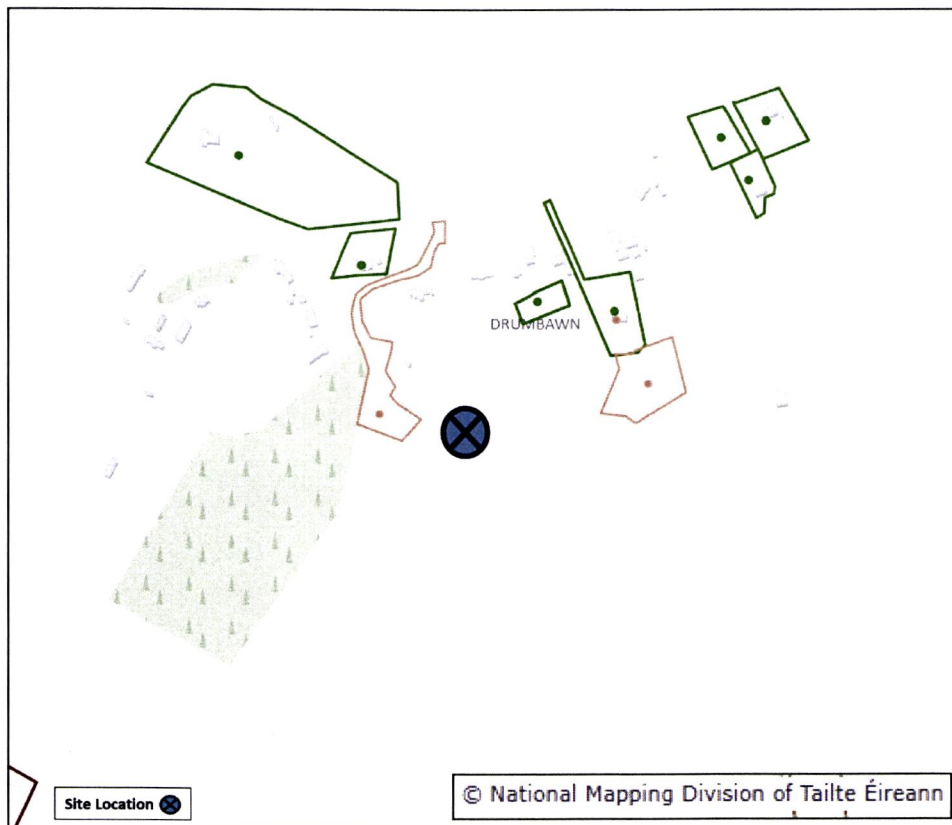


Figure 6.1: Developments within proximity to the proposed development



The Water Framework Directive (WFD) (2000/60/EC) requires all Member States to protect and improve water quality in all waters so that we achieve good ecological status. It applies to rivers, lakes, groundwater, and transitional coastal waters. The Directive requires that management plans be prepared on a river basin basis. Catchments.ie ([www.catchments.ie](http://www.catchments.ie)) is an online resource tool to support the protection and aid in the improvement of the water environment from a water quality perspective and ensure compliance with the WFD. The Ovoca-Vartry catchment includes the Newtownmountkennedy watercourse (NEWTOWNMOUNTKENNEDY\_010). *This catchment includes the area drained by the Rivers Avoca and Vartry and by all streams entering tidal water between Sorrento Point, Co. Dublin and Kilmichael Point, Co. Wexford, draining a total area of 1,247km<sup>2</sup>. The largest urban centre in the catchment is Bray. The other main urban centres in this catchment are Dun Laoghaire-Rathdown, Arklow, Wicklow Town, Rathnew, Newtown Mount Kennedy, Greystones, Delgany and Kilcoole. The total population of the catchment is approximately 179,100 with a population density of 144 people per km<sup>2</sup>. The higher areas of the Wicklow Mountains are underlain by granite bedrock while metamorphic slates and quartzites underly the eastern coastal part of the catchment.* The Sub catchment NEWCASTLE[WICKLOW]\_SC\_010 has significant pressures from (i) Domestic Waste Water, (ii) Industry, (iii) Urban Waste Water, (iv) Urban Run-off and (v) Anthropogenic Pressures. There will be no significant impact on water quality (surface or ground). There is no associated waste water from the proposed development. During the infill phase of project, a deterioration in water quality can arise through the release of suspended solids during soil disturbance works and the release of hydrocarbons (fuels and oils). A deterioration in water quality does not have the potential to have a likely significant impact upon the qualifying interests of the Carriggower Bog SAC as there is no direct hydrological connection from the proposed development site. There is no direct hydrological connection with The Murrough Wetlands SAC and The Murrough SPA. Any potential sediment that would hydrologically travel to these coastal protected sites would not cause a significant impact given that sedimentation is present in wetland habitats and will be significantly influenced by the Southwestern Irish Sea - Killiney Bay (HA10).

Air emissions from the proposed development would mainly be from the machinery during the constructional/infill phase with no heavy industrial activities to take place at the proposed site. During infill works, the potential impact on air quality would not be significant due to the

type of development and low dust from the infill of inert material (clean soil, sub soil and stone) over the lifetime of the site. This material would be transported to the site by licenced vehicles. It is considered that there would be no cumulative air quality impacts which would pose a significant risk to designated sites. There are no Third Schedule invasive species within or adjacent the site boundary. The risk of invasive species being introduced onto the site during the infill phase of the project is considered to be low, with no import of materials with the potential to contain invasive flora species. Any topsoil will be thoroughly checked and screened before being imported into the site. The infill site will re-used for agricultural use.

Therefore, the risk of the proposed development impacting upon water quality, air quality or disturbance would not cause a likely significant impact on water quality of the Natura 2000 Network.

## **7.0 SCREENING STATEMENT AND CONCLUSIONS**

The proposed development was screened to determine whether or not its implementation would result in significant adverse impacts on the Natura 2000 site network. It has been determined that the plan would not result in significant impacts on Natura 2000 sites and, therefore, Appropriate Assessment is not required. There is no significant Source-Pathway-Receptor with Carriggower Bog SAC, The Murrough Wetlands SAC and The Murrough SPA and there is no potential for the proposed development to significantly impact on the habitats and species of these sites or any other SAC and SPA. There will be no significant impact on water quality, air quality, disturbance to species or spread of invasive species from the proposed development site to Carriggower Bog SAC, The Murrough Wetlands SAC and The Murrough SPA or any other SAC or SPA. The proposed development as outlined in Section 1.1 will prevent any likely significant impact on the water quality of Newtownmountkennedy watercourse and therefore no significant impact on any protected habitat or species downstream.

Accordingly, having carried out the Stage 1 Appropriate Assessment Screening, the competent authority may determine that a Stage 2 Appropriate Assessment of the Development is not required as it can be excluded, on the basis of objective scientific information following screening under this Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, that the proposed development, individually or in combination with other plans or projects, will not have a significant effect on any European site.

This report presents a Stage 1 Appropriate Assessment Screening for the development, outlining the information required for the competent authority to screen for appropriate assessment and to determine whether or not the development, either alone or in combination with other plans and projects, in view of best scientific knowledge, is likely to have a significant effect on any European or Natura 2000 site. It is considered that there would be no significant risk of negative impact, either alone or in combination with other plans or projects, to the integrity of the Natura 2000 network. Therefore, a Natura Impact Statement is not required. It can be objectively concluded that no significant effects arising from the development are likely to occur in relation to Carriggower Bog SAC (Site Code: 000716), The Murrough Wetlands SAC (Site Code: 002249) and The Murrough SPA (Site Code: 004186) or indeed any other Natura 2000 site in Ireland.

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## 9.0 APPENDIX – ECOLOGICAL PHOTO LOG AND SITE LEVELS



Plate 1: View of site facing northeast



Plate 2: View of site facing east



Plate 3: View of site along north boundary



Plate 4: View of site facing west



Plate 5: Exposed rock along northern section of site

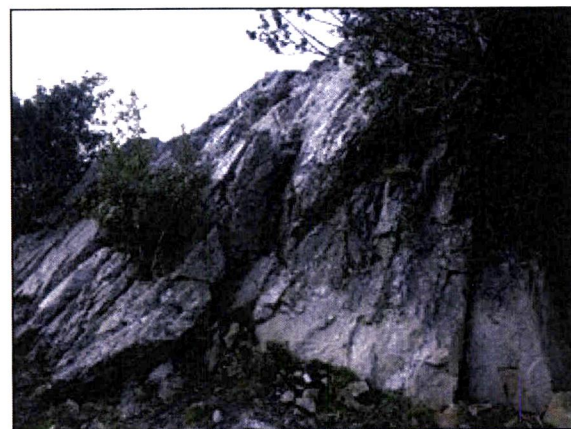


Plate 6: Exposed rock along northern section of site



**FOR APPROVAL**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

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**NOTES**

1. SEE PLAN FOR EXISTING AND PROPOSED SURFACE ELEVATIONS.

2. SEE PLAN FOR CUT AND FILL VOLUMES.

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**MEINHARDT**

INFILL DEVELOPMENT NTMK

CUT & FILL ANALYSIS PLAN

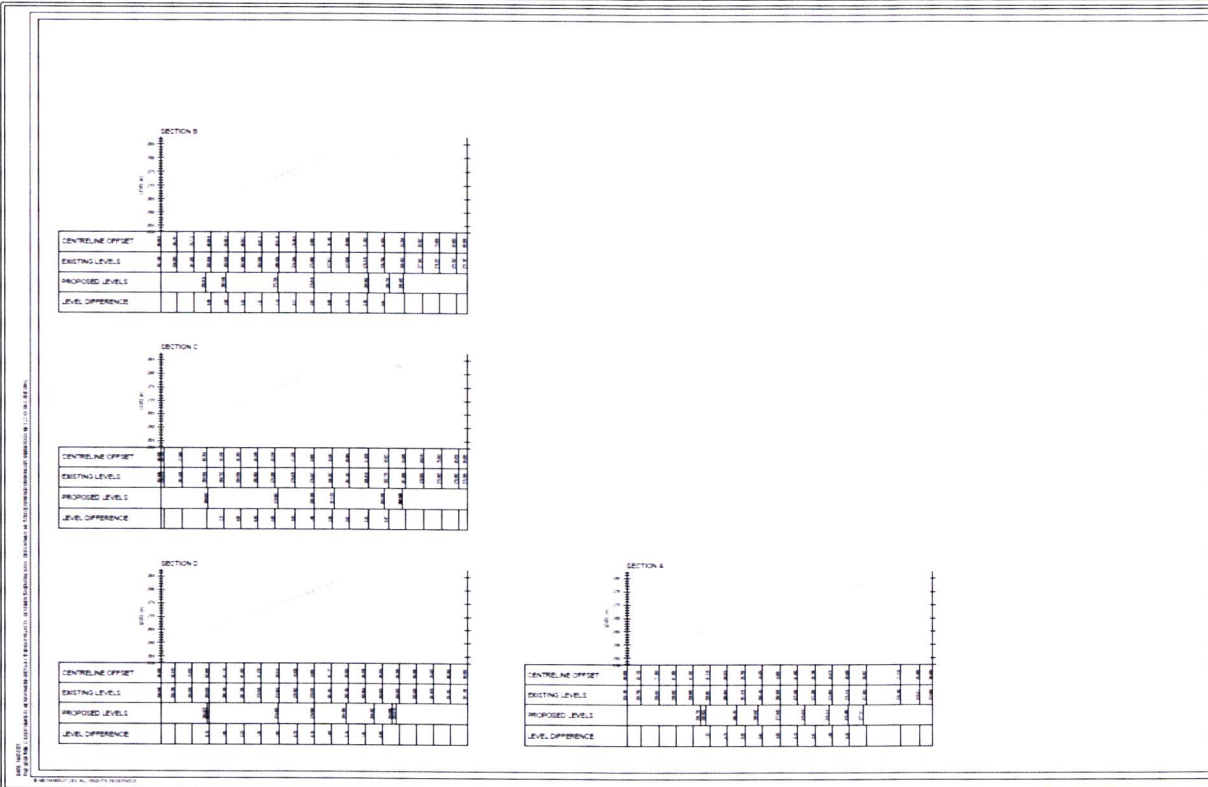
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**NOTES**

1. SEE PLAN FOR EXISTING AND PROPOSED SURFACE ELEVATIONS.

2. SEE PLAN FOR CUT AND FILL VOLUMES.

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**MEINHARDT**

INFILL DEVELOPMENT NTMK

CUT & FILL ANALYSIS SECTIONS

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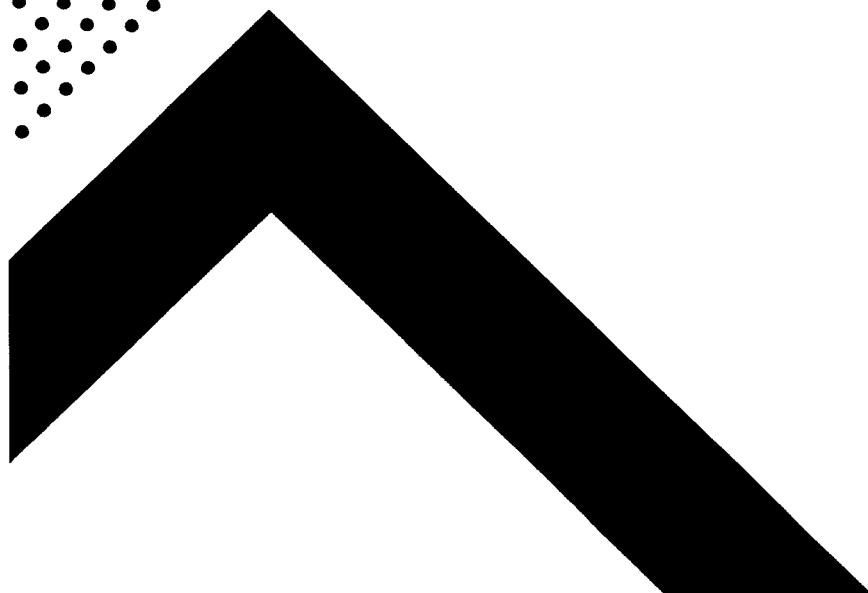
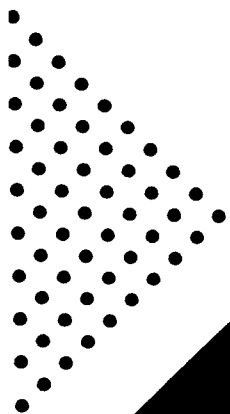




# Section 5 Reference Report

Drumbawn, Newtown Mount Kennedy

6 March 2025



MACCABE DURNEY  
BARNES  
Planning Environment Economics

**Document status**

**Job Number: 2296**

**Job Title: Section 5 Reference at Drumbawn, Newtown Mount Kennedy**

<b>Version</b>	<b>Purpose of document</b>	<b>Authored by</b>	<b>Reviewed by</b>	<b>Approved by</b>	<b>Review date</b>
<b>0</b>	Review	MB	JB	JB	06/03/2025

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## 1. INTRODUCTION

On behalf of Pat Cooke of Tithewer, Ballyduff Cross, Co. Wicklow, we, MacCabe Durney Barnes have been appointed to prepare this Section 5 reference report at lands located in Drumbawn, Newtown Mount Kennedy, Co. Wicklow.

This is a Section 5 Reference application in relation to the following:

*Whether the infilling and reprofiling of land by 25,000 tonnes of by-product (non-waste) is or is not development or is or is not exempted development.*

## 2. SITE CONTEXT

The subject lands are located in the townland of Drumbawn, to the west of Newtown Mount Kennedy, east of the Wicklow Mountains, north of the Vartry Reservoir and south of the Carriggower Bog SAC (Site Code 000716). The site is located c. 4.5km from Newtown Mount Kennedy. Access to the site is via the R765 road. The subject site forms part of the applicant's landholding. There are a number of detached units towards the north of the site and Hilltop Sporting Club to the south of the site. The landscape consists of varied topography, including open fields, wooded areas, and natural slopes.



*Figure 1: Site Context*

As illustrated in the below image, the existing topography differ greatly across the site. The proposed works seek to regrade and redistribute land across the site to create a more uniform topography, enhancing its suitability for future farm related development and improving overall accessibility. Currently, the site features significant variations in elevation, which present challenges for both access and potential future agriculture use.

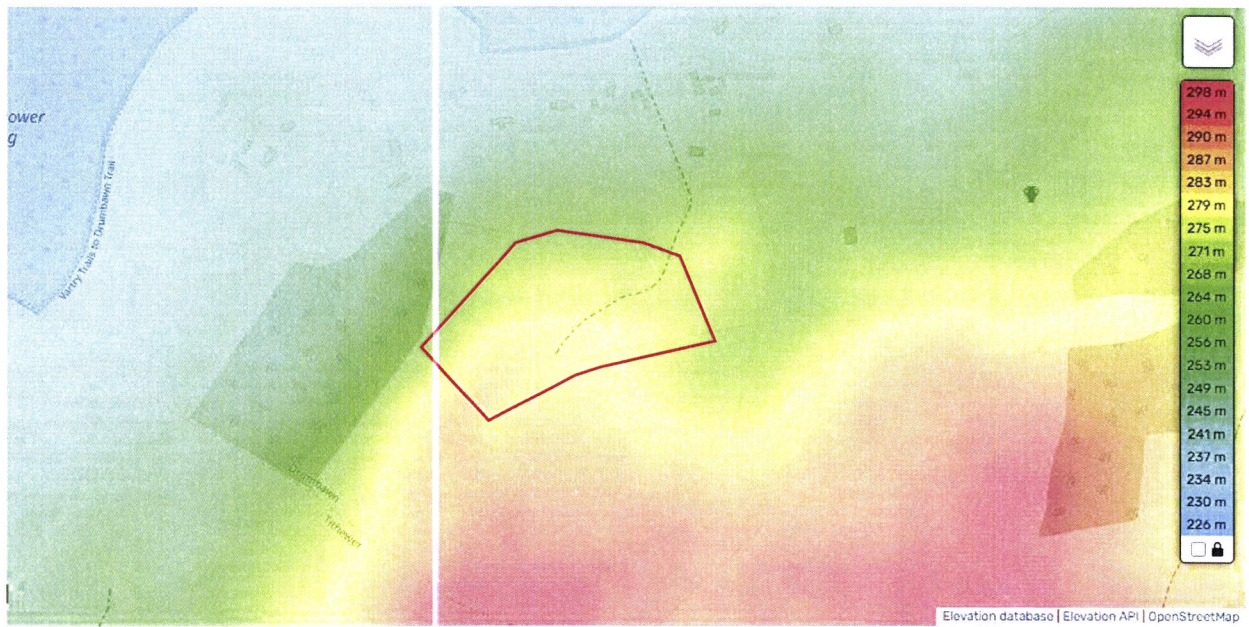


Figure 2: Illustration of Existing Topography

### 3. PLANNING HISTORY

There is no planning history on the site. However, a number of recent planning applications surrounding the site are noted below.

- PA. Reg. Ref. 2460441 the proposed development consists of the construction of a new dwelling, new garage, wastewater treatment unit and polishing filter, new well, new domestic entrance onto existing laneway which leads to an existing entrance onto the public road and associate works. A decision is due 15/03/25.
- PA. Reg. Ref. 22672 the permitted development consists of the construction of a new single storey dwelling and new entrance to site from existing access laneway from the public road and associated site services. Permission was granted 10/08/2022.
- PA. Reg. Ref. 19498 the permitted development consists of the construction of a straw and grain storage farm shed with a total area of c. 430 sqm. Permission was granted 20/06/2024.
- PA. Reg. Ref. 20182 the permitted development comprised the extension and elevational changes to an existing dwelling and demolition and extension works. Permission was granted 09/04/2020.
- PA. Reg. Ref. 2271 the permitted development consists of the construction of a dwelling ad associated site works. Permission was granted 06/07/2022.
- PA. Reg. Ref. 19116 the permitted development consists of the construction of a slatted cattle farm shed and rainwater storage tanks. Permission was granted 21/03/2019.
- PA. Reg. Ref. 18114 the permitted development consists of the construction of a dwelling and associated site services. Permission was granted 02/04/2018.

## 4. SECTION 5 REFERENCE

### 4.1 Statutory Provisions

#### 4.1.1 Planning and Development Act, 2000 (as amended)

##### 4.1.1.1 Interpretations

Section 2(1) states: -

*'development' has the meaning assigned to it by Section 3, and 'develop' shall be construed accordingly;*

*"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature for the kept for the production of food , wool, skins of fur, of 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.*

*"Alterations" - alterations include (a) the plastering or painting or the removal of plaster or stucco or the replacement of a door, window or roof that materially alters the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structure.*

*"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"*

*"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—*

*(a) where the context so admits, includes the land on, in or under which the structure is situate, and "Use" in relation to land does not include the use of the land for the carrying out of any works thereon.*

##### 4.1.1.2 Development

Section 3 (1) states:-

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

##### 4.1.1.3 Exempted Development

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

*(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;*

*(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works that affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.*

*(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.*



Section 1 of the Land Reclamation Act, 1949, lists activities that constitute "works" under the Act and these include the term "land reclamation".

### 4.1.2 Planning and Development Regulations, 2001 (as amended)

Under article 6(3), the Regulations state that subject to article 9, rural development

*"of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1."*

#### 4.1.2.1 Exempted Development

Article 8 of the Regulations, provides that certain works specified in a drainage scheme shall be exempted development. These include in 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'.

Article 9 of the Regulations, sets out a number of circumstances in which development to which article 6 relates shall not be exempted development.

In summary, this includes:

- Where the development would interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan (article 9(1)(a)(vi))
- Comprise alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan (article 9(1)(a)(vii)).
- It comprises development for which the Board or a planning authority is the competent authority, and which would require appropriate assessment (article 9(1)(a)(viiB)).
- If the development is of a type to which Part 10 applies, environmental impact assessment (article 9(1)(c)).

## 4.2 Waste Management

The Waste Framework Directive (2008/98/EC, as amended by Directive (EU)2018/851) provides for uncontaminated excavated soil and stone and other naturally occurring materials (used on sites other than the one from which there were excavated) to be considered in accordance with the definition of waste and the provisions on by-products and on end-of-waste status. The Directive is transposed in Ireland by the European Union (Waste Directive) Regulations 2011-2020 and Article 27 of those Regulations sets out the requirements and conditions for a material to be regarded as a by-product and not as a waste.

Article 27 of the European Communities (Waste Directive) Regulations, 2011, allows an 'economic operator' to decide under certain circumstances that a material is a by-product and not a waste. Decisions by economic operators under this article are required to be notified to the EPA and the Agency is entitled to decide that a notified by-product should in fact be considered as waste. Section 27(1) of the Regulations states that a

substance, resulting from a production process, may be regarded as not being waste but as a by-product if the following conditions are met:

- (a) further use of the substance or object is certain;
- (b) the substance or object can be used directly without any further processing other than normal industrial practice;
- (c) the substance or object is produced as an integral part of a production process; and
- (d) further use is lawful in that the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

### 4.3 Is or is not development

Having regard to the statutory definition of the terms 'works' and 'development', referred to above, which define works as, amongst other things, any act or 'operation of construction' or 'alteration' and development as the 'carrying out of works on land', it is considered that the filling in a depression and reprofiling of the land form by importation of uncontaminated by-product would comprise both 'works' and 'development', as defined in the Planning and Development Act, 2000 (as amended).

### 4.4 Is or is not exempted development

Section 4 of the Planning and Development Act 2000 (as amended) sets out certain categories of development which are exempted. Section 4(1)(l) provides that development consisting of the carrying out of any of the works referred to in the Land Reclamation Act 1949 (excluding the reclamation of estuarine marsh land or callows), is exempted development. Section 1 of the Land Reclamation Act, 1949, lists activities that constitute 'works' under the Act and these 'land reclamation'. However, the term land reclamation is not defined in the Act of 1949 but it is referred to and described in Article 8 of the Planning and Development Regulations, 2001 (as amended). Specifically, article 8C states:

*'Land reclamation works (other than reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.'*

The proposal comprises the infilling and reprofiling of land within the applicant's farm holding. The lands are not wetland in nature. The works consist of land reclamation given the topography at this location, the proposal will enable the applicant efficient usage of these lands.

The proposed development should be assessed in accordance with the EPA Guidance to Planners, Planning Authorities and An Bord Pleanála on the Management of Excess Soil and Stone from Developments and Guidance on Soil and Stone By-products. Please refer to Appendix A for the guidance.

The conditions for a material to be a by-product are listed and responded to below:

- (a) Further use of the substance or object is certain;

#### **Response**

The applicant proposes to use the product to reprofile and infill a depression on the farm holding land.

## Section 5 Reference Report

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*(b) The substance or object can be used directly without any further processing other than normal industrial practice;*

### **Response**

The soil is uncontaminated and can be used directly on the application site without any further processing.

*(c) The substance or object is produced as an integral part of the production process; and,*

### **Response**

As per the EPA Guidance, the applicant with the material producer will clearly demonstrate that the material to be notified is a by-product.

*(d) Further use is lawful in that the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.*

### **Response**

To comply with this criterion, the applicant has submitted this section 5 reference in order demonstrate that the proposal is considered exempted development, which is a pre-requisite when submitting an Article 27 notification to the EPA in respect of the by-product material.

Ultimately, it is within the EPA's remit to determine whether inert soil is deemed as a by-product, and not of the Planning Authority.

Furthermore, it is considered that works undertaken are also exempt under the provisions of Section 4(1)(h) *"development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure to render the appearance inconsistent with the character of the structure or neighbouring structure"*.

*"Structure"* under the Act means any building, structure, or other thing constructed or made on, in or under any land or any part of a structure so defined and

(a) where the context so admits include the land on, in or under which the structure is situate.

In this regard, we note ABP Ref. 301484-18 case which found that the works were development and were exempted development, in response to the question of *"whether the laying of crushed stone to a depth of 100 millimetres and the overlaying of gravel at a depth of 50 millimetres to accommodate a storage area for on-going works at Gartnaneane Wind Farm, in the townlands of Gartnaneane, Bailieborough, County Cavan is or is not development or is or is not exempted development"*

The Inspector found:

*"It is clear in my opinion that the above definition which includes the act of "excavation" falls within the definition of structure. Furthermore, the infill of gravel material on site as proposed could reasonably be construed as "or other thing constructed or made on, in or under any land" as set out in the definition of "structure". The works proposed to be undertaken could in my view be classed as a structure as defined in the Act. Therefore, in the context of Section 4(1)(h) it could be reasonably argued that the provision of a small area of hardstanding for storage would not materially affect the external appearance of the structure i.e. the lands in question or the wind turbines nor would they render the appearance inconsistent with the character of the structure or neighbouring structure having regard to the overall size of the site, the existence of agricultural buildings, access tracks, turbines and electricity substations all of which are located in the vicinity of the site."*

The Board Order further stated:

*"...the excavation and layout of crushed stone and gravel constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h) of the Planning and Development Act 2000, as amended, and having regard to the nature, scale, extent and location of the works, these works do not materially affect the external appearance of the existing windfarm so as to render the appearance inconsistent with the character of the windfarm and that of neighbouring structures,"*

In relation to the subject works, the works do not materially affect the external appearance of the structure, as the appearance of this overall area is effectively unchanged, notwithstanding the infilling and redistribution of soil given the differing surface levels.

The works do not render the appearance inconsistent with the character of the structure or of neighbouring structures, The character of the structure will remain and there is no change to the broad types of materials deposited.

Having regard to the above, we submit that whilst the works would lead to limited changes in appearance, such changes can be entirely allowable within the scope of planning exemptions.

### 4.5 Summary

Having regard to the nature, scale, extent and context of works proposed, we submit that it is considered that the works fall under the exemption provided for in Section 4(1)(h) and Section 4(1)(l) of the Planning and Development Act 2000 (as amended). In summary,

- The infilling and reprofiling of by produce (non-waste) constitute 'works' and 'development' as defined by Section 2(1) and Section 3(1) respectively of the Planning and Development Act 2000 (as amended)
- The classification of excess soil as 'by-product' is under the remit of the EPA to determine.
- The infilling and reprofiling activity proposed constitutes land reclamation on the applicant's farm holdings. The activity is consistent with the provisions of section 4(1)(l) of the Planning and Development Act, 2000, as amended.
- The infilling and reprofiling constitutes development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure. The character of the structures will remain unchanged. This activity is consistent with the provisions of section 4(1)(h) of the Planning and Development Act, 2000, as amended.

## **5. ENVIRONMENTAL ASSESSMENT**

### **5.1 Environmental Impact Assessment**

An EIA Screening Report has been prepared by Ross Swift Ecology Ltd in respect of the proposed development subject of this section 5 reference.

It is considered that the proposed development does not come within the scope of any class or project prescribed in Schedule 5 of the Regulations (SI 600 of 2001 as amended). Having considered the nature, scale and location of the proposal, having regard to the characteristics and location of the proposed development, and having regard to the characteristics of potential impacts it is considered that the project is unlikely to give rise to significant environmental impacts. The development is below the mandatory threshold required for an EIAR, outlined in the Planning and Development Regulations. This sub-threshold EIA Screening assessment has been carried out in accordance with the criteria listed in Schedule 7 and Schedule 7A of the Planning Regulations, in cognizance of the sensitivities of the area.

In conclusion, it is considered that the proposed development will not have any significant impacts on the environment. All recommended mitigation measures and standard practices will be employed throughout the construction and operation phase of the development to ensure that the proposed development will not create any significant impacts on the quality of the surrounding environment. Therefore, there is no requirement for an EIAR to be prepared for the proposed development at Drumbawn, Newtown Mount Kennedy, Co. Wicklow.

### **5.2 Appropriate Assessment**

An Appropriate Assessment (AA) Screening Report has been prepared by Ross Swift Ecology Ltd in respect of the proposed development subject of this section 5 reference.

The AA Screening concludes that there would be no significant impacts on Natura 2000 sites and, therefore, Appropriate Assessment is not required. There is no significant source-pathway-receptor with Carriggower Bog SAC, The Murrough Wetlands SAC and The Murrough SPA and there is no potential for the proposed development to significantly impact on the habitats and species of these sites or any other SAC or SPA. There will be no significant impact on water quality, air quality, disturbance to species or spread of invasive species from the proposed development site to Carriggower Bog SAC, The Murrough Wetlands SAC and The Murrough SPA or any other SAC or SPA. The proposed activities will prevent any likely significant impact on the water quality of Newtown Mount Kennedy watercourse and therefore no significant impact of any protected habitat or species downstream.

Accordingly, the AA Screening states having carried out the Stage 1 Appropriate Assessment Screening, the competent authority may determine that a Stage 2 Appropriate Assessment of the development is not required as it can be excluded, on the basis of objective scientific information following screening under this Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, that the proposed development, individually or in combination with other plans or projects, will not have a significant effect on any European Site,

The AA Screening Report presents a Stage 1 AA Screening for the development, outlining the information required for the competent authority to screen for appropriate assessment and to determine whether or not the development, either alone or in combination with other plans and projects, in view of best scientific knowledge, is likely to have a significant effect on any European or Natura 2000 site. It is considered that there would be no significant risk or negative impact, either alone or in combination with other plans or projects, to the integrity

## Section 5 Reference Report

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of the Natura 2000 network. Therefore, a Natura Impact Statement is not required. It can be objectively concluded that no significant effects arising from the development are likely to occur in relation to Carriggower Bog SAC (Site Code: 00716), the Murrough Wetlands SAC (Site Code: 002249) and the Murriugh SPA (Site Code: 004186) or indeed any other Natura 2000 site in Ireland.

## 6. CONCLUSION

Having regard to the scale and extent of works in question, we submit that the works fall under the exemption provided for in section 4(1)(l) and 4(1)(h) of the Planning and Development Act, 2000, as amended. In summary, the development is required to improve the site conditions to enable the lands viable for agriculture uses and accessibility and the material will be non-hazardous, sourced from greenfield sites only, located in Wicklow. Full Analysis of the by-product material will be submitted to the EPA as part of the Article 27 notification system for the declaration of a by-product.

**APPENDIX A EPA GUIDANCE TO PLANNERS, PLANNING  
AUTHORITIES AND AN BORD PLEANÁLA ON THE  
MANAGEMENT OF EXCESS SOIL AND STONE FROM  
DEVELOPMENTS AND GUIDANCE ON SOIL AND STONE  
BY-PRODUCTS**



# Guidance to Planners, Planning Authorities and An Bord Pleanála on the Management of Excess Soil and Stone from Developments



## 1.0 Introduction

Excess soil and stone material may be generated in the course of developments taking place. This material must be managed in an environmentally sound manner and in doing so, may be managed either as a waste or as a by-product of the production process (the production process being the development taking place). Specific regulatory requirements apply to the management of the material as a by-product or a waste.

This aim of this guidance document is to assist planners, planning authorities and An Bord Pleanála and is prepared in accordance with the provisions set out in Section 56 of the EPA Act 1992. The guidance document is intended to be used when assessing applications for development involving either 1) the export of excess soil and stone material from a site arising out of the construction of a development, or 2) the importation of soil and stone as part of the development, or both (for example in re-profiling or landscaping as part of a proposed development, or as material for the restoration of a quarry).

## 2.0 Regulatory requirements

The Waste Framework Directive (2008/98/EC, as amended by Directive (EU)2018/851) provides for uncontaminated excavated soil and stone and other naturally occurring materials (used on sites other than the one from which there were excavated) to be considered in accordance with the definition of waste and the provisions on by-products and on end-of-waste status. The Directive is transposed in Ireland by the European Union (Waste Directive) Regulations 2011-2020 and Article 27 of those Regulations sets out the requirements and conditions for a material to be regarded as a by-product and not as a waste. The conditions for a material to be a by-product are:

- (a) Further use of the substance or object is certain;
- (b) The substance or object can be used directly without any further processing other than normal industrial practice;
- (c) The substance or object is produced as an integral part of the production process; and,
- (d) Further use is lawful in that the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

Where a natural or legal person<sup>1</sup> decides that the material is a by-product rather than a waste, the person must notify the EPA of that decision. For the purpose of this guidance the person is referred to as the notifier. The EPA may determine to agree with the decision, as notified, or may, following

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<sup>1</sup> Article 27 of SI 126 of 2011 was amended by SI 323 of 2020 – the term *economic operator* is no longer used and has been replaced by the term *natural or legal person*.

consultation with the notifier and others, determine that the material is a waste. The notifier must demonstrate compliance with each of the four by-product conditions.

The EPA published Guidance on Soil and Stone By-products in June 2019 which aims to clarify the EPA approach to determining notifications of soil and stone by-products, for the construction sector, developers, waste industry, local authorities and consultants. A copy of the guidance is available in the Appendix to this document.

### *2.1 Demonstrating certainty of use*

Storage or stockpiling of excess materials off-site without certainty of use is considered a waste activity and requires appropriate regulation. In order to clearly establish certainty of use, in fulfilment of one of the conditions for being a by-product, developers should make plans at the earliest possible stage for the management of the excess soil and stone. It is the view of the EPA that such plans should ideally commence at tendering stage and be brought forward into the planning consent and conditions associated with the development. That is, Construction Waste Management Plans should for example be referred to as Construction Waste and By-product Management Plans. This will have the effect of prompting the developer to make appropriate plans for the management of excess soil and stone that may be generated during the development works.

### *2.2 Demonstrating lawfulness*

Where excess soil and stone is generated during the course of development, it may be used at a location where there is a need to import such material for example, for use in raising ground and profiling works. One of the key elements in the demonstration of lawfulness is the planning status of the destination site, including environmental impact assessment and appropriate assessment, where applicable. The recently published Guidance on Soil and Stone By-products states that each notification must be accompanied by evidence of either:

- (a) appropriate planning permission being in place;
- or,
- (b) a written declaration that the use is specifically exempted from planning permission, in accordance with Section 5 of the Planning and Development Acts.

## **3.0 Key roles in making, considering and determining by-product notifications**

Making, considering and determining by-product notifications involve a number of parties, including notifiers, developers, local authorities, planners, An Bord Pleanála and the Environmental Protection Agency. The respective roles of these parties are described in more detail below, in the context of the aim of this guidance document.

### 3.1 Role of the EPA

The process flow for consideration of by-product notifications is illustrated in Figure 1 below and described in more detail in the paragraph that follows.

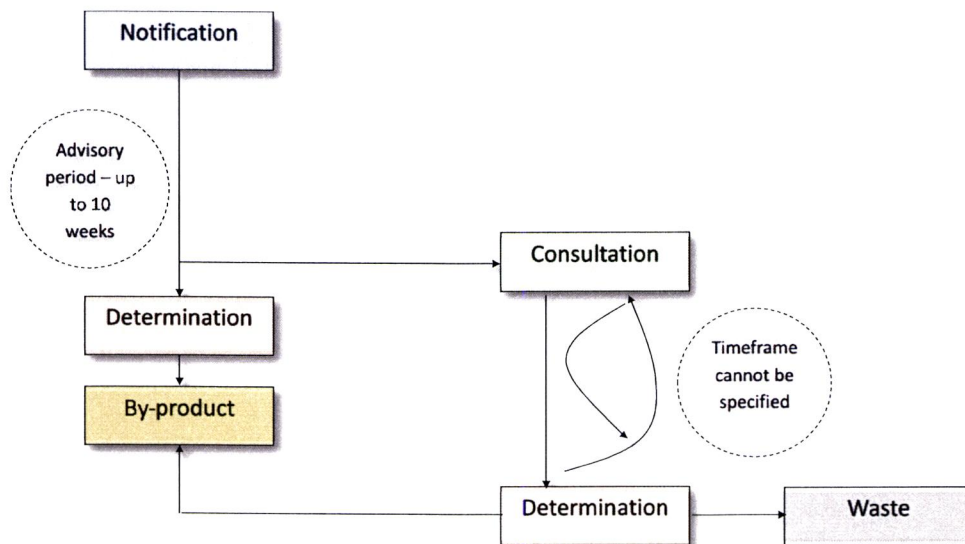


Figure 1 Process flow for considering by-product notifications

1. All soil and stone by-product notifications are assessed on a risk-based, case-by-case basis and EPA will endeavour to make determinations in all cases.
2. A determination will be made that:
  - a. The EPA agrees with the notifier’s decision, as notified (i.e. material is a by-product); or,
  - b. The notified material is a waste (such determination must be preceded by consultation with the notifier and others, including the local authority).
3. Where consultation is undertaken, the EPA will write to the notifier, the local authority (Planning and Environment) and other parties, as appropriate, setting out clarification questions that require response (further detail on the consultation step is described on page 11 of the Appendix below).
4. When all necessary information is presented to the EPA, a determination will be made in accordance with 2. above.

### 3.2 Role of Planners, Planning Authorities and An Bord Pleanála

The role of planners can come into play either at the pre-planning consultation stage or as part of the assessment and decision making around planning applications, as follows:

1. Consider the matter of how excess soil and stone should be managed, during discussions at pre-planning stages of developments, taking into account the specific circumstances of the proposed development.
2. Specifically address the management of excess soil and stone in Planners’ Reports, where it is relevant and appropriate to do so.

3. Consider including conditions that make clear provisions for the management of excess soil and stone through Construction Waste and By-product/Material Management Plans, taking into account, as appropriate, the *Development Management, Guidelines for Planning Authorities (June 2007)*, regarding conditions relating to other codes<sup>2</sup>.
4. Where a development is proposed that requires backfilling, re-profiling or landscaping works, ensure that:
  - a. The Planner's Report describes the environmental assessment that was undertaken in considering the proposed backfilling, re-profiling or landscaping works and addresses the import of material, including quantities, where appropriate; and,
  - b. The planning permission that issues includes conditions that clarify whether import of material is provided for, including quantities, where possible.
5. Where a Section 5 Declaration of Exempted Development is provided, it should address the specific use of the excess soil and stone and the associated Planner's Report should describe matters relevant to considering the question posed, including nature and scale of the proposed activity.
6. Where EPA undertakes consultation on any by-product notification (see below), questions may arise in relation to planning status of the use location, particularly in instances where the planning status is not clear based on the available information, in which case a response will be required from the Planning Authority or An Bord Pleanála, as the case may be.

### 3.3 Role of the notifiers

Notifications are often made by developers carrying on or proposing to carry on a development, or the clients in charge of procuring the development. Notifiers have a key role to play in the preparation of good quality notifications with the necessary information to allow the EPA to make a determination. In particular, notifiers should take account of the following:

1. Where excess soil and stone is anticipated to be generated during development works, plans should be made at the early stages for how the material is to be managed i.e. as a by-product or a waste.
2. Pre-planning consultations should address the matter of excess soil and stone and proposals for its management should form part of the application for planning permission.
3. Where planning permission is sought for backfilling, re-profiling or landscaping works, any proposals for the import of soil and stone should be described in the application for planning permission.
4. Where an application is made for a Section 5 Declaration of Exempted Development, the question posed to the planning authority should describe the nature and scale of the proposed works, and should specifically state that the material is not waste. Where relevant the question the subject of the referral should state '*Whether land reclamation works consisting of the re-contouring of land using non-waste material comprising soil and stone by-product, is or is not development, and is or is not exempt development*'. The specific nature and volume of the

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<sup>2</sup> <https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload,14467,en.pdf>

October 2020

material should be described in full to allow the planning authority to make an informed decision, and the application should also make clear if the land reclamation relates to wetlands.

5. All soil and stone notifications must be accompanied by the necessary documentation to demonstrate compliance with the 4 conditions for the material being a by-product.
6. In particular, no questions should remain around the planning status of the use location, in partial fulfilment of demonstrating the lawfulness of the use of the material.
7. Where EPA undertakes consultation on any by-product notification, questions may arise to clarify aspects of the notification and response is required in order to progress the notification to a determination.

#### 4.0 Further information

Further information can be obtained by referring to our dedicated webpage on <http://www.epa.ie/waste/wastereg/article27/> or by sending an enquiry by email to [article27@epa.ie](mailto:article27@epa.ie).



# **Guidance on Soil and Stone By-products**

in the context of

article 27

of the

**European Communities (Waste Directive) Regulations 2011**

**Version 3; June 2019**

## Introduction

<i>Purpose</i>	<ul style="list-style-type: none"> <li>• To encourage the prevention of waste including the lawful and beneficial use of excess uncontaminated soil and stone.</li> <li>• To set out the Environmental Protection Agency’s regulatory approach to determining notifications on soil and stone by-products and to provide guidance to interested parties.</li> </ul> <p>Note, this guidance does not address any other materials that may be notified to the EPA as by-product.</p>
<i>Addressed to</i>	Local authorities, developers, the construction sector, the waste management sector and consultants.
<i>Environmental objective</i>	By making certain that excess uncontaminated soil and stone is beneficially used with no overall adverse impacts on the environment or human health, a material producer will ensure that the material is regarded as a by-product rather than a waste.

The EPA will have regard to this guidance when determining, on a case-by-case basis, if a soil and stone material meets the criteria to be considered a by-product. This guidance addresses excess uncontaminated soil and stone material only and is not applicable to other materials that may be notified as by-products.

## Legislative Background

The regulatory regime for by-products is enshrined in Article 5 of the Waste Framework Directive and is transposed into Irish legislation by Article 27 of the European Communities (Waste Directive) Regulations 2011 (hereafter referred to as the Waste Directive Regulations). The Waste Framework Directive provides for uncontaminated excavated soil and other naturally occurring materials (used on sites other than the one from which they were excavated) to be considered in accordance with the definition of waste and the provisions on by-products and on end-of-waste status under the Waste Framework Directive (*Recital 11*).

The Court of Justice of the European Union has held that there are a wide variety of relevant factors involved in defining waste, not all of which will be applicable to every case. Decisions must be made on a case-by-case approach.

It is important to note the following: Certain wastes are excluded from the scope of the Waste Framework Directive (Article 2), as reflected in Article 4 of the Waste Directive Regulations. i.e. items which would fulfil the definition of waste yet for various reasons should not be subject to the provisions of the Waste Framework Directive. Further guidance on scope is provided on pp 40-43 of the *Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste*, hereafter referred to as the Commission guidance<sup>3</sup>.

In the case of excess uncontaminated soil and stone, the following descriptions differentiate between material which must be regulated as waste and that which is not required to be regulated as waste.

<i>Not regulated as waste</i>	<p>Uncontaminated soil and stone that is certain to be used in construction at the same project site from where it was excavated is not regulated as waste. For example:</p> <ul style="list-style-type: none"> <li>• Soil that is excavated from one part of a road project and used as fill in another part of the same road project, all within the same site; or</li> <li>• Soil excavated to enable construction but stored for use later at the same site for landscaping works.</li> </ul>
<i>Regulated as waste</i>	<p>Excess uncontaminated soil and stone produced during construction projects may be a waste if it is discarded, is intended to be discarded or is required to be discarded.</p>

### **Definitions and terms**

The definitions and terms which are relevant to this guidance are described in the Waste Framework Directive and the Commission guidance and set out below.

<sup>3</sup> <http://ec.europa.eu/environment/waste/framework/guidance.htm>



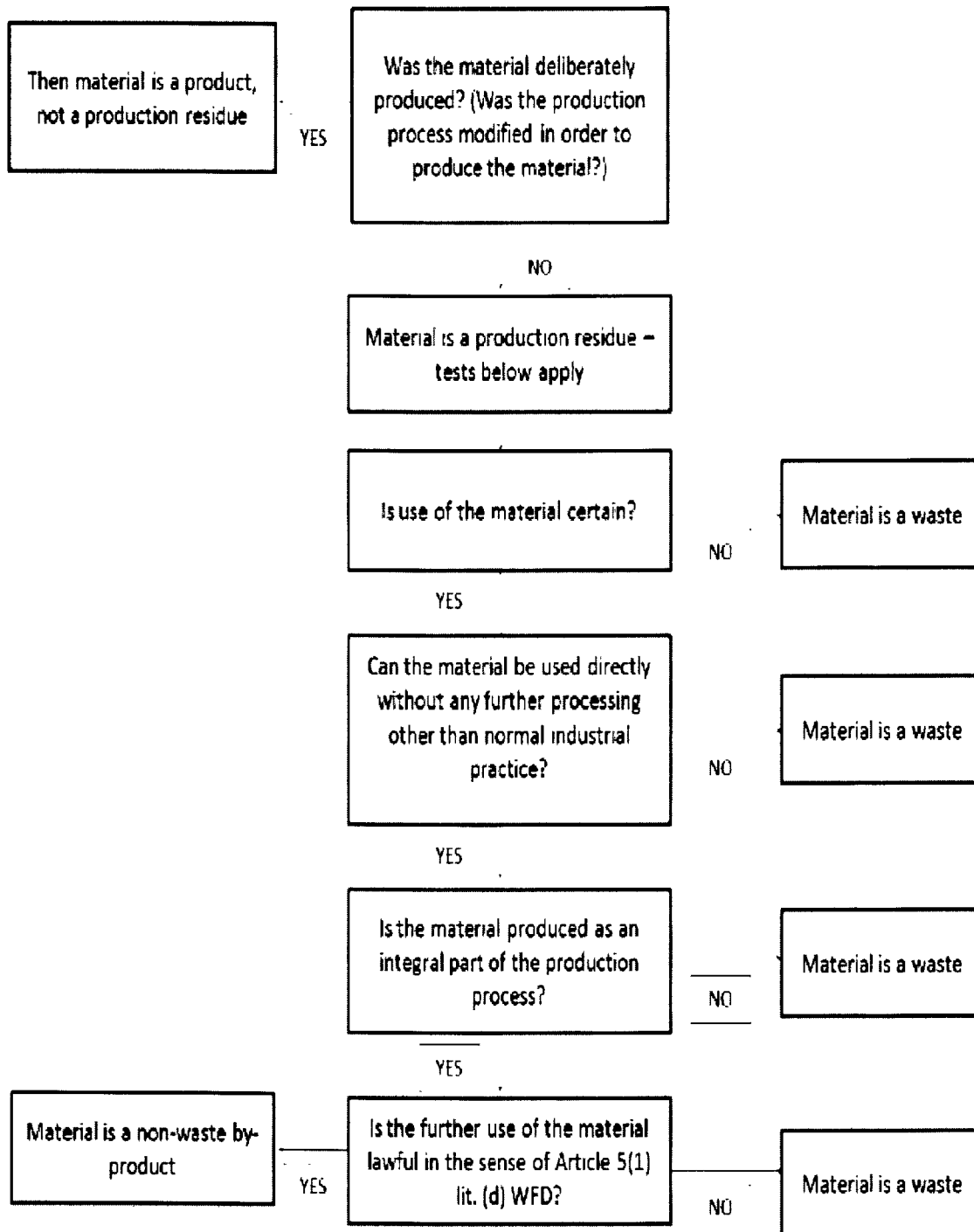
<b>Term</b>	<b>Definition/interpretation</b>	<b>Source</b>
<i>Waste</i>	Means any substance or object which the holder discards or intends or is required to discard.	Waste Framework Directive
<i>Recovery</i>	Means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations.	Waste Framework Directive
<i>Disposal</i>	Means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations.	Waste Framework Directive
<i>Treatment</i>	Means recovery or disposal operations, including preparation prior to recovery or disposal.	Waste Framework Directive
<i>Product</i>	All material that is deliberately created in a production process. In many cases it is possible to identify one (or more) 'primary' products, this or these being the principal material(s) produced.	Commission Guidance
<i>Production residue</i>	A material that is not deliberately produced in a production process but may or may not be waste.	Commission Guidance
<i>Uncontaminated soil</i>	Essentially relates to virgin soil or soil that is equivalent to virgin soil.	Commission Guidance

## **Policy Context**

1. EU and national policy on resource efficiency seeks to decouple the link between economic growth and environmental impact. Recognising the need for a high standard of environmental protection, and the need to promote sustainable and environmentally sound development, the EPA encourages resource efficiency and the sustainable use of resources in Ireland.
2. Prevention is top of the waste hierarchy established by Article 4 of the Waste Framework Directive. Ireland's Waste Policy ('A Resource Opportunity – Waste Management Policy in Ireland') puts prevention as a national priority and focuses the National Waste Prevention Programme on resource efficiency, prevention and reuse.
3. The EPA balances the need for precaution and the need to protect the environment (and the cost of such protection) with the need for infrastructural, economic and social progress and development.
4. By ensuring that excess uncontaminated soil and stone is beneficially and lawfully used as a by-product, the use of virgin soil and stone is minimised, and waste is prevented.

## **Regulatory Position on Soil and Stone By-products**

- The EPA encourages the prevention of waste including the lawful and beneficial use of excess uncontaminated soil and stone.
- Determining whether a material is a 'by-product' or a 'waste' must be considered on a case-by-case basis, taking into account the specific factual circumstances involved. A decision tree for determining whether a material is a by-product is included in Figure 2.
- The actions of, and measures taken by, the material producer are key to informing the determination as to whether the material is a by-product or a waste. If the intent or requirement of the material producer is to discard, the material is waste. This is so, regardless of whether anyone else has a use for it.
- The EPA will produce guidance to advise and assist planning authorities and An Bord Pleanála in the granting of planning permissions related to sites using soil and stone by-products, as provided for under Section 56 of the EPA Act, as amended.



**Figure 2 Decision tree for determining whether a material is a by-product (Source: Commission guidance)**

**Guidance on understanding the by-product Conditions**

Excess uncontaminated soil and stone resulting from excavation works (the primary aim of which is not the production of soil and stone<sup>4</sup>) is a production residue and is regarded as a by-product only if all four by-product conditions are met<sup>5</sup>:

- a) further use of the soil and stone is certain;
- b) the soil and stone can be used directly without any further processing other than normal industrial practice;
- c) the soil and stone is produced as an integral part of a production process; *and*
- d) further use is lawful in that the soil and stone fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

a. certainty of further use	<p>If beneficial use(s) are identified for the entirety of the excavated soil from a project, prior to its production, with that use taking place within a definite timeframe, then use will generally be regarded as certain. It is acknowledged that in certain circumstances it may not be possible to use the entirety of the excavated material for the intended use; in such circumstances the notified quantity should reflect the quantity that will be beneficially used, while the balance of the excess material will be regarded as waste, given that certainty of use has not been established for that balance. Certainty of further use may be indicated through a financial gain for the material producer and the existence of contracts between the material producer and the subsequent user. Further guidance is provided in relation to the 'certainty of further use' in the Commission guidance (pp 16 and 17).</p>
	<p>Storage or stockpiling of excess materials off-site without certainty of use elsewhere is not excluded from waste regulation and is considered a waste activity.</p>

<sup>4</sup> The material in question should not have been deliberately produced; i.e. the production process must not have been modified in order to produce the material.

<sup>5</sup> As set out in Article 5 of the 2008 Waste Framework Directive and Article 27 of the Waste Directive Regulations 2011

<p>b. ...other than normal industrial practice</p>	<p>In the context of soil and stone, normal industrial practice is taken to mean physical steps such as modification of size or shape by mechanical treatment. It may also be considered to include steps such as filtering, washing and drying or adding materials necessary for further use, or carrying out quality control. However, it excludes treatment techniques that address typical waste-related characteristics such as dealing with contamination via soil treatment. Whether normal industrial practice includes the removal of physical contaminants will depend on the particular circumstances of the case. The Commission guidance includes a narrative on the interpretation of 'normal industrial practice' (pp 17 and 18).</p>
	<p>Where excess soil and stone undergoes a recovery operation, this is an indicator that it is waste. Examples include soil cleaning, for the purpose of removing contamination, resulting in recovery of the soil; recycling of inorganic construction materials; and including recovery operations listed in Annex II of the Waste Framework Directive 2008/98/EC, as amended.</p>
<p>c. ...produced as integral part of a production process</p>	<p>The intent of the material producer will be a key determinant in the EPA's consideration of the notification against the by-product conditions. Evidence provided must clearly demonstrate that the <u>material producer has decided</u> that the material to be notified is a by-product. For this reason, it is essential that the notifier of the material is either the material producer, or makes the notification with the express (written) consent of the material producer, and that evidence is provided to demonstrate this consent. For the purpose of this guidance, the economic operator is considered to be the notifier. The Commission guidance provides further narrative on the meaning of 'produced as an integral part of the production process' (pp 18 and 19).</p>
	<p>The by-product notification is a notification of the material producer's decision that the material to be produced as an integral part of a production process is a by-product. The notified material</p>

	<p>must be demonstrated to be a production residue of a production process. Therefore, as above, it is essential that evidence is provided to demonstrate that the <u>material producer</u> has decided that the material is a by-product of a production process.</p>
<p>d. further use is lawful...</p>	<p>The re-use of soil and stone must meet all legal requirements, including, but not limited to, planning permission (or exemption criteria) and all associated applicable environmental impact assessment and appropriate assessment, as required by law. The material producer will need to satisfy itself of this prior to making the notification, and will need to provide relevant evidence to support this conclusion. The notifier shall include evidence of appropriate planning permission being in place or a written declaration that the use is specifically exempted from planning permission, in accordance with Section 5 of the Planning and Development Acts, as amended. The Commission guidance provides further narrative on the meaning of 'further use is lawful' (pp 19 and 20).</p>
	<p>The soil and stone must be uncontaminated. The use of inert landfill waste acceptance criteria is not acceptable as demonstration of uncontaminated status of soil and stone material notified as by-product. The Commission guidance includes a narrative on the interpretation of the terms 'contaminated' and 'uncontaminated' (pp 41 and 42). A rigorous scientific approach is being developed by Geological Survey Ireland in collaboration with the EPA to identify geochemically appropriate levels (soil trigger values) for deposit of soil and stone in licensed soil recovery facilities, on the basis that when the baseline geochemical character of a soil recovery facility is established, then soil and stone material of a similar geochemical nature can be deposited with minimal risk to receptors. This work is being done in support of the 'Waste Acceptance Criteria and Development of Soil Trigger Values for Soil Recovery Facilities' Guidance. While that work has a discrete scope, it may be possible to apply geochemically</p>

	<p>appropriate soil levels on a case-by-case basis for the deposit of notified soil and stone by-product at certain other locations, if available information so indicates. If the necessary information is not available to take this approach, notifiers will have to demonstrate that the notified soil and stone is uncontaminated, in that it is, essentially, virgin soil or soil that is equivalent to virgin soil. It is important to note that the work undertaken by Geological Survey Ireland in collaboration with EPA may, upon completion, result in this guidance document being revised.</p>
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Nothing in this guidance excludes or exempts destination sites from the need to be fully compliant with all applicable regulatory requirements under waste, planning and other laws.

### **What the EPA expects**

- The management of excess uncontaminated soil and stone, as a by-product **or** as a waste, will be prearranged by the material producer at the earliest opportunity:
  - 1) at the planning stage of the development; or at the latest,
  - 2) prior to commencement of the development

(referring to the development from which the material arises, in both instances).
- Where Construction Waste Management Plans are prepared, they should take into account any by-product to be produced and, as such, the Plan should be more accurately described as a "Construction Waste and By-product Management Plan". This will be reflected in the guidance for planning authorities and An Bord Pleanála referred to above.
- Prior to works (i.e. prior to commencement of the development), an economic operator (being either the material producer, or with the express written consent of the material producer) notifies the EPA of the by-product decision. A register of by-product notifications will be maintained and will be available for public inspection online to include details of origin and destination sites for soil and stone by-product.

- Notifications should be accompanied by the full complement of necessary documentation to demonstrate compliance with the four by-product conditions. A quality notification will allow the EPA to make a determination in the earliest possible time.

### **What the Notifier can expect**

- The EPA will take a risk-based approach to making determinations and will endeavour to make determinations in all cases.
- A determination may be:
  - 1) That the EPA agrees with the economic operator's decision, as notified; or,
  - 2) That the notified material is a waste.
- The EPA advises waiting at least ten weeks prior to moving the material as a by-product. If, within that time, the Agency decides that a detailed consideration of the notified decision is warranted, it will inform the economic operator of this and will initiate a consultation process. In that case the economic operator is advised not to move the material until the Agency has made a determination.
- Where consultation is undertaken, this will be at least a two-step process as follows:
  - 1) The first consultation step will involve a consultation notice issuing to the following parties, where relevant, depending on the circumstances of the notification:
    - the material producer (the source site owner, or developer),
    - the end user (destination site owner, or operator/developer),
    - any relevant local authority and/or local authority representatives (Waste Enforcement Regional Lead Authorities),
    - An Bord Pleanála, where relevant, and
    - any member of the public who has expressed an interest in participating in the consultation process.

A period of three weeks is ordinarily given for receipt of submissions.

- 2) Where submissions are received in response to the first consultation, these will be circulated to the relevant parties for further comment in relation to existing issues. A period of three weeks is ordinarily given for receipt of further submissions.



There may be more than one round of circulation of submissions for further comment.

- Compliance with the four by-product conditions, and demonstration of such compliance, remains the responsibility of the material producer. Absence of full compliance with the four by-product conditions may result in the notified material being determined as waste rather than by-product.
- Waste enforcement action by the relevant local authorities and/or the EPA may result in instances where unauthorised waste activity has taken or is taking place.

## **Case Studies**

The three case studies presented below are examples of real situations; however, they are greatly summarised for the purpose of demonstrating how the by-product conditions are met.

### **Case Study 1**

55,000 tonnes of stone, from the deepening of the north channel of Dingle Fishery Harbour.

- a. Use is certain in the N86 Tralee to An Daingean Road Project
- b. Used directly, equivalent to quarried stone
- c. Produced as an integral part of harbour works
- d. Use is lawful and meets engineering specifications for use in the N86 Project

*This summary example illustrates that all the by-product conditions were met.*

### **Case Study 2**

230,000 m<sup>3</sup> of soil and stone excavated in the preparation of an industrial development site. The excavated soil and stone was to be used in the restoration of a quarry.

- Use is certain, planning consent for the destination site requires restoration, the void space capacity is far in excess of the volume of by-product notified.
- No processing of the notified material is required, the notified material is uncontaminated soil and stone.
- The notified material is produced as an integral part of the development works.
- Use is lawful:
  - Planning consent at the destination site requires restoration, contains environmental controls and has specifically addressed the use of by-product in the restoration,
  - Environmental Impact Assessment and Appropriate Assessment has been completed by the planning authority for the use of by-product at the destination site.
  - The notified material is suitable for use in the restoration of the quarry.

*This summary example illustrates that all the by-product conditions were met.*

### **Case Study 3**

5,000 tonnes of soil and stone excavated in the preparation of a housing development site. The excavated soil and stone was to be used in the construction of a roadway.

- Use is certain, the plans for the destination site identified a specific need for imported soil and stone.
- No processing of the notified material is required, the notified material is uncontaminated soil and stone.
- The notified material is produced as an integral part of the development works.
- Use is lawful:
  - Plans associated with the destination site identified the need to import soil & stone,
  - Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) has been completed by the planning consenting authority for the use of by-product at the destination site. The volume of notified material is within the volume considered in the EIA.
  - The notified material is suitable for the intended use and meets the engineering specification for use in the construction of the roadway.

*This summary example illustrates that all the by-product conditions were met.*

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# **Guidance on Soil and Stone By-products**

in the context of  
article 27  
of the  
**European Communities (Waste Directive) Regulations 2011**

**Version 3; June 2019**

## Introduction

<i>Purpose</i>	<ul style="list-style-type: none"><li>• To encourage the prevention of waste including the lawful and beneficial use of excess uncontaminated soil and stone.</li><li>• To set out the Environmental Protection Agency's regulatory approach to determining notifications on soil and stone by-products and to provide guidance to interested parties.</li></ul> <p>Note, this guidance does not address any other materials that may be notified to the EPA as by-product.</p>
<i>Addressed to</i>	Local authorities, developers, the construction sector, the waste management sector and consultants.
<i>Environmental objective</i>	By making certain that excess uncontaminated soil and stone is beneficially used with no overall adverse impacts on the environment or human health, a material producer will ensure that the material is regarded as a by-product rather than a waste.

The EPA will have regard to this guidance when determining, on a case-by-case basis, if a soil and stone material meets the criteria to be considered a by-product. This guidance addresses excess uncontaminated soil and stone material only and is not applicable to other materials that may be notified as by-products.

## Legislative Background

The regulatory regime for by-products is enshrined in Article 5 of the Waste Framework Directive and is transposed into Irish legislation by Article 27 of the European Communities (Waste Directive) Regulations 2011 (hereafter referred to as the Waste Directive Regulations). The Waste Framework Directive provides for uncontaminated excavated soil and other naturally occurring materials (used on sites other than the one from which they were excavated) to be considered in accordance with the definition of waste and the provisions on by-products and on end-of-waste status under the Waste Framework Directive (*Recital 11*).

The Court of Justice of the European Union has held that there are a wide variety of relevant factors involved in defining waste, not all of which will be applicable to every case. Decisions must be made on a case-by-case approach.

It is important to note the following: Certain wastes are excluded from the scope of the Waste Framework Directive (Article 2), as reflected in Article 4 of the Waste Directive Regulations. i.e. items which would fulfil the definition of waste yet for various reasons should not be subject to the provisions of the Waste Framework Directive. Further guidance on scope is provided on pp 40-43 of the *Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste*, hereafter referred to as the Commission guidance<sup>1</sup>.

In the case of excess uncontaminated soil and stone, the following descriptions differentiate between material which must be regulated as waste and that which is not required to be regulated as waste.

<i>Not regulated as waste</i>	Uncontaminated soil and stone that is certain to be used in construction at the same project site from where it was excavated is not regulated as waste. For example: <ul style="list-style-type: none"> <li>• Soil that is excavated from one part of a road project and used as fill in another part of the same road project, all within the same site; or</li> <li>• Soil excavated to enable construction but stored for use later at the same site for landscaping works.</li> </ul>
<i>Regulated as waste</i>	Excess uncontaminated soil and stone produced during construction projects may be a waste if it is discarded, is intended to be discarded or is required to be discarded.

## Definitions and terms

The definitions and terms which are relevant to this guidance are described in the Waste Framework Directive and the Commission guidance and set out below.

<sup>1</sup> <http://ec.europa.eu/environment/waste/framework/guidance.htm>

<b>Term</b>	<b>Definition/interpretation</b>	<b>Source</b>
<i>Waste</i>	Means any substance or object which the holder discards or intends or is required to discard.	Waste Framework Directive
<i>Recovery</i>	Means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations.	Waste Framework Directive
<i>Disposal</i>	Means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations.	Waste Framework Directive
<i>Treatment</i>	Means recovery or disposal operations, including preparation prior to recovery or disposal.	Waste Framework Directive
<i>Product</i>	All material that is deliberately created in a production process. In many cases it is possible to identify one (or more) 'primary' products, this or these being the principal material(s) produced.	Commission Guidance
<i>Production residue</i>	A material that is not deliberately produced in a production process but may or may not be waste.	Commission Guidance
<i>Uncontaminated soil</i>	Essentially relates to virgin soil or soil that is equivalent to virgin soil.	Commission Guidance

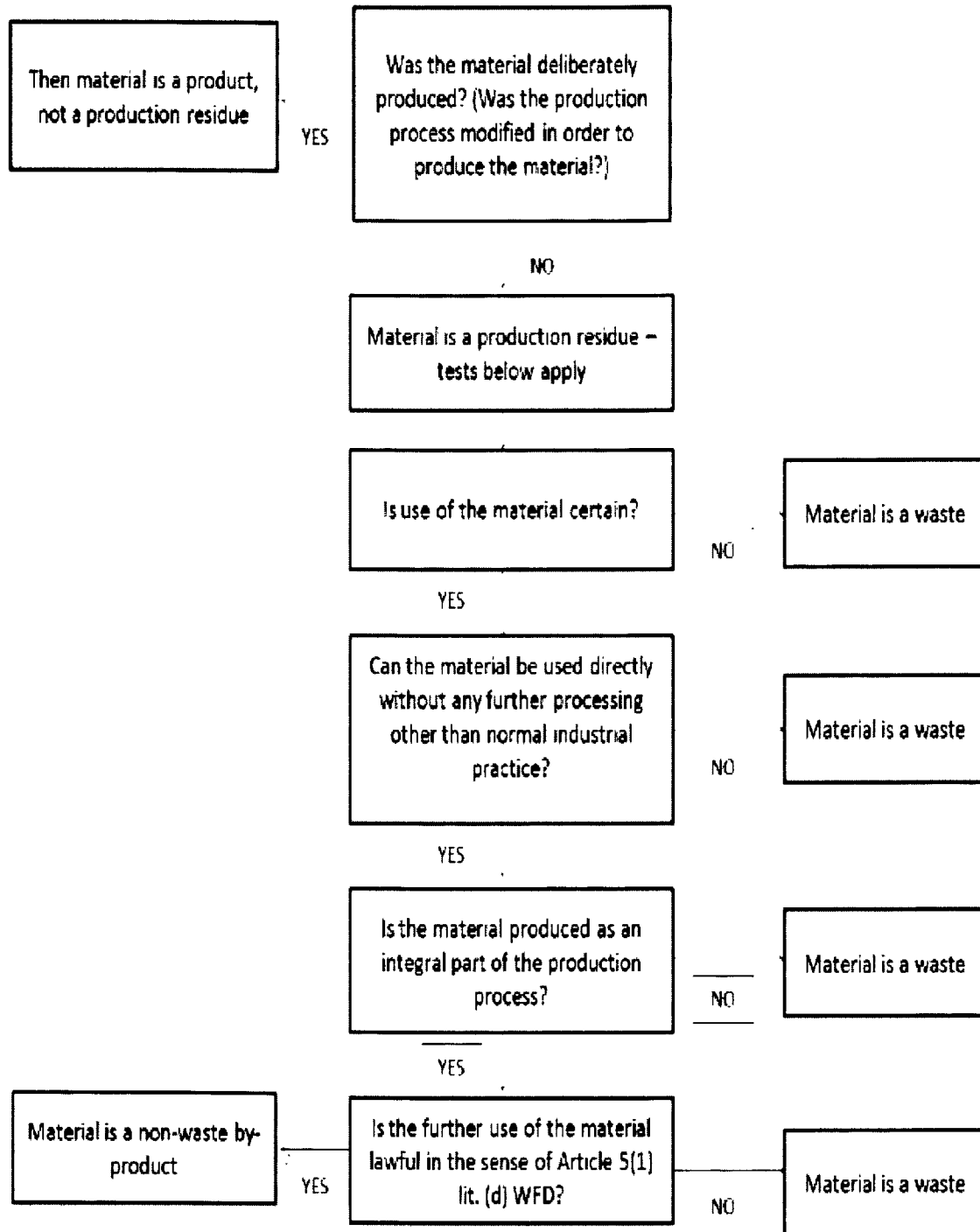
## **Policy Context**

1. EU and national policy on resource efficiency seeks to decouple the link between economic growth and environmental impact. Recognising the need for a high standard of environmental protection, and the need to promote sustainable and environmentally sound development, the EPA encourages resource efficiency and the sustainable use of resources in Ireland.
2. Prevention is top of the waste hierarchy established by Article 4 of the Waste Framework Directive. Ireland's Waste Policy ('A Resource Opportunity – Waste Management Policy in Ireland') puts prevention as a national priority and focuses the National Waste Prevention Programme on resource efficiency, prevention and reuse.
3. The EPA balances the need for precaution and the need to protect the environment (and the cost of such protection) with the need for infrastructural, economic and social progress and development.
4. By ensuring that excess uncontaminated soil and stone is beneficially and lawfully used as a by-product, the use of virgin soil and stone is minimised, and waste is prevented.

## **Regulatory Position on Soil and Stone By-products**

- The EPA encourages the prevention of waste including the lawful and beneficial use of excess uncontaminated soil and stone.
- Determining whether a material is a 'by-product' or a 'waste' must be considered on a case-by-case basis, taking into account the specific factual circumstances involved. A decision tree for determining whether a material is a by-product is included in Figure 1.
- The actions of, and measures taken by, the material producer are key to informing the determination as to whether the material is a by-product or a waste. If the intent or requirement of the material producer is to discard, the material is waste. This is so, regardless of whether anyone else has a use for it.
- The EPA will produce guidance to advise and assist planning authorities and An Bord Pleanála in the granting of planning permissions related to sites using soil and stone by-products, as provided for under Section 56 of the EPA Act, as amended.





**Figure 1 Decision tree for determining whether a material is a by-product (Source: Commission guidance)**

## Guidance on understanding the by-product Conditions

Excess uncontaminated soil and stone resulting from excavation works (the primary aim of which is not the production of soil and stone<sup>2</sup>) is a production residue and is regarded as a by-product only if all four by-product conditions are met<sup>3</sup>:

- a) further use of the soil and stone is certain;
- b) the soil and stone can be used directly without any further processing other than normal industrial practice;
- c) the soil and stone is produced as an integral part of a production process; *and*
- d) further use is lawful in that the soil and stone fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

<p>a. certainty of further use</p>	<p>If beneficial use(s) are identified for the entirety of the excavated soil from a project, prior to its production, with that use taking place within a definite timeframe, then use will generally be regarded as certain. It is acknowledged that in certain circumstances it may not be possible to use the entirety of the excavated material for the intended use; in such circumstances the notified quantity should reflect the quantity that will be beneficially used, while the balance of the excess material will be regarded as waste, given that certainty of use has not been established for that balance. Certainty of further use may be indicated through a financial gain for the material producer and the existence of contracts between the material producer and the subsequent user. Further guidance is provided in relation to the 'certainty of further use' in the Commission guidance (pp 16 and 17).</p>
	<p>Storage or stockpiling of excess materials off-site without certainty of use elsewhere is not excluded from waste regulation and is considered a waste activity.</p>

<sup>2</sup> The material in question should not have been deliberately produced; i.e. the production process must not have been modified in order to produce the material.

<sup>3</sup> As set out in Article 5 of the 2008 Waste Framework Directive and Article 27 of the Waste Directive Regulations 2011

<p>b. ...other than normal industrial practice</p>	<p>In the context of soil and stone, normal industrial practice is taken to mean physical steps such as modification of size or shape by mechanical treatment. It may also be considered to include steps such as filtering, washing and drying or adding materials necessary for further use, or carrying out quality control. However, it excludes treatment techniques that address typical waste-related characteristics such as dealing with contamination via soil treatment. Whether normal industrial practice includes the removal of physical contaminants will depend on the particular circumstances of the case. The Commission guidance includes a narrative on the interpretation of 'normal industrial practice' (pp 17 and 18).</p> <p>Where excess soil and stone undergoes a recovery operation, this is an indicator that it is waste. Examples include soil cleaning, for the purpose of removing contamination, resulting in recovery of the soil; recycling of inorganic construction materials; and including recovery operations listed in Annex II of the Waste Framework Directive 2008/98/EC, as amended.</p>
<p>c. ...produced as integral part of a production process</p>	<p>The intent of the material producer will be a key determinant in the EPA's consideration of the notification against the by-product conditions. Evidence provided must clearly demonstrate that the <u>material producer has decided</u> that the material to be notified is a by-product. For this reason, it is essential that the notifier of the material is either the material producer, or makes the notification with the express (written) consent of the material producer, and that evidence is provided to demonstrate this consent. For the purpose of this guidance, the economic operator is considered to be the notifier. The Commission guidance provides further narrative on the meaning of 'produced as an integral part of the production process' (pp 18 and 19).</p> <p>The by-product notification is a notification of the material producer's decision that the material to be produced as an integral part of a production process is a by-product. The notified material must be demonstrated to be a production residue of a production</p>

	<p>process. Therefore, as above, it is essential that evidence is provided to demonstrate that the <u>material producer</u> has decided that the material is a by-product of a production process.</p>
<p>d. further use is lawful...</p>	<p>The re-use of soil and stone must meet all legal requirements, including, but not limited to, planning permission (or exemption criteria) and all associated applicable environmental impact assessment and appropriate assessment, as required by law. The material producer will need to satisfy itself of this prior to making the notification, and will need to provide relevant evidence to support this conclusion. The notifier shall include evidence of appropriate planning permission being in place or a written declaration that the use is specifically exempted from planning permission, in accordance with Section 5 of the Planning and Development Acts, as amended. The Commission guidance provides further narrative on the meaning of 'further use is lawful' (pp 19 and 20).</p> <p>The soil and stone must be uncontaminated. The use of inert landfill waste acceptance criteria is not acceptable as demonstration of uncontaminated status of soil and stone material notified as by-product. The Commission guidance includes a narrative on the interpretation of the terms 'contaminated' and 'uncontaminated' (pp 41 and 42). A rigorous scientific approach is being developed by Geological Survey Ireland in collaboration with the EPA to identify geochemically appropriate levels (soil trigger values) for deposit of soil and stone in licensed soil recovery facilities, on the basis that when the baseline geochemical character of a soil recovery facility is established, then soil and stone material of a similar geochemical nature can be deposited with minimal risk to receptors. This work is being done in support of the 'Waste Acceptance Criteria and Development of Soil Trigger Values for Soil Recovery Facilities' Guidance. While that work has a discrete scope, it may be possible to apply geochemically appropriate soil levels on a case-by-case basis for the deposit of notified soil and stone by-product at certain</p>

	<p>other locations, if available information so indicates. If the necessary information is not available to take this approach, notifiers will have to demonstrate that the notified soil and stone is uncontaminated, in that it is, essentially, virgin soil or soil that is equivalent to virgin soil. It is important to note that the work undertaken by Geological Survey Ireland in collaboration with EPA may, upon completion, result in this guidance document being revised.</p>
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Nothing in this guidance excludes or exempts destination sites from the need to be fully compliant with all applicable regulatory requirements under waste, planning and other laws.

### **What the EPA expects**

- The management of excess uncontaminated soil and stone, as a by-product **or** as a waste, will be prearranged by the material producer at the earliest opportunity:
  - 1) at the planning stage of the development; or at the latest,
  - 2) prior to commencement of the development

(referring to the development from which the material arises, in both instances).
- Where Construction Waste Management Plans are prepared, they should take into account any by-product to be produced and, as such, the Plan should be more accurately described as a "Construction Waste and By-product Management Plan". This will be reflected in the guidance for planning authorities and An Bord Pleanála referred to above.
- Prior to works (i.e. prior to commencement of the development), an economic operator (being either the material producer, or with the express written consent of the material producer) notifies the EPA of the by-product decision. A register of by-product notifications will be maintained and will be available for public inspection online to include details of origin and destination sites for soil and stone by-product.
- Notifications should be accompanied by the full complement of necessary documentation to demonstrate compliance with the four by-product conditions. A

quality notification will allow the EPA to make a determination in the earliest possible time.

### **What the Notifier can expect**

- The EPA will take a risk-based approach to making determinations and will endeavour to make determinations in all cases.
- A determination may be:
  - 1) That the EPA agrees with the economic operator's decision, as notified; or,
  - 2) That the notified material is a waste.
- The EPA advises waiting at least ten weeks prior to moving the material as a by-product. If, within that time, the Agency decides that a detailed consideration of the notified decision is warranted, it will inform the economic operator of this and will initiate a consultation process. In that case the economic operator is advised not to move the material until the Agency has made a determination.
- Where consultation is undertaken, this will be at least a two-step process as follows:
  - 1) The first consultation step will involve a consultation notice issuing to the following parties, where relevant, depending on the circumstances of the notification:
    - the material producer (the source site owner, or developer),
    - the end user (destination site owner, or operator/developer),
    - any relevant local authority and/or local authority representatives (Waste Enforcement Regional Lead Authorities),
    - An Bord Pleanála, where relevant, and
    - any member of the public who has expressed an interest in participating in the consultation process.

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- 2) Where submissions are received in response to the first consultation, these will be circulated to the relevant parties for further comment in relation to existing issues. A period of three weeks is ordinarily given for receipt of further submissions.

There may be more than one round of circulation of submissions for further comment.

- Compliance with the four by-product conditions, and demonstration of such compliance, remains the responsibility of the material producer. Absence of full compliance with the four by-product conditions may result in the notified material being determined as waste rather than by-product.
- Waste enforcement action by the relevant local authorities and/or the EPA may result in instances where unauthorised waste activity has taken or is taking place.

## **Case Studies**

The three case studies presented below are examples of real situations; however, they are greatly summarised for the purpose of demonstrating how the by-product conditions are met.

### **Case Study 1**

55,000 tonnes of stone, from the deepening of the north channel of Dingle Fishery Harbour.

- a. Use is certain in the N86 Tralee to An Daingean Road Project
- b. Used directly, equivalent to quarried stone
- c. Produced as an integral part of harbour works
- d. Use is lawful and meets engineering specifications for use in the N86 Project

*This summary example illustrates that all the by-product conditions were met.*

### **Case Study 2**

230,000 m<sup>3</sup> of soil and stone excavated in the preparation of an industrial development site. The excavated soil and stone was to be used in the restoration of a quarry.

- Use is certain, planning consent for the destination site requires restoration, the void space capacity is far in excess of the volume of by-product notified.
- No processing of the notified material is required, the notified material is uncontaminated soil and stone.
- The notified material is produced as an integral part of the development works.
- Use is lawful:
  - Planning consent at the destination site requires restoration, contains environmental controls and has specifically addressed the use of by-product in the restoration,
  - Environmental Impact Assessment and Appropriate Assessment has been completed by the planning authority for the use of by-product at the destination site.
  - The notified material is suitable for use in the restoration of the quarry.

*This summary example illustrates that all the by-product conditions were met.*



### Case Study 3

5,000 tonnes of soil and stone excavated in the preparation of a housing development site. The excavated soil and stone was to be used in the construction of a roadway.

- Use is certain, the plans for the destination site identified a specific need for imported soil and stone.
- No processing of the notified material is required, the notified material is uncontaminated soil and stone.
- The notified material is produced as an integral part of the development works.
- Use is lawful:
  - Plans associated with the destination site identified the need to import soil & stone,
  - Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) has been completed by the planning consenting authority for the use of by-product at the destination site. The volume of notified material is within the volume considered in the EIA.
  - The notified material is suitable for the intended use and meets the engineering specification for use in the construction of the roadway.

*This summary example illustrates that all the by-product conditions were met.*

Environmental Protection Agency 2019

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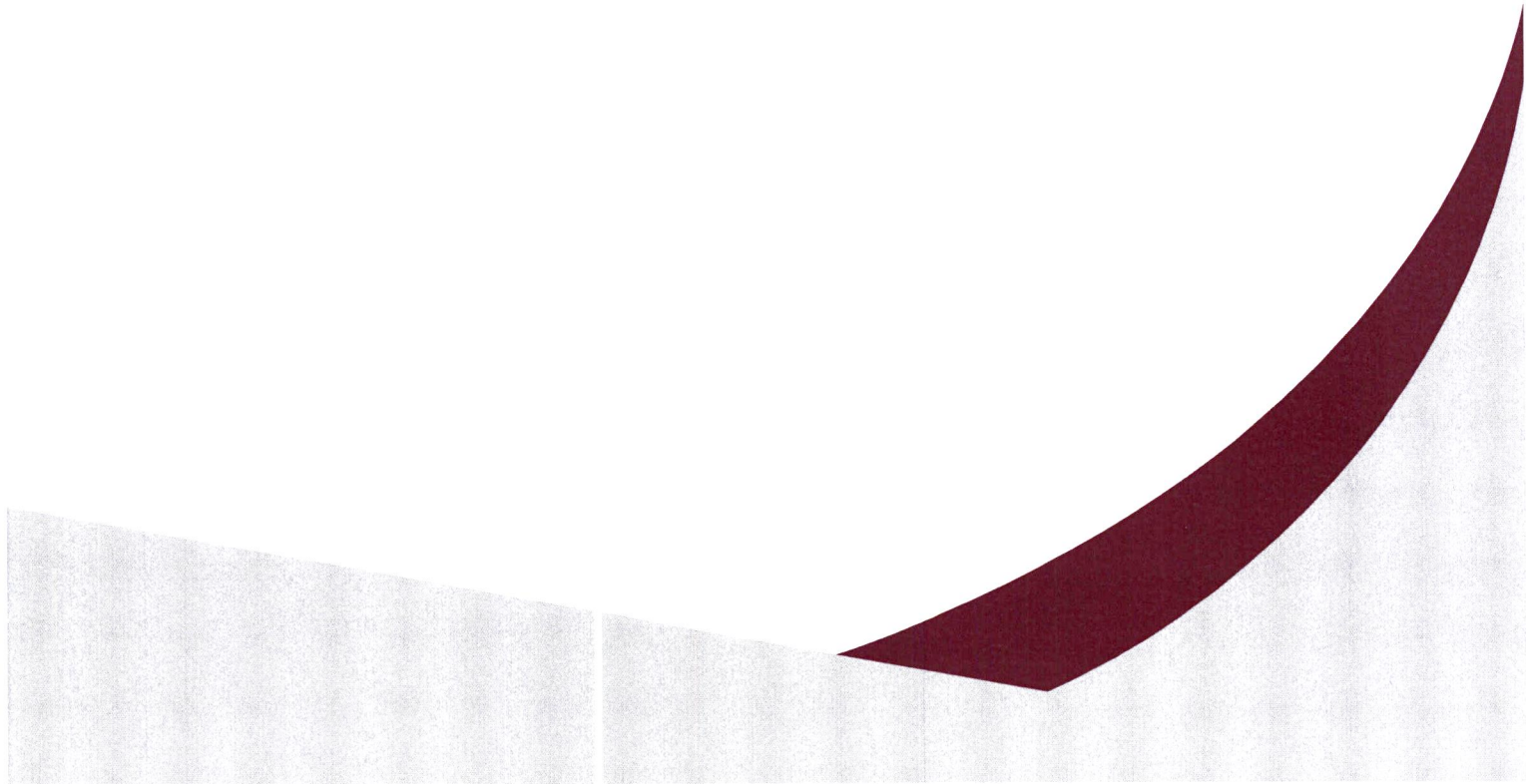
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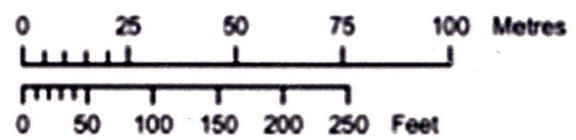
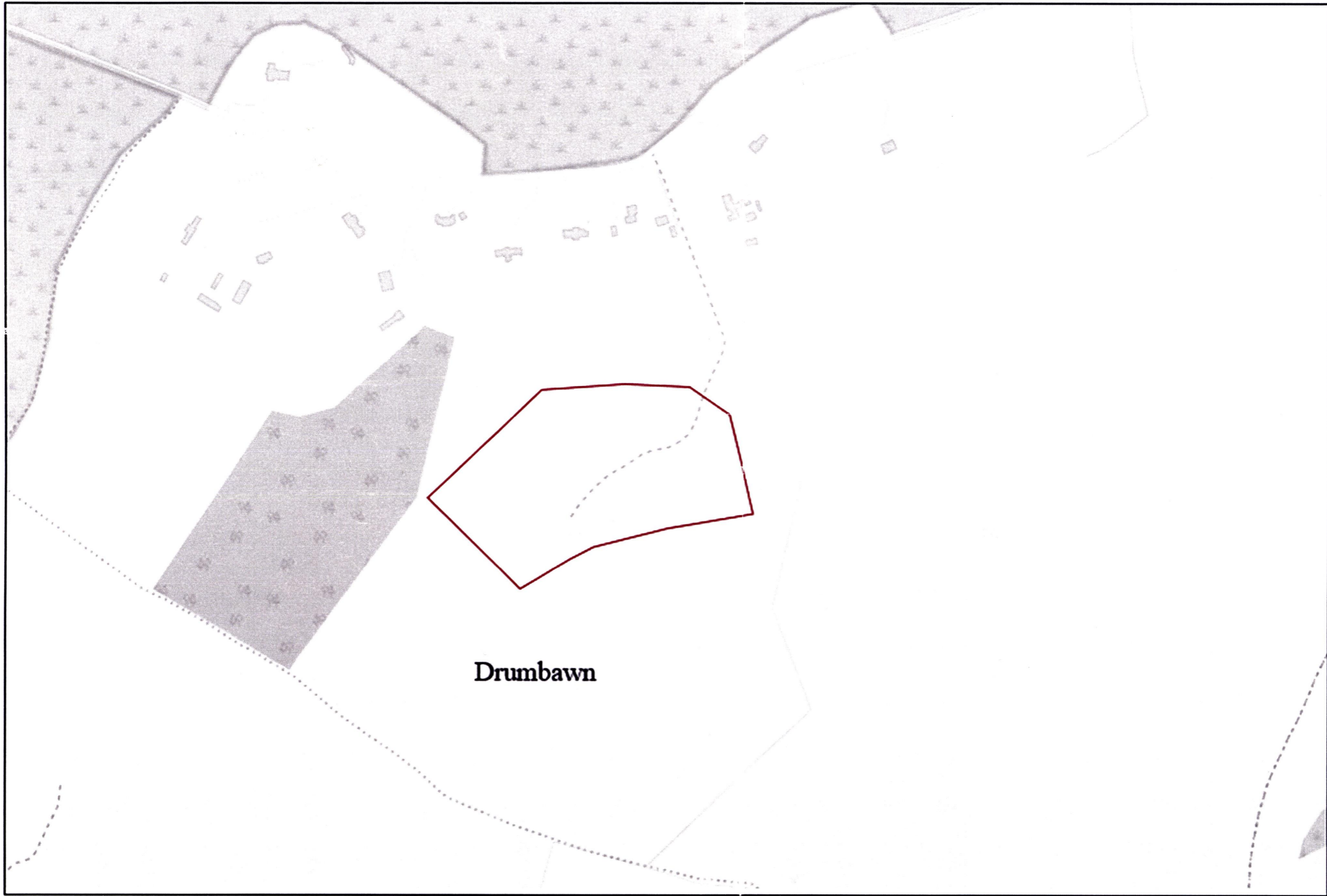
[planning@mdb.ie](mailto:planning@mdb.ie)



[www.mdb.ie](http://www.mdb.ie)



**SITE LOCATION MAP**



**OUTPUT SCALE: 1:2,500**





