



An  
Bord  
Pleanála

## Inspector's Report PL.27.248500

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<b>Development</b>	Reclamation of 1.6 hectares of farmland.
<b>Location</b>	Moanspick, Brittas, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	17/64.
<b>Applicant</b>	John O'Donoghue.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party v. decision.
<b>Appellants</b>	Irish Water.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> August 2017.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Location and Description**

- 1.1 The appeal site is located on the western side of the N81 in the rural townland of Moanspick, c 6.5km north of Blessington in County Wicklow. It is set back c. 400 metres from the road to the rear of agricultural buildings with access via a gated agricultural lane which also serves two dwellings.
- 1.2 The site boundaries consist mainly of post and wire fencing with ditches/drains running along some of these boundaries. A stream flows in an easterly direction along the southern boundary. The north eastern section of the site is bounded by mature trees which screen the adjoining agricultural buildings. Extensive drainage works have taken place on site. Ponding and rushes observed on site.
- 1.3 Maps, photographs and aerial images in the file pouch.

## **2.0 Proposed Development**

2.1. Permission is sought for the reclamation of c. 1.61 hectares of farmland consisting of:

- The importation of c.15,105 cubic metres (c.22,657 tonnes) of subsoil and topsoil sourced from greenfield developments.
- It is proposed to raise the level by c.0.95 to 1 metre across the site.
- Lands to be seeded on completion on the works.
- 40 no., 20 tonne capacity, trucks in/out per day.
- Delivery of material between 9:30 and 16:30.
- Overall landholding is stated to be c.50 hectares.

Further Information submitted included the increase in the buffer area from 2 to 10 metres along the water courses. This resulted in a decrease in the amount of proposed fill to c. 12,282 cubic metres.

The application outlines that the soils, which will be sourced at greenfield developments, will be categorized as a By-product under Article 27 of the European Communities Waste Directive Regulations 2011 (S.I 126 of 2011).

The applicant notes that this will not be classified as waste and their use is consistent with a proposed approach on dealing with soils and stone issued by the EPA.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission granted subject to 9 conditions which included:

No. 1 Plans and particulars submitted on the 24<sup>th</sup> March 2017.

No.2 (a) limits the permission to 3 years from the date of the final grant.

(b) limits to 1 year the period for the deposition of inert soils on site from the date of commencement.

No. 3 Refers to the use of the site only for the development proposed, that is for the acceptance of inert soil matter for use in land reclamation for agricultural purposes.

No. 4 Relates to restrictions on delivery times (0930 to 1630).

No. 5 Sets out the requirement for a temporary net fence to be erected along the full extent of the infill area boundary which provides for a 10 metre buffer zone.

No. 6 Refers to the provision of a wheel wash and maintaining the road free from debris, muck.

No. 7 Refers to the erection of advance warning signs along the N81.

No. 8 Sets out the requirement for records of all materials entering the site, and copies of all soil classification reports to be maintained on site for the inspection by the Planning Authority.

No. 9 Development Contribution. €6,600.

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

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

The two Planners Reports formed the basis for the Planning Authority's decision. The main issues considered related to the impact of the proposal on the receiving environment.

- Further information was requested generally based on the report from Inland Fisheries Ireland and related to the requirement for a buffer zone, wheelwash and an invasive species management plan. These matters were addressed to the satisfaction of the Planning Authority and a recommendation to grant permission issued.
- Appropriate Assessment screening concluded that there was no requirement for stage 2 assessment due to the scale of the proposal and the distance from the nearest European site.
- Environmental Impact Assessment screening concluded that the site does not come within the definition of wetlands to which the provision of Schedule 5 of the Planning and Development Regulations 2001, as amended would apply. The lands in question do not have any evident intrinsic nature conservation value which would be lost as a result of the works.

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

**3.2.2.1 Area Engineer.** Report on the further information. Wheelwash proposal considered acceptable.

**3.2.2.2 Road Design Office.** Reports on the initial application and subsequent further information.

It was noted that the delivery of material to site would be completed within 1 year. No objection subject to the provision of a wheel wash and advance warning signage.

**3.2.2.3 Environment and Water Services.** Reports on the initial application and subsequent further information.

- It was noted that the proposal related to the importation of good quality inert soil to raise the ground level by c. 1 metre across the site. The applicant estimated that the total volume of the required imported soil to

be c.15,105 cubic metres which would equate to c. 24,200 tonnes of soils, requiring c.1400 truckloads. The Waste Management Section had no objection subject to the installation of a wheelwash.

### **3.3 Prescribed Bodies**

**3.3.1 Dublin City Council (referred to as an agent of Irish Water).** Report received on the initial proposal. No report on file following the submission of the further information.

Object to the proposal due:

- a) to the proximity of the reclamation area to a feeder stream to the Poulaphuca Reservoir from which DCC abstracts water for drinking purposes.
- b) The presence of a high water table in the proposed area for reclamation.

Landfilling carries the inherent risk to water quality because in practice it is impossible to ensure that no contaminated material finds its way into the landfill area of the site. For this reason, it is considered that a landfill should not be sited in such a sensitive location within the catchment of Dublin's major drinking water source. The site has a feeder stream to the reservoir which runs along its boundaries. It is proposed to landfill within 2 metres of this stream which is unacceptable.

**3.3.2 Inland Fisheries Ireland.** Report received on the initial proposal. No report on file following the submission of the further information.

- The site is within the catchment of the Brittas river, an important salmonid system with Brown trout throughout and Freshwater crayfish (listed under Annex II of the EU Habitats Directive) also recorded.
- All measures should be taken to ensure comprehensive protection of the local aquatic ecological integrity. Only clean, uncontaminated surface waters must be permitted to be discharge to the surface water network in the area so that the ecological integrity of the system is protected.

- The disturbance of riparian habitats should be minimal. Riparian vegetation should be retained in as natural state as possible with supplementary native planting where required. An undisturbed buffer zone of 10 metres should be retained between the stream bank and the area of soil deposition.
- A list of requirements is set out including the provision of a wheelwash, details on material (source, characterisation, etc), an invasive species management plan and appropriate fencing.

**3.3.3 Transport Infrastructure Ireland.** Report received on the initial proposal. No report on file following the submission of the further information.

The proposal is considered to be at variance with the official policy in relation to the control of development on/affecting national roads. The proposal by itself, or by precedent, which a grant of permission for it would set, would adversely affect the operation and safety of the national road network. A Traffic Impact Assessment and a Road Safety Audit is required and the results incorporated as amendments to the proposal or as conditions.

#### **3.4 Third Party Observations**

None.

### **4.0 Planning History**

There are no recent relevant planning histories attached to the site.

Documentation submitted with the application refers to a landholding of c. 50 hectares in the applicant's ownership at Moanaspick, however, no map has been submitted of this landholding.

### **5.0 Policy Context**

#### **5.1. Wicklow County Development Plan 2016-2022**

##### **Chapter 5. Economic Development**

Objective **AGR1** refers to the development of environmentally sustainable agricultural activities whereby watercourses, wildlife habitats, areas of ecological importance and other environmental assets are protected from threat of pollution and where development does not impinge on the visual amenity of the countryside.

## **Chapter 10 Heritage**

**Objective NH23** refers to the requirement for a buffer (generally 10 metres) along watercourses free from inappropriate development to minimise alterations or interference with river/stream beds, banks and channels except for reason of overriding public health and safety (e.g to reduce risk of flooding).

**Objective NH51** refers to the need to resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling / reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and /or not give rise to adverse impacts

**Appendix 1** includes general development standards for facilities for the disposal of inert materials.

### **5.2 Eastern-Midlands Region. Waste Management Plan 2015-2021**

This is the regional waste management plan governing Wicklow.

### **5.3 European Communities (Waste Directive) Regulations 2011 (S.I 126 of 2011)**

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. Article 27 was introduced into Irish law to implement article 5 of the 2008 Waste Framework Directive (2008/98). Article 27(1) sets out the 4 conditions required to be met for a substance or object to be classed as a by-product.

**27 (1)** *A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste but as being a **by-product** only 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.*

*(2) (a) Where an economic operator makes a decision in accordance with paragraph (1) that a substance or object is to be regarded as a by-product, he or she shall notify the Agency of the decision and the grounds for the decision.*

*(b) Where there is no notice given to the Agency under subparagraph (a) in respect of a substance or object and the substance or object, as the case may be, is discarded or otherwise dealt with as if it were waste, the substance or object, as the case may be, shall be presumed to be waste until the contrary is proved.*

*(3) The Agency -*

*(a) may determine, in consultation with the relevant local authority and the economic operator concerned, whether a substance or object notified to it as a by-product in accordance with paragraph (2)(a) should be considered as waste, and*

*(b) shall notify the local authority and the economic operator concerned in circumstances where a determination is made that a substance or object should be considered as waste and not as a by-product.*



- (4) *Nothing in this Regulation shall relieve an economic operator from his or her responsibilities under the Act of 1992 or the Act of 1996.*
- (5) *The Agency shall establish and maintain a register of by-products to record substances or objects notified to it as by-products under paragraph (2)(a).*
- (6) *Where the Agency makes a determination in accordance with paragraph (3) that a substance or object should be considered as waste and not as a by-product, the determination shall be final.*

**5.4 Soil and stone as a by-product to be used as backfill or fill - A proposed approach to the assessment of notifications. Report on a consultation undertaken by the Environmental Protection Agency, 15 April 2013**

- This report noted that in relation to soils, any economic operator has the right to make a by-product notification under Article 27. A notification is simply a mechanism to inform the Agency of a decision already taken by the economic operator. If the economic operator satisfactorily addresses the conditions of article 27(1), the Agency cannot then make a determination under article 27(3)(a) that the material should be classified as waste. Soil and stone is legitimately classifiable as by-product if the requirements of article 27(1) are met.
  
- The notification of soil and stone is generally not precedent-setting due to the unique aspects of each notification, for example:
  1. - the nature of the notified material,
  2. - its source, and
  3. - the destination of the notified material and its particular characteristics

**5.5 EPA Guidance Manual for Waste Facility Permits and Registration Regulations 2011.**

**Third Schedule Part I.** Class of Activity subject to **Waste Facility Permit** Application to the Local Authority.

**Class 5:** Recovery of excavation or dredge soil, comprising natural materials of clay, silt, sand, gravel or stone and which comes within the meaning of inert waste, through deposition for the purposes of the improvement or development of land, where the total quantity of waste recovered at the facility is less than 100,000 tonnes.

**Third Schedule Part II.** Class of Activity subject to **Registration** with the Local Authority or the Agency.

**Class 5.** Recovery of excavation or dredge spoil, comprising natural materials of clay, silt, sand, gravel or stone and which comes within the meaning of inert waste, through deposition for the purposes of the improvement or development of land, where the works do not constitute exempted development within the meaning of \*Classes 11(b) and 11 (f) of exempted development – Rural Part 3 of second schedule of the Planning and Development Regulations 2001 (S.I No. 600 of 2001), and the total quantity of waste recovered at the site shall not exceed 25,000 tonnes.

(\*Class 11 has been amended since this document was written, however the reference to Land reclamation activities remains)

## 5.6 Natural Heritage Designations

There are no European designated sites within the immediate vicinity.

- Redbog SAC (site code 000397) is c.5 km to the southwest of the site
- Poulaphuca SPA (site code 004063) is c. 5km to the south of the site.
- Wicklow Mountains SAC (site code 002122) is c. 5km to the east of the site.
- Glenasmole Valley SAC (site code 001209) is c. c.7km to the north east of the site.

Natural Heritage Areas:

- The Slade of Saggart and Crooksling Glen pNHA is c.1.8km to the north of the site.

The Poulaphuca Reservoir is c. 7km south of the application site.

## **6.0 The Appeal**

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

A third party appeal was lodged by Irish Water and can be summarised as follows:

- The proposed development would result in the importation and placing of waste material in the catchment of the Poulaphuca Reservoir and thus pose a risk to the largest drinking water source in the Irish State. The conditions attached to the grant of permission are considered to be insufficient to safeguard the quality of this important source of drinking water.
- Irish Water is the owner of the Ballymore Eustace Water Treatment Plant, which is operated by Dublin City Council under a service level agreement. There is no record of the Council notifying Irish Water about the proposed development.
- The proposal is for the importation of c. 22,657 tonnes of waste material. The recovery and disposal of waste material is a waste activity and as such is subject to the requirements of the Waste Management Act and Regulations. A certificate of registration of waste activity to the Local Authority or an Article 27 notification to the EPA by the landowner receiving the waste is required for such an activity. There is no evidence provided by the applicant that either of these options have been followed.
- It is proposed to import soil and landfill clean soils and topsoil from greenfield development sites. However, there is no indication how the requirements of the Landfill Directive will be met in terms characterising the imported waste by:
  - a) Basic characterisation.
  - b) Compliance testing.

c) On-site verification.

There is no information on how the sourcing of the material will be achieved, nor how the applicant will ensure the waste is coming from greenfields (issue raised in the Inland Fisheries submission).

- The Planning Authority addressed the potential for pollution from the site reaching the reservoir by means of a surface water pathway(s). But pollution by means of a groundwater pathway was not addressed which is of concern due to:
  - The presence of a high water table on site.
  - No leachate collection or holding system is envisaged by the applicant.
  - Any recharge or run-off from the landfilling of waste material would appear to be directed to groundwater.
- Irish Water is concerned that the conditions attached do not sufficiently control the risk of inappropriate material being imported and disposed of at the subject site which has a direct surface water pathway to the Kilbride river feeding into the Poulaphuca Reservoir and potential groundwater pathways to the reservoir, which has a short retention time due to the operation of the hydraulic station at the Poulaphuca Dam.
- Should the Board grant permission, it is requested that the following conditions be included:
  - 1) The source of imported soil is managed and recorded by the applicant and a weighbridge to be agreed with Wicklow County Council and that the standard of the soil or stone in the imported material meets an engineering standard.
  - 2) A gate ceiling be imposed to prevent the soil and stone destination site receiving more than 25,000 tonnes of material which is a key waste management benchmark if breached.

- 3) A drainage system for the proposed infill be agreed to prevent contaminated runoff into the underlying groundwater table or to the feeder stream north of Kilbride river.
- 4) Environmental management system and controls be agreed with Wicklow County Council to ensure daily vehicle movements are at a maximum of 40 loads per day.

In addition to the above risk to the drinking water source, the appellant's note that the site is within 15km of a European site (Poulaphuca) and query if an appropriate assessment was carried out as there is no evidence of this on file.

## **6.2. Applicant Response**

The applicant has submitted a response to the third party appeal. The following points of note were made:

- The proposed development is neither a waste disposal (landfill) nor a waste recovery (land improvement using waste) activity. As stated in the planning application, the proposal will solely involve the reinstatement of agricultural lands using clean soil and stones that will be sourced from greenfield developments. These materials will be classified as a by-product under Article 27 of the European Communities (Waste Directive) Regulations 2011 S.I. No. 126 of 2011.
- Wicklow County Council took Dublin City Council's concerns into consideration, but concluded that given that the site is 7km from the boundary of the Poulaphuca Reservoir and the minimal nature of the works proposed, the development would not have a detrimental impact on the reservoir.
- The application did not include an assessment of the groundwater pathway to the reservoir as it was not considered necessary. Environmental risk assessment is based on Source-Pathway-Receptor linkages. For a proposed development to present a risk to a sensitive receptor there must be both a source and a pathway. The material that will be used in the reinstatement will comprise of clean soil and stone that

will not have the potential to leach out contaminants that present a risk to groundwater. Therefore, the development will not be either an actual or a potential source of groundwater contamination.

- The duty to undertake an appropriate assessment (AA) and to ensure that the stringent evaluation and decision making procedure is applied correctly lies with the competent authority. The Planners Report dated 10<sup>th</sup> March 2017 includes reference to the AA screening carried out.

The applicant notes that:

- Condition No. 8 attached to the grant of permission addresses condition no. 1 proposed by Irish Water.
- Irish Water's condition no. 3 relates to a waste disposal facility, which the applicant is not proposing. The Planning Authority's condition No. 5 refers to a 10m buffer and surface water runoff.
- Condition no. 1 of the grant of permission limits the amount of material to be imported to that stated in the application, therefore there is no requirement for the suggested 25,000 tonne benchmark as set out in Irish Water condition No. 2.
- Condition no. 1 limits the number of trucks to that stated in the application, therefore there is no requirement for Irish Water's suggested condition No. 4.

The applicant notes that Irish Water appears to misunderstand the nature of the proposed development. The proposal is for a land reclamation project and not a waste disposal or waste recovery activity. The concerns raised by Irish Water in the appeal are substantively the same as those identified by Dublin City Council, who are Irish Water agents, in its submission on the application and which the Council took into consideration when making its decision.

### **6.3. Planning Authority Response.**

The Planning Authority's response can be summarised as follows:

- The application was referred to Dublin City Council for comment as they have a service level agreement with Irish Water. This matter will be rectified in future applications.
- Appropriate Assessment screening was carried out as part of the assessment of the application.
- The appeal is concerned with the risk of inappropriate material being imported and disposed of on site, which has the potential to impact on the adjoining stream and groundwater which are pathways to the reservoir. It is highlighted that the application is for a modest level of reclamation to be carried out over a short time period. The materials to be brought on site have been indicated to be inert materials and the works will be subject to a Local Authority waste permit. In addition, the Planning Authority has limited the time for such works and required details of all materials being brought on site to be maintained.

#### **6.4. Observations**

None.

## **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal. Traffic is also considered due the nature of the development. The issues of appropriate assessment also need to be addressed. The issues are dealt with under the following headings:

- Nature of the development
- Impact on the receiving environment
- Traffic
- Appropriate Assessment

## **7.1 Nature of the development**

7.1.1 The proposed development relates to the reclamation of c. 1.61 hectares of farmland consisting of the importation of c.15,105 cubic metres (c.22,657 tonnes) of subsoil and topsoil sourced from greenfield development sites. It is proposed to raise the level by c.0.95 to 1 metre across the site for the purposes of improving the land for agricultural use. Revised proposals submitted to the Planning Authority under further information increased the buffer area from 2 to 10 metres along the water courses, resulting in a decrease in the amount of proposed fill to c. 12,282 cubic metres.

7.1.2 The grounds of appeal appear to be based on the premise that the proposal relates to a waste activity consisting of the importation and disposal of significant amounts of waste material in the Poulaphuca Reservoir catchment. Also that a certificate of registration for waste activity to the Local Authority or an Article 27 Notification to the EPA, is required for such an activity and that no evidence has been provided by the applicant that either of these options have been followed. The applicant has stated that the proposal is a land reclamation project using soil and stones, by-products under Article 27, and would not be a waste disposal or waste recovery activity



- 7.1.3 Article 27 of the European Communities Waste Directive Regulations 2011 (S.I. 126 of 2011) is set out in section 5.3 of this report. It places the onus on the economic operator to determine if materials are considered a by-product or not. The Planning Authority in their response to the appeal have noted that the proposal would require a Local Authority waste permit. I have set out the relevant activities under Class 5 that require Waste Permit or a Certificate of Registration in section 5.5 of this report
- 7.1.4 There have been a number of appeals for similar developments where no reference has been made to Article 27 in the applications. I draw the Boards attention to An Bord Pleanala Reference PL.09.246641, file attached. This relates to a 2016 grant of permission for the importation of 52,000 tonnes of soil and stones to improve the quality of the land for agricultural purposes. The Inspector noted that the stone and soils to be imported would be drawn from development sites and would be subject to Section 39(4) of the Waste Management Act for waste management permits.
- 7.1.5 The applicant has set out in the appeal that the proposed development is neither a waste disposal (landfill) nor a waste recovery (land improvement using waste) activity. The proposed land reclamation involves the reinstatement of agricultural lands using clean soil and stones sourced from greenfield developments sites, which would be classified as a by-product under Article 27 of the European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011).
- 7.1.6 While I am satisfied that the proposed development is not a landfill or a waste recovery facility, a determination on whether the stone and soils to be imported are classed as 'by-product' under Article 27 of the European Communities Waste Directive Regulations 2011 (S.I. 126 of 2011), or 'waste' may be subject to other legislative processes. This report assesses the impact of depositing inert materials (subsoil and topsoil) on the appeal site.

## **7.2 Impact on the receiving environment**

- 7.2.1 The placing of inert materials on lands in the form of soil and stones, whether classed as a by-product under Article 27 or as waste, has the potential to have a detrimental environmental impact. Therefore, the impact on the receiving environment forms the basis of this assessment.
- 7.2.2 As set out in section 7.1.5 above, the applicant has stated that the material to be imported would be clean inert subsoil and topsoil from greenfield development sites. I note that the specifics of this, while not specified in the planning application, would be included within a Certificate of Registration or an Article 27 Notification and regulated accordingly. In this instance, having regard to the scale and nature of the proposal, I consider that the requirement to maintain records of materials entering the site and soil classification reports would control the materials being received on site which would address the concerns raised by the appellant in the appeal on these grounds. I am satisfied that this matter can be dealt with by condition if the Board is of a mind to grant permission.
- 7.2.3 Concerns were raised at application stage by Inland Fisheries Ireland regarding the impact of the proposal on the adjacent stream which feeds into the Brittas River, a salmonid river. This formed the basis of a further information request which was addressed to the satisfaction of the Planning Authority.
- 7.2.4 Irish Water also raised concerns in the grounds of appeal that the conditions attached to the grant of permission would not sufficiently control the risk of inappropriate material being imported and disposed of at the subject site which has a direct surface water pathway to the Brittas river feeding into the Poulaphuca Reservoir and potential groundwater pathways to the reservoir, and are, therefore, insufficient to safeguard the quality of this important source of drinking water.
- 7.2.5 The applicant has stated that the material that will be used in the reinstatement would comprise of clean inert soil and stone. These materials would not have the potential to leach out contaminants that present a risk to groundwater. Therefore, the development will not be either an actual or a potential source of groundwater contamination. I am satisfied that the details lodged with the

planning application are sufficiently clear that what is proposed is the disposition of clean topsoil and subsoil with no foreseeable leachate arising. I consider that the information contained within the application and subsequent response to the appeal adequately address the concerns raised by Irish Water in relation to risk of pollution to groundwater and surface water. And that these matters can be addressed through appropriate conditions if the Board is of a mind to grant permission.

7.2.6 Objective NH23 of the Development Plan sets out the requirement for a 10 metre buffer along streams and watercourses in order to protect them from inappropriate development. The Planning Authority's Condition No. 5 sets out the requirement for netting to be erected at the infill area boundary and the provision of a 10 metre buffer along the stream which shall be kept free from works. The Environment and Water Services Section have no objection to the proposal. I am satisfied that these measures, along with appropriate drainage conditions, adequately addresses the issue of material potentially entering the stream thus reducing the risk to the stream.

7.2.7 Irish Water have included, as referenced in section 6.1 of this report, a number of recommended conditions to be attached in the event of a grant of permission. These are briefly discussed below:

- Condition No. 1 refers to record keeping and classification of materials being imported. This was addressed by the Planning Authority and the relevant condition included in the decision to grant.
- Condition No. 2 relates to a gate ceiling being imposed to prevent the soil and stone destination site receiving more than 25,000 tonnes of material which is stated to be a key waste management benchmark if breached. I do not consider that this condition is warranted as the proposal, if granted, would be limited to the plans and particulars as submitted. I further note that under further information to the Planning Authority, this was revised to c.12,282 cubic metres of fill.
- Condition No. 3 relates to drainage systems for the proposed infill area to prevent contaminated water to the underlying groundwater table or the feeder stream bounding the site. As referenced in section 7.2.5 above

the material to be deposited on site would consist of clean inert soils which would not have the potential to leach out contaminants that present a risk to groundwater. The provision of a buffer zone and netting, as noted in section 7.2.6 of this report, addresses the risk of material entering the stream through surface water runoff. This matter was addressed by the Planning Authority and the relevant condition included in the decision to grant.

- Condition No. 4 sets out that an environmental management system and controls be agreed with Wicklow County Council to ensure daily vehicle movements are at a maximum of 40 loads per day. This was also addressed by the Planning Authority and the relevant condition included in the decision to grant.

7.2.8 I am satisfied that, given the small scale of the proposed reclamation works, the nature of the materials to be imported and the location of the site at c. 7km from the Poulaphuca Reservoir, and subject to the appropriate conditions, the proposal would not present a danger of pollution to this source of drinking water or a risk to the receiving environment.

### **7.3 Traffic**

7.3.1 The appeal site is accessed off the N81, a national secondary route. Transport Infrastructure Ireland (TII) raised concerns in their submission to the Planning Authority that the proposal by itself, or by precedent, would adversely affect the operation and safety of the national road network. A Traffic Impact Assessment and a Road Safety Audit was recommended, the results of which should be incorporated as amendments to the proposal or as conditions.

7.3.2 The Councils Road Design Office noted no objection to the proposal subject to conditions limiting the delivery of material to the site to be completed within one year of confirmation of a grant of planning permission, the installation of a weighbridge and the erection of safety signage along the N81. The Area Planner concluded that the development was of limited scale and duration and,

therefore, the works would not have a long term impact in the capacity if the N81.

7.3.3 Irish Water, in their grounds of appeal, recommended that a condition be attached relating to the requirement for an environmental management system and controls be agreed with Wicklow County Council to ensure daily vehicle movements are at a maximum of 40 loads per day.

7.3.4 I am satisfied that the impact of the traffic associated with the proposed development, 40 trucks per day over a period of 12 months, would have a limited short term impact on the N81 with no foreseeable long term impact on the carrying capacity of this road. A condition requiring the submission of a Traffic Management Plan would further address the short term impacts of traffic generated by the proposal.

## **7.4 Appropriate Assessment**

7.4.1 The closest Natura 2000 sites are the Redbog SAC (site code 000397) and the Poulaphuca SPA (site code 004063) both of which are located at a distance of c.5 km respectively to the south and south west of the site. The Wicklow Mountains SAC (site code 002122) is c. 5km to the east of the site. Conservation Objectives have been prepared for them.

7.4.2 There are no direct pathways or linkages with the Redbog SAC and the Wicklow Mountain SAC.

7.4.3 The site drains into a stream which flows in an easterly direction along its southern boundary. This discharges into the Brittas River c. 500m east of the site (east of the N81). The Brittas river is a tributary of the River Liffey which flows into the Poulaphuca Reservoir within the Poulaphuca SPA (site code 004063).

7.4.4 The Area Planners Report concluded that given the minimal scale of the development and the distance of the development to the Reservoir that the development, even where some materials were to enter the stream, would not

give rise to a significant negative impact on the SPA, and, therefore, there was no need for a Stage 2 Appropriate Assessment.

7.4.5 Soils used in the process would be clean and inert and not susceptible to leaching of substances and unlikely to result in the contamination of groundwater sources or be detrimental to the water quality. The proposed 10 metre buffer along the stream would prevent potential for rain runoff. The development would be relatively small scale and the hydrological distance, via the nearby stream and the Brittas River, to the Poulaphuca SPA is of the order of 7km.

7.4.6 I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect a European site, in particular the Poulaphuca SPA (site code 004063) and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **8.0 Recommendation**

I recommend that permission be granted subject to condition as set out below

## **9.0 Reasons and Considerations**

Having regard to the small scale of the proposal, the location of the development site and to the provisions of the Wicklow County Development Plan 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would not give rise to risk of water pollution and would, otherwise, be satisfactory in terms of environmental impact. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with

the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 24<sup>th</sup> day of May 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. a) This site shall be used only for the development proposed, that is the acceptance of inert soil material for use in land reclamation for agricultural purposes. No other activity, including any industrial activity, shall occur on this site whether or not such change of use would otherwise constitute exempted development.

**Reason:** In the interest of clarity and of environmental protection.

3. (a) The appropriate period for this permission is 3 years from the date of this order.  
  
(b) The importation of soil shall be completed within 12 months of commencement of the development.

**Reason:** In the interest of good traffic management and to protect amenities of the area.

4. Records of all materials entering the site and copies of all soil classification reports shall be maintained on site for inspection by the Planning Authority, as and when requested.

**Reason:** To ensure that materials entering the site are appropriate and in the interest of environmental protection.

5. Prior to the commencement of development, the developer shall submit for the written agreement by the Planning Authority, details for a temporary net

fence to be erected the full extent of the infill area boundary. This net fence shall be set back 10 metres from the boundary with the stream shown on the revised topographical survey drawing submitted to the Planning Authority on the 24<sup>th</sup> March 2017 and no material shall be deposited within this 10 metre buffer area.

**Reason:** In order to protect surface water and to prevent pollution.

6. Prior to the commencement of development, the developer shall submit and agree the following in writing with the Planning Authority:
  - a) The location and details for a wheelwash facility. All vehicles (other than private cars and vans) exiting the site shall pass through the wheel wash facility.
  - b) The siting and specification for a weighbridge within the site.

**Reason:** To ensure that materials entering the site are appropriate and in the interest of environmental protection.

7.
  - a) The maximum number of truck loads to the site per day shall be 40.
  - b) The importation of soil and operation of associated machinery shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays and between 0800 and 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interest of traffic safety and convenience and to protect the amenities of the area.

8. Prior to the commencement of development, the developer shall submit and agree the following in writing with the Planning Authority:
  - (a) A traffic management plan for the operations.
  - (b) The material, content, design and location of metal advance warning signs which shall be erected on both sides of the entrance along the



N81. These signs shall be maintained in good and clean condition and removed on completion of the land reclamation works.

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

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

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

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Dáire McDevitt  
Planning Inspector

20<sup>th</sup> November 2017