



An
Bord
Pleanála

Inspector's Report ABP-301135-18

Development

The importation and deposition of inert subsoil and topsoil for land profiling and re-contouring purposes including all ancillary site works at an existing agricultural holding of 7.53 hectares. The purpose of this work is to improve the site for agriculture. A Waste Facility Permit is required for this development. The planning application is accompanied by an N.I.S. (Natura Impact Statement).

Location

Kilnamanagh More, Glenealy, Co. Wicklow.

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

17/866

Applicant(s)

Ann Dempsey

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal	First Party v. Decision
Appellant(s)	Ann Dempsey
Observer(s)	None.
Date of Site Inspection	25 th June, 2018
Inspector	Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located in the rural townland of Kilnamanagh More, Co. Wicklow, approximately 2.5km south of the village of Glenealy and 6km east-northeast of Rathdrum, where it occupies a position to the west of the N11 National Route and to the southeast of the Deputy's Pass Nature Reserve. It forms part of a larger landholding and is set back from the public road with the intervening lands used for pasture / tillage purposes. The surrounding area is primarily agricultural and is characterised by an undulating rural landscape interspersed with individual farmsteads and one-off rural housing, although the lands to the northwest are more elevated and increasingly dominated by low quality farmland and forestry plantations. The site itself has a stated site area of 7.53 hectares, is irregularly shaped, and comprises a series of agricultural fields bounded by hedgerows and the Potters River to the south. Access to the site is obtained via an existing haul route / track which extends northwards from Local Road No. L1113.

2.0 Proposed Development

- 2.1. The proposed development involves the raising, reprofiling and re-contouring of the ground level of 2 No. agricultural fields over an area of 7.53 hectares through the importation and deposition of 23,000 No. tonnes (15,400m³) of inert subsoil and topsoil to improve the agricultural quality / output of the lands in question (*N.B.* The increase in ground level will range from 500mm - 1,300mm). In this respect it has been stated that the majority of the imported material is expected to be sourced from road improvement works and other projects in the locality (subject to availability). Upon completion of the works, including the provision of a 300mm deep surface layer of topsoil, the newly raised lands will be graded, seeded, and returned to agricultural use.
- 2.2. The proposal also includes for the extension of an existing haul route to accommodate the land improvement works. It is anticipated that the proposal will result in 1,278 No. loads of material being delivered to the site over a period of 3 No. years at a rate of 426 No. loads per annum (i.e. 1-2 No. loads of 18 No. tonnes per day) which would equate to 7,667 No. tonnes of material per annum (although it has been suggested that the timeline for the works may change depending on the

availability of fill material). Deliveries to the site will occur from 07:30-19:00 hours, Monday to Friday, and from 07:30-1500 hours on Saturdays.

- 2.3. It is proposed to maintain a 10m buffer zone from watercourses (i.e. The Potters River and the smaller drainage streams along the site boundaries) and to erect a 1.2m high clay bund within the first year of operation along the length of the watercourse (Potters River) in order to demarcate the edge of the buffer.
- 2.4. Associated site development works include the surfacing of the existing recessed site entrance in tarmacadam, the re-planing and resurfacing of the public road by up to 15m either side of the centreline of the existing entrance, and the maintenance of a road washer and wheelwash on site.
- 2.5. A Waste Facility Permit will be required for the proposed development.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On 20th February, 2018 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 3 No. reasons:

- Having regard to:
 - a) The nature and scale of the proposed development.
 - b) The location of the development and its proximity to the Potters River and its feeder streams.
 - c) The environmental impacts resulting from similar forms of development within the immediate vicinity of the site in particular the deterioration in water quality as a result of suspended solids entering watercourses.
 - d) The Environmental Impact Assessment - Sub-threshold analysis which has concluded that the proposed development is likely to have significant effects on the environment.

It is considered that the proposed development would require Environmental Impact Assessment. To assess this application in the absence of an Environmental Impact Assessment Report (EIAR) would be contrary to the

EIA Directive and to the proper planning and sustainable development of the area.

- Having regard to:
 - a) The nature and scale of the development proposed.
 - b) The proximity of the site to the Potters River and its feeder streams which connect the application site to the Brittas Buckroneys Dunes and Fen candidate Special Area of Conservation.
 - c) The potential impact on the conservation objectives of the Natura 2000 site as a result of water quality deterioration due to the risk of contaminants reaching surface waters (feeder streams of the Buckroneys-Brittas Dunes and Fen SAC) and the over dependence on the implementation of mitigation measures to rule out the potential impact.
 - d) The damage to the Potters River, resulting from a similar form of development within the immediate vicinity of the site.

It is not possible to rule out possible adverse effects on the integrity of Natura 2000 sites. The proposed development would, therefore, be contrary to the provisions of Article 6(3) of the Habitats Directive and to the proper planning and sustainable development of the area.

- Having regard to:
 - a) The nature and scale of the proposed development, particularly when taking into consideration similar forms of development within the immediate vicinity of the site.
 - b) The location of the development and its proximity to the Potters River and its feeder streams.
 - c) The failure of the applicant to demonstrate that the proposed level of fill is necessary and appropriate given the existing conditions of the site etc.

It is considered that the development as proposed is unjustified and has the potential to unnecessarily alter the natural landscape and topography,

resulting in changes to existing surface water runoff patterns and rates, loss of bio-diversity and loss of habitats. It is therefore considered that the proposed development would be contrary to the standards and objectives of the Wicklow County Development Plan and to the principle of proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

Details the particulars of the proposed development, the site context, and the relevant planning history, before proceeding to analyse the proposal in light of the applicable planning policy considerations. In this regard, particular reference is made to the potential cumulative impacts associated with the subject proposal when taken in conjunction with the land improvement / infilling works previously approved elsewhere on the landholding under PA Ref. No. 15/825. Moreover, it has been asserted that the aforementioned works were not undertaken in accordance with the terms and conditions of the relevant grant of permission and thus that development would have necessitated environmental impact assessment pursuant to Class 11(b) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended. The report subsequently states that although the subject proposal is sub-threshold, it would also require environmental impact assessment. It is further submitted that as the proposal has the potential to impact on the downstream Buckronev-Brittis Dunes and Fen Special Area of Conservation given the risk of a deterioration in water quality, permission should be refused having regard to the 'precautionary principle'. The report also queries certain other aspects of the development, including the need for the level of infilling proposed, before ultimately recommending a refusal of permission.

3.2.2. Other Technical Reports:

Wicklow Area Engineer: States that there is a high probability of damage to the surrounding regional and local road network consequent on the traffic movements associated with the development. Accordingly, in the event of a grant of permission, it is recommended that the applicant be required to contribute towards the cost of

road repairs either by way of development levies or the inclusion of other specific conditions.

3.3. Prescribed Bodies

3.3.1. *Inland Fisheries Ireland*: States the following:

- The lands border the Potters River, an important salmonid system supporting Atlantic salmon (*Salmo salar* listed under Annex II and V of the EU Habitats Directive), lamprey (Annex II), Sea trout (*Salmo trutta*) in addition to resident Brown trout (*Salmo trutta*) throughout. All proposed works must be designed and implemented in an environmentally sound and sustainable manner and should not impact negatively on the salmonid status of this system.
- Inland Fisheries Ireland are opposed to any infilling of floodplain lands.
- The development, if permitted, should be completed in a phased manner with discrete sections being completed and seeded before the next phase commences.
- At a minimum, a 10m buffer should be installed along all watercourses / drainage channels and the Potters River.
- The clay bund together with the buffer area should be seeded / planted within the first season.
- A detailed monitoring and maintenance programme should be agreed for all on site ditches. Records should be maintained of all monitoring and maintenance. It is imperative that these should not convey silt from the operation to the Potters catchment.
- The site access constructed over the Potters River and the haul road crossing the southern tributary are both unsatisfactory and are impacting on the passage of fish. Any crossing of the Potters River should be by a clear span bridge type structure which will not impact on the bed or banks or on fish migration, similarly the crossing of the tributary must ensure the unhindered passage of fish during all flows.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. On Site:

PA Ref. No. 16/1273. Was refused on 24th January, 2017 refusing Ann Dempsey permission for the importation and deposition of insert subsoil and topsoil for land profiling and recontouring purposes including all ancillary site works at an existing agricultural holding of 4.14 hectares. The purpose of this work is to improve the site for agriculture. A Waste Facility Permit is required for this development. All at Kilnamanagh More, Glenealy, Co. Wicklow.

- Having regard to:
 - a) The nature and scale of the proposed development.
 - b) The location of the development and its proximity to the Potters River and its feeder streams.
 - c) The environmental impacts resulting from similar forms of development within the immediate vicinity of the site in particular the deterioration in water quality as a result of suspended solids entering watercourses.

It is considered that the applicant has failed to demonstrate that the proposed development would enhance the landscape and would not give rise to adverse impacts. The proposed development would therefore be contrary to County Development Plan Policy and to proper planning and development.

- Having regard to:
 - a) The nature and scale of the proposed development.
 - b) The proximity of the site to the Potters River and its feeder streams which connect the application site to the Brittas Buckroneys Dunes and Fen candidate Special Area of Conservation.
 - c) The environmental impacts resulting from similar forms of development within the immediate vicinity of the site – in particular the noticeable

deterioration in water quality as a result of suspended solids entering watercourses.

- d) The Stage 1 appropriate assessment screening which concluded that the potential likely risks to the conservation objectives of the Brittas Buckroneys Dunes and Fen candidate Special Area of Conservation cannot be ruled out.
- e) The need for Stage 2 Appropriate Assessment.
- f) The information submitted with this application which is deemed inadequate to carry out Stage 2 Appropriate Assessment.
- g) The Environmental Impact Assessment – Subthreshold analysis which has concluded that the proposed development is likely to have significant effects on the environment.

It is not possible to rule out possible adverse effects on the integrity of Natura 2000 sites. To permit the proposed development would therefore be contrary to the provision of Article 6(3) of the Habitats Directive, the EIA Directive and to the proper planning and sustainable development of the area.

- The proposed development would represent consolidation of unauthorised development, having regard to the non-compliance of the development on this landholding with the terms and conditions of the previous grant of planning permission PRR15/825, in particular in relation to the construction, maintenance etc. of the site entrance, haul roads and wheel wash, infrastructure and facilities upon which the proposed development is reliant.

The provision of such a form of development unduly impacts on the amenities of the area, public health, the amenities of adjoining properties, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.

4.2. On Adjacent Sites:

PA Ref. No. 15/35. Application by Ann Dempsey for permission for the importation and deposition of inert subsoil and topsoil for land profiling and re contouring purposes including all ancillary site works at an existing agricultural holding of 6.24

acres. A waste facility permit is required for this development. All at Carrigmore, Glenealy, Co. Wicklow. This application was withdrawn.

PA Ref. No. 15/825. Was granted on 23rd September, 2015 permitting Ann Dempsey permission for the importation and deposition of inert subsoil and topsoil for land profiling and re-contouring purposes including all ancillary site works at an existing agricultural holding of 6.24 acres. The purpose of this work is to improve the site for agriculture. A waste facility permit is required for this development. All at Carrigmore, Glenealy, Co. Wicklow.

5.0 Policy Context

5.1. National and Regional Policy

5.1.1. The *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* published by the Department of the Environment, Heritage and Local Government in November, 2009 introduce comprehensive mechanisms for the incorporation of flood risk identification, assessment and management into the planning process. The core objectives of the Guidelines are to:

- Avoid inappropriate development in areas at risk of flooding;
- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;
- Avoid unnecessary restriction of national, regional or local economic and social growth;
- Improve the understanding of flood risk among relevant stakeholders; and
- Ensure that the requirements of the EU and national law in relation to the natural environment and nature conservation are complied with at all stages of flood risk management.

5.1.2. In achieving the aims and objectives of the Guidelines the key principles to be adopted should be to:

- Avoid the risk, where possible,
- Substitute less vulnerable uses, where avoidance is not possible, and

- Mitigate and manage the risk, where avoidance and substitution are not possible.

5.1.3. The Guidelines outline the need to identify flood zones and to categorise these according to their probability of flood events. Notably, these should be determined ignoring the presence of flood protection structures as such areas still carry a residual risk of flooding from overtopping or breach of defences and as there is no guarantee that the defences will be maintained in perpetuity.

5.1.4. A staged approach to Flood Risk Assessment is advocated with only such appraisal and / or assessment as is needed to be carried out for the purposes of decision-making at the regional, development and local area plan levels, and also at the site specific level. Stage 1 entails the identification of flood risk by way of screening of the plan / project in order to determine whether there are any flooding or surface water management issues related to the area or the site that may warrant further investigation. This is followed by Stage 2 (Initial flood risk assessment) which seeks to confirm the sources of flooding that may affect a plan area or site, to appraise the adequacy of existing information and to scope the extent of the risk of flooding which may involve preparing indicative flood zone maps. Where hydraulic models exist the potential impact of a development on flooding elsewhere and of the scope of possible mitigation measures can also be assessed. The third and final stage (Stage 3: Detailed flood risk assessment) aims to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of potential flood risk to a proposed or existing development or land to be zoned, its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.

5.1.5. Chapter 3 of the Guidelines states that the key principles of a risk-based sequential approach to managing flood risk in the planning system are to:

- **Avoid** development in areas at risk of flooding;

If this is not possible, consider substituting a land use that is less vulnerable to flooding.

Only when both avoidance and **substitution** cannot take place should consideration be given to **mitigation and management of risks**.

- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- **Exceptions** to the restriction of development due to potential flood risks are provided for through the use of a **Justification Test**, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

5.1.6. It is a key instrument of the Guidelines to undertake a sequential approach in order to guide development away from areas at risk from flooding such as through the use of flood zones and the vulnerability of different development types, however, it is recognised that several towns and cities whose continued growth and development is being encouraged (through the National Development Plan, Regional Planning Guidelines etc.) in order to bring about compact and sustainable urban development and more balanced regional development, contain areas which may be at risk of flooding. Where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the ‘Justification test’ set out in Box 5.1 of the Guidelines should be employed.

5.1.7. The vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used. The classification of different land uses and types of development as highly vulnerable, less vulnerable and water-compatible is influenced by various factors including the ability to manage the safety of people in flood events and the long-term implications for the recovery of the function and structure of buildings.

5.2. **Development Plan**

5.2.1. **Wicklow County Development Plan 2016-2022:-**

Chapter 5 - Economic Development:

Section 5.6: *Objectives for Wicklow’s Rural Economy:*

Economic Development in a Rural Area:

- Applications pertaining to proposals for commercial waste facilities shall be assessed on the basis of objectives set out in 'Section 9.3: Waste & Environmental Emissions'.

Agriculture: Strategic Objective:

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.

AGR1: To facilitate the development of environmentally sustainable agricultural activities, whereby watercourses, wildlife habitats, areas of ecological importance and other environmental assets are protected from the threat of pollution, and where development does not impinge on the visual amenity of the countryside. Developments shall not be detrimental to archaeological and heritage features of importance.

AGR4: To ensure that agricultural developments do not cause increased pollution to watercourses. Developments will be required to adhere to the Nitrates Directive (91/676/EC), and the EC (Good Agricultural Practice for Protection of Waters) Regulations 2009, with regard to storage facilities, concerning the protection of waters against pollution caused or induced by nitrates from agricultural sources. Developments will be required to comply with relevant measures, which operate to protect water quality from pollution by agricultural sources. The disposal and storage of agricultural waste shall comply with the standards required by Council.

Chapter 9 - Infrastructure:

Section 9.2: Water Infrastructure and Flooding:

Section 9.2.5: Flooding:

Flood Management Objectives:

FL1: To prepare new or update existing flood risk assessments and flood zone maps for all zoned lands within the County as part of the review process for Local Area Plans, zoning variations and Town Plans, where considered necessary.

FL2: To implement the ‘Guidelines on the Planning System and Flood Risk Management’ (DoEHLG/OPW, 2009).

FL3: The zoning of land that has been identified as being at a high or moderate flood risk (flood zone A or B) shall be in accordance with the requirements of the Flood Risk Guidelines and in particular the ‘justification test for development plans’ (as set out in Section 4.23 and Box 4.1 of the guidelines).

FL4: Applications for new developments or significant alterations/extension to existing developments in a flood risk area shall comply with the following:

- Follow the ‘sequential approach’ as set out in the Flood Risk Guidelines.
- Flood risk assessments will be required with all planning applications proposed in areas identified as having a flood risk, to ensure that the development itself is not at risk of flooding and the development does not increase the flood risk in the relevant catchment (both up and down stream of the application site).
- Where a development is proposed in an area identified as being at low or no risk of flooding, where the planning authority is of the opinion that flood risk may arise or new information has come to light that may alter the flood designation of the land, an appropriate flood risk assessment may be required to be submitted by an applicant for planning permission.
- Restrict the types of development permitted in Flood Zone A and Flood Zone B to that are ‘appropriate’ to each flood zone, as set out in Table 3.2 of the guidelines for Flood Risk Management (DoEHLG/OPW, 2009).
- Developments that are an ‘inappropriate’ use for a flood zone area, as set out in Table 3.2 of the guidelines, will not be permitted, except where a proposal complies with the ‘Justification Test for Development Management’, as set out in Box 5.1 of the Guidelines.
- Flood Risk Assessments shall be in accordance with the requirements set out in the Guidelines.

- Generally a Flood Impact Assessment will be required with all significant developments and a certificate (from a competent person stating that the development will not contribute to flooding within the relevant catchment) will be required with all small developments of areas of 1 hectare or less.

FL5: To prohibit development in river flood plains or other areas known to provide natural attenuation for floodwaters except where the development can clearly be justified with the Flood Risk Guidelines 'Justification test'.

FL8: To require all new developments to include proposals to deal with rain and surface water collected on site and where deemed necessary, to integrate attenuation and SUDS measures.

FL9: For developments adjacent to all watercourses of a significant conveyance capacity or where it is necessary to maintain the ecological or environmental quality of the watercourse, any structures (including hard landscaping) must be set back from the edge of the watercourse to allow access for channel clearing/ maintenance / vegetation. A minimum setback of up to 10m (or other width, as determined by the Council) will be required either side depending on the width of the watercourse.

Section 9.3: *Waste and Environmental Emissions:*

Strategy:

To promote and facilitate best practice in prevention, re-use, recovery, recycling and disposal of all waste and environmental emissions produced in the County

Section 9.3.2: *Solid Waste Management:*

Solid Waste Management Objectives:

WE3: To facilitate the development of existing and new waste recovery facilities and in particular, to facilitate the development of 'green waste' recovery sites.

WE6: To facilitate the development of sites, services and facilities necessary to achieve implementation of the objectives of the Regional Waste Management Plan.

Chapter 10 - Heritage:

Section 10.3: *Natural Heritage and Landscape:*

Section 10.3.2: *Biodiversity*

Section 10.3.4: *Water Systems:*

NH23: To minimise alterations or interference with river / stream beds, banks and channels, except for reasons of overriding public health and safety (e.g. to reduce risk of flooding); a buffer of generally 10m along watercourses should be provided (or other width, as determined by the Planning Authority) free from inappropriate development, with undeveloped riparian vegetation strips, wetlands and floodplains generally being retained in as natural a state as possible. In all cases where works are being carried out, to have regard to Regional Fisheries Board "Requirements for the protection of fisheries habitat during the construction and development works at river sites".

Section 10.3.6: *Green Infrastructure*

Section 10.3.9: *Wicklow's Landscape:*

Eastern Corridor Area: 4(a) - The N11:

This area covers the main access corridor area along the east of the County. The boundary of the eastern access corridor generally follows what is considered to be the areas upon which the greatest influence is exerted by this primary access route. This route, for the most part, runs through the more low lying and accessible tracts of land, dissects the Glen of the Downs wood in the north of the County and provides expansive coastal views north of Wicklow Town. This landscape area acts as the main connection between the major towns along the east coast of the County.

NH49: All development proposals shall have regard to the County landscape classification hierarchy in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment (set in Volume 3 of this plan) and the 'Key Development Considerations' set out for each landscape area set out in Section 5 of the Wicklow Landscape Assessment.

NH51: 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.

Section 10.3.10: *Views and Prospects:*

NH52: To protect listed views and prospects from development that would either obstruct the view / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.

Appendix 1: Development and Design Standards:

Section 9: *Waste and Emissions: Facilities for disposal of inert materials:*

Applications for the development of commercial waste disposal or recycling facilities catering for the disposal or reuse of inert clean soils, clay, sands, gravels and stones shall only be permitted at appropriate locations and shall be subject to the following:

- It shall be for the disposal of inert clean material only;
- There shall be a proven need for the proposed development;
- The proposed development shall be in accordance with the policies set out in the Eastern-Midlands Region Waste Management Plan
- The proposed development shall not result in adverse impacts on the landscape or unnecessarily interfere with natural land form and topography in any area, without detailed justification
- Such facilities shall not give rise to significant adverse impacts on a designated Natura 2000 site, or interfere with a protected view or prospect, a public right of way, an existing or planned piece of strategic infrastructure, or an important tourist site;

- A development shall not be permitted if it has a detrimental impact on the amenity of adjoining residents, by reason of unacceptable levels of traffic, noise, dust, lighting or other impact resulting from the operation of the facility;
- A development shall not be permitted if it has a detrimental impact on the flora and fauna, ecology, ground and surface water, air quality, and geological / archaeological heritage of the area;
- The development does not result in the creation of a significant traffic hazard and the road network is suitable and has the capacity for anticipated traffic levels.

It should be noted that this policy pertains to inert clean waste disposal facility only, and does not relate to any ancillary activities pertaining to the operation of sorting, manipulation and recycling of waste.

A detailed phasing programme for the importation of material, to include details of the volume of material to be included in each phase, cross sections of each phase of operation, the construction of slopes or banks in each phase, details for the seeding and capping of each phase, details pertaining to the impact on the landscape at each phase and landscaping details for the final phase of site restoration.

Where an Environmental Impact Assessment is required the applicant should liaise with the Planning Authority to scope the contents, concerns and issues to be addressed in any environmental impact statement to be prepared.

Appendix 5: Landscape Assessment:

Section 4.5: Wicklow's Landscape Areas:

Section 4.5.4: Corridor Area: 4(a) - The N11:

This area covers the main access corridor area along the east of the County. The boundary of the eastern access corridor generally follows what is considered to be the areas upon which the greatest influence is exerted by this primary access route. This route, for the most part, runs through the more low lying and accessible tracts of land, dissects the Glen of the Downs wood in the north of the County and provides expansive coastal views north of Wicklow Town. This landscape area acts as the main connection between the major towns along the east coast of the County.

Section 5: Policy Provision:

Section 5.3.1: *General Development Considerations (GDC)*

Section 5.3.14: *Corridor Area KDC (see Appendix 4 Map 10.13(d)):*

1. To protect views and prospects from the corridor area towards the surrounding landscape areas from development that would either obstruct the views / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.
2. Development proposals within this area should aim to locate within existing clusters of structures / tree stands and avoid locating new development in open fields.

N.B. The proposed development site is located within the 'Corridor area east (N11)' landscape category as detailed in Figure 4.11: 'The Landscape Category Map' and Map 10.13(d) of the Landscape Assessment.

Appendix 11: Strategic Flood Risk Assessment

5.3. Natural Heritage Designations

5.3.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The Deputy's Pass Nature Reserve Special Area of Conservation (Site Code: 000717), approximately 1.4km northwest of the site.
- The Vale of Clara (Rathdrum Wood) Special Area of Conservation (Site Code: 000733), approximately 5.5km west of the site.
- The Magherabeg Dunes Special Area of Conservation (Site Code: 001766), approximately 7km east-southeast of the site.
- The Murrough Special Protection Area (Site Code: 004186), approximately 7.6km northeast of the site.
- The Murrough Wetlands Special Area of Conservation (Site Code: 002249), approximately 7.7km northeast of the site.

- The Buckroney-Brittis Dunes and Fen Special Area of Conservation (Site Code: 000729), approximately 7.8km southeast of the site.
- The Wicklow Head Special Protection Area (Site Code: 004127), approximately 9.1km east-northeast of the site.
- The Wicklow Reef Special Area of Conservation (Side Code: 002274), approximately 10km east-northeast of the site.
- The Wicklow Mountains Special Area of Conservation (Site Code: 002122), approximately 11.6km northwest of the site.
- The Wicklow Mountains Special Protection Area (Site Code: 004040), approximately 12.7km northwest of the site.

6.0 The Appeal

6.1. Grounds of Appeal

- By way of background, it should be noted that when the applicant came into ownership of the subject landholding, the land was of no value for agricultural purposes due to the undulating terrain, the presence of large rocks, and the poor drainage characteristics. Therefore, on the advice of Teagasc, the applicant applied for planning permission and a Waste Facility Permit in order to remediate the land so that it could be used for agricultural purposes. In this respect permission was granted under PA Ref. No. 15/825 for the importation of approximately 50,000 No. tonnes of clean inert soil on a phased basis with the result that part of the landholding was remediated to provide for good quality agricultural land. Notably, the Planning Authority had initially sought to refuse permission for the original proposal on the basis that the size of the development proposed was excessive, although it subsequently approved the works on a reduced scale. It was for this reason that the applicant only applied for a section of the land to be remediated. The applicant then sought to remediate a further part of her landholding under PA Ref. No. 16/1273, however, this was refused by the Planning Authority.

It is considered that the decision of the Planning Authority in respect of PA Ref. No. 16/1273 was ill-informed, lacked any scientific basis, and served to

deprive the applicant of an income from her land. More particularly, it is submitted that there was no basis for the third and final reason for refusal given that the applicant's property is the closest dwelling house and as the proposal would have provided for a locally-based temporary infill site (at a time when the lack of such sites is of national concern given the improvement of the construction sector). The development would also have provided for local employment and allowed the land to be used for agricultural purposes. Furthermore, due to the poor quality of the lands and their limited ecological value, the development proposed would not have resulted in a loss of biodiversity.

In addition, a bridge that had been constructed by the applicant across the river, and which was thought to have formed part of the ancillary works, was removed and the site fully restored once it was realised that planning permission was required.

- The proposed development involves the importation of 23,000 No. tonnes of material over a period of three years. Accordingly, it is below the threshold for Environmental Impact Assessment as set out under Class 11(b) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, as follows:

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

With regard to the foregoing, it is also submitted that whilst the subject proposal can be categorised as a 'waste' operation on the basis that the input material is technically 'waste', the proposed development amounts to land remediation. In any case, the proposed intake will be approximately 7,500-8,000 No. tonnes per annum over a period of 3 No. years

- Even if the proposal were to be taken in conjunction with the development previously permitted under PA Ref. No. 15/825, it would not exceed the threshold for the preparation of an Environmental Impact Assessment Report. Moreover, the permitted development is now complete and in use as farmland i.e. it is not impacting on the environment as an infill / waste facility.

- The development previously approved under PA Ref. No. 15/825 operated in compliance with a Waste Facility Permit issued by the Local Authority (Ref. No. WFP-15-0035-01).
- The subject application has been accompanied by an environmental report which details the means by which potential environmental impacts will be controlled and mitigated.
- The proposed development involves the importation of no more than 7,500-8,000 No. tonnes of soil per annum and is therefore of a small scale.
- Given that the proposed development is located adjacent to a previously approved facility, the decision to refuse permission shows a complete lack of consistency by the Planning Authority.
- There is no evidence to support the claim by the Planning Authority that there has been a deterioration in water quality within adjacent watercourses. Moreover, the accompanying correspondence from Inland Fisheries Ireland states that the most likely risk to water quality in the Potters River is attributable to the nearby Barndarrig Wastewater Treatment Plant.
- There is no scientific basis on which the Planning Authority can conclude that the proposed development is likely to have 'significant' effects on the environment. All of the potential environmental impacts have been addressed in the Environmental Report submitted with the application and it is further felt that the proposed activities can be suitably controlled by way of conditions attached to any grant of permission and / or the Waste Facility Permit.
- It is considered that the Planning Authority's requirement to submit an Environmental Impact Assessment Report for a development of the nature and scale proposed is entirely disproportionate and not based on scientific fact. The Council has therefore erred in its requirement to submit a sub-threshold EIAR.

A Natura Impact Statement was supplied with the application and this report concluded that there '*is no pathway for the proposed development to impact on the qualifying interests at Buckronev-Brittis Dunes and Fen SAC*'. The report also notes that '*there is still the potential for a negative impact on the*

northern parcel of salt marsh habitat at the mouth of the Potter's River. Due to this, mitigation measures as part of the Environmental Management Plan are proposed which should be adhered to at all times'.

This approach follows best practice and recommends that the 'precautionary principle' be applied, namely, that mitigation measures be implemented on the site in order to avoid the potential for any risk. This has been misinterpreted by the Planning Authority as an 'over-reliance on mitigation measures to rule out risk' and instead, the proposed mitigation measures will ensure that the small potential for risk is eliminated.

- The concluding expert statement in the NIS states the following:

'It has been shown in this Natura Impact Statement that there is no connection between the proposed site and any of the qualifying interests of the Buckronev-Brittis Dunes and Fen SAC. There is a hydrological connection between the proposed site and a small parcel of non-designated suboptimal salt marsh habitat. However, through the implementation of the mitigation measures described, it is considered that there is no risk of a negative impact on this habitat as a result of the proposed site.

It is considered, on the basis of the rationale outlined in section 2.6 above, that the proposed development does not include any element that has the potential to alter the favourable conservation objectives associated with the habitat, or interfere with the key relationships that define the structure or function, either alone or in-combination with other impacts of the Natura 2000 sites considered in this document provided that the following are carried out:

- *The proposed program of works is conducted as described in section 2.2.*
- *The Construction Environmental Management Plan is implemented as described in section 2.2.*
- *Best practice standards, design and pollution controls are adhered to throughout'.*

The foregoing statement stresses that if the project is carried out as proposed and best practice employed then there will be no negative impact on the

Special Area of Conservation. The Planning Authority would appear to have misinterpreted this statement and has come to a different conclusion without applying scientific knowledge.

- The Planning Authority's suggestion that the development is unjustified and has the potential to unnecessarily alter the natural landscape etc. is questionable and shows a clear lack of understanding as to the purpose of the application. The subject proposal has been lodged to improve the landscape and the quality of the land so that the applicant can derive a benefit from it.
- Surface water will flow from the same area of land but with the contouring of the site area it will run off in a more even pattern thereby providing for better drainage of the site and allowing for a more even distribution to watercourses. A flood risk assessment has been submitted with the application.
- The lands in question are marginal with extremely limited biodiversity – the main flora is gorse *Ulex sp.* and the only bird species noted was Dunnock *Prunella modularis*. Due to the extremely poor quality of the land, the small area involved, and its low biodiversity value, the final reason for refusal as issued by the Planning Authority is incomprehensible.
- The proposed development will:
 - Improve the land for agricultural use.
 - Re-contour the site to allow for better natural drainage.
 - Potentially attract a greater biodiversity, such as the red-listed Meadow Pipit *Anthus pratensis* which has been seen in the remediated area adjacent to the site.
 - Provide employment during the filling period.
 - Provide a much-needed outlet for the acceptance of soil and stone.
 - Allow the applicant to derive a benefit from the land.

6.2. Planning Authority Response

None.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- The requirement for environmental impact assessment
- Flooding implications
- Appropriate assessment
- Other issues

These are assessed as follows:

7.2. **The Principle of the Proposed Development:**

- 7.2.1. It is not uncommon in rural areas for landowners to seek to improve the quality of their agricultural lands by way of raising the level of same through the importation and re-grading of suitable inert material. In this respect the subject application seeks permission to import inert subsoil and topsoil to the site in order to raise ground levels for the purpose of improving the drainage qualities and agricultural productivity of the lands in question. This would seem to be supported by the accompanying correspondence prepared by Mr. Martin Bourke, Agricultural Advisor, Teagasc, which states that the lands in question are presently of a poor agricultural quality with bad drainage in places.
- 7.2.2. Accordingly, on the basis of the foregoing, and having regard to the site location in a rural area outside of any scenic, visual or amenity designation, in addition to the provisions of Section 9: *Waste and Emissions: Facilities for disposal of inert*

materials' of Appendix 1 of the Wicklow County Development Plan, 2016, I am satisfied that the proposed development is acceptable in principle at this location.

7.3. **The Requirement for Environmental Impact Assessment:**

- 7.3.1. With regard to the assertion by the Planning Authority that the proposed development necessitates environmental impact assessment, it is of relevance in the first instance to note that the subject proposal involves the importation of 23,000 No. tonnes of inert subsoil and topsoil over a period of three years in order to improve the agricultural quality of the application site. Secondly, whilst the applicant has indicated that the proposal amounts to land remediation, it may be categorised as a 'waste' operation on the basis that the input material is technically 'waste' (*N.B.* By way of case precedent, the Board has previously held that material (e.g. topsoil) which is imported from outside a landholding for infilling purposes constitutes waste).
- 7.3.2. Therefore, in view of the foregoing, it is necessary to determine whether or not the proposal involves a class of development which is prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended. In this respect I would advise the Board that Class 11(b) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, prescribes *'Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule'* for the purposes of Part X of the Act.
- 7.3.3. Given that the subject proposal involves the disposal of 23,000 No. tonnes of material over a period of 3 No. years at an intake rate of approximately 7,500-8,000 No. tonnes per annum, it is clearly considerably below the aforementioned threshold and thus there is no mandatory requirement for the planning application to be accompanied by an Environmental Impact Assessment Report.
- 7.3.4. With regard to sub-threshold development, Class 15 of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, prescribes *'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'*. In this respect guidance is provided in the document entitled *'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development'* published by the Department of the

Environment, Heritage and Local Government in 2003 which states that the criteria for deciding whether or not a proposed development is likely to have significant effects on the environment are set out in the EC (Environmental Impact Assessment) (Amendment) Regulations, 1999 (S.I. No 93 of 1999) and in Schedule 7 of the Planning and Development Regulations, 2001 (S.I. No 600 of 2001). However, in light of the advice contained in Circular Letter PL1/2017 (as issued by the Department of Housing, Planning, Community and Local Government on 15th May, 2017), which refers to the implementation of Directive 2014/52/EU on the effects of certain public and private projects on the environment pending the transposition of the Directive into national legislation, it is necessary to screen the subject proposal having regard to the three headings (and sub-sections) detailed in Annex III of the amended Directive as follows:

7.3.5. Characteristics of Projects:

a) *The Size and Design of the Whole Project:*

The proposed development involves the raising, reprofiling and re-contouring of 2 No. agricultural fields over an area of 7.53 hectares through the importation and deposition of 23,000 No. tonnes (15,400m³) of inert subsoil and topsoil at a rate of approximately 7,500-8,000 No. tonnes per annum over a period of three years, although it has been suggested that the timeline for the works may change depending on the availability of fill material (*N.B.* The amount of material to be deposited per annum is considerably below the EIA threshold of 25,000 No. tonnes per year). In this regard it is anticipated that the overall increase in ground levels will range between 500mm and 1,300mm. Upon completion of the works, the newly raised lands will be seeded and returned to agricultural use. Associated works will include the extension of an existing hardcore haul route to accommodate the land improvement works and the provision of a 10m buffer zone from watercourses (i.e. The Potters River and the smaller drainage streams along the site boundaries) which will be defined by a 1.2m high clay bund to be erected within the first year of operation.

The applicant will be required to obtain a Waste Facility Permit from the Local Authority to carry out the works which will also regulate the source and nature of the material to be deposited at the site pursuant to the waste management code,

although the submitted details have confirmed that the site will be used solely for the disposal of clean inert soil and stone which adheres to European Waste Catalogue Code 17 05 04 (i.e. non-hazardous soil and stone) whilst the majority of the material will be sourced from road improvement works and other greenfield projects to be carried out in the locality (subject to availability).

b) Cumulation with other Existing and / or Approved Projects:

Permission was previously granted to the applicant on 23rd September, 2015 for a comparable development on adjacent lands within the same landholding under PA Ref. No. 15/825 which approved the importation and deposition of inert subsoil and topsoil on 6.24 No. acres for the purposes of agricultural improvement. Those works involved the deposition of 50,000 No. tonnes of material over a four-year period at an intake of 12,000 No. tonnes per annum. That development has since been completed and the lands in question are currently in use for agricultural purposes.

Whilst I would acknowledge that the subject proposal and the development approved under PA Ref. No. 15/825 involve comparable works within the same landholding by the same applicant, it should be noted that a period of c. 23 No. months has lapsed between the lodgement of the respective planning applications with the Local Authority. Moreover, a period of 34 No. months has passed since the grant of permission issued for PA Ref. No. 15/825 and the ongoing assessment of the subject appeal during which time the approved works have been completed with the relevant lands presently in use for agriculture.

It is unclear if the Planning Authority was aware of any further proposals for the infilling of additional lands within the applicant's landholding in its assessment of PA Ref. No. 15/825.

The overall tonnage of material and timelines involved in the subject application are noticeably less than those involved in the comparable development previously approved under PA Ref. No. 15/825 which was not deemed to require EIA.

Furthermore, the development works set out in the subject proposal and PA Ref. No. 15/825, both individually and cumulatively, are also subthreshold for the purposes of environmental impact assessment.

Having considered the foregoing, it is my opinion that given the limited scale and extent of the developments in question (whilst acknowledging that it is unclear if any

other major projects are planned in the area in the near future), and as the works approved under PA Ref. No. 15/825 have been completed with the result that the affected lands are in agricultural use and no longer operate as a waste facility, the proposed development is unlikely to give rise to any cumulative impact which would be significant on the environment when taken in conjunction with other existing / approved development in the area.

c) The Use of Natural Resources (in particular land, soil, water and biodiversity):

Other than the limited amount of hardcore surfacing required for the extension of the haul road, the proposed operation will not involve any substantial use of natural resources that would justify the requirement for EIA.

Furthermore, whilst the proposal will result in the temporary loss / disruption of an area of agricultural land, this will be for an interim period of 3 No. years given that the purpose of the works to improve the agricultural quality / output of the land in question.

d) The Production of Waste:

The proposed development will operate as a waste disposal facility in accordance with a Waste Facility Permit issued by the Local Authority and thus is unlikely to result in any significant production of waste.

Only material adhering to EWC Code 17 05 04 will be accepted on site (in accordance with the Waste Facility Permit). In addition, waste sources will have been subject to prior inspection whilst the consignment note for each load will be inspected by a site supervisor with any unsuitable material to be disposed of at an off-site waste management facility. A 'waste-in' register for the site will also be maintained at all times as part of an Environmental Management Plan.

e) Pollution and Nuisances:

The site in question drains to the Potters River whilst the proposed infilling works will require the crossing of same via an existing access arrangement and associated bridging / culverting. It has been acknowledged that during the course of the works the accidental spillage of contaminants or the release of sediment / contaminated soils has the potential to impact on water quality (and thus the downstream aquatic environment), however, the likelihood and severity of these effects is to be minimised

through adherence to specified mitigation measures, including the maintenance of a 10m buffer zone from watercourses (i.e. The Potters River and the smaller drainage streams along the site boundaries), the erection of a 1.2m high clay bund, and various other best practice pollution controls e.g. the implementation of a fuel and oil management plan.

The underlying bedrock aquifer is classified as 'poor' and is generally unproductive except for local zones (PI) with the closest source protection area for a public groundwater scheme located 5.6km south at Redcross. It is anticipated that the proposed mitigation measures etc. will avoid impacts on water quality.

The working phase of the proposed development will give rise to traffic generation and associated noise, vibration and air quality emissions due to the on-site activities and the movement of traffic and materials along the public road and haul routes. However, any such impacts will be of an inherently temporary duration and are unlikely to be of wider significance whilst any localised nuisance could likely be satisfactorily mitigated.

f) 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:

The likelihood of any accidental spillage / release of material during the works into the aquatic environment will be managed through the implementation of a series of specified mitigation measures, including the maintenance of a 10m buffer zone from watercourses to be defined by a clay bund, and best practice site management.

Given the low traffic volumes expected to be generated by the proposed development (i.e. 2-4 No. movements per day) and the adequacy of the existing site entrance arrangements from the public road, it is not considered likely that the proposed development would have any adverse impact in terms of accidents.

Normal health and safety protocols will also apply on site during the course of the works.

It is not anticipated that the project is a type which would give rise to an increased risk of other major accidents / disasters, including those caused by climate change.

g) The Risks to Human Health (for example due to water contamination or air pollution):

Risks to human health may arise from accidental spillages, sediment releases or contaminated soils that could impact on water quality, although it has been indicated that best practice standards, environmental guidelines and mitigation measures will be adhered to in order to avoid impacts on water quality.

Given the site location in an isolated rural area, the separation distances from nearby housing / receptors, and the prospect of suitable mitigation measures, any risk to human health attributable to noise and dust emissions arising during the operational stage are unlikely to be of significance.

7.3.6. Location of Project:

a) The Existing and Approved Land Use:

The predominant land use in the surrounding area is agriculture and the proposed development involves the remediation / improvement of the subject site in order to improve its agricultural quality / productivity. Therefore, in light of the limited extent and temporary duration of the works in question, and the overall purpose of the proposed development, the prevailing land use in the area will not be significantly impacted.

b) The Relative Abundance, Availability, Quality and Regenerative Capacity of Natural Resources (including soil, land, water and biodiversity) in the Area and its Underground:

The subject site is comparable to adjacent lands and the predominant land use of the surrounding area for agricultural purposes. Indeed, there is a notable expanse of similar land in the area whilst the proposed development involves the improvement of the subject site for agricultural purposes. Moreover, the site itself is stated to be of limited value from an ecological and biodiversity perspective. Furthermore, any impact on the productivity of neighbouring agricultural lands consequent on the proposed works is likely to be temporary given the regenerative capacity of same through normal farming practice.

Whilst some construction materials will be imported to the site for the extension of the haul road, the quantity of same is not considered to be of significance.

In relation to the water / aquatic environment, including the downstream Buckroneys-Brittis Dunes and Fen Special Area of Conservation, the proposed development will involve crossing the Potters River by way of an existing access arrangement whilst the works themselves could potentially give rise to the accidental spillage of contaminants or the release of sediment / contaminated soils. However, the likelihood and severity of any effects on water quality is to be minimised by adherence to various mitigation and pollution control measures.

The underlying bedrock aquifer is classified as 'poor' and is generally unproductive except for local zones (PI) with the closest source protection area for a public groundwater scheme located 5.6km south at Redcross. It is anticipated that the proposed mitigation measures etc. will avoid impacts on water quality.

In terms of ecological and biodiversity considerations, whilst the subject lands are located outside of any national or European designation, there are a number of protected sites within the wider area, including the Deputy's Pass Nature Reserve Special Area of Conservation (Site Code: 000717), approximately 1.4km northwest of the site, and the Vale of Clara (Rathdrum Wood) Special Area of Conservation (Site Code: 000733), approximately 5.5km west of the site. Moreover, the proposed development site will be located approximately 10km upstream of the Buckroneys-Brittis Dunes and Fen Special Area of Conservation (Site Code: 000729) with the Potters River providing a potential hydrological connection / pathway between the proposed works area and the aforementioned Natura 2000 site. However, having regard to the findings of the submitted Natura Impact Statement, including the mitigation measures set out in same, potential impacts on these designations can be satisfactorily mitigated.

c) The Absorption Capacity of the Natural Environment:

Given the proximity of the works to a number of watercourses, including the Potters River, the proposed development could potentially have a direct impact on riparian zones and an indirect downstream impact on the aquatic environment, particularly as a result of pollution incidents or siltation. In this regard it should be noted that the proposal has included provision for a 10m buffer between the works area and all watercourses in accordance with the requirements of the Development Plan and the

recommendations of Inland Fisheries Ireland. In addition, it is anticipated that the various mitigation measures proposed will avoid impacts on water quality.

The proposed development will not directly impact on any coastal zones or the marine environment, although consideration should be given to the potential implications for downstream protected habitats within the Buckronee-Brittias Dunes and Fen SAC arising from any deterioration in water quality attributable to the proposed works given the hydrological connectivity between the application site and that European site by way of the Potters River. In this regard it should be reiterated that the likelihood and severity of any effects on water quality is intended to be minimised by adherence to various mitigation and pollution control measures.

The works will not give rise to any impact on nature reserves or parks nor will they significantly affect any mountain or forested areas.

Other than the aforementioned SAC, in light of the separation distances between the subject site and other areas of ecological sensitivity (i.e. those designated under national and European legislation), and the absence of any pathways between same, the proposed development is unlikely to have any significant impacts on such areas.

I am unaware of any areas in which there has already been a failure to meet environmental quality standards laid down in EU legislation that are relevant to the subject project.

The application site is located a considerable distance from any densely populated areas and thus will not impact on same.

The proposed development site is located within the '*Corridor area west (N81)*' landscape category as detailed in Figure 4.11: '*The Landscape Category Map*' and Map 10.13(d) of the Landscape Assessment contained in the Wicklow County Development Plan, 2016. Within this area it is the policy of the Planning Authority to protect those views and prospects available from the corridor area towards the surrounding landscape areas from development that would either obstruct the views / prospects available from any identified vantage point or that would otherwise serve to form an obtrusive or incongruous feature within that view / prospect. In this respect whilst there is a '*Prospect of Special Amenity Value / Special Interest*' located a relatively short distance away to the northwest of the site (i.e. No. 40:

L5118 Deputy's Pass, Glenealy: *Prospect of both sides of Deputy's Pass including woodland*), having regard to the nature, extent, and duration of the proposed works, in addition to the site location, the subject proposal is unlikely to significantly impact on this prospect.

There are no sites of historical, cultural or archaeological significance on site and the proposed development will not impact on any such features.

7.3.7. *Type and Characteristics of Potential Impacts:*

a) The Magnitude and Spatial Extent of the Impact (for example geographical area and size of the population likely to be affected):

The overall magnitude and spatial extent of the development in question is relatively limited, however, any deterioration in water quality within the Potter's River attributable to the proposed works could potentially have an adverse impact on aquatic species and downstream habitats for a considerable distance beyond the confines of the application site.

b) The Nature of the Impact:

The (negative) impact of the proposed works would range from potentially slight to moderate.

c) The Transboundary Nature of the Impact:

There are no transboundary impacts associated with this proposed development.

d) The Intensity and Complexity of the Impact:

The potential for complexity arises from the impact of the project works on ecological and hydrological considerations in terms of water quality and the possible impact on species/habitats.

e) The Probability of the Impact:

During the works phase of the development there is a high probability of noise nuisance, air quality, hydrological and ecological impacts, although adherence to best practice construction techniques and the implementation of suitable mitigation measures would likely serve to reduce same.

f) The Expected Onset, Duration, Frequency and Reversibility of the Impact:

The majority of the impacts attributable to the proposed development (e.g. noise and dust emissions) will arise during the works / construction stage and will be of limited duration (i.e. 3 No. years) and localised geographical extent. However, any deterioration in water quality consequent on the works could potentially have a much greater impact and be of a prolonged duration depending on the ability and robustness of the aquatic environment to recover from any pollution event etc.

g) The Cumulation of the Impact with the Impact of Other Existing and/or Approved Projects:

Given the limited scale and extent of the proposed development, and as the works approved under PA Ref. No. 15/825 have been completed with the result that the affected lands are in agricultural use and no longer operate as a waste facility, I would reiterate that the proposed development is unlikely to give rise to any significant cumulative impact when taken in conjunction with other existing / approved development in the area.

h) The Possibility of Effectively Reducing the Impact:

On balance, there is a reasonable possibility that the impact of the proposed development on the receiving environment could be effectively reduced, although this would be dependent on the implementation of suitable mitigation measures.

7.3.8. EIA Screening Conclusions:

Having regard to the available information, in my opinion, the nature and extent of the proposed development and its associated environmental impacts are not such as to necessitate sub-threshold environmental impact assessment.

7.4. Flooding Implications:

- 7.4.1. From a review of the available information, it is apparent that consideration needs to be given to the potential flooding implications of the proposed development due to the proximity of the Potters River and the possible downstream impacts attributable to any loss of floodplain and the associated displacement of flood waters.
- 7.4.2. In this respect it is of relevance in the first instance to note that the National Flood Hazard Mapping compiled by the Office of Public Works does not record any flood events in the immediate surrounds of the subject site, although it must be conceded

that whilst this mapping serves as a useful tool in highlighting the potential for flood events in a particular area, it is not definitive.

- 7.4.3. Therefore, it is perhaps of greater relevance to consider the indicative mapping published by the Office of Public Works in 2011 as part of its Draft Preliminary Flood Risk Assessment which details that a considerable proportion of the southernmost extent of the application site is located within the estimated extent of a 1 in 100 year fluvial flood event (as reiterated in the Strategic Flood Risk Assessment appended to the County Development Plan by reference to Map No. 'SFRA 3'). However, whilst the PFRA is a further useful resource in the assessment of flood risk, I would draw the Board's attention to the contents of Circular PL2/2014 issued by the Department of the Environment, Community and Local Government on 13th August, 2014 which states that the Draft Indicative Preliminary Flood Risk Assessment Maps were prepared for the purpose of an initial assessment, at a national level, of areas of potentially significant flood risk and that *'the maps provide only an indication of areas that may be prone to flooding. They are not necessarily locally accurate and should not be used as the sole basis for defining Flood Zones, or for making decisions on planning applications'*. This Circular further recommends that for the purposes of decision-making in respect of planning applications, a Stage II Flood Risk Assessment as set out in *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'* should be undertaken where there are proposals for development in areas that may be prone to flooding.
- 7.4.4. Accordingly, I would refer the Board to the most up-to-date flood mapping prepared by the Office of Public Works as part of its CFRAM programme which has recently been made available on www.floodinfo.ie and serves to inform the development of Flood Risk Management Plans for specific areas in addition to the proposed measures to be implemented. Notably, this mapping would seem to corroborate the earlier flood risk hazard mapping in that it makes no reference to any flood events in the immediate surrounds of the application site.
- 7.4.5. At this point I would advise the Board that whilst the submitted planning application form states that there is no history of flooding on site, the subject proposal has nevertheless been accompanied by a site specific flood risk assessment prepared by Envirologic Ltd., Hydrogeological Hydrological Consulting, which acknowledges that the fluvial flood extent from the Potters River (as detailed in the PFRA) encroaches

into the southern half of the application site. This report includes a 'Justification Test' (seemingly pursuant to Section 5.15 of *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities'*) which implies that the proposed development accords with the provisions of Section 9: *'Waste and Emissions: Facilities for disposal of inert materials'* of Appendix 1 of the County Development Plan. It also includes the results of hydraulic modelling of various flood flows along the Potters River which indicate that when simulating the flood flows adjusted using a pivotal gauge (the recommended method) it has been established that flood flows can be safely transmitted within the existing flood channel and that under this scenario the proposed infill development will not result in any alteration to river flood elevations or flood flow velocities. However, when simulating the larger (more conservative), unadjusted flood flows, it has been determined that the conveyance capacity of the river channel would be exceeded at some cross-sections, although the degree of flooding is generally not considered to be of significance. The report proceeds to state that the proposed infilling will result in a minor displacement of water with an associated, but relatively low, rise in water levels (0.29m) to the north and south of the river alongside the application site (*N.B.* It has been submitted that those lands on both sides of the river which may be subject to an increase in flood risk are within the ownership of the applicant and that she is accepting of same). It is further stated that under all the modelled scenarios there was found to be no rise in downgradient river water levels or increase in downstream velocity whilst no receptors to an increase in flood levels were identified 550m east (downgradient) of the site and thus no measures are proposed to mitigate against flooding (other than to prevent the loss of suspended solids etc.). The Flood Risk Assessment thus concludes by stating that the proposed works will not have a negative impact, in terms of flood risk, on the local drainage network, on local private property, or on the surrounding environment and human health.

- 7.4.6. Having reviewed the available information, including the site specific flood risk assessment, it is apparent that a considerable proportion of the southernmost extent of the application site lies within the 0.1% (1 in 100 year) AEP flood level (by reference to the Preliminary Flood Risk Assessment prepared by the OPW and the Strategic Flood Risk Assessment appended to the County Development Plan) and thus can be considered to be located within Flood Zone 'A' (i.e. where there is a high

probability of flooding) as defined in *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'*. In this respect I would advise the Board that the Guidelines advocate a risk-based sequential approach to managing flood risk in the planning system in order to guide development away from areas at risk from flooding, such as through the use of flood zones and the vulnerability of different development types, although exceptions to the restriction of development due to potential flood risks are provided for through the use of a 'Justification Test' (i.e. there is an acknowledgment in the Guidelines that urban centres whose continued growth and development is being encouraged through the National Development Plan and the Regional Planning Guidelines etc. in order to bring about compact and sustainable urban development and more balanced regional development, may contain area which are at risk of flooding. Therefore, in those instances where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the 'Justification test' set out in Box 5.1 of the Guidelines is to be employed).

- 7.4.7. In my opinion, it is clear from the risk-based sequential approach to flood risk management advocated in the Guidelines that development within areas at risk of flooding should be avoided in the first instance and that the 'Justification Test' is only to be applied in exceptional circumstances e.g. in urban towns and cities whose continued growth and development is being encouraged by national / regional policy etc. Indeed, Section 3.5 of the Guidelines states that development within 'Flood Zone A' should be avoided and / or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Accordingly, given the site location within a rural area, the nature and purpose of the works proposed, and the intended future use of the lands in question, I am unconvinced that the infilling of that part of the site which has have been identified as being at a high risk of flooding (i.e. Flood Zone A) would accord with the aforementioned sequential approach to flood risk management. In this regard I would submit there are no exceptional circumstances in the subject case which would warrant a deviation from the need to afford protection to floodplains and to avoid unnecessary development within same. I would further suggest that it cannot have been the

intention of the Guidelines to permit the widespread infilling of known floodplains in undeveloped rural areas given the potential cumulative implications associated with same for downstream urban centres. Accordingly, on the basis of the foregoing, I would recommend that the proposed development should be refused permission.

7.4.8. In the event that the Board wishes to give further consideration to the merits of the submitted proposal, I would refer to Table 3.1 of the Guidelines which sets out the classification of various land uses / development types which are either highly vulnerable, less vulnerable or water-compatible. In this respect it is noteworthy that the use of lands for agricultural purposes can be classified as a '*Less Vulnerable Development*'. Accordingly, in view of the site's location within the 1 in 100 year flood level (Flood Zone 'A') and the nature of the proposed development, it is necessary to apply the Justification Test as set out in Box 5.1 of the Guidelines as follows:

(1) The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of the Guidelines:

The proposed development site is not zoned in the current Wicklow County Development Plan nor has it been designated within same for the particular use or form of development proposed. Furthermore, whilst I would acknowledge the policy objectives contained in Section 9 of Appendix 1 of the Development Plan with regard to the development of facilities for the disposal of inert materials, I would have reservations as regards placing an overt reliance on these general provisions in order to justify the development proposed at the subject location.

(2) The proposal has been subject to an appropriate flood risk assessment that demonstrates:

i) The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk:

The submitted Flood Risk Assessment states that when using a conservative approach in determining flood levels, the proposed development will result in the minor displacement of flood waters with an associated rise in water levels (0.29m) within the applicant's lands to the north and south of the Potters River alongside the application

site. In this regard whilst I would acknowledge that the applicant is seemingly amenable to the increased flood risk to her wider landholding, I am not satisfied that sufficient information has been provided to confirm that the proposed works will not increase the flood risk to third party lands in the immediate surrounds by way of the displacement of flood waters (including by way of potential 'throttling' given the infilling works already completed elsewhere within the applicant's landholding).

ii) The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible:

On the basis that the proposed development will not result in any rise in downgradient water levels or increase in downstream velocity, and as no receptors have been identified within a 550m downgradient distance of the works, the FRA does not propose any measures to mitigate against flooding. Whilst acknowledging the foregoing, I would reiterate my concerns as regards that potential for the proposed works to increase the flood risk to third party lands in the immediate surrounds.

iii) The development proposed includes measures to ensure that residual risks to the area and / or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access:

The submitted proposal does not include any measures with regard to the management of residual risks other than to confirm that the applicant is willing to accept any additional flooding implications for the remainder of her lands.

iv) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in

relation to development of good urban design and vibrant and active streetscapes.

Given the rural site location, and the proposal to return the lands in question to agricultural use, the proposed development does not give rise to any urban design considerations.

- 7.4.9. Having considered the foregoing, and following a review of the available information, in my opinion, the subject proposal to undertake infilling works within a known floodplain does not accord with the risk-based sequential approach to flood risk management as set out in ‘*The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009*’. Furthermore, I am not satisfied on the basis of the information provided that the proposed development would not cause or exacerbate flooding on adjoining lands contrary to national guidance.

N.B. In the absence of further details, including a suitably scaled and annotated site plan, which clearly identify the extent of the floodplain, with particular reference to the 0.1% (1 in 100 year) AEP flood level, I would reservations as regards any proposal to grant permission for any aspect of the wider development proposal, although the Board may wish to seek further information in this regard.

7.5. **Appropriate Assessment:**

- 7.5.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, there are a number of protected sites within the wider area, including the Deputy's Pass Nature Reserve Special Area of Conservation (Site Code: 000717), approximately 1.4km northwest of the site, and the Vale of Clara (Rathdrum Wood) Special Area of Conservation (Site Code: 000733), approximately 5.5km west of the site. Moreover, the proposed development site will be located approximately 10km upstream of the Buckronev-Brittis Dunes and Fen Special Area of Conservation (Site Code: 000729) with the Potters River providing a potential hydrological connection / pathway between the proposed works area and the aforementioned Natura 2000 site. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 10 of the Wicklow County Development Plan, 2016, to avoid negative impacts upon the natural environment and to promote the appropriate enhancement

of the natural environment as an integral part of any development. Furthermore, Objective NH2 of the Plan states that no projects which would give rise to any significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites 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, will be permitted on the basis of the plan (either individually or in combination with other plans or projects). By way of further clarity, Objective NH4 also states that all projects and plans arising from the Development Plan (including any associated improvement works or infrastructure) will be screened for the need to undertake Appropriate Assessment pursuant to Article 6 of the Habitats Directive whilst any such plan or project will only be authorised after the competent authority has ascertained, based on scientific evidence, Screening for Appropriate Assessment, and a Stage 2 Appropriate Assessment, where necessary, that:

- 1) The Plan or project will not give rise to significant adverse direct, indirect or secondary effects on the integrity of any European site (either individually or in combination with other plans or projects); or
- 2) The Plan or project will have significant adverse effects on the integrity of any European site (that does not host a priority natural habitat type and / or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. In this case, it will be a requirement to follow procedures set out in legislation and agree and undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000; or
- 3) The Plan or project will have a significant adverse effect on the integrity of any European site (that hosts a natural habitat type and/or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons for overriding public interest, restricted to reasons of human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest. In this case, it will be a requirement to follow procedures set out in legislation and

agree and undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000.

7.5.2. In effect, the subject proposal may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the proposed development for the purposes of 'appropriate assessment'.

7.5.3. Stage 1: Screening:

In screening the subject proposal for the purposes of appropriate assessment, I would refer the Board at the outset to the screening exercise undertaken by the applicant as set out in Section 2.3 of the Natura Impact Statement which has accompanied the application. This has identified the following 10 No. European Sites within a 15km radius of the proposed works pursuant to the advice contained in the '*Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities*' published by the Department of Environment, Heritage and Local Government:

- The Deputy's Pass Nature Reserve Special Area of Conservation (Site Code: 000717)
- The Vale of Clara (Rathdrum Wood) Special Area of Conservation (Site Code: 000733)
- The Magherabeg Dunes Special Area of Conservation (Site Code: 001766)
- The Murrough Wetlands Special Area of Conservation (Site Code: 002249)
- The Buckronev-Brittis Dunes and Fen Special Area of Conservation (Site Code: 000729)
- The Wicklow Reef Special Area of Conservation (Site Code: 002274)
- The Wicklow Mountains Special Area of Conservation (Site Code: 002122)
- The Murrough Special Protection Area (Site Code: 004186)

- The Wicklow Head Special Protection Area (Site Code: 004127)
- The Wicklow Mountains Special Protection Area (Site Code: 004040)

7.5.4. In addition to the foregoing, using the precautionary principle, I would also advise the Board that I have given consideration to Natura 2000 sites located outside of the defined 15km radius, however, as no potential pathways for any significant impacts can be established, it can be concluded that there is no potential for any impacts on those Natura 2000 sites located outside the 15km radius.

7.5.5. In terms of assessing the potential direct, indirect or secondary impacts of the proposed development on the conservation objectives of the aforementioned Natura 2000 sites, it should be noted at the outset that due to the location of the proposed works outside of any Natura 2000 designation, and the separation distances involved, it is clear that the subject proposal will not directly impact on the integrity of any European Site (such as by way of habitat loss or reduction). However, having reviewed the available information, in light of the nature and scale of the proposed development, the specifics of the site location relative to certain Natura 2000 sites, and having regard to the prevailing site topography, in my opinion, by employing the source / pathway / receptor model of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of the Buckroney-Brittis Dunes and Fen Special Area of Conservation on the basis that the lands in question are situated upstream of this Natura 2000 site and thus drain towards same i.e. it will be necessary to consider the potential implications for downstream protected habitats within the Buckroney-Brittis Dunes and Fen SAC arising from any potential deterioration in water quality attributable to the proposed works given the hydrological connectivity between the application site and that European site.

7.5.6. Accordingly, I would concur with the findings of the applicant's screening exercise that consideration for the purposes of appropriate assessment should be focused on the following:

European Site: The Buckroney-Brittis Dunes and Fen Special Area of Conservation (Site Code: 000729)

Distance & Direction: c. 7.8km southeast

Qualifying Interests:

- [1210] Annual Vegetation of Drift Lines
- [1220] Perennial Vegetation of Stony Banks
- [1410] Mediterranean Salt Meadows
- [2110] Embryonic Shifting Dunes
- [2120] Marram Dunes (White Dunes)
- [2130] Fixed Dunes (Grey Dunes)*
- [2150] Decalcified Dune Heath*
- [2170] Dunes with Creeping Willow
- [2190] Humid Dune Slacks
- [7230] Alkaline Fens

Conservation Objectives: To maintain or restore the favourable conservation condition of the Annex I habitats for which the SAC has been selected.

7.5.7. At this point it is of relevance to note that the Buckroneys-Brittis Dunes and Fen Special Area of Conservation consists of a complex of coastal habitats which comprises two main sand dune systems (Brittas Bay and Buckroneys Dunes) connected on the coast by the rocky headland of Mizen Head. The dunes have also cut off the outflow of a small river at Mizen Head and a fen, Buckroneys Fen, has developed. There is a further small sand dune system south of Pennycomequick Bridge. The area contains two legally protected plants, as well as a number of other rare or scarce plant species, and also provides habitat for some rare species of invertebrate and for the vulnerable Little Tern. Accordingly, the area encompasses a wide diversity of habitats and has been designated as being of considerable conservation significance due to the presence of habitats (including two priority habitats identified as *) which are listed on Annex I of the E.U. Habitats Directive.

7.5.8. Therefore, following consideration of the 'source-pathway-receptor' model, including the likelihood that potentially negative impacts on downstream water quality could arise during the works stage of the proposed development due to the pollution of watercourses through the release of suspended solids or the discharge of hydrocarbons / other contaminants, I would concur with the findings of the screening

exercise undertaken by the applicant and thus it is my opinion that, in accordance with the precautionary principle, it is not possible to rule out the likelihood of the proposed development adversely impacting on a Natura 2000 site and that particular consideration needs to be given to the likelihood of the proposal to have an adverse effect on the conservation objectives of the Buckroneys-Brittis Dunes and Fen Special Area of Conservation. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the likelihood of the proposed development adversely affecting the aforementioned Natura 2000 site cannot be objectively ruled out and therefore it is necessary to proceed to 'Appropriate Assessment (Stage 2)'.

7.5.9. Stage 2: 'Appropriate Assessment':

With regard to the Stage 2 Appropriate Assessment set out in the Natura Impact Statement which has accompanied the subject application, I am generally satisfied that it has adequately identified the key characteristics of the potential impacts arising as a result of the proposed development which would be likely to undermine the stated conservation objectives of the designated site i.e. the potential indirect impact on the integrity of the downstream aquatic environment within the Buckroneys-Brittis Dunes and Fen Special Area of Conservation arising from a deterioration in water quality consequent on the proposed development. In this respect the NIS has specifically noted the potential impacts on the water-dependent habitats / qualifying interests of the SAC (i.e. '*Alkaline Fens*' and '*Mediterranean Salt Meadows*') arising from the hydrological pathway for water pollution and sedimentation / siltation as follows:

- Pollution of watercourses with suspended solids due to runoff from the importation of materials.
- Pollution of watercourses with nutrients absorbed or chemically bound to eroded suspended solids released during importation.
- Pollution of watercourses with oils or fuels due to runoff from operating machinery or refuelling operations.

7.5.10. In its analysis of potential in-combination impacts, Section 2.5.1 of the NIS states that as the application site is located close to the source of the Potters River, it will only be subject to cumulative impacts from point and diffuse source pressures

arising from within a relatively small section of the overall sub-catchment. It is further stated that as agricultural grassland is the principle land use both upstream and downstream of the site (and within the greater geographical area between Kilnamanagh More and Brittas), agriculture is the most significant activity within the sub-catchment which could potentially act synergistically with any impacts attributable to the proposed and existing development so as to give rise to cumulative effects (*N.B.* The NIS has also noted that the lands adjacent to the application site were recently raised in order to improve agricultural productivity). In this respect it has been submitted that there have been considerable changes in agricultural practices since the introduction of the Nitrates Action Plans which have led to a significant reduction in the levels of chemical fertiliser usage. Reference is also made to the restrictions imposed on the application of fertilisers at vulnerable times of the year which have served to reduce losses to surface waters whilst the agricultural point source problem has been further addressed through the implementation of the Farm Waste Management Scheme which assists farmers in meeting their requirements under the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2005. Moreover, the NIS has noted that the Potters water body has been assessed under the Water Framework Directive as being '2b – Not at Risk' of not achieving good status from point or diffuse sources associated with agriculture (*N.B.* The overall status of the water body in question has been described as 'Good'). Accordingly, the implication drawn in the NIS would appear to be that there is no potential for any significant cumulative impacts between the proposed development and the predominant land use in the river catchment.

7.5.11. Section 2.6 of the NIS proceeds to provide a more in-depth analysis of the potential for water pollution impacts on the '*Alkaline Fens*' and '*Mediterranean Salt Meadows*' habitats arising from the hydrological pathway offered by the Potters River with a considerable reliance having been placed on the contents of the '*Saltmarsh Monitoring Project (2007-2008)*' prepared by Mark McCorry & Tim Ryle (A Report for Research Branch, National Parks and Wildlife Service).

7.5.12. It has been submitted that the '*Alkaline Fen*' and the '*Mediterranean Salt Meadows*' habitats lie some distance south of the zone of influence of the Potters River and are located within a different water management unit (Ballytunney) that is fed by a

separate waterbody, namely, Haughton's Stream, which has no connection to the proposed development i.e. there is no hydrological connection between the application site and the aforementioned water-dependent habitats and thus no likelihood of any potential impacts.

7.5.13. It has also been noted that there are two areas of suboptimal salt marsh habitat within the SAC which do not conform to the habitat designation of '*Mediterranean salt meadows*'. The first of these areas is located within the southern section of the SAC adjacent to a known '*Mediterranean Salt Meadows*' habitat and is associated with Haughton's Stream. The second parcel is located close to the mouth of the Potters River, and although it has been suggested that this is not a qualifying interest of the SAC, the NIS has noted that there is a source-pathway-receptor link from the proposed development site to this area of salt marsh habitat.

7.5.14. Therefore, the NIS has asserted that given the lack of any hydrological connection between the proposed works and the qualifying interests of the Buckroneys-Brittis Dunes and Fen Special Area of Conservation, it can be objectively concluded that there will be no impact on the designated habitats within the SAC as a result of the proposed development. However, it has been accepted that there is the potential, in the absence of control measures, for a '*short-term minor negative*' impact on the northernmost parcel of suboptimal salt marsh habitats due to the ingress of suspended solids and / or pollutants into the Potters River during the development works. Accordingly, it is proposed to implement a series of mitigation measures as part of a wider Environmental Management Plan to address the foregoing risks. In this regard the principle means of mitigation has involved the incorporation of a Drainage Management Plan into the design of the proposed development which provides for the following:

- The provision of a 10m buffer zone between the proposed infilling works and any watercourses which will be demarcated by the construction of a 1.2m high clay bund.
- The installation of hay bales wrapped in mesh netting within all drainage ditches that have the potential to discharge into the Potters River in order to provide further protection from any sediment entering the watercourse.

- The implementation of a fuel and oil management plan (as part of a Construction Management Plan) during the course of the works which will outline measures to prevent fuel and oil from entering the Potters River.

7.5.15. Further mitigation will be provided as follows:

- All operation method statements will be prepared in consultation with Inland Fisheries Ireland.
- No vehicles or machinery will enter the Potters River or stream, or the riparian habitats adjacent to the stream.
- A programme of inspection and maintenance of drainage and sediment control measures during site work will be designed, and dedicated operation personnel assigned to manage this programme.
- All waste material arising from the site will be taken off-site and disposed of in a suitable waste management facility.

7.5.16. The NIS has thus concluded that, subject to adherence to the foregoing mitigation measures, the proposed works can be carried out with minimal risk to the Potters River and with no significant effect on the integrity of the Buckronev-Brittis Dunes and Fen Special Area of Conservation.

7.5.17. Whilst I would generally concur with the findings of the NIS, I would have some reservations that the applicant may have underestimated the prevalence of the *'Mediterranean salt meadows'* habitat within the SAC given that the site synopsis prepared by the National Parks and Wildlife Service acknowledges the possibility that some smaller unrecorded areas of this habitat may occur within the wider confines of the site. Indeed, the applicable conservation objective further stresses the importance that there may be additional areas of unsurveyed saltmarsh present within the SAC.

7.5.18. However, I would accept that the implementation of best practice and adherence to the mitigation measures set out in the NIS will serve to avoid any impacts on downstream water quality thereby ensuring that no significant adverse effects on the integrity of the Buckronev-Brittis Dunes and Fen Special Area of Conservation will arise as a result of the proposed development.

7.5.19. With regard to the potential for in-combination / cumulative impacts with other plans or projects, I am also satisfied that the proposed development, subject to suitable mitigation, would not be likely to give rise to any in-combination / cumulative impacts with other plans or projects which would adversely affect the integrity of any Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.

7.5.20. Therefore, I consider it reasonable to conclude, on the basis of the information available, that the proposed development, when taken individually and in combination with other plans or projects, will not adversely affect the integrity of the SAC in view of the sites' conservation objectives.

7.6. **Other Issues:**

7.6.1. **Visual Impact:**

Whilst I would concede that the proposed development will detract to some extent from the visual amenity of the surrounding area during the course of the filling operations, given the site location outside of any amenity designation, the nature and limited extent of the works proposed, the temporary duration of the development, and as the lands in question will be seeded and returned to agricultural use upon completion of the works, I am inclined to suggest that the proposed development will not unduly detract from the visual amenity or scenic quality of the wider area and that the topographical changes consequent on the proposal will have a negligible impact on the prevailing rural character of the site.

7.6.2. **Traffic Implications:**

Having regard to the traffic volumes associated with the proposed development (i.e. 1-2 No. loads of 18 No. tonnes per day or 426 No. loads per annum, depending on the availability of fill material), and following a site inspection, I am satisfied that the surrounding road network has adequate capacity to accommodate the increased traffic volumes consequent on the subject proposal without detriment to public safety.

Furthermore, any concerns with regard to the maintenance of the public road could be satisfactorily addressed by way of condition in the event of a grant of permission.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. Having regard to the nature of the proposed development, that is the raising of lands by means of filling with inert materials, and its location in an area identified by the Office of Public Works and the Strategic Flood Risk Assessment appended to the current Development Plan for the area as being at risk of fluvial flooding, the Board is not satisfied on the basis of the information provided that the proposed development would not cause or exacerbate flooding on adjoining lands contrary to national flood guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

31st July, 2018