



An
Bord
Pleanála

Inspector's Report ABP-312346-21.

Development

Permission for the importation of soil & stone for the raising of an agricultural field in order to improve the agricultural output of the field. A Natura Impact Statement (NIS) has been prepared and will be submitted to the authority with this application.

Location

Ballintober, Kanturk, Co. Cork.

Planning Authority

Cork County Council.

Planning Authority Reg. Ref.

20/6484.

Applicant(s)

John Healy.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party

Appellant(s)

Jeremiah & Maura Duloherly.

Observer(s)

Desmond Sharp Bolster
Connie & Kathleen Moylan.

Date of Site Inspection

04/03/2022.

Inspector

A. Considine.

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1.0 Site Location and Description

- 1.1. The subject site is located approximately 2km to the east of Kanturk and approximately 170m to the east of the identified settlement of Sally's Cross, in north Co. Cork. Access to the site is over the local road network, from the R580 to the west of the site and ultimately off the local road, L-1043 which comprise the northern boundary of the site. The area is rural in character with a small number of residential properties to the east. The settlement of Sally's Cross, to the west of the site and which forms part of the Kanturk settlement area, comprises a number of small residential developments including one off-houses and a small estate, Bowling Green, which includes approximately 9-10 detached houses. There are no other services located within the boundaries of the settlement of Sally's Cross.
- 1.2. The site the subject of this appeal has a stated area of 1.81ha and is currently under grass. The field is almost square in shape and is bound by a ditch / land drain to the north and west and a stream to the south. The L-1043 local road comprises the northern boundary and the eastern boundary lies immediately adjacent to a long driveway which provides access to a third party residential and farm property, with mature hedgerows forming the boundaries of the site.

2.0 Proposed Development

- 2.1. Permission is sought, for the importation of soil & stone for the raising of an agricultural field in order to improve the agricultural output of the field. A Natura Impact Statement (NIS) has been prepared and will be submitted to the authority with this application., all at Ballintober, Kanturk, Co. Cork.
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form
 - Cover letter from the applicants' agent advising as follows:
 - The proposed timeline for filling is anticipated to be a maximum of 5 years.
 - The development will import 27,370m³ of soil and stone.

- This equates to 2,700 loads and a rate of filling of less than 25,000 tonnes per annum.
 - No fuel oil is to be stored on site.
 - The permit holder will take adequate measures to prevent undue impacts which would result in an interference with amenities or the environment.
 - A mechanical road sweeper will be available while the site is in operation. A wheel wash will be provided if required.
- Agricultural Report
 - Ecology Report – AA Assessment and NIS
 - Closure Plan
 - Emergency Response Procedure
 - Waste Acceptance Procedure
 - Risk Assessment

- 2.3. The existing site levels appear to range from between approximately 103.99m to 107.03m in a south to north direction, and between 107.11m to 104.26m in a west to east direction. The proposed finished level of the site is indicated at 107.00m generally across the full area. The maximum fill therefore will be approximately 2.96m with an average depth indicated at 1.9m.
- 2.4. Following the PAs request for further information, the applicant's agent submitted a response advising that the subject site is not located within an area prone to flooding. As such, no flood risk assessment is submitted.
- 2.5. The submission indicated that the filling of the site will take a minimum of 2 years and a maximum of 5, with a maximum of 1660 loads per annum, approximately 32 loads per week. It is anticipated that the material will be sourced locally but actual sources will not be determined until such time as all the necessary authorisations are in place. The response also includes a landscaping plan.
- 2.6. Following a request for clarification, the applicant submitted the requested flood risk assessment and responded to the other questions raised in the clarification request.

However, a subsequent request for clarification in terms of EIA Screening was sought by the PA.

- 2.7. On the 12th day of October 2021, the EIA Screening was submitted by the applicants' agent.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant planning permission for the proposed development subject to 27 conditions. The conditions are standard in the main and condition 2 requires the submission of revised drawings within 2 weeks of the grant of permission or prior to the commencement of any activities on-site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

The Planning Report notes that the site is located within the Kanturk Greenbelt, c150m to the east of Sally's Cross and notes that there are indicative flood risk areas onsite. The report notes the location of the site and concludes that the principle of the development can be considered. The report concludes that further information is required in order to determine matters relating to EIA. Further information was sought in relation to flood risk, Topographic Survey, facility Closure Plan, Agricultural Report / Site Assessment Report, justification for the timeline and duration of the proposed development, clear details of proposed annual intake in tonnes, phasing of the development, estimated traffic generation and source of materials in the context of Schedule 5 and Schedule 7, Part 2 of the Planning and Development Regulations 2001 as amended and a detailed landscaping plan.

The Board will note that the SEP agreed that there is no objection in principle to the proposed development and that the issues raised in the Planning Officers report are required to be addressed. Further information required.

Following receipt of the response to the further information request, the Planning Officer considers that clarification was required with regard to the flood risk issue. In addition, clarification on the source of the material, annual intake and timelines, volumes, and traffic require to be submitted. The SEP concurred that the response to the FI request was inadequate, and that clarification was required.

Following the submission of the response to the clarification request, the PA was not satisfied that the information sought had been submitted, and a further clarification request was sought.

The final planning report, prepared by the SEP, concludes that all issues raised have been addressed and that the proposed development is not likely to have significant effects on the environment. An EIAR is not required. The report concludes that a general contribution is not applicable to the development and recommends that the special development contribution sought by the AE has been justified. The report recommends that permission be granted for the proposed development. This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

Area Engineer: Notes that planning permission was granted for an entrance under PA ref. 20/4683.

The report notes that the L-1043 is heavily trafficked and in poor condition with surface water issues in locations near the site.

A wheel wash is necessary as mud would be brought onto the public road. Specific routes for trucks detailed with access / exit only to the west towards the R580. No trucks are to enter or leave the site to the east.

In terms of surface water, existing road inlets taking water off the public road are to be maintained. It is noted to be very important that the land drain is maintained around the site to take water off the public road and no development can interfere with this.

In terms of flooding, the report notes that part of the site is within the Draft PFRA OPW maps. A flood risk assessment needs to be carried out in terms of the impact of the development in relation to flooding and whether raising the site could cause flooding in surrounding lands.

The initial AE report requires that further information be sought.

Following the submission of the response to the FI request, the AE notes that no flood risk assessment was submitted. The AE restates that the OPW Draft Preliminary Flood Risk Assessment Draft PRFA shows that the site has a section of pluvial flooding. Therefore, a flood risk assessment needs to be carried out.

Following the submission of the response to the clarification request, including the submission of the flood risk assessment, the AE advised no further objections. The final AE report requires the submission of a special contribution of €20,760 to cover 20% of the cost associated with the overlaying of the public road with 60mm Binder & Surface Dressing, which came about due to the heavy vehicles and turning movements along the road associated with the subject site.

The final report advises no objections.

Environment Report: The report indicates that further information is required in relation to the following:

- Revised topography survey so that it includes a Temporary Bench Mark to which existing and proposed levels relate. Photographic proof of the TBM along with its location to be submitted.
- The facility Closure Plan is not adequate and needs to make provision for a topographical survey of the site once it has been returned to grass / agricultural use. This survey shall state the total volume of fill material deposited. The Closure Plan shall also make provision to confirm that all buffer

zones remain sterile and will continue to be sterile until the land has been returned to grass.

- The Agricultural Report / Site Assessment Report needs to be revised to include the current application drawings. The drawings attached refer to a previous planning application for the site.

Following receipt of the response to the FI request, the Environment Report advises that the 5m buffer requested between the treelines and hedgerow boundaries has not been provided. The fill area and volumes will need to be revised and resubmitted to take account of this 5m buffer zone.

Following the submission of the response to the clarification request, the Environment Section noted that the clarification sought in their previous report was not included in the letter of clarification. The report concludes that the information sought should be conditioned.

Ecology Report: The report sets out the details of the proposed development and raises concerns in terms of the lack of information provided with regard to watercourses and flooding and notes that the south-eastern corner of the site is noted to be at risk of pluvial flooding.

In terms of AA, the report notes the content of the AA Screening Report and Stage 2 NIS submitted with the application, which identifies two Natura 2000 sites within 15km of the site. The screening report concludes that the Blackwater River SAC required further consideration in the NIS.

The Council's Ecology Report agrees with the conclusions of the NIS and that there is potential for the proposal to have indirect impacts through risks of impact to water quality in the SAC during construction as a result of contaminated run-off. However, given the hydrological distance to the SAC from the site, and the provision of mitigation measures, the Ecologist is

satisfied that the proposal does not pose a risk of significant impacts on the SAC.

The report concludes recommending that additional measures be implemented by way of condition. It is also recommended that a condition be imposed to safeguard the mature hedgerow habitats along the peripheries of the development and that a 5m buffer between the hedgerows and the infilling site be established.

Following the submission of the response to the FI request, the County Ecologist advises satisfaction with the revegetation strategy as submitted.

3.2.3. Prescribed Bodies

Inland Fisheries Ireland: The report notes no objection in principle to the development, but raises a number of issues including as follows:

- Discharge of polluting matter such as silt and fuel oils and the protection of riparian zones and flood plains.
 - The discharge of silt-laden waters to fisheries streams due to insufficient silt control measures can clog salmonid spawning beds and can precipitate riverbank erosion downstream resulting in the loss of valuable habitat.
 - Riparian zones along watercourses should be maintained and that no material be deposited within 10m of watercourses or open drains adjacent to the site.
 - No material should be deposited on floodplain areas
 - Best practices should be incorporated to minimise discharges to waters.
 - Refuelling of vehicles should take place in a designated area well away from aquatic zones and fuel oils must not discharge into an aquatic zone.
- Biosecurity
 - The importance of employing bio-security measures as mitigation against the introduction and spread of invasive species is indicated.

3.2.4. Third Party Submissions

There are 3 no third-party objections/submissions noted on the planning authority file from Mr. Desmond G. Sharp Bolster, Mr. and Mrs. Jeremiah & Maura Duloherly, and Connie & Kathleen Moylan. The issues raised are summarised as follows:

- The field in question provides drainage for other portions of the Ballintober townland, down to the stream which it abounds.
- There are drains under the road, which were re-installed by the council several years ago after the road became flooded. To raise the level of the field would interrupt the natural drainage.
- The agricultural output of the field can be increased by good husbandry as it is basically good land surrounded by good pasture on two sides and excellent tillage on the other two sides.
- It is not clear where the waters from leeching and soil erosion and the washing of plant and transport equipment is to be directed as the stream is a main watercourse leading to the River Blackwater.
- Pollution concerns in terms of the waterway and wells.
- The stream also supplies a pond and concern is raised in terms of the impact on the wildlife who use the pond.
- Height of the filling in terms of the potential for landslip onto adjacent property, and the potential impact on the observers' driveway which runs the length of the eastern boundary.
- Impact of the development on the landscape and the scenic value of the tourist area.
- The development will devalue property.
- There are potential archaeological features within the site which are not featured on OS maps which may require investigation.
- Roads and traffic issues associated with the proposed development on an already heavily trafficked road.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref: 20/4683: Permission granted by Cork County Council for the construction of a new agricultural entrance to the current site.

PA ref: 19/5281: Permission sought for the importation of soil and stone to raise the levels of the agricultural field by Greenvally Transport & Land Reclamation Ltd. The application was withdrawn prior to a decision issuing.

The Board will note that the current application and appeal is essentially a repeat application of this previously sought development.

PA ref: 08/10030: Permission refused for the construction of a house on the north-eastern corner of the current proposed development site.

PA ref: 07/11003: Permission refused for the construction of a house on the current proposed development site.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- 5.1.1. Chapter 9 of the NPF deals with Environmental and Sustainability Goals and with regard to managing waste, the Framework seeks to provide ‘Adequate capacity and systems to manage waste in an environmentally safe and sustainable manner’. It is further stated that ‘Ireland is advancing its development as a circular economy and bio economy where the value of all products, materials and resources is maintained for as long as possible and waste is significantly reduced or even eliminated.
- 5.1.2. National Planning Objective 56 seeks to “Sustainably manage waste generation, invest in different types of waste treatment and support circular economy principles, prioritising prevention, reuse, recycling and recovery, to support a healthy environment, economy and society”.

5.2. Southern Region Waste Management Plan 2015-2021

- 5.2.1. Chapter 11 of the Plan deals with Packaging Waste and other Priority Waste Streams which includes, at Section 11.2 Construction and Demolition (C&D) Wastes. C&D waste is described in the EPA National Waste Reports (NWRs) as all waste that arises from C&D activities – excluding excavated soil from contaminated sites. C&D calculations in the Plan also include soil and stone waste collected. The bulk of C&D waste collected in the region is soil and stone, accounting for approximately 68% and such waste is primarily managed at LA permitted infill sites.
- 5.2.2. The plan further states that traditionally, the recovery of much of the C&D waste stream has been managed by placing it in a variety of land use applications. This treatment, collectively known as backfilling includes land reclamation, improvement or infill works. The largest fraction of the C&D waste stream arising is soil and stones, which (if uncontaminated) typically undergoes little if any treatment prior to recovery at these sites. Many sites selected for infill facilities are considered marginal agricultural land; these may include wetland habitats or lands subject to flooding. There is increasing recognition of the potential ecological and biodiversity value of these types of wetland sites. There is also a sense that at many of these sites, the deposition of waste material was the primary purpose of the activity rather than improvement or development of the land.

5.3. Development Plan

- 5.3.1. The Cork County Development Plan 2014, as extended, is the relevant policy document pertaining to the subject site. The site is located within the rural area around the town of Kanturk, and within the identified greenbelt. Chapter 4 of the CDP deals with Rural, Coastal and Island and in this regard, the following policy objective is relevant:

RCI 5-8: Greenbelts around Settlements:

- a) Retain the identity of towns, to prevent sprawl, and to ensure a distinction in character between built up areas and the open countryside by maintaining a Greenbelt around all individual towns.

- b) Reserve generally for use as agriculture, open space or recreation uses those lands that lie in the immediate surroundings of towns. Where Natura 2000 sites occur within Greenbelts, these shall be reserved for uses compatible with their nature conservation designation.
- c) Prevent linear roadside frontage development on the roads leading out of towns and villages.
- d) The local area plans will define the extent of individual Greenbelts around the ring and county towns and any of the larger villages where this approach is considered appropriate. They will also establish appropriate objectives for the Greenbelts generally reserving land for agriculture, open space or recreation uses.

5.3.2. Chapter 6 of the Plan deals with Economy and Employment and section 6.8 relates to Agriculture and Farm Diversification. Policy Objective EE 8-1 seeks to encourage the development of a dynamic and innovative sustainable agricultural and food production sector.

5.3.3. Chapter 11 of the Plan deals with Water Services, Surface Water and Waste and section 11.7 specifically deals with Waste. The following policy objective is considered relevant:

WS 7-1: Waste Management:

- a) Support the policy measures and actions outlined in 'A Resource Opportunity' 2012 – National Waste Policy
- b) Encourage the delivery of an effective and efficient waste management service in line with the Waste Management Acts and relevant Waste Management Plan for the County/Region.
- c) Normally require details and formal development proposals of onsite provisions for the management of waste materials that are likely to be generated from the proposed use. The Council will require Waste Management Assessment for projects which exceed thresholds outlined.

- d) Support the incorporation of the recommendation and policies of the National Hazardous Waste Management Plan 2008-12.
- e) Support the sustainable development of the Bottlehill facility for specialised and appropriate uses primarily associated with integrated waste management.

5.3.4. Chapter 11 of the Plan also deals with matters relating to the Management of Surface Waters, Section 11.5 and policy objectives WS 5-1: Surface Water and SuDS, WS 5-2: River Channel Protection and WS 5-3: Surface Water Management. Flood Risk, Section 11.6 of the CDP is also relevant, including policy objectives WS 6-1 Flood Risk – Overall Approach and WS 6-2: Development in Flood Risk Areas.

5.4. Draft Cork County Development Plan 2022

The Board will note that the Elected Members of Cork County Council adopted the Cork County Development Plan 2022-2028 at a full Council Meeting on the 25th of April 2022. The Plan will come into effect on the 6th of June 2022. The primary designation of the subject site being located outside the development boundary of Kanturk, within the towns Greenbelt and in the landscape character type Broad Marginal Middleground Valley / Fertile Plain with Mooreland Ridge are not changed in the new Plan.

5.5. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located approximately 2km to the west of the subject site.

The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) lies approximately 13.8km to the north-west of the site.

5.6. Environmental Impact Assessment

5.6.1. The requirement for EIA of certain types of developments is transposed into Irish legislation under the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001 as amended. Schedule 5, Part 1 of the

Regulations provides a list of projects which are subject to mandatory EIA based on, *inter alia*, their scale, nature, location and context. Part 2 of Schedule 5 includes a list of projects that require EIA where specific thresholds are breached or where it is determined that there is potential for significant environmental impact.

5.6.2. In this context, the following Schedule 5 Part 1 projects relate to waste management:

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9, of non-hazardous waste with a capacity exceeding 100 tonnes per day.

The development does not come within the scope of the above.

5.6.3. Schedule 5 Part 2 projects

1. Agriculture, Silviculture and Aquaculture
 - (c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.
11. Other projects
 - (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

5.6.4. Article 92 of the Planning and Development Regulations, 2001, (as amended) defines sub-threshold development, as 'development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development'.

5.6.5. The Board will note the figures presented by the applicant in terms of the volume of inert material waste intake will be 41,500 tonnes over a period of 2 -5 years.

5.6.6. In this context, together with the fact that the development, if permitted, will require a Waste Permit, it is unlikely that the 25,000 tonne per year maximum will be reached, and therefore, the development does not require mandatory EIA. The subject site also falls below the 2ha area which would trigger EIA. The need for environmental impact assessment, therefore, can be excluded at preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. This is a third-party appeal, by Mr. & Mrs. Jeremiah & Maura Duloher, against the decision of the Planning Authority to grant planning permission for the proposed development. The appeal presents a context for the proposed development, including a site description and details of the current land use, details of field drainage and planning history. The submission advises that the applicant is not a farmer and raises questions regarding the proposed development.
- 6.1.2. The appeal presents a critique of the reports submitted by the applicant and notes a number of concerns in relation to same, including highlighting contradictions between reports. Of particular note, the appeal issues raised are summarised as follows:
- Cuthbert Environment Report dated February 2019:
 - Issues in relation to the pathway of surface water draining from the proposed site which is noted to be 'unclear'.
 - The proposed 1 x 1m bund referred to will not contain overspill of contaminated water from land which will be filled up to 2.9m high.
 - The risk to the Blackwater SAC is likely to be significant.
 - The ecology report does not deal with the serious risk of introducing Japanese Knotweed into the local environment.
 - Cuthbert Environment Report dated 9th February 2021:
 - Issues raised in relation to the comments that the site is not within an area prone to flooding and that the existing pond will not be impacted.
 - Report from Byrne Looby of 28th June 2021, figure 2 contradicts the flooding statement.
 - Byrne Looby Report date 7th October 2021:
 - The appellant submits that the land is already an agricultural field laid out in permanent grassland.

- The current owner is not a farmer and has made no use of the land for 5/6 years.
- There is no entrance to the holding.
- The material to be imported is described generally as 'inert soil and stone granted by local construction activities.' This material description allows the developer to import all types of construction/demolition material onto the site.
- The applicant is seeking permission to operate a landfill under the guise of improving 'agricultural functionality'.
- Concerns raised with the statement that 'it is anticipated that, upon completion of the deposition of fill material the surface will be reseeded and restored to agricultural grassland habitat'. The commitment to improve the agricultural functionality of the land is merely 'anticipated'.
- Issues raised with the information provided in relation to the quantum of waste fill material to be imported as well as the issue of topsoil required, as additional material, to be imported to the site.
- No practical Method Statement has been put forward for the operation of the landfill.
- Issues raised in relation lack of reference to where haul roads will be constructed and no proposals to create an attenuation pond for collection of surface water.
- No buffer strip proposed along the eastern side of the site and the existing boundary will be overburdened with the risk of damage.
- Byrne Looby Report date 28th June 2021:
 - Issues raised in relation to the Flood Risk Assessment, and it is submitted that the land filling of the pluvial flood risk zone on the Healy land will increase the flood risk zone on neighbouring property.
- Closure Plan
 - The plan is considered to be casual in the extreme with noted omissions.

- Questions raised in relation to the Closure Cost Estimate indicated and is noted as being wholly unrealistic.
- The Closure Plan refers to a different applicant, not associated with the current applicant. The Council should have rejected the document.
- Ceres Consulting Consultants in Agriculture – Site Assessment Report dated 9th February 2021:
 - This report is a re-dated version of a similar report dated 15th March 2019 for a different applicant.
 - There is no evidence of any trial pits having been studied to establish depth of topsoil, groundwater or drainage issues.
 - Proposed drainage works referred to are not noted on the drawings and levels of adjoining lands are not shown.
 - Current land use details are incorrect.
 - The submission that the raising of the land by an average of 1.9m is required for drainage is a nonsense and it is submitted that landfilling to the extent proposed will lead to significant soil compaction.
 - Flattening the field will do nothing to increase its productivity or usability as the existing natural slope does not pose any problems for use by machinery or livestock.
 - The improved productivity indicated is not quantified or justified.
- The appellant submits that the proposed development is not justified.
- There are low spots or hollows in the field and some mounds or ridges which could be attributed to historical tillage procedures. There is some evidence of red cinders which could be evidence of fulacht fias.
- Some grading and levelling of the field could be justified and could be dealt with by other means, including importing a very limited quantity of topsoil to fill the hallow areas, representing no more than 10% of the field.
- These areas only need to be raised by 0.1-0.5m at most.

- Reclaiming land from its current status is discouraged by all environmental schemes supported by EU and Nationally funded financial support schemes.
- An assessment of costs suggests that the only feasible way this project makes any economic sense would be for the facility to operate as a commercial landfill site.

It is requested that the Board overturn the Councils decision and refuse the development.

6.2. First-Party Response to Third-Party Appeal

6.2.1. The applicants' have responded to the third-party appeal. The response to the grounds of appeal are summarised as follows:

- The appellant is a historic owner of the site, which has changed hands a number of times before its purchase by the current applicant.
- The site has planning for an entrance (the Board will note that it was under construction on the date of my site inspection). The reason the site was not used for a number of years as indicated is that the field was sold with an illegal gate created by a former owner. The gate was not usable. Health issues prevented the applicant from farming the land in the past few years.
- The full-time profession of the applicant should not prohibit the applicant undertaking an enterprise with agricultural benefit. The applicant is from a farming background and intends to use the field as a hobby farm.
- The material to be imported will be soil and stone only, as specified in the application. The importation of material will be regulated by means of a waste facility permit for soil and stone.
- The information submitted regarding surface water pathways is not considered to materially change the conclusion of the Report dated Feb 2019.
- The flow containment system of a 1 x 1 earthen bund is a standard methodology.
- The size of the stream to the south of the site is below the threshold of stream size included in the PRFA analysis.

- The applicant is committed to the improvement of the agricultural functionality of the land notwithstanding the choice of words in the EIA Screening report.
- Reference is made to topsoil stockpiling in section 2.4 of the EIA screening report.
- The costs in the closure plan are indicative and do not proprot to be a definitive cost estimate.
- A topographic survey and investigation into the levels and volumes require to achieve a workable topography has been completed.
- The existing natural slope and topography is considered to be deficient in a number of regards.
- The cost of transport of material will be borne by the supplier of the material.
- The reference to 2.9m height of fill is considered misleading as to the overall scale of the development.

It is submitted that the development will be fully regulated and all materials coming into the site will be screened and tested as contamination free prior to their dispatch to the facility.

It is requested that the grant of permission be upheld.

6.3. Planning Authority Response

The Planning Authority submitted a response to the third-party appeal noting that the relevant issues have been covered in the technical reports already forwarded to the Board. The PA has no further comments to make.

6.4. Observations

There are 2 observers noted in relation to the subject appeal. The observations submitted reflect those concerns raised during the PAs assessment of the proposed development and are summarised as follows:

- Impact on the natural drainage system of Ballintober townland.

- Good husbandry and farming practice shall improve the agricultural output of the field without interfering with the levels and natural drainage.
- The fields to the north of the public road flooded because drains under the road had become blocked. Cork County Council re-instated the drains and natural drainage resumed. To raise the level of the lower field will spoil and interfere with the natural drainage, would not be good practice and is likely to create flooding on the road as well as ponding on the fields to the north.
- The road is freshly resurfaced by Cork County Council and is already beginning to unravel at the entrance to the site.
- The road is heavily trafficked due to school traffic and traffic associated with the local creche. In addition, traffic traveling to the Green Valley Depot use the road and a new car park is being developed to relieve traffic at the school.
- A large tillage/sheep farmer also uses the road as well as secondary school students travelling to Kanturk and Charleville daily.
- A number of Hidden Ireland houses are located along the road and the proposed introduction of an industrial site would depreciate the natural attraction and beauty of the landscape and environment.

7.0 Planning Assessment

7.1.1. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the proposed development
2. Roads & Traffic
3. Flood Risk Assessment
4. Visual Impacts
5. Other Issues

7.2. Principle of the proposed development:

7.2.1. Permission is sought for the importation of soil & stone for the raising of an agricultural field in order to improve the agricultural output of the field. A Natura Impact Statement (NIS) has been prepared and is submitted with this application, all at Ballintober, Kanturk, Co. Cork. The development will result in the importation of 41,500 tonnes (27,370m³) of soil and stones, to be spread on the site over a period of between two and five years. The existing site levels appear to range from between approximately 103.99m to 107.03m in a south to north direction, and between 107.11m to 104.26m in a west to east direction. The proposed finished level of the site is indicated at 107.00m generally across the full area. The maximum fill therefore will be a maximum of 2.96m with an average depth indicated at 1.9m.

7.2.2. The subject site is located approximately 2km to the east of Kanturk and approximately 170m to the east of the identified settlement of Sally's Cross, in north Co. Cork. Access to the site is over the local road network, from the R580 to the west of the site and ultimately off the local road, L-1043 which comprise the northern boundary of the site. The agricultural access to the site recently received planning permission from Cork County Council, PA ref: 20/4683 refers, and was under construction on the date of my site inspection. The site the subject of this appeal has

a stated area of 1.81ha and is currently under grass. The field is almost square in shape and is bound by a ditch / land drain to the north and west and a stream to the south. The L-1043 local road comprises the northern boundary and the eastern boundary lies immediately adjacent to a long driveway which provides access to a third party residential and farm property, with mature hedgerows forming the boundaries of the site.

- 7.2.3. The land reclamation works will be undertaken in phases, beginning in the southern areas and moving north. The EIA Screening Report submitted indicates that the works will proceed filling the deeper depths initially and progressing northwards until the filling is completed and the site profile is finished with topsoil and seeded. The development will also include the construction of a 1m x 1m earthen bund along the three sides of the fill area boundary where the drains / water course are located for the purposes of surface water containment onsite. There will also be a 5m buffer zone between the bund and the drains to supplement the surface water containment. Section 2.4 of the EIA Screening Report also indicates that an appropriate temporary barrier (silt fence) will be installed to prevent the migration of silt-laden surface water runoff from the construction footprint and that hedgerows will be maintained. Excess spoil/topsoil will be stockpiled at dedicated temporary spoil depot areas, which will be located within the bunded area of the site.
- 7.2.4. The Board will note the intended purpose of the filling of the site is stated to improve the land for agricultural purposes. The site is located in the rural area, and within the greenbelt around Kanturk. I note the concerns and questions which arise as to the fact that the development amounts to a waste management facility during the period of the filling, in this case, between 2 and 5 years. In this regard, there is a commercial element to the proposal, beyond the primary purpose, which is to improve the quality and usability of agricultural lands. I also note that the applicant will be required to apply for a Waste Facility Permit from the County Council to import inert material to the site.
- 7.2.5. In terms of the provisions of the Cork County Development Plan, the Board will note that the subject site lies within the Kanturk Greenbelt, c150m to the east of the Sally's Cross settlement. Chapter 4 of the CDP deals with Rural, Coastal and Island and in this regard, policy objective RCI 5-8: Greenbelts around Settlements, is relevant. The purpose of this policy is essentially to prevent development sprawl and

to ensure a distinction in character between built up areas and the open countryside. In addition, the policy seeks to reserve the greenbelts for use as agriculture, open space or recreation uses. Having regard to the nature of the proposed development, I am generally satisfied that the principle of improving agricultural land for agricultural use is acceptable under the provisions of policy objective RCI 5-8.

- 7.2.6. Chapter 6 of the Plan deals with Economy and Employment and section 6.8 relates to Agriculture and Farm Diversification. Policy Objective EE 8-1 seeks to encourage the development of a dynamic and innovative sustainable agricultural and food production sector. Again, I am satisfied that the proposed development generally accords with the thrust of this policy objective.
- 7.2.7. In terms of waste management, policy objective WS 7-1 of the CDP is relevant. I note that permission is sought to import inert soil and stone only, with no hazardous wastes proposed. I also note that the development will be subject to a waste facility permit with checks in place to ensure no contaminated waste will be imported.
- 7.2.8. In principle, I have no objection to the intention of improving the quality of agricultural lands, through raising, grading and levelling as proposed. As such, I am satisfied that the proposed development can be considered acceptable in principle at this location. That said, there are potential issues arising in relation to flood risk, impacts on ecology, visual impacts and roads and traffic.

7.3. Roads & Traffic

- 7.3.1. The Board will note that the all parties have noted that the local road to the north of the subject site, the L-1043, is heavily trafficked and up to recently, was in poor condition. The Council have recently overlaid the road (in 2021) with the type of surface changed due to the heavy traffic and turning movements along the road. I would have noted no issue with the quality of the public road on the date of my site inspection. I note the third-party concerns in terms of the nature of the vehicles which would attend at the proposed development site but note that the Councils Area Engineer has raised no objections to the proposed development, subject to compliance with a number of conditions.
- 7.3.2. Of note, a special contribution is required to be paid by the applicant for the upgrading of the road, 20% (€20,760) of the overall cost for the works carried out to

the road. I note that the applicant has not questioned this contribution and that the SEP has accepted the justification for the contribution as set out in the Area Engineers report dated 30th July 2021. I will discuss this matter further below in this report.

- 7.3.3. With regard to the level of traffic generated by the proposed development, the applicant has indicated that if the site is filled within 2 years, the development will result in a maximum of 32 truck-loads arriving at the site per week, equating to a maximum of 5 loads per day. This figure will mean 10 truck movements generated from the development if permitted on this local road. I would also note that the level of traffic will be dependent on the availability of suitable material, sourced locally.
- 7.3.4. In terms of traffic movements to and from the site, the Board will note that a condition of planning permission, as required by Cork County Councils Area Engineer, restricts the route of trucks to and from the west of the site, towards the R580. Condition 22 of the PAs decision to grant planning permission specifically states that no trucks are to enter or leave the site to the east, in the interests of road safety. Having regard to the characteristics of the surrounding area, I consider this to be a reasonable condition and one which will reduce the potential for traffic safety hazards arising. As such, I am satisfied that the issue of roads and traffic impact has been appropriately considered and concluded as not being an issue in principle.

7.4. Flood Risk Assessment

- 7.4.1. Following a number of requests, the applicant ultimately submitted a Flood Risk Assessment in support of the application. Issues were raised by the PA, that part of the site was located within the Draft PFRA OPW maps and as such, the FRA was required to consider how the raising of the site will affect the site in terms of flooding. Further concerns were also noted as to the potential for the filling of the site to cause flooding of surrounding lands. Third-parties also noted issues with flooding on the road in the vicinity of the site. There are existing road inlets which take surface water off the public road and the AE requires that these inlets, and the existing land drainage system around the proposed development site be maintained. The FRA considered the impact of the proposed development in terms of interfering with this drainage system.

- 7.4.2. The Byrne Looby submission of the 22nd July 2021 sets out a consideration of the flood risk potential of the site. The report identifies the raised ditches and hedgerows which separate the fields to the north from the site, between which the road passes. It is indicated that it is unclear how run-off from lands to the north is drained but notes that the proposed site has an existing drain running parallel to the northern boundary. The report assumes that this drain collects water from the lands to the north and the road. The remaining parts of the site drain in a southerly direction. In terms of the surrounding lands, it is submitted that they drain towards the existing stream which runs along the southern boundary of the site via the existing drains.
- 7.4.3. In terms of flood risk, the report submits that the site is not located in an area prone to fluvial, coastal or groundwater flooding. There are no historic flooding issues noted at the site. The National Preliminary Flood Risk Assessment undertaken by the OPW in 2010, indicates that there is potential for a pluvial flood risk to the south of the site. The report concludes as follows:

The pluvial risk established by the PRFA is via a process of identifying areas with depressions from which there is no obvious drainage. The size of the stream to the south of the proposed site was below the threshold of stream size included in the PRFA analysis. Consequently, the PRFA has identified a 'bowl' in this location that does not actually exist.

Ultimately, the report concludes that surface water run-off from the site flows into the local stream to the south and there is no pluvial flood risk at this location. The proposed development will maintain the existing pluvial regime and will not negatively impact on flood risk elsewhere.

- 7.4.4. The Board will note that the Planning Authority accepted the findings of the Flood Risk Assessment and raised no further concerns in this regard.
- 7.4.5. The site is located in an area mapped as a regionally important karstified aquifer. Though the site is underlain at depth by karstified bedrock, there are no karst features identified on the site or in the surrounding area. The GSI notes that the locality has a 'high' groundwater vulnerability rating.
- 7.4.6. Inland Fisheries Ireland made a submission in relation to the proposed development noting no objection in principle but noting a number of issues which are required to be considered. Of note, the discharge of polluting matters such as silt and fuel oils to

fisheries streams due to insufficient silt control measures can clog salmonid spawning beds and can precipitate further riverbank erosion downstream, leading to loss or degradation of valuable habitat. The report requests that the riparian zones along watercourses should be maintained and that no material should be deposited within 10m of watercourses or open drains adjacent to the site, or on floodplains. Other issues raised relate to the storage of fuel oils etc and matters relating to biosecurity, and the introduction and spread of invasive species.

- 7.4.7. Having regard to the information available, I would be inclined to agree with the Planning Authority with regard to the risk of flooding. The subject site does not appear to be located within a Flood Zone A, B or C, and the OPW Flood Maps show no historical flood events in the vicinity of the site. It does not appear that watercourses in the area are maintained by the OPW under an arterial drainage scheme and as such, the site is not within benefitting lands.
- 7.4.8. The proposed works seek to improve the quality and productivity of agricultural lands which are considered a 'less vulnerable' use in terms of FRA. I note the mitigation measures included as part of the overall development and would accept that such measures have sought to protect and maintain the open drains and watercourse in the immediately vicinity of the site. A 5m buffer is proposed between the site boundaries and the proposed fill area, together with the proposal to construct a berm around the perimeter. The existing drainage regime does not appear to be impacted by the proposed development and as such, I accept that the development has been designed in order not to increase flood risk.
- 7.4.9. Should the Board consider a risk remains, I would consider the inclusion of a condition which excludes the area identified in the 2010 map as an area at risk of pluvial flooding from the filling area could be included in any decision to grant permission.
- 7.4.10. In terms of the justification test criteria of the FRM Guidelines, the following is relevant:
1. The subject lands have been zoned or otherwise designated for the particular use or form of development in an operational plan, which has been adopted or varied taking account of these guidelines:

The subject site is not zoned, being located in the open countryside area of Co. Cork. It is notable that the proposed development is sought in order to improve the quality of agricultural lands and as such, given that the site is located in the countryside, I am satisfied that the subject site might be reasonably considered to be appropriately designated for use proposed.

2. The development has been subject to an appropriate flood risk assessment that demonstrates:
 - (i) The development proposal will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk;
 - (ii) The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;
 - (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 and provisions for emergency services access;
and
 - (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.

7.4.11. In terms of a consideration of part 2 of the JT Criteria, I would accept that the FRA, has presented mitigation measures which, if adhered to, will ensure that the proposed works will not remove any potential flood plain storage and that the development will not have a negative impact in this regard. The Planning Authority, and the Area Engineer, is satisfied that the proposed development will not have a negative impact on the local drainage network, on local private property or to the local road to the north of the site. As such, I am satisfied that the development, if permitted, will not exacerbate or add to flooding risk in the area.

7.5. Visual Impacts

- 7.5.1. The subject site lies outside the development boundary of Kanturk and within the towns Greenbelt. The site is covered by 2 landscape character types, including Broad Marginal Middleground Valley which has a locally important, high landscape value and sensitivity and Fertile Plain with Mooreland Ridge which has a county important, very high landscape and sensitivity. A highly sensitive landscape is likely to be vulnerable to change whereas a landscape with a low sensitivity is likely to be less at risk to change. The Board will note, however, that while the subject site is included within the above landscape character areas, it is not located within an identified High Value Landscape.
- 7.5.2. In addition to the above, the Board will note that there are no identified scenic routes noted in the vicinity of the subject site. Having undertaken a site visit I would accept that there will be some visual impacts associated with the proposed development during the 2 to 5 years of the permission, if granted. However, following the completion of the filling, I would not consider that the visual impacts are significant or would be significant in the long term.
- 7.5.3. In support of the proposed development, and following requests for further information, the applicant submitted drawings presenting a topographical survey and assessment of the land. The land was surveyed to produce contours of the proposed fill area, to aid in determining the volume of material required to raise the land and to provide an even surface to facilitate agricultural activities.
- 7.5.4. The submissions from the applicant also include details of the volume of material to be imported and the number of truck movements associated with the volume. I note the relatively small area to be filled and would accept the submission of the applicant that the work is proposed to improve to the production capabilities of the agricultural land and is unlikely to have any adverse effects on drainage or flood risk.
- 7.5.5. In the context of visual impacts associated with the proposed development, I refer the Board to the Sections Drawing submitted with the application and following the request for further information. This drawing represents the existing and proposed ground levels associated with the site and following the completion of the development. The existing site levels appear to range from between approximately 103.99m to 107.03m in a south to north direction, and between 107.11m to 104.26m

in a west to east direction. The proposed finished level of the site is indicated at 107.00m generally across the full area. The maximum fill therefore will be approximately 2.96m with an average depth indicated at 1.9m. I note that there is a 5m buffer between existing drains/watercourse and hedgerows proposed and the ground should be suitably graded across the fill site area to eliminate the creation of any 'edges' in order to minimise any visual impacts. Having regard to the requirements of the IFI, I recommend that the buffer zone be increased to 10m adjacent to the drains to the north and west, and to the stream to the south of the site. A 5m buffer should be retained along the eastern boundary.

- 7.5.6. On completion of the filling of the site, I am generally satisfied that the development will have little visual impacts on the landscape in this area subject to compliance with conditions which require that the edges of the filled area be sloped and graded across the fill area to provide for a smooth transition.

7.6. Other Issues

7.6.1. Residential Amenity Issues

The Board will note that the subject site is located within a rural area with limited residential development, the closest house being located approximately 170m to the west of the site. There is no residential property directly abutting the subject site, other than a driveway to the east, which provides access to a house and farm set back from the public road. As such, I would consider that there is limited potential to impact on residential amenities in the area. I note the submission of the applicant with regard to minimising noise impacts as well as mitigation measures proposed in relation to the provision of a water bowser on site to dampen dust potential. I would also note that any waste facility permit will provide limits for noise arising from the development.

Having regard to the nominal size of the site, and the limited works proposed over a 2-5 year life of the development, the nature of the material to be deposited on the site and the distance between the site and residential properties, I am generally satisfied that the development will not give rise to significant adverse impacts on existing residential amenities.

7.6.2. Development Contribution

The Board will note the limited scope of the Cork County Council Development Contribution Scheme 2015 which does not include a class of development for which planning permission is currently sought. A Supplementary Development Contribution Scheme – Cobh/Midleton -Blarney Suburban Rail Project was implemented in 2004 and includes, at Appendix 1, the Councils approach to levying Special Contributions in the County, under Section 48(2)(c) of Planning and Development Act, 2000, as amended, where exceptional costs, not covered by the General Development Contribution Scheme (GDCS) are incurred by the Local Authority in respect of public infrastructure and facilities which benefit the proposed development.

The documents identify a number of types of development for which special contributions will be levied, with the basis of the calculation criteria also noted. The scheme includes Quarries and Gravel Pits, Windfarms, Golf Courses and Other Leisure Facilities which incorporate Premises. Contributions are calculated in terms of the floorspace of developments. There is no class for which the special contribution might be applicable noted in terms of waste management facilities or infill proposals such as the appeal currently before the Board, and as the development does not propose a 'floorspace', no levy is applicable under the GDCS.

Condition 27 of the PAs decision to grant permission requires the payment of a special contribution in the amount of €20,760.00. The Board will note that this contribution condition has not been appealed by the applicant. The contribution is required 'in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out for the provision of upgrading the public road.' In this regard, the Board will note that the works referred to, including overlaying the road with 60mm binder and surface dressing from Sally's Cross to the site, were carried out in late 2021. I note that the AE has indicated that said works, and the change to the type of surface, were carried out due to the proposed development and the heavy vehicles and turning movements.

Section 48 of the Planning and Development Act, 2000 as amended, sets out the provisions for attachment of a condition requiring the payment of a special development contribution. Section 48(2)(c) of the Act, states that

A Planning Authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

Section 2 of Circular Letter PD 4/2003 also deals with SDCs and advises that works must “benefit very specific requirements of the proposed development” while Section 7.12 of the Development Management Guidelines advises that the basis for the calculation of the SDC should be explained. As such, the Guidelines state that:

“it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.”

An example of where a SDC would be justified is also noted - where the costs are incurred directly as a result of, or in order to facilitate, the development in question.

In terms of the current proposed development, I am satisfied that the works carried out to the L-1043 between Sally’s Cross and the site, together with the change in the road surface, has been identified and explained in the Area Engineers report. I am further satisfied that the basis for the calculation of the contribution has also been detailed and having regard to the inclusion of condition 22 which explicitly requires all traffic to and from the site to travel west from the site, towards Sally’s Cross and the R580, with no trucks permitted to access or leave the site from the east, I consider the inclusion of the special development contribution to be reasonable.

As such, I am satisfied that a contribution of €20,760.00 is applicable.

8.0 Appropriate Assessment

8.1. Introduction:

- 8.1.1. The site is not located within any designated site. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located approximately 2km to the west of the subject site. The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) lies approximately 13.8km to the north-west of the site.
- 8.1.2. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.
- 8.1.3. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. The Board will note that a Natura Impact Statement (NIS) was submitted as part of documentation for permission for the proposed development to assess the likely or possible significant effects, if any, arising from the proposed development on any European site. An Appropriate Assessment Screening Report, was also provided by the applicant.
- 8.1.4. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.
- 8.1.5. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

8.2. AA Screening Report

- 8.2.1. The application was accompanied by an Appropriate Assessment Screening Report, as part of the NIS and dated February 2019. The document was prepared by Cuthbert Environmental. This report assesses whether significant effects to the Natura 2000 network are likely to occur as a result of the project. The report sets out the methodology employed and provides a description of the project proposed as well as including a description of the site.
- 8.2.2. The AA Screening Report identifies the zone of influence as 15km from the boundary of the development. The report identifies the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) as the only Natura 2000 sites within this radius. It is noted that no direct impacts are likely given the location of the site but notes that indirect impacts potentially arise as the site is located within the catchment of the Blackwater River. In addition, drainage ditches are identified along the perimeter of the site which are assumed to represent a hydrological pathway to the Blackwater River SAC. The report notes that there is no hydrological connection to the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and as such, there is no environmental concern warranted.
- 8.2.3. The screening report concludes that the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA can be screened out and that as there is a risk that surface water runoff may pick up pollutants from the proposed filling area and transport them via drains to a section of the River Dalua to the west, or to the River Awbeg to the east, the precautionary principle is employed and the consequences are assumed to be significant for the purposes of AA. Surface water containment

measures are to be employed and it is noted that these measures cannot be taken into account at screening stage and will require to proceed to stage 2 AA.

- 8.2.4. Other potential impacts considered as part of the AA Screening relate to noise and dust. As with the measures proposed in relation to surface water protection, dust suppression measures are proposed which cannot be taken into account at screening stage. Other plans and projects are considered in terms of in-combination effects.
- 8.2.5. The Report presents details of the relevant SAC, including details of the qualifying interests of Blackwater River (Cork/Waterford) SAC. An Assessment of Potential Impacts is presented in Section 2.2.4 of the document. Natura 2000 sites are considered relevant where a source-pathway-receptor link exists, and the report concludes that there are potential impacts associated with the proposed development for the SAC due to the hydrological pathway to the site. The Conclusion of the AA Screening (Stage 1) is that a full AA will be required with regard to the SAC. The report includes a Natura Impact Statement at Section 4 of the document.

8.3. Natura Impact Statement

- 8.3.1. The Natura Impact Statement submitted by the applicant is included in Section 4 of the AA document. The NIS seeks to examine the potential impacts of the proposed development on the following European Site:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

Table 3 of the report identifies the qualifying features and their conservation objectives for the SAC.

- 8.3.2. Having reviewed the NIS and supporting documentation, including the other ecological assessment documents submitted with the application, together with relevant submissions, and having undertaken a site inspection, I am satisfied that a Stage 2 Appropriate Assessment is required for the following European Site on the basis of the proximity of the sites to the appeal site and the potential for indirect impacts to water quality arising:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

- 8.3.3. I am satisfied that the submitted NIS provides adequate information in respect of the site, clearly identifies the potential impacts, and uses best scientific information and knowledge. Section 4.2 of the NIS document presents an assessment of potential impacts and Section 4.3 sets out details of the proposed mitigation measures to be employed in terms of the surface water containment and dust suppression associated with the proposed development.
- 8.3.4. The NIS concludes that with the implementation of the mitigation measures proposed, there will be no risk of contamination of the adjacent drains. As such, it is considered that with the measures in place, the integrity of the qualifying features and conservation objectives of the Blackwater River SAC will not be negatively impacted. I am satisfied that the information is sufficient to allow for Appropriate Assessment of the proposed development.

8.4. Consultations and Observations

- 8.4.1. The AA Screening Report and NIS submitted with the application lists all data sources and guidance documents used in the preparation of the document.
- 8.4.2. The County Council Ecology report notes agreement with the conclusions of the NIS and considers that there is potential for the proposal to have indirect impacts through risks of impact to water quality in the SAC during construction as a result of contamination run-off. It is noted however, that given the hydrological distance to the SAC from the site, and the proposed mitigation measures to be employed, the Cork County Council Ecologist is satisfied that the proposed development does not pose a risk of significant impact on the SAC. This report recommends additional measures be implemented by way of condition and that a condition be imposed to safeguard the mature hedgerow habitats along the periphery of the development. A 5m buffer between the hedgerows and the infilling site should be established.
- 8.4.3. Inland Fisheries Ireland also submitted a report in relation to the proposed development noting no objection in principle to the proposed development. The Board will note, however, that IFI has sought that the riparian zones along watercourses should be maintained and that no material should be deposited within 10m of the watercourses or open drains adjacent to the site.

8.4.4. The Councils Environment Report raised no concerns in terms of AA, other than noting the requirements of the Cork County Council Ecologist in terms of the 5m buffer between the filled area and the hedgerow boundaries.

8.4.5. I note that the third-party submissions raised a number of concerns with regard to the potential impact of the development on the River Blackwater as well as to the local environment including the pond which is located on adjacent lands.

8.5. Screening for Appropriate Assessment:

8.5.1. I have presented a summary of the AA Screening report submitted with the application above. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:

- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
- b) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.

8.5.2. The AA Screening Report submits that the zone of influence extends to 15km from the boundary of the development. The report identifies the relevant Natura 2000 site within the identified zone of influence as being the Blackwater River (Cork/Waterford) SAC (Site Code: 002170). In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site.

8.5.3. In addition to the above, the Board will note that the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) lies approximately 13.8km to the north-west of the site. This SPA was not considered as part of the applicants NIS. The Stack's to Mullaghareirk Mountains is a very large site centred on the borders between the counties of Cork, Kerry and Limerick. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for Hen Harrier. This SPA is a stronghold for Hen Harrier and supports the largest concentration of the species in the country. I am satisfied that the SPA can be screened out in the first instance, as the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated site to the

development site and therefore, I conclude that no significant impacts on the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) is reasonably foreseeable.

8.5.4. I consider that the following Natura 2000 sites, located within 2km of the subject site, can be identified as being within the zone of influence of the project, for the purposes of AA Screening, as follows:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

8.6. Conclusion on Stage 1 Screening:

8.6.1. Having regard to the information submitted as part of the application, together with the information available on the NPWS website, the scale and nature of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my inspection of the site and the surrounding area, I am satisfied that the following site can be screened out from further assessment:

- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161)

8.6.2. It is further reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on the above European sites, in view of the sites' conservation Objectives and that a Stage 2 Appropriate Assessment is not required in respect of this site.

8.6.3. There is potential however, for the development to give rise to potential impacts in terms of water quality of the Blackwater River (Cork/Waterford) SAC during the construction and operation phases of the development. Potential impacts on qualifying features, conservation interests and conservation objectives are primarily related to water quality.

8.6.4. In light of the above, a stage 2 Appropriate Assessment was carried out in relation to the following European Sites:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

The potential impacts (direct / indirect and in-combination effects) of the development on the site are examined in light of each of the site's conservation objectives.

8.7. Stage 2 Appropriate Assessment

8.7.1. The following table sets out the qualifying interests for the identified Natura site:

European Site	Qualifying Interests
<p>Blackwater River (Cork/Waterford) SAC (Site Code: 002170)</p> <p>Located approx. 2km to the east of the site</p>	<ul style="list-style-type: none"> • Estuaries [1130] • Mudflats and sandflats not covered by seawater at low tide [1140] • Perennial vegetation of stony banks [1220] • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] • Mediterranean salt meadows (Juncetalia maritimi) [1410] • Water courses of plain to montane levels with the Ranunculon fluitantis and Callitricho-Batrachion vegetation [3260] • Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] • Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] • Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] • Austropotamobius pallipes (White-clawed Crayfish) [1092] • Petromyzon marinus (Sea Lamprey) [1095] • Lampetra planeri (Brook Lamprey) [1096] • Lampetra fluviatilis (River Lamprey) [1099] • Alosa fallax fallax (Twaite Shad) [1103] • Salmo salar (Salmon) [1106] • Lutra lutra (Otter) [1355] • Trichomanes speciosum (Killarney Fern) [1421]

Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

8.7.2. The River Blackwater is one of the largest rivers in Ireland, draining a major part of Co. Cork and five ranges of mountains. The site consists of the freshwater stretches of the River Blackwater as far upstream as Ballydesmond, the tidal stretches as far as Youghal Harbour and many tributaries, the larger of which include the Licky, Bride, Flesk, Chimneyfield, Finisk, Araglin, Awbeg (Buttevant), Clyda, Glen, Allow, Dalua, Brogeen, Rathcool, Finnow, Owentaraglin and Awnaskirtaun. The portions of the Blackwater and its tributaries that fall within this SAC flow through the counties of Kerry, Cork, Limerick, Tipperary and Waterford. Nearby towns include Rathmore, Millstreet, Kanturk, Banteer, Mallow, Buttevant, Doneraile, Castletownroche, Fermoy, Ballyduff, Rathcormac, Tallow, Lismore, Cappoquin and Youghal.

8.7.3. The site is also important for the presence of several E.U. Habitats Directive Annex II animal species, including Sea Lamprey (*Petromyzon marinus*), Brook Lamprey (*Lampetra planeri*), River Lamprey (*L. fluviatilis*), Twaite Shad (*Alosa fallax fallax*), Freshwater Pearl Mussel (*Margaritifera margaritifera*), Otter (*Lutra lutra*) and Salmon (*Salmo salar*). The Awbeg supports a population of White-clawed Crayfish (*Austropotamobius pallipes*). This threatened species has been recorded from a number of locations and its remains are also frequently found in Otter spraints, particularly in the lower reaches of the river. The freshwater stretches of the Blackwater and Bride Rivers are designated salmonid rivers. The Blackwater is noted for its enormous run of salmon over the years.

Overall, the River Blackwater is of considerable conservation significance for the occurrence of good examples of habitats and populations of plant and animal species that are listed on Annexes I and II of the E.U. Habitats Directive respectively. Furthermore, it is of high conservation value for the populations of bird species that use it. Two Special Protection Areas, designated under the E.U. Birds Directive, are also located within the site - Blackwater Callows and Blackwater Estuary. Additionally, the importance of the site is enhanced by the presence of a suite of uncommon plant species.

8.8. Conservation Objectives:

8.8.1. The Conservation Objectives for the relevant designated site are as follows:

European Site	Conservation Objectives
<p>Blackwater River (Cork/Waterford) SAC (Site Code: 002170)</p> <p>Located approx. 2km to the east of the site</p>	<ul style="list-style-type: none"> • The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Austropotamobius pallipes (White-clawed Crayfish) [1092] ○ Lampetra planeri (Brook Lamprey) [1096] ○ Lampetra fluviatilis (River Lamprey) [1099] ○ Salmo salar (Salmon) [1106] ○ Estuaries [1130] ○ Mudflats and sandflats not covered by seawater at low tide [1140] ○ Perennial vegetation of stony banks [1220] ○ Salicornia and other annuals colonising mud and sand [1310] ○ Mediterranean salt meadows (Juncetalia maritimi) [1410] ○ Trichomanes speciosum (Killarney Fern) [1421] ○ Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] • The NPWS has identified a site-specific conservation objective to restore the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] ○ Petromyzon marinus (Sea Lamprey) [1095] ○ Alosa fallax fallax (Twaiite Shad) [1103] ○ Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] ○ Lutra lutra (Otter) [1355] ○ Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]

	<ul style="list-style-type: none"> ○ Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0] • The status of <i>Taxus baccata</i> woods of the British Isles [91J0] as a qualifying Annex I habitat for the Blackwater River (Cork/Waterford) SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this habitat.
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8.9. Potential Significant Effects

8.9.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated.

8.9.2. In terms of indirect effects, and with regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 2km from the boundary of any designated site at its closest point. As such, there shall be no direct or indirect loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within a rural area of Co. Cork, primarily surrounding by agricultural land. A new access has been constructed into the site from the public road which lies to the north of the site.

No qualifying species or habitats of interest, for which the designated site is so designated, are noted to occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the works proposed, there is little or no potential for disturbance or displacement impacts to land based species or habitats for which the identified Natura 2000 site have been designated.

In terms of the proposed works, and the potential for surface water or dust to result in the contamination of the watercourse and drains which run to the east, west and southern boundaries of the site, I note that mitigation measures have been included in order to prevent such occurrences. I also note the concerns of the adjacent third-party landowner with regard to the potential for runoff to contaminate the pond which lies approximately 160m to the east of the site. This pond is fed by the watercourse which runs along the southern boundary of the site. I note that the flow of the watercourse is from west to east, through the pond, and onto the Awbeg River, which lies approximately 2km to the east. The Awbeg River is a tributary of the Blackwater River and will flow approximately 2.5km in a southerly direction where it flows into the Blackwater River SAC. The third-party notes that wildlife use the pond and any deterioration in the quality of the water will impact on the species using it. I note that the NIS makes no reference to the private pond but note the mitigations measures proposed to protect water courses and drains from surface water runoff and potential contamination.

- **Water Quality:** The proposed development relates to the filling of an agricultural site within a rural area. The development is proposed in order to improve the quality and agricultural functionality of the site. The material to be used to fill the site will comprise solely of stone and soil, with no proposal for hazardous materials to be imported to the site. Given the presence of drains and water courses surrounding the subject site, which feeds into the Awbeg River and ultimately the River Blackwater, it is reasonable to conclude that this may act as a conduit for surface water runoff, containing pollutants, to reach the Natura 2000 site. There is potential, therefore for contaminants to temporarily affect water quality and in particular sediment pollution, and therefore impact on the water dependent habitats and species within the SAC.

The application includes a number of mitigation measures which are to be implemented on the site, including the proposed 1m berms and the maintenance of a 5m buffer between the fill area and the adjoining drains and watercourse.

- 8.9.3. Having regard to the above, it might be reasonable to consider that, subject to the full implementation of the mitigation measures as described in section 4.3 of the submitted NIS, there is little or no potential for impacts on water quality or QIs associated with the SAC arising.
- 8.9.4. Having regard to the scale of the proposed development, I am generally satisfied that the principle of the proposed development is acceptable and that if permitted, is unlikely to impact on the overall water quality of any Natura 2000 site in proximity to the site.

8.10. In Combination / Cumulative Effects

- 8.10.1. In terms of potential in-combination / cumulative impacts associated with the proposed development, I note Section 2.2.6 of the NIS which has considered a number of documents and planning applications in the area. The wider area has not been the subject of significant development and the most recent planning application was for the construction of a house.
- 8.10.2. Given the nature of the proposed development, being the importation of soil and stone to an agricultural site, I consider that any potential for in-combination effects on water quality in the Blackwater River can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in the Blackwater River (Cork/Waterford) SAC via rivers and other surface water features are also subject to AA.

8.11. Mitigation Measures

- 8.11.1. Mitigation and best practice measures are proposed to address the potential adverse effects of the development to ensure that the development will not adversely affect the identified European Sites or the conservation status of protected habitats and species they support. The environmental measures are proposed to deal with surface water runoff containment and dust suppression from the site associated with the construction phase. I also note the submission of a Flood Risk Assessment.

8.12. Overall Appropriate Assessment Conclusion

8.12.1. Having regard to the nature of the subject development site, the nature of the proposed development, together with the details presented in the Natura Impact Statement which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, I consider it reasonable to conclude on the basis of the information on the file, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the following Natura 2000 site, or any other European site, in view of the sites Conservation Objectives:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

9.0 Recommendation

I recommend that planning permission be granted for the proposed development for the following stated reason.

10.0 Reasons and Considerations

Having regard to the nature and extent of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 10th day of February 2021, 22nd day of July 2021 and the 12th day of October 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. This permission shall apply for a period of five years from the date of this order. Following the expiration of this period, the importation of material to the site and operations on site shall cease, unless prior to the end of the period, planning permission shall have been granted for a further period.

Reason: To enable a review of the effect of the development on the amenities of the area.

3. The maximum quantities of inert soil and stone to be accepted at the site shall not exceed 27,370 metres in total over the period referred to in condition number 2 of this permission with the number of deliveries limited to a maximum of 5 number loads per day.

Reason: In the interests of clarity and traffic safety.

4. The imported material to be deposited on the land shall comprise inert soil, stone and topsoil only and shall be levelled, contoured and seeded upon the completion of the works and protected until established.

Reason: In order to assimilate the development into the surrounding rural landscape, in the interest of visual amenity.

5. (a) A minimum 5-meter-wide buffer zone shall be maintained between the proposed fill area of the site and the hedge which forms the eastern boundary of the site.
- (b) A minimum 10-metre-wide buffer zone shall be maintained between the proposed fill area of the site and the drains which run along the northern and western boundary of the site, as well as the watercourse which runs along the southern boundary of the site.
- (c) The buffer zone shall be cordoned off from earth movement works and suitable bunds, barriers and/or silt fencing shall be erected along the boundary of the infill area and the buffer zone to prevent soil and sediment from entering watercourses throughout the course of works. No inert, or any other material shall be deposited in these buffer zones.
- (d) Details of the buffer zone and the provision of bunds, barriers and/or silt fencing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (e) Prior to the commencement of any development on the site, revised drawings and fully scaled cross sections, shall be provided for the written approval of the Planning Authority clearly identifying the buffer zones, including proposals to provide appropriate barriers to prevent accidental deposition of material within the buffer zones.
- (f) The revised plans and sections required to comply with this condition shall clearly show the original / existing level profile and the proposed finished level profile and details of the minimum, maximum and average depth of fill shall be noted. The fill area in m² and fill volume in m³ shall also be submitted to the Planning Authority for agreement.

Reason: In the interest of clarity and in order to protect receiving waters.

6. (i) Prior to commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted for the written agreement of the planning authority.

(ii) All works on the site shall be carried out strictly in accordance with the mitigation measures specified in the Construction Environmental Management Plan (CEMP).

(iii) No development shall be commenced on the site until part (i) of this condition is complied with.

Reason: In the interest of environmental protection.

7. A Temporary Bench Mark (TBM) to which the existing and proposed levels relate, shall be installed and maintained for the duration of the proposed works. Full details of the TBM, including photographic evidence and details of its location on a site layout drawing shall be submitted for the written approval of the Planning Authority prior to the commencement of any development on the site.

Reason: In the interests of clarity and the proper planning and sustainable development of the area.

8. The importation of inert soil, stone and topsoil and the operation of associated machinery shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays, between 0800 to 1400 hours on Saturdays and not at all on Sundays, bank or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

9. No trucks shall access the site from the east and no trucks leaving the site shall turn right or travel east. All access and egress from the development site shall be to and from the west towards the R580.

Reason: In the interest of road and traffic safety.

10. (a) Details of road signage including advance warning notices and proposals for traffic management at the site entrance, including notice of no right turn / travelling east on leaving the site, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) A wheel wash facility shall be installed at the exit of the site. The public roadway shall be kept clean and tidy at all stages of the development.

Reason: In the interest of traffic safety.

11. The development shall not commence on this site until a Waste Facility Permit, has been issued and site operations shall be in accordance with the said permit.

Reason: In the interest of amenity and to prevent environmental pollution.

12. All trees and hedgerows on the boundaries of the site shall be retained and maintained. Retained trees and hedgerows shall be protected from damage during construction and infill development works.

Reason: To protect trees and planting during the construction and infill period, in the interest of visual amenity and biodiversity.

13. During the construction phase of the proposed development, the noise level from within the boundaries of the site measured at noise sensitive locations in the vicinity, shall not exceed-

(a) an L_{Ar,T} value of 55 dB(A) between the hours of 0800 and 1900 from Mondays to Fridays, between the hours of 0800 and 1400 on Saturdays (excluding public holidays).

(b) an L_{Aeq, T} value of 45 dB(A) at any other time.

Reason: To protect the residential amenities of property in the vicinity.

14. During the construction stage, dust emissions shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge). Details of a monitoring programme for dust shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Details to be submitted shall include monitoring locations, the commencement date and the frequency of monitoring results.

Reason: To protect the residential amenities of property in the vicinity.

15. The developer shall pay the sum of €20,760.00 (Twenty thousand, seven hundred and sixty euro) updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office, to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of upgrading works carried out to the L-1043 between Sally's Cross and the site, together with the change in the road surface, to accommodate the proposed development and which are specific exceptional costs not covered in the Councils General Development Contribution Scheme. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

A. Considine
Planning Inspector
3rd May 2022