



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312699-22

<b>Development</b>	Fill land with inert waste along with associated site works, for the purpose of land reclamation. A Natura Impact Statement (NIS) was submitted with this application.
<b>Location</b>	Nantinan, Killorglin, Co Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	21650
<b>Applicant(s)</b>	Seamus Hobbins
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Seamus Hobbins
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	04th of April 2022
<b>Inspector</b>	Adrian Ormsby

## **1.0 Site Location and Description**

- 1.1. The site is located in Nantinan, Co. Kerry, c. 5km east of Killorglin. The site is in agricultural use with a stated site area of 2.07 ha. The site can be accessed from two local roads, one to the north and one to the south of the site. Both roads are linked by a private access road along the eastern boundary of the site. Large 110v overhead wires traverse lands to the east and part of the eastern boundary of the site.
- 1.2. There are a number of residential properties located to the south of the site and a large pig farm enterprise to north and north west of the site.
- 1.3. Public road side boundaries include typical trees and hedgerows. A roadside drainage ditch was observed along the northern side boundary. There is an existing agricultural style entrance to the site towards the northern boundary and one to the southern boundary but both are off the private road.

## **2.0 Proposed Development**

- 2.1. The cover letter accompanying the application details the proposal -
  - is to improve the 'Agricultural characteristics of the land by importation of soils and sub soils'
  - will have a life span of 5 years
  - anticipated tonnage per annum of 4,800
  - the total volume of fill required is 16,000 m<sup>3</sup> or 24,000 tonnes of fill.
  - includes a number of waste types with listed EWA Waste Codes
  - will have on average 1-2 loads per day with a maximum of 10 loads per day.
  - will operate from 08.00 – 1800 Monday to Saturday and closed Sundays and Bank holidays.
  - include a separate entrance is proposed to the northern boundary
- 2.2. A waste facility permit will be required.
- 2.3. The following documents accompany the application-

- An EIA screening report carried out by Southern Scientific Services Ltd dated 15/06/21
- A Natura Impact Statement carried out by Southern Scientific Services Ltd dated 06/06/21

2.4. Unsolicited Further information was submitted on the 12/07/21 which included a letter from Teagasc detailing the infilling of the site should lead to an overall improvement of this area from an agricultural point of view. The submission also included three third party submissions. This submission was not considered significant by the Planning Authority on the 14/07/21.

2.5. A request for Further Information issued from the Planning Authority on the 09/08/21 seeking-

- An Archaeologist Impact Assessment to be carried out on the site to include predevelopment testing if it is proposed to strip the site prior to filling
- Information relating to proposed year operations will commence and how the proposal is consistent with policies E13 and E14 of the Southern Region Waste Management Plan given the number of authorised inert waste facilities in the area.

2.6. A response to the Further Information request was received on the 10/12/21 and included an Archaeological Assessment Report dated November 2021.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The Planning Authority decided to refuse permission on the 14/01/22, for two reasons-

1. *There is in excess of 50,000 tonnes of approved capacity for the acceptance and treatment of inert waste at present in the Killorglin Milltown region. Therefore, the proposed development would contravene the following objectives of the Southern Region Waste Management Plan relating to backfilling activities, to which this application relates*

- *Objective E13: Future authorisations by the local authorities, the EPA and an Bord Pleanála must take account of the scale and availability of existing back filling capacity.*
  - *Objective E14: The local authorities will coordinate the future authorisations of backfilling sites in the region to ensure balanced development serves local and regional needs with a preference for large restoration sites ahead of smaller scale sites with shorter lifespans. All proposed sites for backfilling activity must comply with environmental protection criteria set out in the plan.*
2. *The proposed development would contravene Objective WM-1 of the Kerry County Development Plan 2015-2021 which states that it is an objective of the Council to ensure the implementation of the Regional Waste Management Plan with particular emphasis on waste reduction, reuse and recycling and the sustainable disposal of residual waste in the most appropriate manner. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

## **4.0 Planning Authority Reports**

### **4.1. Planning Reports**

The planners report (13/01/22) generally reflects the decision of the Planning Authority.

### **4.2. Other Technical Reports**

- Environment Section-
  - 06/08-21 Further information requested
  - 12/01/22 Refusal recommended
- County Archaeologist-
  - 09/08/21- Further Information requested
  - 14/12/22- No mitigation required

- Biodiversity Officer-
  - 06/08/21- it is requested mitigation measures proposed in the NIS and requested by IFI form conditions. AA concludes based on information on file including NIS no adverse effect on the integrity of European Sites

#### **4.3. Prescribed Bodies**

- Inland Fisheries Ireland-
  - 26/07/21- There is no fishery interest in drainage ditches on site but they should be left open for attenuation of nutrients from agricultural lands to protect water quality. Must not be used as part of mitigation measures to prevent silt runoff from the site. Mitigation required for ground works/clearance and waterlogged areas to prevent runoff to watercourses. Good site management practices required to prevent discharge of silt or contaminated water to surface waters. Other measures included.
- HSE Environmental Health-
  - 20/07/21 All legal and appropriate best available technology measures should be implemented, Restricted to inert material as proposed, complaint management procedure recommended.

#### **4.4. Third Party Observations**

- None recorded in planners report but I note three submissions were included as part of unsolicited further information submitted by the Applicant on the 12/07/21. These appear to be within the five week submission period after application was lodged but it is not clear if a fee was paid.
- These submissions are from adjoining landowners in the area and they raise no concerns over the proposed development. The contents of same to not have a material influence upon this assessment.

## 5.0 Planning History

- This Site
  - None recent
- Nearby Sites
  - 0.5 km to north west of site- ABP-310113-21/ 20-323- To fill land with inert waste for the purpose of land reclamation including NIS. **Grant with revised conditions** 25/04/2022
  - Directly north and opposite site- ABP-312624-22/ 211259- Retention of two pig sheds and four feed silos **Contribution Appeal Decided** 07/06/2022

## 6.0 Policy Context

### 6.1. National Waste Management Plan for a Circular Economy (NWMPCE)

- Notice of Intention to commence preparation of the National Waste Management Plan for a Circular Economy to replace the existing Regional Waste Management Plans was advertised in 2021 with a closing date for submissions of the 06/05/2021.
- I have not been able to identify any further updates on this plan.

### 6.2. Southern Region Waste Management Plan 2015 – 2021 (SRWMP)<sup>1</sup>

- This waste management plan is a statutory document prepared by the local authorities of the region including Kerry. This waste plan covers the period from 2015 to 2021 and is required to be revised or replaced every six years.
- It is intended that once the NWMPCE is adopted it will replace the SRWMP.

---

<sup>1</sup> <http://southernwasteregion.ie/content/southern-region-waste-management-plan-2015-2021-associated-reports>

- The SRWMP provides a 'List Of Terms (Abbreviations And Glossary)' which explain the following terms relevant to this application-
  - Backfilling-
    - *Recovery of C&D waste through the permanent placement of suitable material in land reclamation or for engineering purposes where the waste is a substitute for non-waste material.*
  - Construction and demolition (C&D) waste-
    - *All waste that arises from construction and demolition activities (including excavated soil from contaminated sites). These wastes are listed in chapter 17 of the European waste catalogue (EWC).*
  - Inert Waste-
    - *Waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in any way likely to give rise to environmental pollution or harm human health.*
  - Landfilling-
    - *The disposing of waste at a waste disposal facility used for the depositing of waste onto or under the land.*
  - Recycling-
    - *Means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.*
- Section 16.4.4 deals with 'Recovery – Backfilling' and sets out the following policies-

- *E13. Future authorisations by the local authorities, the EPA and An Bord Pleanála must take account of the scale and availability of existing back filling capacity.*
- *E14. The local authorities will co-ordinate the future authorisations of backfilling sites in the region to ensure balanced development serves local and regional needs with a preference for large restoration sites ahead of smaller scale sites with shorter life spans. All proposed sites for backfilling activities must comply with environmental protection criteria set out in the plan.*

### 6.3. Kerry County Development Plan 2022-2028

- A Notice of Intention to Issue a Direction to Kerry County Council on the Kerry County Development Plan 2022 – 2028 issued from the Minister on the 12/08/22. The matters set out in this generally relate to wind energy and are not considered pertinent to this appeal.
- Volume 1, Chapter 9, section 9.7.6 deals with ‘Agriculture, Agri-Food and Agri-Tech’. The following objectives are relevant-
  - *KCDP 9-53 Facilitate and support the development of sustainable agricultural practices and facilities within the county, subject to normal planning and environmental criteria and the development management standards contained in Volume 6 of this plan.*
  - *KCDP 9-61 Support the maintenance of a vibrant and healthy agricultural sector based on the principles of sustainable development whilst at the same time allowing for engaging in alternative employment in or close to rural areas to sustain rural communities.*
- Volume 1, Chapter 13, section 13.3 deals with ‘Waste Management’. The following objectives are relevant-
  - *KCDP 13-27 Ensure the implementation of the Regional Waste Management Plan with particular emphasis on waste reduction, reuse*



*and recycling and the sustainable disposal of residual waste in the most appropriate manner.*

- *KCDP 13-28 Facilitate the implementation of the current Regional Waste Management Plan, and any replacement or amending plan, to include implementation of the waste hierarchy and maximising the diversion of waste from landfill in accordance with current national and European policy.*

#### **6.4. Natural Heritage Designations**

- Castlemaine Harbour SAC (000343) is located c.1.5km south of the site
- Castlemaine Harbour SPA (004029) is located c.3.85km west of the site

#### **6.5. EIA Screening**

- 6.5.1. An Environmental Impact Assessment Screening prepared by 'Southern Scientific Services Ltd' was submitted with the application and includes the information required under Schedule 7 and 7A of the Planning and Development Regulations, 2001, as amended. I have had regard to same.
- 6.5.2. The development subject of this application falls within the class of development described in 11(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising of installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.
- 6.5.3. The development proposes an intake of c.4,800 tonnes per annum over a life span of five years giving a maximum total intake of 24,000 tonnes. This falls significantly short of the 25,000 tonne per annum threshold.
- 6.5.4. The materials to be disposed of within the site comprise of 'inert' material. These are identified within section 3.2 of the Applicants EIA Screening Report as-
- Soil and Stone 15,840 tonnes
  - Concrete 2,880 tonnes
  - Bricks 1,920 tonnes

- Tile and Ceramics 480 tonnes
- Mixture of concrete, bricks tiles and ceramics 960 tonnes
- Dredging Spoil 960 tonnes
- Track Ballast 960 tonnes

- 6.5.5. I do not consider the proposed development as significant in terms of the stated site area of 2.07 ha and its location within this rural area. The site is low lying and appears poorly drained. The works will allow for the beneficial use of the land for future agricultural purposes. The proposal will result in temporary loss of grassland habitat but will be replaced once infilling is completed over five phases and five years.
- 6.5.6. The reclamation works will not result in any significant loss of natural resources or local biodiversity. The open drain along the western boundary is to be retained with a 5m set back from the works. The drain to the northern boundary is to be piped as part of works to provide for a site entrance. The site boundaries are to be maintained save for the entrance.
- 6.5.7. Best Practise Construction measures in accordance with recommended guidance is detailed in section 3.3 of the Screening Report. Appropriate measures including setback from the western drain on site and installation of silt fences to protect against accidental spillage/pollution to surface water
- 6.5.8. The site is not within or adjacent to any European Site. The issues arising from the proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive and the proposed mitigation measures included within the NIS are considered sufficient to adequately address any significant likely effects.
- 6.5.9. The introduction of a reclaimed land for agricultural use will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site (see section 8.3 below).
- 6.5.10. The proposed development would not give rise to significant waste, pollution or nuisances that would negatively impact upon residential amenity in the neighbourhood. Noise impacts from the development including traffic movements are

not considered significant and would be temporary in nature. The proposal would not give rise to a risk of major accidents or risks to human health. The development does not propose water supply or wastewater drainage.

6.5.11. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Schedule 5, Part 2 Class 11 (b)- Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule as set out in the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands in this rural area and the existing pattern and nature of uses in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),
- The features and measures proposed by the Applicant to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement.

it is considered that the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an Environmental Impact Assessment Report for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

A first party appeal has been received. The grounds of appeal can be summarised as follows-

- The Applicant's responded comprehensively to a request for Further Information demonstrating compliance with Objectives E13 and E14 of the SRWMP.
- The FI response includes details of the two closest sites planning reference numbers 15/215 and 20/323 which are not in a position to take waste. The first is at capacity and the second is on appeal to ABP (since granted)
- The Applicants are applying for not just soil and stone but also ceramics, tiles, bricks, blocks and dredge which none of the other sites can take.
- There are no applications for waste permits involving large scale restoration sites of the type referred to in E14 in the local or wider region.
- It is more sustainable to carry out waste disposal locally notwithstanding the aspirations of the SRWMP.
- The application is essentially recycling, reuse and conservation by placing on land for purpose of improving its agronomic status.
- A policy in section 4 of the CDP recognises the importance of agriculture to the economy of the county. The waste management act cites the recovery of such waste for the improvement of land.
- Reference is made to a report commissioned by Dublin City Council on Construction and Demolition Waste- Soil and Stone Recovery / Disposal Capacity. The report includes inert waste across the country. The appeal details statistics from the report on capacity in Kerry and a likely demand over the next 3 years in Kerry.
- The Applicants estimate a capacity in the region of 54,750 tonnes in total. With the expected demand they consider the value remaining will be exceeded long before the end of 2025.

- Four such sites are listed with estimates of capacity detailed
- The SWRMP has not adopted the principle of sustainability in its widest context.
- There is no negative comment on any key environmental component of the application by KCC or designated bodies.
- The Applicant is a farmer and civil contractor. Improving his land serves to improve his economic status thereby supporting farm families.
- It is very unusual to be refused based on objectives E13 and E14 of the SRWMP. It is not clear if this relates to inert waste. The term backfilling in the plan is confusing as it infers the activity of filling an already excavated site.
- Excavation of the land surface is not required.
- The 2015-21 plan is expired and it is not clear if E13 and E14 will feature in the new plan.
- Other planning and environmental issues have been deemed satisfactory.
- A recent application for a similar development in Kerry was granted by the Board under 311269. Reference is made to paragraph 7.1.2 and 7.1.3 of the Inspectors Report.

## **7.2. Planning Authority Response**

- None

## **7.3. Observations**

- None

## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. I have examined the application details and all other documentation on file, including the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.
- 8.1.2. I consider that the main issues for assessment in this appeal are as follows-
- The Refusal Reasons
  - Appropriate Assessment

### **8.2. The Refusal Reasons**

- 8.2.1. The Planning Authority recommended refusal of this application for two reasons which can be summarised as-
- Non-compliance with objectives E13 and E14 of the SRWMP and
  - Non-compliance with objective WM-01 of the Kerry CDP 2015-21. This objective seeks to ensure the implementation of the SRWMP.
- 8.2.2. The 2015-21 CDP has now been replaced by the 2022-28 CDP. The current plan includes similar policies to WM-01 of the previous plan. These are KCDP 13-27 and KCDP 13-28 which seek the implementation of the SRWMP and its subsequent replacement.
- 8.2.3. The SRWMP covered the period from 2015-2021. It is due to be replaced by the National Waste Management Plan for a Circular Economy (NWMPCE). Preparation of this plan commenced in 2021 but has not reached adoption stage. In such circumstances I am satisfied that until the SRWMP is replaced, then the SRWMP remains the appropriate policy framework for waste management in the southern region and this is supported by objective KCDP 13-28 of the current CDP.
- 8.2.4. The local authorities refusal of this application appears to have been strongly influenced by the report of the Environment Section which detailed a number of such facilities in the general area. ABP granted permission under 310113 in April of 2022

for a similar development c. 0.6km north east of the subject site. A further such development operates just north of the one permitted by ABP.

- 8.2.5. The Environment Section Report details there is in excess of 50,000 tonnes of approved capacity in the Killorglin/Milltown area at the time of the report (January 2022) and there is adequate capacity to meet local demand. The Section are of the opinion that having regard to the Regional Waste Plan the proposed development is premature and permission should be refused. As a result of the permission granted under 310113 there now appears to be c. 75,000 tonnes of capacity in the area (not allowing for usage since January 2022).
- 8.2.6. I have considered the contents of the SRWMP and in particular the details of objectives E13 and E14. These objectives do not specify capacity targets or constraints and nor do they specify applicable geographical target areas. I also note objective E14 does not detail what large restoration sites or small scales sites are. Nor do they detail what a short lifespan is considered to be.
- 8.2.7. Reclamation of land for agricultural purposes such as pastoral grazing of cattle is a reasonable proposal for unproductive or poor draining agricultural lands. The current CDP details a number of objectives in section 9.7.6 for 'Agriculture, Agri-Food and Agri-Tech'. In particular KCDP 9-53 seeks to facilitate and support the development of sustainable agricultural practices and facilities within the county and KCDP 9-61 support the maintenance of a vibrant and healthy agricultural sector based on the principles of sustainable development whilst at the same time allowing for engaging in alternative employment in or close to rural areas to sustain rural communities.
- 8.2.8. Having considered the stated policies and objectives of the current CDP, the objectives of the SWRMP 2015-21, the nature of the development as proposed and having visited the site, I am satisfied that the development will provide an overall agricultural benefit to the land upon its completion, is a reasonable proposal for such a site and would not contravene the policies or objectives of the current Kerry County Development Plan or the SWRMP. In this regard, I recommend the Board should set aside the two refusal reasons and permit the development as proposed subject to further considerations as set out below.

### 8.3. Appropriate Assessment

#### 8.3.1. Introduction

- a) The application was accompanied by an Appropriate Assessment (AA) Natura Impact Statement (NIS) prepared by Southern Scientific Services Ltd dated the 08/06/21. The document includes both a Stage 1 Screening Report and a Stage 2 Natura Impact Assessment.
- b) The Screening Report details a site visit took place on 07<sup>th</sup> of April 2021 to identify potential pathways for pollutants to enter nearby watercourse and to identify habitats within and surrounding the development site.

#### 8.3.2. Stage 1 – Screening

- a) The Applicant's AA Screening Report concludes that-  
*“Due to the location and nature of the development, and its hydrological connection to the Kealbrogeen Stream it has been objectively concluded that without appropriate mitigation measures the SAC and SPA could potentially be significantly impacted by the proposed development. Further assessment is required to determine whether the proposed development is likely to adversely affect the integrity of this Natura 2000 site. The recommendation of the screening process is to proceed to Stage 2: Natura Impact Statement (NIS).*
- b) The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

#### 8.3.3. The Proposed Development and Receiving Environment

- a) The application site can be described as an agricultural field that benefits from two local roads to its north and southern boundaries. These roads are linked by a private access road/track to the eastern site boundary. Section 3.1 of the Screening Report details the site is currently used for pastoral grazing for cattle.



- b) The site appears poorly drained and there are open drains running along its western and northern boundary. The screening report details these flow in an easterly direction for 700m turning south at the Kealbrogeen Stream and travelling a further 3.5km where it joins the River Laune. This river then flows westerly slowly meandering for approx. 10km before entering the sea at Castlemaine Harbour. This indicates indirect hydrological distance of c.14.2km to the Harbour.
- c) The site itself is not located within a designated European site. The River Laune forms part of the Castlemaine Harbour SAC (000343) and Castlemaine Harbour SPA (004029) with the Screening Report detailing the SAC approx. 5km and the SPA 13km downstream of the site. I note these are c.1.5km south of the site and c.3.85km west of the site as the crow flies.
- d) The development proposes filling of the site with 24,000 tonnes of 'inert' material (C& D waste) as set out in section 1.2.3 of the Screening Report over a period of five years averaging 4,800 tonnes per annum. Works will include opening an entrance to the northern boundary and an access track on site including piping and covering over the northern drain only with clean stone. Upon completion of the fill the site will reseeded and returned to agricultural pasture. The drawings show an average depth of fill of 0.492m ranging to 1.15m over the 5 phases which will be done in a north to south west direction. A 5m buffer zone with a berm will set the works back from the western boundary and open drain.

#### 8.3.4. European Sites

- a) Having considered the source-pathway-receptor model and given the location of the site, and the nature and scale of the proposed development, I consider the following designated European sites as set out in Table 1 to be within the zone of influence of the application site-

Table 1-

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance

Castlemaine Harbour SAC (000343) <sup>2</sup>	<p><b>Animal and Plant Species-</b></p> <p>1095 Sea Lamprey <i>Petromyzon marinus</i>  1099 River Lamprey <i>Lampetra fluviatilis</i>  1106 Salmon <i>Salmo salar</i>  1355 Otter <i>Lutra</i>  1395 Petalwort <i>Petalophyllum ralfsii</i></p> <p><b>Natural Habitat Type</b></p> <p>1130 Estuaries  1140 Mudflats and sandflats not covered by seawater at low tide  1210 Annual vegetation of drift lines  1220 Perennial vegetation of stony banks  1230 Vegetated sea cliffs of the Atlantic and Baltic coasts  1310 Salicornia and other annuals colonising mud and sand  1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)  1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)  2110 Embryonic shifting dunes  2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)  2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*  2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>)  2190 Humid dune slacks  91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)*</p> <p>* indicates a priority habitat type as defined in the Directive.</p>	c. 1.5km to the south.
Castlemaine Harbour SPA (004029) <sup>3</sup>	<p><b>Bird Species</b></p> <p>A001 Red-throated Diver <i>Gavia stellata</i> wintering  A017 Cormorant <i>Phalacrocorax carbo</i> wintering  A046 Light-bellied Brent Goose <i>Branta bernicla hrota</i> wintering  A050 Wigeon <i>Anas penelope</i> wintering  A053 Mallard <i>Anas platyrhynchos</i> wintering  A054 Pintail <i>Anas acuta</i> wintering  A062 Scaup <i>Aythya marila</i> wintering  A065 Common Scoter <i>Melanitta nigra</i> wintering  A130 Oystercatcher <i>Haematopus ostralegus</i> wintering  A137 Ringed Plover <i>Charadrius hiaticula</i> wintering  A144 Sanderling <i>Calidris alba</i> wintering  A157 Bar-tailed Godwit <i>Limosa lapponica</i> wintering  A162 Redshank <i>Tringa totanus</i> wintering  A164 Greenshank <i>Tringa nebularia</i> wintering</p>	c. 3.85 km to the west.

<sup>2</sup> <https://www.irishstatutebook.ie/eli/2022/si/387/made/en/pdf>

<sup>3</sup> <https://www.irishstatutebook.ie/eli/2012/si/244/made/en/pdf>

	A169 Turnstone <i>Arenaria interpres</i> wintering A346 Chough <i>Pyrrhocorax</i> non-breeding  <b>Other</b> A999 Wetlands & Waterbirds	
--	-----------------------------------------------------------------------------------------------------------------------------------------------------	--

b) Conservation Objectives-

- SAC- Available to view at- [https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO000343.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000343.pdf)
- SPA- Available to view at- [https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO004029.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004029.pdf)

c) I have considered other European Sites in the general area including those identified in Tables 1 the Applicant's Screening Report which sets out European sites with 15km of the application site. Section 3.2 of the Screening Report concludes significant impacts are considered possible to only the Castlemaine Harbour SAC and SPA

d) Having considered this, I am satisfied that other European sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on such European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to those sites from the appeal site.

### 8.3.5. Test of Likely Significant Effects

- The project is not directly connected to or necessary to the management of any European site. The proposed development is therefore, examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- I have reviewed the Statutory Instruments for both European Sites (footnotes 1 and 2 above), their conservation objectives as applicable and Table 2 of the submitted screening report. These identify the particular Qualifying Interests within the identified European Sites and which the proposed development has the potential to significantly impact upon.

- c) Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites and having regard to the NIS carried out for the County Development Plan and implications for this site, the following issues are considered for examination in terms of likely significant effects on European sites-
- Potential for impacts on surface water quality due to hydrological connections to the SAC and SPA e.g. silt, sediment and pollutants
  - Cumulative impact with other plans and projects in the area (including planning reference numbers ABP-310113-21/ 20-323 (a similar 'fill' development) and ABP-312624-22/ 211259 (a retention application))

#### **8.3.6. Potential Effects**

- a) The SR suggests habitat loss and alteration risks to the Alluvial Forests and Tidal Mudflats & Sandflats habitats which are both located downstream of the development. Having reviewed Maps 3 and 7 of the Conservation Objectives for these habitats I note these are located c. 5km and 5.5km from the site as the crow flies and not allowing for the flow paths of the drains, the Kealbrogeen Stream and the River Laune which given their meandering nature would be substantially further than the direct distance.
- b) The SR suggests indirect risk to habitat or species fragmentation due to indirect barriers to migration from contaminated runoff from infilling activities and reseeded of the field preventing aquatic species movement.
- c) The SR identifies potential for water quality impacts through contaminated runoff from sediment or accidental spillages or leaks from machinery or equipment.
- d) The main risks identified to protected species include- hydrological change, nutrient pollution, sediment pollution and acidification which can impact aquatic life such as reproduction success of lamprey and salmon. Other impacts include disturbance and loss of foraging/resting areas to otters or bird species.
- e) The SR considers in-combination impacts and refers to agriculture, wastewater treatment and other development in the area. Farming poses a

risk of nutrients to watercourses. Wastewater drainage from Killorglin is discharged to the River Laune. An existing inert fill site is located 550m north east of the site and a piggery bounds the northern boundary. Through interaction with existing discharge in the area there is a risk of contaminated runoff.

- f) I have also considered a grant of permission 0.5 km to north west of site under reference number ABP-310113-21/ 20-323 which permits the filling of land with inert waste for the purpose of land reclamation and the mitigation measures proposed within it.

#### **8.3.7. Conclusion**

- a) The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project and having regard to the Applicants submitted Screening Report, it has been concluded that the project individually (or in combination with other plans or projects) could potentially have significant effects on the following European Sites-

- Castlemaine Harbour SAC (000343)
- Castlemaine Harbour SPA (004029)

in view of these site's Conservation Objectives, a Stage 2 Appropriate Assessment is therefore required. The Applicants have submitted a NIS with the application.

- b) No mitigation measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening.

#### **8.3.8. Stage 2 – Appropriate Assessment**

- a) The requirements of Article 6(3) as related to Appropriate Assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 (as amended) are considered in this section.

- b) In accordance with Article 6 (3) it is noted the proposed development is not directly connected to or necessary to the management of any European site.
- c) Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded that the proposed development individually or in-combination with other plans or projects will not have a significant effect on the following European sites-
  - Castlemaine Harbour SAC (000343)
  - Castlemaine Harbour SPA (004029)

#### 8.3.9. The Natura Impact Statement (NIS)

- a) The application includes a NIS prepared by prepared by Southern Scientific Services Ltd, which examines and assesses likely effects of the proposed development on the European Sites listed above.
- b) The NIS concludes-

*“The proposed development site is located adjacent to a drainage ditch, which flows into the Kealbrogeen Stream, a tributary of the River Laune, which provides a hydraulic connection to the Castlemaine Harbour SAC and Castlemaine Harbour SPA (Site Codes 000343 and 004029; 1.5km south and 3.8km west respectively).*

*The most likely impact on the integrity of the SAC/SPA, which was identified during this assessment, is thought to arise from pollutants and silt/sediment entering the stream via surface water during infilling works and the reseeding phase....*

*.....Providing that all mitigation measures outlined above are adequately implemented during the project, it is considered that significant negative impacts on the quality of the Castlemaine Harbour SAC and Castlemaine Harbour SPA are unlikely to occur as a result of the proposed development.”*
- c) I have reviewed the documents on file, I am satisfied that the information allows for a reasonable assessment of adverse effects of the development, on the conservation objectives of the identified European sites alone, or in combination with other plans and projects.

#### 8.3.10. Implications of the proposed development on the integrity of European sites

- a) The NIS lists the Qualifying Interests of the two identified European Sites<sup>4</sup> and considers those against potential direct and indirect impacts from the proposed development.
- b) There are no direct impacts identified to the SAC. The NIS details indirect impacts are considered possible to the following-
  - i. 1130 Estuaries
  - ii. 1140 Tidal Mudflats and Sandflats
  - iii. 1310 Salicornia Mud
  - iv. 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*
  - v. 1095 Sea Lamprey
  - vi. 1106 Atlantic Salmon
  - vii. 1355 Otter
- c) The NIS details that the other habitat and species do not occur within the 10km grid square V89 or the adjoining V79<sup>5</sup>, or do not have an impact pathway or are significantly distant from the site and therefore concludes the proposed development does not pose a potential risk to these habitats and species.
- d) There are no direct impacts identified in the SPA. The NIS considers indirect impacts are only likely to the following-
  - A017 Cormorant
  - A053 Mallard
  - A999 Wetlands & Waterbirds
- e) The NIS details that the other birds are excluded as they do not forage or roost in the vicinity and there are no impact pathways.

#### 8.3.11. Potential Impacts

- a) Section 4.6 of the NIS assesses the potential significant impacts from the development. In this regard the surface water drains adjoining the site are

---

<sup>4</sup> See section 8.3.4 above

<sup>5</sup> <https://maps.biodiversityireland.ie/Map>

highlighted as having the potential to facilitate the transport of silt, sediment and other pollutants into adjacent watercourses. Such materials could have potential negative effects in flora and fauna species as identified in the Habitats and Bird Directive.

- b) The NIS details the identified pollutants can impact invertebrate plant and fish life in surrounding water. A deterioration in water quality can impact aquatic species such as Salmon and Sea Lamprey as well as the predators such as the Otter.
- c) Section 4.6.1 details a reduction in water quality or changes to the hydrological regime has the potential to negatively impact Estuaries and Tidal Mudflats & Sandflats which provide foraging and resting for otters and birds. A deterioration may result in displacement of feeding opportunities with knock on effects such as increased competition within and between species. Filling the site to improve drainage and grazing quality may impact hydrological regimes. The proposed development is likely to improve permeability of the site and lead to a decrease in volume and the rate of drainage from the site. Therefore increased runoff rate or erosion are not likely and impacts to the SAC and SPA are unlikely to occur.
- d) Section 4.6.2 details in-combination impacts. The cumulative impact of agricultural uses in the area presents a risk of nutrients to the European Sites. The implementation of the Nitrates Directive assists in reducing this risk.
- e) The NIS details no major developments are proposed in the general area. I have already highlighted the recent grant of permission under ABP-310113-21/ 20-323 for a similar filling and land reclamation development. I note the NIS for this application also details hydrological connectivity to the SAC and SPA via the Kealbrogreen Stream. Mitigation measures are proposed and conditioned as part of that permission.

#### **8.3.12. Mitigation Measures**

- a) Section 4.7 of the NIS details proposed mitigation measures to avoid any significant impacts to the Castlemaine Harbour SAC and SPA, which could



potentially arise from the proposed development in the absence of such measures.

b) The measures proposed are-

- An ecologist or environmental scientist shall be appointed to oversee the implementation of all mitigation measures
- An appropriately qualified and experienced contractor will be appointed
- Works will comply with-
  - i. CIRIA Guidelines- Control of Water Pollution from Construction Sites -Guide to Good Practise (2001)
  - ii. Inland Fisheries Ireland – Guidelines on Protection of Fisheries during Construction Works in and adjacent to Waters (2016).
- Installing perimeter sediment controls including-
  - i. a silt fence setback 2m from drains to a detailed spec as set out in the section and figure 6 of the NIS.
  - ii. Construction of a 1m high by 1m wide berm to be constructed a minimum 5m from the edge of ditches allowing for drainage from the works to the open drain at 100m intervals protected with a silt fence.
  - iii. The berms will be constructed and seeded before development commences.
- Onsite Bunded Storage Facilities (spill trays/spill pallets)
- Infilling and reseeded during favourable weather, a 300mm layer of top soil will be spread evenly across the site.
- Good site management including the access route and public road

c) Section 4.7 is silent in terms of the works required to provide piping and fill over of the open drain along the northern boundary of the site. However, given the small scale of the works necessary at this location (c. 30-40m) and the hydrological distance of the site via the Kealbrogheen Stream to the SAC and SPA I am satisfied an Ecologist appointed to monitor the site would

ensure adequate mitigation of the risks at this point. It is recommended the matter is addressed by condition.

#### **8.3.13. Conclusion**

a) The proposed development has been considered in light of the requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the following European sites-

- Castlemaine Harbour SAC (000343)
- Castlemaine Harbour SPA (004029)

in view of those site's Conservation Objectives.

- b) This conclusion is based on a complete assessment of all aspects of the proposed development alone (and in-combination plans and projects) including possible construction and operational related impacts to surface waters and local watercourses.
- c) Specific mitigation measures designed to prevent adverse effects have been incorporated into the submitted NIS and a Construction Environmental Management Plan with Method Statement as required by the mitigation measures should be conditioned.
- d) Subject to conditions I am satisfied there is no reasonable doubt as to the effectiveness of these measures and therefore no doubt as to the absence of adverse effects from the proposed development on the conservation objectives of the identified European Sites.

### **9.0 Recommendation**

9.1. I recommend permission is granted subject to the following conditions-

### **10.0 Reasons and Considerations**

10.1. Having regard to the policies and provisions of the Kerry County Development Plan 2022-28, which seek to support the sustainable development of agriculture and the

nature and scale of the development proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development, which seeks to reclaim lands for agricultural use, would not seriously injure the amenities of the area and would not be likely to have significant effects on the environment, or the ecology of the area. 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 December 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.

Reason: In the interests of clarity and of the protection of the environment during the construction and operational phases of the development.

2.

- a. All of the environmental and construction mitigation measures, as set out in the EIA Screening Report and the Natura Impact Statement received by the planning authority on the 16th day of June 2021 shall be implemented by the developer, except as may otherwise be required in order to comply with the conditions of this Order.
- b. Prior to the commencement of development on site the following shall be submitted for the written agreement of the Planning Authority-
  - i. Details of appropriate measures to pipe and fill the open drain along the northern boundary of the site.

- ii. Details of an ecologist or suitably qualified person to supervise and monitor the works and to ensure appropriate implementation of the mitigation measures.

Reason: In the interests of clarity and of the protection of the environment during the construction and operational phases of the development.

3. The importation of fill and operation of associated machinery shall be carried out only between the hours 0800 and 1800 from Mondays to Fridays inclusive. 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 amenities of the area.

4. All trees and hedgerows on the boundaries of the site shall be retained and maintained with the exception of those necessary to provide for the proposed entrance.

Reason: In the interests of visual and rural amenity.

5. (a) Prior to commencement of development, a system of advanced warning signs shall be erected along the access road to the site. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

(b) The public roadway shall be kept clean and tidy at all stages of the development.

Reason: In the interest of traffic safety.

6. The final use of the lands after the completion of the importation of fill materials shall be for agricultural purposes only.

Reason: In the interest of clarity.

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

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

---

Adrian Ormsby  
Planning Inspector

15<sup>th</sup> of December 2022