



An
Bord
Pleanála

Inspector's Report

ABP-315355-22

Development

Fill 1.21 ha of lands (part of the existing site) with a clean stone and place a concrete finish thereon, erection of a palisade fence with onsite drainage and all associated site works. A Natura Impact Statement (NIS) accompanies this application.

Location

Marshmeadows, New Ross, Co. Wexford.

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

20221130

Applicant(s)

O'Leary International Unlimited Company

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Sustainability 2050

Observer(s)

None

Date of Site Inspection

6th February 2024

Inspector

Catherine Dillon

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1.0 Site Location and Description

- 1.1. The site is located approximately 2.2km south of New Ross town centre and 1.6km from the N25 New Ross bypass to the south. Access into the subject site is via an existing vehicular entrance on the western side of the R733, which serves a larger site comprising a freight and transport business, associated two storey office and workshop building and associated car and lorry parking. The subject site is to the west of the office building. The site is rectangular in shape with the exception of 2 linear projections which extend into the lands to the east and has a stated site area of 1.21 hectares.
- 1.2. The River Barrow is located c. 60m from the western boundary of the site. There is evidence of drainage ditches around the subject site's perimeter and there is a stream on the south western boundary which drains into the River Barrow. The site is at a lower level than the road. Existing ground levels within the site boundary range from approximately 0.9 mOD (Malin) at the southern boundary of the site to 0.4mOD (Malin) at the northern boundary of the site. The site is wet marsh land with evidence of vegetation associated with impeded drainage such as rushes/thistle on the site.
- 1.3. Along the western stretch of the R733 and in the vicinity to the subject site comprises a mixture of industrial/commercial businesses. Opposite the entrance to the site on the eastern side of the of the R733 is Oaklands Fishing Lake. To the south east of the subject site is a halting site with open fields beyond. A pedestrian footpath extends from the halting site into the town centre on the western side of the R733.

2.0 Proposed Development

- 2.1. The proposed development is for the fill of 1.21 hectares of lands with clean stone and a concrete finish placed on top, erection of a palisade fence with onsite drainage and all associated works. The plans do not include cross sections indicating the extent of fill across the site. Details of the palisade fencing have not been provided.
- 2.2. The submitted plans and associated documentation indicate the infill land would be used for the parking of trailer/lorries. The number of trailer/lorry parking spaces have

not been specified but 46 trailer/trucks are indicated on the plans. A vehicular access would extend into the site over a drain along the eastern perimeter to the site.

- 2.3. Surface water would be collected into a storm pipe and discharged into an oil/silt interceptor prior to discharging into a storm attenuation tank on the adjoining land. No storm water would discharge into any open drain. Details of the drainage system including SuDs calculations have been submitted.
- 2.4. A 10-20m wide buffer zone around the perimeter of the site is indicated to be left for biodiversity planting between the red line boundary and the open drains. Permanent silt fencing would be erected between the open drains and buffer area.
- 2.5. Noise, dust and odour monitoring points would be installed at the north and south eastern boundary of the site.
- 2.6. A Natura Impact Assessment (NIS), Site Specific Flood Risk Assessment (SSFRA) and Construction & Environmental Management Plan (CEMP) were submitted with the proposal. There is an element of ambiguity regarding the surface finish of the subject site, with the SSFRA recommending the construction of a permeable hardcore area, the plans indicating a concrete finish to be laid at a 'later stage on compaction'.
- 2.7. The CEMP proposes to remove approximately 350mm of top soil and replace with 350mm of stone and states the level of the site would not be raised. Where topsoil is stockpiled, silt fences would be erected around the perimeter of the stockpile material on site. Silt fencing would be erected around the drains prior to construction.
- 2.8. A covering letter from the Director of the company (O'Leary International ULC) was submitted with the planning application and summarised as follows:
 - The development is for additional truck parking space at the headquarters in Marshmeadows, New Ross.
 - The requirement for the additional parking space arises from the changes brought about by Brexit and the planned expansion of the business.
 - Prior to Brexit most of their journeys were made through Dublin port which has now changed, whereby the greater part of journeys (up to 95% at times)

now exit through Rosslare port. With increased capacity being provided on the Rosslare routes this situation will continue and grow.

- They operate a fleet of 200 trucks with plans for expansion in the coming months. They employ 300 people in the transport business and the planned expansion will result in an increase in employment.
- They are a major transport and logistics business which supports the export and import of goods into and out of the country.
- Their maintenance and management operations are based at Marshmeadows and it is vital that any additional parking be situated close to these operations and close to Rosslare Port.
- The business operates 7 days a week, 24 hours a day.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. On 18th November 2022, Wexford County Council granted planning permission for the development, subject to 11 conditions. Conditions of note include:

Condition 2: Proposed work shall be carried out in accordance with the construction environmental management plan and waste management plan submitted as further information.¹

Condition 3: The buffer zone outlined in the revised site layout map should be strictly adhered to and should not be used as parking during the operational phase of the development.

Conditions 7-9 relate to noise, dust and surface water emissions and monitoring.

Condition 11: Night time artificial lighting of the development confined to the minimum extent necessary for security and operational reasons, and any on site lighting to be cowed and directed to prevent glare or spillage.

¹ There is no Waste Management Plan submitted with the appeal documentation, there is reference in the CEMP to waste material.

3.3. Planning Authority Reports

- 3.3.1. The initial planner's report dated 14th October 2022 considered the development acceptable in principle, acknowledged the importance of helping an expanding company, and concluded the works would not result in an adverse impact to the hydrological regime or increase flooding elsewhere.

Further information was requested on the issues raised by the environment section outlined below regarding drainage, and clarity was sought regarding the status of the unauthorised development which had been subject to 2 previous invalid applications.

- 3.3.2. The second planner's report dated 17th November 2022, following receipt of the further information response recommended planning permission be granted, subject to conditions. The applicants in their response to the further information confirmed that the hardcore stone placed on the adjoining site and identified in P.A Ref: 2020/1336 & 2020/1283 is to be removed and returned to a topsoil finish and sown with grass.

3.3.3. Other Technical Reports

Senior Engineer (Environment) referenced in planner's report:

1. The drainage system leads to a storm water holding tank and oil and grit interceptor but no detail of the interceptor, size or capacity. This information is critical to ensure overload into open ditches which lead direct to SAC.
2. The drainage design does not state design flow information for proposed yard and existing or any pipe sizes or manhole invert levels.
3. The drainage layout does not state the cross falls of the proposed yard or if surface water will not flow into open ditches around the perimeter of the site. The layout does not indicate if there is adequate cross falls or nib walls are proposed around the yard.
4. No details of 'silt fence' if it is permanent or temporary.
5. No information of the existing yard/sheds regarding drainage design or layouts

Coastal Engineer: No report.

New Ross Area Water Services: Report dated 26/9/2022: No comment to make.

Executive Roads Engineer: Report dated 26/9/2022: Regional road R733. Existing established entrance with adequate sightlines of 220m in both directions with well maintained roadside boundary. Recommends grant with conditions regarding sightlines, and collection and disposal of surface water to be within curtilage of the site.

3.4. **Prescribed Bodies**

Office of Public Works: No report received.

Inland Fisheries Ireland: No report received.

Health & Safety Authority: No report received.

Dept. of Housing, Local Government & Heritage: No report received.

3.5. **Third Party Observations**

John Callaghan on behalf of Sustainability 2050 on the following summarised grounds:

- The planning authority must assess the application is in accordance with the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001 as amended.
- The Planning Authority must assess the information submitted by the application and screen the project for environmental impact.
- The Planning Authority is the competent authority to assess the project under the Habitats Directive.

4.0 **Planning History**

4.1. On subject site – None.

4.2. On immediate adjacent lands to east of subject site:

4.3. **P.A Ref: 2021/0095:** (south of main entrance). Planning permission granted to John Whelan (Director) of O’Leary IUC on 28th May 2021 to fill 4047m² for use as a trailer park (part of the existing site) on a 0.405ha site with a clean stone and place a

concrete finish thereon, erection of a palisade fence with on-site associated drainage, with all associated works, subject to 12 conditions. This application was accompanied by a Flood Risk Assessment and NIS. The level of tonnage for the fill is stated in the planner's report as 5,951 tonnes.

4.4. **P.A Ref: 2014/0414:**(included a portion of the subject site) Planning permission refused to Paul Begley on 1st August 2014, for the importation of inorganic land fill material to the application site (3.2ha) and the use of this imported material for the construction of a raised site ground level and associated ancillary site works, all as indicated on the planning application drawings. The inorganic landfill material will be imported on a phased basis and at a rate not exceeding 24,000 tonnes per annum. A NIS accompanied the application. The reasons for refusal were as follows:

1. In the absence of a Strategic Flood Risk Assessment, an Environmental Impact Statement and a thorough Natura Impact Statement that fully assesses the flood risk posed by the development within a flood zone, that fully assesses the environmental risks posed by the proposed development upstream of a Natura 2000 site with which there are direct hydrological links and upon a qualifying interest on site for SAC 2162 and that assesses fully any mitigation measures, it is likely that the proposed development poses an unacceptable flood risk, would be likely to adversely impact upon a Natura 2000 site and upon a qualifying interest and would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development would contravene policies SWO3, SWO6 and NHO2 of the New Ross Town and Environs Development Plan 2011- 2017 and would contravene Objectives FRMO4, NH01 and NH03 of the Wexford County Development Plan 2013 -2019 for protection of lands from inappropriate development in flood zones that would adversely impact upon the adjacent Natura 2000 site, and would therefore be contrary to the proper planning and sustainable development of the area.

4.5. **P.A Ref: 2008/2269:** Planning permission granted to O'Leary International on 3rd November 2008, for proposed extension to the side of the existing transport building comprising (a) additional 2 bay vtn test centre (b) change of use of existing waiting room consisting of a vtn waiting area, vtn canteen, vtn office and toilet facilities (c) stand alone signage for advertisement (d) advertisement to the building (f) new

shared road access with Wexford County Council (g) additional parking spaces to the front of existing transport building, together with associated site works.

- 4.6. **P.A Ref: 2007/4579:** Planning permission granted to O'Leary International Ltd., on 21st April 2008 for 1) change of use to part of transport building to a VTN test centre 2) standalone signage, 3) advertisement to the building and 4) road signage.
- 4.7. **P.A Ref: 2007/3368:** Planning permission granted to Wexford Recycling on 1st November 2007, for the change of use to part of O'Leary International Ltd., transport building at Marshmeadows, New Ross, Co. Wexford to a waste management facility, erection of a weybridge to service the waste management facility. For the purpose of this application a waste license permit was required.
- 4.8. **P.A Ref: 2006/2722:** Planning permission granted to William O'Leary on 20th December 2006, for the erection of new offices and transport yard to consist of the following (a) new office building to contain company offices, storage area and 3 bay garage, (b) parking area for 50 artic lorry trailers, (c) 2 no. lorry washing areas (d) refuelling area and associated site works, subject to 37 conditions. The site had a stated area of 3 ha..
- 4.9. **P.A Ref: 2020/1336 & 2020/1283:** These files were invalid and sought permission for retention of infilling of lands.
- 4.10. **Enforcement:**
- 4.11. No enforcement listed on the Planning Register for the site.

5.0 Policy Context

5.1. New Ross & Environs Development Plan 2011-2017(as extended)

The site is zoned as 'Port Related Activities' (PRA), with an objective 'To provide for Port Related Activities' within the New Ross & Environs Development Plan. The purpose of this zoning is to provide for the needs of New Ross Port and port related activities and the established industrial development on these lands. Uses 'open for consideration' on this zoning include; car park, industrial, light industrial, office and storage/transport depot. This Development Plan included a Masterplan for the Marshmeadows area which included the subject site.

5.2. Wexford County Development Plan 2022-2028

5.2.1. The current Development Plan came into effect on 25th July 2022. The appeal was submitted under the provisions of this Plan. New Ross is a Level 2 Large town within the settlement hierarchy for Wexford County in the CDP. The Development Plan states the development approach for New Ross Town will be incorporated into, and expanded upon, in the proposed new local area plan for the town. There is currently no Local Area Plan for New Ross Town.

5.2.2. New Ross Town Strategic Objectives NT01- NT11 are contained within the Core Strategy of the Development Plan. Of particular relevance are the following objectives:

NT01:To maximise the economic development potential of the town, optimising the potential offered by the N25 New Ross By-pass, the presence of New Ross Port and its proximity to the Waterford MASP and Wexford Town.

NT04:To prepare, as part of the local area plan for the town, an Economic and Spatial Strategy which will identify and develop opportunities for economic synergies and specialisms to compliment the role of Waterford MASP. This strategy will be informed by a report commissioned by the Council which will consider the strengths, opportunities, impacts and consequences of the Waterford MASP on South Wexford and New Ross.

NT10:To work with Kilkenny County Council towards the preparation a joint Local Area Plan for the New Ross Town and Rosbercon areas.

5.2.3. Volume 1- Written Statement

Chapter 6 - Economic Development Strategy

Objective ED01: To facilitate sustainable economic development, increase and improve job opportunities and ensure that County Wexford provides an outstanding business environment.

Objective ED05: To develop the extended Eastern Economic Corridor and the towns and settlements on the corridor as a significant driver of economic growth in the Southern Region, linking Rosslare Europort and the Southern Region with Dublin and Belfast. The Council will consult relevant stakeholders including other local

authorities, the Southern Regional Assembly and the Eastern and Midlands Regional Authority in order to plan and optimise economic development.

Objective ED39: Seeks to protect land zoned for economic development, industry and employment related uses from inappropriate development that would undermine future economic activity or the sustainable development of such areas.

Objective ED46: Requires the scale of a commercial development shall be commensurate with the scale of the settlement. In general large scale employers, that is, those employing more than 50 employees should be located on serviced zoned land in the county's four main towns - Wexford Town, Enniscorthy Town, Gorey Town and New Ross Town.

Objective ED45: To direct commercial development to the settlements identified in the Settlement Hierarchy. Economic development proposals will be permitted within settlements on suitably zoned land or within towns and villages defined within the Core Strategy / Settlement Hierarchy, subject to the proper planning and sustainable development of the area. Exceptions to the objective will be permitted in accordance with those outlined in this chapter, Chapter 7 Tourism Development, Chapter 12 Coastal Zone Management and Marine Spatial Planning, Chapter 14 Recreation and Open Space Strategy, Volume 8 Retail Strategy and Volume 10 Energy Strategy of the Plan.

Objective ED47: To ensure employment locations follow the hierarchy set out in Chapter 3 Core Strategy, and ensure they are built fit-for-purpose. This includes the provision of access to utilities, connectivity, and other enterprise development factors; to identify future locations for strategic employment development having regard to accessibility by sustainable transport modes and environmental constraints, and support a positive presumption in favour of locating appropriate employment where it would address unemployment blackspots, support sectoral and location-based strengths and synergies with existing employers, take advantage of 'ready-to-go' property solutions and local ambition.

Objective ED51: Seeks to ensure that, where economic development uses bound sensitive uses such as residences, natural and built heritage assets or community and education uses, that an appropriate buffer is maintained to protect the sensitive use.

Objective ED58: To include an economic development spatial strategy in the Local Area Plans for each town to ensure that: i. The town fulfils its strategic economic role in accordance with the Regional Economic and Spatial Strategy for the Southern Region. ii. Economic development is located in the optimal location depending on whether it is people intensive (customer and employee), land or space intensive or tied to a particular resource. People intensive activities, particularly those with large customer numbers, should be located in the most accessible locations where public transport is available. iii. The sequential approach is utilised in selecting land for economic development purposes to ensure that urban consolidation and brownfield regeneration is encouraged over greenfield development. The preparation of the spatial strategy shall have regard to the principles of Health Place Audits and the guiding principles for the location of employment development as set out in the RSES.

5.2.4. **New Ross Town**

Objective ED63:

- Maximise the tourism potential of New Ross town as a key economic driver for the town and county.
- Maximise economic development opportunities that may arise due to the town's proximity to the Waterford MASP, and its connection to the Southern Region and the Atlantic Economic Corridor.
- Develop the role of New Ross Port and associated port related economic development subject to compliance with the Habitats Directive.
- Support the development of existing industries in the town including manufacturing, transport and logistics, maximising the opportunities offered by New Ross Port, the N25 By-pass and close proximity to Belview Port, Rosslare Europort and Dublin via the M11.
- Support the expansion of the Life Sciences industry in the town, and to support the development of new industries.

- Support the development of business hubs and flexible working spaces to provide start-up companies with office space and commuters the opportunity to work in an office environment close to their homes in the town.

5.2.5. **Chapter 10- Environment Management**

Objectives EM02 & EM05: relates to planning permission being granted for development that will not have an impact on a European site, and the protection of groundwater.

Objective WQ15: To ensure that development permitted would not negatively impact on water quality and quantity, including surface water, ground water, designated source protection areas, river corridors and associated wetlands, estuarine waters, coastal and transitional waters.

5.2.6. **Volume 2- Development Management Manual**

Section 5: Enterprise & Employment Development

Section 8 Infrastructure & Environment Management

Surface and Ground Water Management

Air Quality

5.3. **Natural Heritage Designations**

- 5.3.1. The River Barrow & Nore SAC (site code: 002162) and the Barrow River Estuary pNHA (site code: 000698) are c.20m to the west of the site. The River Nore SPA (site code: 004233) is c.10km north west of the site and Blackstairs Mountains SAC (site code: 000770) is located c.12km north east of the site.

5.4. **EIA Screening**

- 5.4.1. An Environmental Impact Assessment Screening Report was not submitted with the application. Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended and section 172(1)(a) of the Planning and Development Act 2000, as amended provides that an Environmental Impact Assessment (EIA) is required for infrastructure projects that involve: Class 11 (b) Installations for the

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

- 5.4.2. Taking into account the cumulative effects of existing and approved developments on the adjoining the site, and the environmental sensitivities of the subject site, I consider that the potential for significant effects on the environment either individually or cumulatively cannot be screened out in this instance. Refer to Appendix 1 of this report.

6.0 The Appeal

6.1. Grounds of Appeal

A Third Party appeal was submitted in respect of Wexford County Council's notification of decision to grant permission for the development. The following provides a summary of the grounds of appeal.

Validity of planning application

1. The planning application does not comply with Article 22 of the Planning and Development Regulations as it does not indicate the extent of other lands owned by the applicant in blue. The site location map does not indicate the way leave registered on the Land Registry maps. (Map attached)
2. Site notice is inadequate to inform the public as to the intended use of the development, as it does not describe the use of the land after it is backfilled.
3. The site layout map indicates works (silt fencing) that are to be carried outside the red line boundary of the application site. The Board are requested to note the absence of a blue line outlining lands owned. Could planning conditions be enforced outside the site area outlined in red.
4. Having regard to the record of planning permissions on O'Leary International lands the cumulative extent of development exceeds permitted development, and planning permission is required for the retention of unauthorised works is required. Application should therefore be invalid.

The application should have included an application to retain the backfilling and parking use on the section of lands that are beyond the extent of permission granted in previous permissions.

5. Inadequacy of drawings and reference is made to a judgment in *Balsacadden Road Residents Association Ltd v ABP* (2020) IEHC 586.

Stability of lands for the development

1. The lands are low lying and the EPA map indicates that they are substantially underlain by alluvium deposits and have a high water table which has the potential for movement. There is a history of ad hoc filling of lands and no scheme of site/ground investigation/geotechnical aspects accompanying the planning application. Reference is made to *Ted Kelly V An Bord Pleanala* [2014] IEHC judgement.

Appropriate Assessment/Natura Impact Assessment

1. The NIS failed to consider other development carried out and despite the Planning Authority screening out the need for a Stage 2 AA, there was insufficient attention to cumulative effects and in-combination effects with other plans and projects. NIS failed to consider impact on species outside the SAC such as otters and the impact of lights, human proximity, silt fences and nesting habitat. A number of court cases are referenced in this regard.

Planner's report

1. Planning permission was granted without confirmation of the adequacy of the further information response by the Environmental section.

2. Failure to assess the traffic safety impact of the proposed development and future forecast of the traffic movements for either cars or lorries from the existing or expanded facility to assist in the need for determining a Traffic Safety Audit.

3. Cumulative extent of the O'Leary development and other development requires an EIAR.

6.2. Applicant Response

None

6.3. Planning Authority Response

None

6.4. Oral Hearing

An Oral Hearing was heard on 18th April 2024. The Oral Hearing had a limited agenda to clarify a number of matters in the appeal and the following is a broad outline of the issues covered:

- Validity of planning application.
- Works included within the NIS as mitigating measures lie outside the red line boundary.
- NIS – fails to consider impact on species such as otters.
- Insufficient detail in NIS regarding cumulative and in-combination effects with extent of development carried out on the lands in applicant's ownership without planning permission.
- Stability of lands for the development.
- Failure to assess traffic impact.

These issues are presented in detail in Appendix 2 and are considered as applicable, within the following assessment.

7.0 Assessment

7.1. The main issues are those raised in the Planning Authority decision and the Appellant's grounds for appeal. The issue of appropriate assessment also needs to be addressed. A new issue was raised at the oral hearing by the First party regarding vexatiousness which will also be considered. The main issues under consideration are as follows:

- Validity/Procedural issues;
- Policy context and principle of the proposed development;
- Stability of the site;

- Drainage;
- Vexatiousness (New Issue); and
- Appropriate Assessment.

7.2. **Validity/Procedural issues**

The grounds of the Appellant highlight a number of procedural/validation issues associated with the application submitted and the Planning Authority's assessment of the application. While some of the issues raised are matters for the Planning Authority and cannot be addressed by the Board the main issues raised in respect of procedural issues are dealt with below.

Site location map not indicating the lands in the applicant's ownership and absence of wayleave

- 7.2.1. For the purposes in determining this appeal, the lands outlined in red are considered as being the subject site and any lands indicated in blue within the Applicant's ownership. I note the copies of the land registry map submitted by the Appellant indicate a wayleave in yellow. This wayleave does not impact on the subject site outlined in red, and I therefore do not consider it a material planning matter in this instance.
- 7.2.2. The Applicant during the oral hearing confirmed he owned lands beyond the red line boundary including the lands extending to the drains along the periphery of the subject site. However, in terms of legal interest, I am not satisfied that the Applicant has provided sufficient evidence of their legal interest beyond the red line boundary for the purpose of the assessment of this appeal, particularly as works are proposed for the development which are beyond the red line boundary. The Board may wish to seek clarity in this regard.

Description of development on site notice

- 7.2.3. The Appellants grounds of appeal have referred to the development description not including the intended use of the land following the infilling of the subject site. Although the use of the land for the parking of lorry/trailers is not included within the relevant notices, it is clear, however that the Appellant has been able to deduce this

aspect upon reading the relevant plans and particulars submitted with the planning application.

- 7.2.4. The advice in the Development Management Guidelines 2007, is 'planning authorities should not be over-rigorous in assessing the adequacy of the evidence for the purposes of validation: further evidence may be sought by way of further information'. Nevertheless, although the description of the development does not refer to the use of the lands as a lorry trailer park, the drawings and the accompanying documentation with the planning application including the SSFRA, NIS and CEMP clearly specify the future intended use of the site as a lorry/trailer park. I am satisfied that these issues did not prevent the concerned Third party from making representations regarding the nature of the proposed development.

Works required outside the red line boundary:

- 7.2.5. The site location maps as submitted do not indicate the lands surrounding the subject site as being in the Applicant's ownership (i.e contained within the blue line), and there are works proposed outside the red line area required for the proposed development. In terms of the validity of the application, mitigating measures specified in the NIS which include a buffer zone and silt fencing are proposed beyond the red line boundary of the subject site. These lands are not however included within the Applicant's ownership as submitted in the planning application. The Development Management Guidelines 2007 Section 7.3.3. states 'conditions should be capable of being complied' and as works are proposed beyond the red line area of the subject site, this would prove difficult to enforce. This aspect of the proposal was raised during the oral hearing and will be assessed in the Appropriate Assessment section in detail below.

Unauthorised works

- 7.2.6. I note from assessing the planning history and from my site inspection, works have been carried out on the subject site in the form of stockpiling of soil, and the adjoining lands to the east are being used for the parking of lorries/trailers which do not have the benefit of planning permission. This matter of enforcement falls under the jurisdiction of the Planning Authority, and enforcement issues are not a matter for the Board.

Inadequacy of drawings

- 7.2.7. The Third Party has raised concerns about the overall inadequacy of the drawings, including lack of detail of the silt fencing, sectional drawings, where topsoil materials are to be deposited, depth and type of fill and the lack of a geotechnical assessment. Whilst I consider a number of the aspects raised in this regard by the Appellant could be agreed by way of prior to commencement conditions, I do have concerns regarding the absence of detail on the infilling of the lands, geotechnical aspects of the development, and the road access details across the open ditch.
- 7.2.8. Although the description of the development is for the infilling of lands only, and does not specify the intended proposed use of the lands, I am satisfied that the plans and particulars including the NIS, SSFRA, CEMP and accompanying details, identify the site is to be used for lorry/trailer parking. In conclusion therefore regarding the validity of the planning application, although I consider the plans and particulars submitted with the planning application are lacking in consistency regarding the surfacing and stability of the site for the intended use, I do not consider the details as submitted prevent the Board from making a decision on the proposed development.

7.3. Policy context and principle of the proposed development

- 7.3.1. The New Ross Town & Environs Development Plan 2011-2017 (as extended up to 2019) is stated as being expired on the Wexford County Council website, and therefore has been superseded by the current Wexford County Development Plan (CDP) 2022-2028, which came into effect on 25th July 2022. The Wexford CDP does not include land use zonings for New Ross and its surrounding areas, with the intention that a spatial planning framework, which will incorporate a development approach, will be set out in a newly prepared New Ross Town & Environs Local Area Plan.
- 7.3.2. The site however was zoned for 'Port Related Activities' within the New Ross & Environs Development Plan 2011-2017 (as extended up to 2019). Uses 'open for consideration' on this zoning include car park, industrial, light industrial, office and storage/transport. The proposed use of the site for the parking of lorries/trailers therefore would be acceptable on this zoning.

- 7.3.3. New Ross is the fourth largest town in the County and identified as a Level 2 Large Town settlement within the county's settlement hierarchy. The town has the advantage of having an inland port which provides the opportunity for further development in both port-related activities and in spin-off industries. The development approach for New Ross within the CDP inter alia, seeks to maximise the economic potential offered by New Ross Port and Belview Port, port related development, manufacturing and transport and logistics sectors.
- 7.3.4. The commercial nature of the adjoining site to the east of the subject site, is established by virtue of the parent permission P.A Ref: 2006/2722 as a transport yard with associated activities that have incrementally expanded over the years. However, I note from the planning history and reading the planner's report, there are elements associated with the business, (particularly lands immediately to the east of the subject site) that are being used for the parking of lorries that do not have the benefit of planning permission.
- 7.3.5. With the exception of the residential properties to the southeast of the subject site, the adjoining land uses on the western side of the R733 are commercial in nature. However, the use of the subject site for lorry/trailer parking is not a sequential approach to the development of the overall site as there are lands closer to the office building which have not been fully developed. I acknowledge in the Applicant's response to the further information request that it is proposed to change the unauthorised use of the lands back to grass, following a grant of permission, but to date this has not happened. Therefore, the subject lands cannot be considered as a brownfield or infill site, and there are lands closer to the office block which could be developed in a sequential manner, further away from the river than the current appeal site.
- 7.3.6. RPO 42 of the Regional Spatial and Economic Strategy for the southern region supports development of the Eastern Economic Corridor as a strategic economic driver in the region, extending economic and transport links from the Dublin- Belfast Corridor, to the south east extending to Rosslare Europort. I acknowledge the appeal site has good accessibility from the R733 onto the N25 bypass which links to Rosslare Harbour. I also note the Planning Authority's Road engineer had no objections to the development and, that there were adequate sightlines from the site onto the R733. Whilst the Applicant is not listed as being one of the larger employers

in the county as specified in the Wexford CDP (page 228) the business as outlined in the supporting documentation would have synergies with similar uses nearby (i.e Nolan Transport referred to in the CDP). As such I consider in principle the nature of the proposed development is appropriate, however I have concerns regarding the uncoordinated approach of development of the overall site and the cumulative impact on the SAC, particularly given the extent of unauthorised development carried out on the adjacent lands for lorry parking.

- 7.3.7. If the Board are minded to grant planning permission I would recommend additional information on the justification for the development in this particular location on the site, a traffic and transport assessment regarding the level of activity of the vehicles to and from the site, number of vehicles proposed to park on the site and whether the trailers would contain storage material when parked on the lands.

7.4. Stability of the site

- 7.4.1. The Appellant has referred to the development being on a floodplain and the lack of geotechnical information regarding the stability of the land for the intended use, and refers to a high court judgement *Ted Kelly V An Bord Pleanala* [2014] IECH 400, relating to a substantial windfarm in relation to ground stability details. I do not consider the case referred by the Appellant is comparable to the current proposal, given the overall size and the nature of the development. However, the stability of the lands is considered further below.
- 7.4.2. The site lies within Flood Zone A and within a defended area up to a 1 in 1000 year flood event. A Flood Risk assessment was submitted with the planning application and outlines the development site may be susceptible to an extreme fluvial and /or tidal flood event in the River Barrow Estuary. I have assessed the SSFRA and consider it robust. The Planning System and Flood Risk Management Guidelines 2009, state development in this flood zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, and where the Justification Test has been applied to the proposed development.
- 7.4.3. The Justification Test has been carried out in accordance with the 'Planning System and Flood Risk Management Guidelines 2009'. It is stated in the SSFRA, the site is to be used for the parking of commercial trailers, and subject to the construction of a

permeable hardcore area the development would not have an adverse impact on the hydrological regime or increase flood risk elsewhere. I consider the use of the site as a parking area for commercial vehicles on lands subject to flooding would fall within the category of a 'less vulnerable' use as specified in the aforementioned guidelines.

- 7.4.4. The Appellant has raised concerns regarding a lack of detail on the soil formation and the absence of a geotechnical survey of the site. The SSFRA submitted with the proposal identifies the hydrology, topography and soil formation of the site, and outlines as the site is not surrounded by significantly elevated lands, it does not provide an important water discharge point to surrounding lands. The epa.ie maps indicate the subject site consists of alluvial subsoils with a Lower- Middle Ordovician slate, sandstone, greywacke, conglomerate bedrock. The site lies on a Locally Important Aquifer (productive only in local zones) and has a high groundwater vulnerability.
- 7.4.5. I have referred to anomalies regarding the finish to the infill of the lands compared to the plans and that in the SSFRA, the latter which recommends the parking area does not incorporate any impermeable hardstanding or hardsurfacing areas. The SSFRA has not addressed whether the use of the land as a trailer/lorry park on a floodplain would be subject to sinking in the future. The Applicant at the oral hearing confirmed the adjoining lands had not been piled and it would not be necessary to pile the subject lands, or to concrete the site, as it would be used for the parking of lorry trailers only. However, this conflicts with the details in the plans which specify 'once compacted the lands would be concrete(d) over'.
- 7.4.6. The application did not include a Structural Engineers Report to assess the structural stability of the infilling of the site for the parking of (plans identify a minimum of 46) trailer/lorries. It is not clear whether the trailers would be used for storage whilst parked on the site which would increase the weight bearing on the land and could have an impact on the stability of the lands, given the alluvium sub soil and the size and number of lorry trailers indicated on the plans. The plans state the finished surface would comprise 350mm of stone on a geo-textile membrane, which would not provide a stable finish if the trailer/lorries were constantly being moved on site.
- 7.4.7. In assessing the site levels as indicated on the plans it is noted the site is 0.5m higher along the southern boundary (S.L= 0.940) compared to the northern boundary

(S.L = 0.366). I also note the plans state the lands to the north are to be filled with 'approx. 700mm of clean stone'. This would contradict with that stated in both the SSFRA and CEMP, which outline the proposal is to remove 350mm of topsoil only, and replace it with 350mm of stone. Furthermore, I note the cover level of the manhole is stated as being at 1.5m on the plans which is a minimum of 85mm above the highest existing stated site level. To allow for the stormwater drainage to flow within the site the lower part of the site (north) would have to be raised a minimum of 1.13m. I also note the area to the east of the site which would link the eco drain to the attenuation tank is at a higher level (S.L= 1.5m) than the existing site, which would suggest the subject lands would have to be raised higher than 350mm as specified.

- 7.4.8. In conclusion therefore given the wetland nature of the site, I am not satisfied in the absence of sufficient information regarding the extent of fill, the anomalies concerning the surface finish, details regarding the level of activity and nature of the trailer/lorry parking, is such, to enable me to reach a reasoned conclusion in respect of the stability of the land to accommodate the proposed development.

7.5. Drainage

- 7.5.1. Surface water from the subject site would discharge into a storm sewer via an Eco drain and discharge into an attenuation holding tank on the lands to the east. The storm water pipe is shown on the plans to be laid to connect into a silt/oil/grit interceptor on the adjoining site. The SuDs calculation submitted by way of further information has been assessed for an area of 2.3 hectares on clayey poorly drained soil, in accordance with the Stormwater Management Policy for Developers (1998). The attenuation tank would have a storage capacity of 435 m³, required for a 1 in 30 year storm, but would have insufficient capacity to accommodate a 1 in 100 year storm event. The attenuation tank would also store the storm water for the lands to the east of the subject site (P.A Ref: 2021/0095).
- 7.5.2. I note the Appellant has raised the matter of the Environment section not commenting on the further information regarding the drainage. At the oral hearing the Planning Authority were satisfied that the drainage details submitted by way of further information were addressed. I would be of the opinion as the site is located

on a floodplain the storage of the attenuation tank should cater for at least a 1 in 100 year storm event.

7.6. Vexatious Appeal (New Issue)

7.6.1. At the oral hearing the First Party raised the issue of the Third Party's submission being vexatious and that the appeal was submitted for the purposes of delaying the development. Section 138. (1) of the Planning and Development Act 2000, as amended states: 'The Board shall have an absolute discretion to dismiss an appeal or referral—

(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,

or

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

7.6.2. At the oral hearing the Applicant raised the issue of the Third party not being a registered organisation within Ireland or the EU and that the submission was made with the intention of delaying the development through the appeal process. It is not the role of the Board to look behind the nature of the Appellant and determine whether the objection, and subsequent appeal to the Board, were within, or outside, the powers and duties of the organisation, and I therefore do not consider that there is any basis for dismissing the appeal on this ground.

7.6.3. The Third party was invited to attend the oral hearing by the Board which provided them with an opportunity to address the issues raised in their submission, but failed to attend the hearing. The Planning Authority granted planning permission for the development, and the subsequent appeal by the Third Party, in this instance has delayed the development. However, I note the Appellant's grounds of appeal relate to material planning considerations. Therefore having regard to vexatiousness, I am unable to advise the Board to dismiss this appeal under the said Section of the Act. Nevertheless, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

7.7. Appropriate Assessment (AA)

7.7.1. The Appellant contends the Natura Impact Statement (NIS) is deficient and failed to consider cumulative and in combination effects of other plans and projects and impact on species including otter and salmon outside the SAC. The submission refers to the Planning Authority screening out the need for a Stage 2 AA, despite attaching mitigation measures. A number of court cases are referenced in this regard.

7.7.2. The subject site is not located within any designated Natura 2000 European site but is c.20m from the River Barrow & Nore SAC. The planning application was accompanied by an NIS (dated May 2022). It provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts in relation to the River Barrow & River Nore SAC having regard to accompanying documents with the planning application including the SSFRA and CEMP. The NIS includes mitigating measures.

Compliance with Article 6 (3) of the EU Habitats Directive

7.7.3. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's

conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

Screening for Appropriate Assessment (Stage I)

7.7.4. Notwithstanding the submission of an NIS, it is necessary to review the screening process to ensure alignment with the sites brought forward for AA and to ensure all sites that may be affected by the development have been considered.

7.7.5. Description of the Development

A description of the project is provided in 4.1 and 4.2 of the NIS. I refer the Board to Section 2 of this report. In summary the development within the NIS is described as follows:

- Phase 1 Site clearance and material import: The site will be cleared of vegetation (with the exception of the buffer zones along the stream and ditches which will be marked off by silt fencing) and additional fill material will be imported, placed and compacted in order to raise the site to the desired level.
- Phase 2 Site civil works: Works will be completed including installation of site drainage (including pipes and Eco-drains).
- Phase 3 Finishing of parking areas: The parking areas will be constructed in accordance with construction practice and all planning requirements.

The project will be carried out in the following sequence:

- Demarcation of 11m wide (north and south side) and 20m (west side) buffer zones with silt fencing and site clearance,
- Excavation,
- Import of fill material,
- Installation of infrastructure,
- Use of materials and handling of waste,
- Finishing of parking areas,
- Landscaping works.

- The overall duration of the works is likely to be in the order of 5 months.

Table 1: Natura 2000 sites identified

European Site Name & (site code) (Refer to NPWS website).	Qualifying Interests (QI)	Distance	Source- Pathway- Receptor	Considered further in screening
River Barrow & River Nore Special Area of Conservation (SAC) (site code: 002162) <u>Conservation Objectives:</u> To restore (R) and/or maintain (M) the favourable conservation status.	Estuaries [1130] (M) Mudflats and sandflats not covered by seawater at low tide [1140] (M) Reefs [1170] Salicornia and other annuals colonising mud and sand [1310] (M) Atlantic salt meadows (Glauco- Puccinellietalia maritima) [1330] (R) Mediterranean salt meadows (Juncetalia maritimi) [1410] (R) Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche- Batrachion vegetation [3260] (M) European dry heaths [4030] (M) Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430] (M) Petrifying springs with tufa formation	c. 20m to west of site boundary	Stream to south west of site flows into SAC.	Yes- pollution & sedimentation to stream. QI Habitat - Hydrophilous on perimeter of site along ditches. QI Species- Use of stream and ditches in the area by otters. (Refer to Dept of Heritage & Gaeltacht comments in P.A Ref: 2014/0414 in this regard)

	<p>(Cratoneurion) [7220] (M)</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] (R)</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] (R)</p> <p>Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016] (M)</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] (Under review)</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092] (M)</p> <p>Petromyzon marinus (Sea Lamprey) [1095] (R)</p> <p>Lampetra planeri (Brook Lamprey) [1096] (R)</p> <p>Lampetra fluviatilis (River Lamprey) [1099] (R)</p> <p>Alosa fallax fallax (Twaiite Shad) [1103] (R)</p> <p>Salmo salar (Salmon) [1106] (R)</p> <p>Lutra lutra (Otter) [1355] (R)</p> <p>Trichomanes speciosum (Killarney Fern) [1421] (M)</p>			
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	Margaritifera durrovensis (Nore Pearl Mussel) [1990] (R)			
Blackstairs Mountains SAC (Site Code: 000770) <u>Conservation Objective:</u> To maintain (M) or restore (R) the favourable conservation status of the Annex I habitats.	Northern Atlantic wet heaths with Erica tetralix [4010] (M) European dry heaths [4030] (M)	12.7km to north east	None.	No- designated site is upstream of the development site. Separation distance involved is sufficient to exclude the possibility of significant effects from dust and pollutants.
River Nore SPA (Site Code: 004233) <u>Conservation Objective:</u> To restore (R) and/or maintain (M) the favourable conservation status of the bird species as listed.	Kingfisher (Alcedo atthis) [A229] (M & R)	9km to north west	None.	No- Separation distance involved is sufficient to exclude the possibility of significant effects from noise/dust and or vibrations.

7.7.6. In relation to Blackstairs Mountains SAC and the River Nore SPA, noting the separation distances involved and the absence of any hydrological connection between these European sites and the subject site, and there being no source-pathway-receptor identified, I would agree with the submitted NIS that these sites can be screened out. The proposed development, individually or in combination with other plans and projects would not be likely to have a significant effect on these European sites, in view of their site conservation objectives.

Identification of Potential Impacts on the Designated Site

7.7.7. Potential impacts:

The potential impacts that could arise during the construction and operational stages of the proposed development on the River Barrow & River Nore SAC (site code: 002161) relate to:

- Deterioration of water quality arising from release of sediment and pollutants and potential for discharge to groundwater during the construction and operational phases.
- Potential for spillages such as oils, fuels or other pollutants into groundwater during the construction and operational phases.
- Loss of habitat/commuting places used by QI and SCI species.
- Noise and disturbance to QI and SCI species.
- Invasive species.

Screening Determination

7.7.8. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site No. 002162 (River Barrow & River Nore SAC), in view of the sites Conservation Objectives, and an Appropriate Assessment is therefore required.

7.7.9. I confirm that the site screened in for Appropriate Assessment is the site included in the NIS prepared by the project proponent.

7.7.10. The possibility of significant effects on other European sites has been excluded on separation distance and lack of substantive ecological linkages between the proposed works and European sites.

Appropriate Assessment- (Stage II)

7.7.11. The following Appropriate Assessment of the implications of the proposed works alone and in combination with other relevant plans and projects will be carried out in relation to the following European site in view of its conservation objectives:

- River Barrow and River Nore SAC (site code: 002162)

- 7.7.12. The application included an NIS which was informed by a desk top study of the site and field survey carried out on 16th January 2022, and includes information on the water quality of the River Barrow and use of GSI datasets and soil type. The Applicant's NIS provides a description of the development as set out in Section 4 of the submitted NIS. The description refers to the construction of a 14,500m² trailer parking facility on a 1.837 hectare site and all associated works.
- 7.7.13. A field survey carried out on 16th January 2022, identified a strip of Natura 2000 habitat type [6430] *Hydrophilous tall herb fringe*, a qualifying interest of the River Barrow & Nore SAC around the edges of the site. No invasive species were identified. The NIS states there was no evidence of otters on the site, although I note on a previous adjoining planning application (2014/0414 refer to 4.3 above), The Dept. of Arts, Heritage & the Gaeltacht notes the site is known to be habituated by otters, and a stream running from Oaklands fishery is used by otters. Although the NIS states there was no evidence of otters from the field survey, as otters are highly territorial animals with large home ranges the field survey therefore does not preclude the use of the site by otters.
- 7.7.14. The NIS submitted on behalf of the applicant concluded that the proposal will not, beyond reasonable scientific doubt, adversely affect the integrity of any Natura 2000 designated sites, either directly or indirectly and concludes as follows:
- ‘An ecological assessment has been carried out on terrestrial habitats on site (wet Meadow and ditches) and has determined that there are no species of conservation interest on the site.
- Five species that are listed for protection under the EU Habitats Directive were identified as being present or likely to be present within the zone of a potential impact downstream of the inflow of the stream. In addition, areas of one habitat listed for protection, tall herb fringe community, will be preserved.
- The potential effects of the construction phase on the ditches, stream and the Barrow river into which it flows have been described as well as the potential negative impacts on the qualifying interests of the Barrow River SAC, namely, salmon, 3 lamprey species and otter.

Mitigation measures to avoid negative impacts during construction phase were outlined (Section 7) and to be prescribed in a site specific Construction Environmental Management Plan.

Implementation of the proposed measures will achieve the key conservation objective of maintaining the minimum Q4 water quality for the River Barrow and preventing any release of pollutants during the construction phase. This will prevent any negative effects on the Barrow River SAC or its qualifying interest species.

Lastly, the flood risk to and from the development site is considered to be low so the development off the site is not expected to result in an adverse impact to the hydrological regime of the area or increase flood risk elsewhere.'

Implications of the proposed development on the integrity of the River Barrow & River Nore SAC

7.7.15. A description of the site, and its Conservation and Qualifying interest/Special Conservation Interests, are set out in Table 1 above and in Table 2 of Appendix 3 and within the submitted NIS.

7.7.16. Description of Site's Characteristics

The River Barrow & River Nore SAC consists of the freshwater stretches of the Barrow and Nore River catchments as far upstream as the Slieve Bloom Mountains, and it also includes the tidal elements and estuary as far downstream as Creadun Head in Waterford. Species rich habitats (Annex I of the EU Habitats Directive) including estuaries, alluvial forests, petrifying springs, and intertidal mudflats and sandflats can be found within this SAC. This SAC supports multiple species including Otter, Lamprey, Freshwater Pearl Mussel, and Salmon. The water quality for the River Barrow is classified as good based on its ecological status with a Q4 rating.

Land use within the SAC is primarily agricultural, principally grazing and silage production. Fishing is also a main tourist attraction along stretches of the main rivers and their tributaries. Other recreational activities such as boating, golfing, and walking also occur within the SAC.

The main threats to the site and current damaging activities include high inputs of nutrients into the river system from agricultural run-off and several sewage plants, over-grazing within the woodland areas, and invasion by non-native species. The water quality of the site remains vulnerable.

The project is not necessary for the management of any European site, however there is a tributary stream to the southwest of the site's perimeter which flows into the River Barrow estuary.

Relevant prescribed bodies consulted

- 7.7.17. The submitted NIS does not identify specific consultations with prescribed bodies but does refer to a desktop review of published documentation and information. At application stage the application was referred to the relevant prescribed bodies by Wexford County Council. In response to these referrals, no submissions were received from the prescribed bodies.

Qualifying interests that could be affected in the River Barrow & Nore SAC

Direct effects

The project site and adjacent watercourse are not located within a European site and there will be no direct impacts on the SACs or their QI habitats or species arising from the proposed development.

Potential for Indirect effects

As the development would be located a short distance from the River Barrow & River Nore SAC (c.20m), this raises the potential for indirect effects during the construction and operational phases on the SAC and some of the QI species, and loss of a wet meadow area from the floodplain of the catchment area.

Construction Phase

- 7.7.18. Potential impacts could arise from any deterioration in water quality as a result of the uncontrolled or unmitigated release of sediments and pollutants to the adjacent watercourse, and general disturbance during the works, which could in turn have localised adverse impacts on QI species in the River Barrow & Nore SAC, and supporting habitat. I note it is proposed to install silt fencing around the perimeter drains beyond the red line boundary of the site. The CEMP outlines silt drains would

be installed prior to construction, and where topsoil is stockpiled silt fences are to be erected around the entire perimeter of the material.

- 7.7.19. The NIS does not refer to works over the perimeter drain to the east of the site which would accommodate the vehicular access into the site. It is anticipated this drain may be culverted but no details have been provided in this regard. The NIS refers to the installation of a permanent boom across the stream just below the site as a precautionary measure for the duration of construction works.

The silt fencing to be installed prior to construction around the perimeter drains would not be within the red line boundary of the site. As mentioned previously within this report, the Applicant confirmed at the oral hearing the buffer area between the application site to the drains around the site's perimeter were in the Applicant's ownership. The construction works associated with the proposed development will not take place entirely within the boundaries of the development site and the aforementioned measures outlined in the CEMP and NIS cannot be controlled as part of the proposed development during the construction phase. During the oral hearing the Planning Authority stated they were satisfied that the installation of the silt fencing could be enforced by the Authority.

Operational Phase

- 7.7.20. During the operational phase, surface water runoff from the site will be discharged to a storm sewer and connected to an attenuation tank on lands to the east, beyond the subject site. The oil & grit interceptor drain is indicated on the plans next to the attenuation tank and outside the red line boundary but within the blue line boundary. The attenuation tank would also serve the 0.4 ha of lands granted permission for infilling by virtue of P.A Ref: 2021/0095. The plans indicate odour, dust and noise monitoring points within the site boundary but there are no water monitoring points indicated to control the water quality from the site.
- 7.7.21. The Appellant raised concerns in relation to the impact on otters particularly with regards to lighting. I note the Department's comments on a previous planning application regarding the presence of otters and the potential of streams in the area as a commuting route. Given the extent of parking and possible 24 hour usage of the site, there would be a level of noise and disturbance currently not experienced in this location. I note the Planning Authority placed a condition on the Notification to Grant

restricting the lighting at the site. However, there is no lighting indicated on the plans. The development is not proposing the removal of riparian vegetation, and subject to no lighting on the site I am satisfied the development would not affect the otter, in terms of light disturbance. I note the conservation objectives for this SAC do not refer to noise disturbance and the quality of the terrestrial habitat would be maintained by the buffer area beyond the site boundary. Although the site would generate noise which currently does not occur there would be existing habitat available along the river and drainage channels for the otter.

- 7.7.22. The drainage from the site is proposed to link to the attenuation tank to the east of the subject site. As previously discussed above there are anomalies regarding the extent of fill on the site, and it is considered the levels on the site would have to be higher than 350mm as specified in the CEMP and SSFRA, to allow the storm water drain to flow into the attenuation tank, which has not been considered in the NIS. There are mitigation measures proposed in the NIS which fall outside the red line boundary of the site and as such, I consider that these works do not form part of the application, and that this issue cannot be addressed by condition. However, it is noted in the NIS the particular strip of hydrophilous tall herb fringe habitat is to be left in situ around the edges of the site.

Potential in-combination effects

- 7.7.23. The NIS in assessing impacts and cumulative impacts specifies there are no other developments currently proposed in the Marshmeadows area, and diffuse pollution from the adjacent road and industrial sites create cumulative impacts on the waterway. I note there has been no recent planning permissions granted within the Marshmeadows area to the north or south of the subject site with the exception of ABP Ref: 316122-23 for the widening of O'Hanrahan bridge to the north of the site, which is pending.
- 7.7.24. However, lands to the east of the subject site (P.A Ref: 2021/0095) was granted planning permission for the infilling of 0.4 hectares and was subject to an NIS. As stated previously there has been further infilling on the adjoining site without the benefit of planning permission which has not been assessed in the NIS. I therefore consider the NIS has not adequately assessed the cumulative impacts, particularly

regarding the adjoining site and the level of fill specified in the NIS does not correspond with the CEMP and SSFRA.

Mitigation Measures

7.7.25. Section 7 of the submitted NIS and Section 4.4 of the submitted CEMP outline a number of mitigation measures including the following:

- Crushed limestone on layer of geo-textile membrane compacted to formation level and intervening areas filled with 700mm of clean stone;
- Permanent retention of 10m (north and south side) and 20m buffer zones (west side) around the perimeter of the site;
- Annual cut of vegetation buffer zone;;
- Eliminating the use of herbicides during any landscaping works;
- Eliminating the use of biocides to prevent impact on remaining meadow area;
- Photographic evidence to be provided by contractor;
- Collection of surface water run off through cut off Eco drain and annual maintenance of eco drains;
- Selecting contractors with suitable environmental competence;
- Bunding of fuel etc;
- Refuelling of vehicles off site;
- Installation of permanent boom across the surface of the stream just below the site.

Appropriate Assessment Conclusion

7.7.26. On the basis of the information provided with the application and the appeal, and, particularly having regard to the absence of an examination of the potential in combination effects of the adjoining development to the east of the site on the conservation objectives of the River Barrow & River Nore SAC (site code 002162) and the proposed mitigation measures which lie outside the subject site's boundary, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the River Barrow & River Nore SAC (site code: 0002162), in view of its

conservation objectives, to ensure the water quality of the drains and river is not affected by the development, with regards to sedimentation and pollution.

8.0 Recommendation

8.1. I recommend planning permission is refused for the following reasons.

9.0 Reasons and Considerations

1. Having regard to the location of the site next to the River Barrow, the nature and scale of the proposed development, the absence of a structural survey to assess the impact of the development on the floodplain, conclusive details regarding the extent of infill on the lands and the level of activity and number of parked trailers/lorries on the site, it is considered the level of detail in the application and appeal does not enable the Board to reach a reasoned conclusion. Furthermore, the development would not be a sequential development of the overall site and would therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of the site, within 20m of the River Barrow and River Nore SAC (site code: 002612), the Board is not satisfied, on the basis of the submissions made in connection with the planning application and appeal, that the proposed development, either individually, or cumulatively with development on the adjoining land to the east, would not be likely to have a significant effect on the River Barrow and River Nore SAC (site code: 002612). In such circumstances, the Board is precluded from considering a grant of permission for the proposed development.
3. Having regard to the size of the site, which it is proposed to infill 2.1 hectares of land, and to the thresholds set down in Class 11 (b) of Part 2 of Schedule 5 to the Planning and Development Regulations 2001, as amended, to the criteria set out in Schedule 7 of those Regulations, to the advice in paragraphs (5.8 to 5.12) of the Guidance for Consent Authorities regarding subthreshold development issued by the Department of the Environment, Heritage and Local Government in August 2003, and to the cumulative impact of the development in conjunction with previous and other development

adjacent to the site, it is considered the proposed development would be likely to have significant effects on the environment and should be subject to an environmental impact assessment within the meaning of Part X of the Planning and Development Act 2000 as amended. The proposed development would, therefore, require an Environmental Impact Statement which should contain the information set out in Schedule 6 of the said Regulations.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Catherine Dillon
Planning Inspector

29th May 2024

Appendix 1 EIA Screening

Form 1- EIA Pre Screening Report

(EIAR not submitted)

An Bord Pleanála Case Reference	315355-22		
Proposed Development Summary	Permission for to fill a 1.21 ha of lands (part of the existing site) with a clean stone and place a concrete finish thereon, erection of a palisade fence with onsite drainage, with all associated works. A NIS accompanies the application.		
Development Address	Marshmeadows, New Ross Rural, Wexford		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes No	X No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes	X	Class 11 (b) refers to "installations for the disposal of waste with an annual intake greater than 25,000 tonnes", not included in Part 1 of this schedule.	Level of tonnage not specified. I consider that having regard to the nature of infilling
			Proceed to Q.4

			<p>that the volume of material would be unlikely to exceed the threshold detailed in Class 11 (b). However, in the absence of clear detail in relation to the tonnage and the extent of lands infilled to the east that has been already been filled I cannot conclude that the development would not meet or exceed the threshold for mandatory EIA. Furthermore, given the sensitivity of the receiving environment proximate to a stream that drains into adjacent SAC, it cannot be excluded that the proposed development would not meet any of the criteria set out in Schedule 7 of the Regulations for determining whether a sub-threshold development would be likely to have significant effects on the environment. I would therefore submit that on the basis of the available information, the need for an EIS cannot be excluded.</p>	
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4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Form 2- EIA Preliminary Examination

The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development would be located on a floodplain, with a tributary stream to the south west of the site which flows into the River Barrow & Nore SAC.</p> <p>The extent of fill/tonnage has not been specified by the Applicant. It is noted in a previous planning application made by the applicant on adjoining lands to the east (P.A Ref: 2021/0095), on 0.4 ha of land the level of tonnage is specified as 5,951 tonnes of fill.</p> <p>Monitoring points to control dust and odour emissions will be implemented around the site. No water monitoring points are indicated.</p> <p>There are no sensitive noise receptors within the vicinity of the fill area.</p>	Uncertain
<p>Size of the Development Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>The size of the site is not exceptional in the context of the existing environment.</p> <p>Having regard to the existing development carried out on the site which has included infilling, given the site's proximity to the river this is not considered the optimum site for this development due to its proximity to the drains and stream which flows into the River Barrow.</p>	Uncertain
<p>Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p>	<p>The site is located on a flood plain within 20 metres of the River Barrow & River Nore SAC. An Appropriate Assessment Screening report and Natura Impact Statement were submitted with the documentation. My appropriate assessment concludes that the proposed development will adversely affect the integrity of the European site.</p>	Uncertain

Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?		
Conclusion		
<p>There is no real likelihood of significant effects on the environment in terms of the nature, size and location of the proposed development and having specific regard to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended).</p> <p>EIA not required.</p>	<p>There is significant and realistic doubt regarding likelihood of significant effects on the environment.</p> <p>Schedule 7A information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p>

Inspector: Catherine Dillon

Date: 22/5/2024

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)

Appendix 2 – Proceedings of the Oral Hearing

1. Background

An Oral Hearing (OH) was held on 18th April 2024 in relation to the proposed development at Marshmeadows, New Ross, Co.Wexford. It was held at the offices of An Bord Pleanála. A limited agenda which set out the issues to be addressed during the OH was supplied to all the relevant parties on 7th March 2024 and a copy of this is available on file.

2. Attendance

The following were in attendance and made submissions at the Oral Hearing.

Table 1: List all those persons who attended and gave evidence at the hearing.

Name	Organisation	Representing
Mr. Adrian Doyle		Applicant- O'Leary International Unlimited Company
Mr. James Lavin	Wexford County Council	Planning Authority

The following is a brief synopsis of the proceedings as I consider appropriate, comprising an overview of the material presented to the hearing.

3. Opening of the Hearing

The Inspector formally opened the hearing at 10.11 A.M. Following some introductory remarks by the Inspector, it was requested that Mr.Doyle on behalf of the Applicant, provide a brief summary of the proposed development.

4. Submissions to the Hearing:

First Party:

Mr. Doyle stated the subject lands are to be used for truck and trailer parking by the existing business, O'Leary International Unlimited Company. The company employs 200 people and New Ross is now the largest logistics hub in the country. The development is essential due to Brexit and the expansion of the Rosslare Port. The

adjoining site is used for the maintenance of vehicles and offices for the overall business. The expansion of the business is of national importance and is essential to facilitate the growth of Rosslare Port. In relation to the business itself they have complied with all the planning regulations and last year the Applicant met with the Environment section of the Council in relation to the current operation, and met all requirements under the legislation and regulations and would intend to do so with regards to the current application.

Following Mr. Doyle's summary of the proposed development, the hearing was broken down into the following issues as outlined in the Agenda:

1. Clarification of the ownership of lands beyond the application site boundary.
2. Clarity on the extent of works carried out to date.
3. Clarity regarding the type of fill materials and proposed levels across the site
4. Details of the assessment of the baseline environment and, of in combination effects, particularly regarding the lands to the east and permissions granted on lands in applicant's ownership.
5. Confirmation on whether an otter survey was carried out as part of the NIS.
6. Given the nature of ground conditions and proposed use of the lands, potential issues of stability.

Submission by Mr. Doyle to the above issues

1. Clarification of the ownership of lands beyond the application site boundary.

Mr. Doyle confirmed O'Leary International own the lands to the river and to the back and rear of the site.

The Inspector showed Mr. Doyle a plan that was submitted with the Planning Application and Appeal (Dwg No. S1/F1), which had the red line boundary indicated. Mr. Doyle confirmed that the lands beyond the red line boundary were in the ownership of the Applicant and that these lands extended to the drains to the south and north of the red line boundary.

The Inspector sought clarity on how it was proposed to cross over the drain from the blue line to the eastern boundary into the subject site. Mr. Doyle said he didn't have the application with him, but it would be as proposed in the planning application.

Mr. Doyle confirmed hydrocarbon interceptors will be located within the red line boundary, and stated there are hydrocarbon interceptors on the lands to the east.

2. Clarity on the extent of works carried out to date.

Mr. Doyle stated there have been no works carried out to date within the red line area, and to his knowledge the lands immediately to the east had not been filled.

3. Clarity regarding the type of fill materials and proposed levels across the site.

Mr. Doyle confirmed it is proposed to fill the subject site to existing ground level and the material would be stone.

Mr. Doyle could not confirm the extent of fill and referred to the planning application as submitted.

The Inspector noted the plans referred to a cross section but that no cross section had been provided. Mr. Doyle said he didn't have a cross section with him, but he could submit a cross section separately.

Mr. Doyle didn't have any details regarding the maximum extent of fill, but referred to whatever was on the drawings. He was unable to confirm the tonnage of fill.

Mr. Doyle confirmed when the lands would be filled, they would be used for the parking of mainly trailers in association with the haulage business. He was unable to confirm how many trailers would be parked on the subject site.

4. Details of the assessment of the baseline environment and, of in combination effects, particularly regarding the lands to the east and permissions granted on lands in applicant's ownership.

Mr. Doyle stated in relation to this issue that whatever was assessed in the NIS and he had nothing further to add on this matter.

5. Confirmation on whether an otter survey was carried out as part of the NIS.

Mr. Doyle stated if there is no reference to an otter survey in the NIS then an otter survey was not carried out.

6. Given the nature of ground conditions and proposed use of the lands, potential issues of stability.

Mr. Doyle stated there have been no issues of stability or subsidence on previous development within the overall site over the years, and the subject site has the same ground conditions.

The Inspector asked whether a Geotechnical survey had been carried out and Mr. Doyle said he wasn't sure.

Mr Doyle stated there would be no pilling carried out on the subject lands and that there had been no pilling on the adjoining lands in the Applicant's ownership.

Mr. Doyle confirmed the finish surface of the infill lands would be stone.

The Inspector asked would the lands over time be concreted and Mr. Doyle said he didn't consider it would be necessary as the usage was for parking only. The other lands had been concreted as it was used for washing facilities, oil and tyre storage and it is used for the service bays for the trucks.

New issue:

The Inspector asked Mr. Doyle had he anything further he wished to add. He said he wished to raise the issue regarding the Appellant - Sustainability 2050. He said when he researched Sustainability 2050, he found they were a Scottish organisation, and couldn't understand why their submission had been accepted as the organisation had no basis in Ireland or the EU.

The Inspector noted his comment in this regard and stated she would return to the issue at a later time in the proceedings.

Submission by Planning Authority:

Mr. Lavin on behalf of the Planning Authority stated the planning application was assessed under the County Development Plan and was in accordance with the County Development Plan policies. Although the New Ross Town & Environs Development Plan had expired, the lands had been zoned for Port Related Activities

in this Plan. In relation to the location of the site, the Planning Authority is satisfied the site is suitable for the proposed use. The Planning Authority considered the submitted Flood Risk Assessment and Appropriate Assessment Stage II with the proposal, made it clear there would be no significant or potential environmental impacts on the adjacent SAC. The Planning Authority were satisfied the road infrastructure could accommodate the development.

The Inspector asked Mr. Lavin were the Planning Authority as the enforceable authority satisfied, that the conditions attached in the Notification to Grant were enforceable with regards to the maintenance of the buffer zone and the silt fencing. Mr. Lavin stated the Planning Authority were satisfied these could be maintained as specified in the AA.

The Inspector sought clarification regarding reference in one of the Planning Authority's planner's reports, regarding unauthorised works that had been carried out on the subject site. Mr. Lavin confirmed there had been unauthorised infill on the lower portion towards the middle section of the subject site. The unauthorised works related to the importation of material to raise the ground to facilitate parking. He thought the works were as a result of an emergency response to Brexit conditions relating to Rosslare Harbour. He confirmed the works had since ceased.

Mr. Lavin stated the lands immediately to the east of the subject site which are being used for the parking of trailers had been granted planning permission by virtue of Planning Application Ref: 2021/0095. The Planning Authority are looking at the overall development of the site as a whole, and the principle of the area being developed for port related activities is in line with the previous New Ross Town & Environs Plan, and the area in general is acceptable for the land use proposed.

Mr. Lavin considered the application would address the unauthorised works and in combination effects of the overall site were considered in this regard.

The Inspector asked the Mr. Lavin did he consider the description of the development was clear to third parties. He said he did, and it would be clear from a site inspection of the site as the adjacent site is being used as a lorry park, and that it would be difficult to misinterpret the nature of the proposed use.

The Inspector noted in the planner's report that the Environment section had not responded to the further information request regarding the drainage system and oil & grit interceptor details. Mr. Lavin was asked were the planning authority satisfied with the further information response with regards to these issues. Mr. Lavin said the Planning Authority was satisfied the issues raised had been addressed in the further information response.

5. Questioning between Parties

Mr. Lavin on behalf of the Planning Authority stated the proposed development was a compatible use for the site and considered it amounted to a planning gain with regards to increasing the biodiversity of the site and protection of the SAC. Mr. Lavin was satisfied the road could accommodate the additional traffic from the development, as the development could access onto the town bypass.

Mr. Doyle considered the development was an ideal location for the expansion of the logistics hub in the area and that the Planning Authority have made substantial funds in improving the road to create access onto the New Ross Bypass and Waterford and Rosslare Port.

New Issue:

The Inspector returned to the issue raised by Mr. Doyle regarding the Third Party submission.

Mr. Doyle stated he could find no organisation established in Ireland under Sustainability 2050. His findings indicated it was a student organisation set up for the protection of the environment in Scotland. He found it difficult to understand how an organisation such as Sustainability 2050 could make a submission without any proof whereas the Applicant has to spend a huge amount of money in submitting a planning application and provide details of Directors etc., and then an organisation could submit an objection were there is no trace of them existing.

The Inspector asked Mr. Doyle did he consider the Third party submission vexatious in line with S.138 of the Planning and Development Act 2000 as amended which states the following:

Section 138. – (1) The Board shall have an absolute discretion to dismiss an appeal or referral –

(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,

Mr. Doyle stated that he did consider the Third Party submission vexatious on the following grounds:

- Third Party purports to be a body that does not exist.
- The Appellant has never visited the site, as any access into the site needs to go through security and this did not happen.
- He also added that the Third Party has failed to attend the hearing today, which he considers strengthens his view that the appeal is vexatious.
- The purpose of the Third Party submission was to delay the development.
- The Third Party that signed the objection was the subject of a Prime-Time programme.

Mr. Doyle confirmed he wanted it recorded that the Third Party submission is vexatious.

6. Closing Comments

Mr. Lavin on behalf of the Planning Authority stated that based on the conclusions of the Appropriate Assessment, that the Planning Authority is satisfied that the proposed development is in compliance with the objectives of the County Development Plan and the previous objections of the expired New Ross Town & Environs Plan and compatible with the proper planning and sustainable development of the area.

7. Closing of Oral Hearing

- The Inspector made some brief final comments and closed the Oral Hearing (11:25).

Appendix 3: Appropriate Assessment (AA)

River Barrow and Nore SAC, site code: (002162)					
Summary of Appropriate Assessment					
Qualifying Interest	Conservation Objectives (NPWS Conservation objectives for SAC)	Potential adverse effects	Mitigation measures	In-combination effects	Can adverse effect on integrity be excluded?
Estuaries [1130]	Maintain favourable condition	Siltation, sedimentation Pollution, fuel, oil leaks Waste material	CEMP Eco drains Surface water management plan, installation of construction buffers and pollution and sediment control measures	Additional development that has been carried out on the site to the east both extant and unauthorised	No
Mudflats and sandflats not covered by seawater at low tide [1140]	Maintain favourable condition	Not present within area	N/A	N/A	Yes

Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows [1330] Mediterranean salt meadows [1410] Reefs [1170]					
Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]	Maintain favourable conditions.	Distribution area not known, occurs in areas of slow moving rivers.	N/A	N/A	Yes
European dry heaths [4030]	Maintain favourable condition.	Not present within area	N/A	N/A	Yes
Hydrophilous tall herb fringe communities of	Maintain favourable condition.	Sedimentation Pollution	CEMP	See above	No

plains and of the montane to alpine levels [6430]		Waste material Removal/disturbance	Buffer zones around the site with silt fencing 11m Buffer zones maintained Annual cut & removal of cut material from buffer zone Restrict use of herbicides/pesticides Daily inspections, spill kits, absorbent socks fixed across stream & ditches etc..		
Petrifying springs with tufa formation (Cratoneurion) [7220]	Maintain favourable condition.	Not present within area	N/A	N/A	Yes
Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno -	Restore favourable condition	Not present within area	N/A	N/A	Yes

Padion, Alnion incanae, Salicion albae) [91E0]					
Desmoulin's Whorl Snail [1016]	Maintain favourable condition.	Not present within area	N/A	N/A	Yes
White - clawed Crayfish [1092]	Maintain favourable condition.	Not present within area	N/A	N/A	Yes
Sea Lamprey [1095] Brook Lamprey [1096] River Lamprey [1099]	Restore favourable condition	Sedimentation Pollution	Buffer zones around site Eco drains/Clean fill/Bunding of fuel etc../Silt fencing/Spill kits, reporting & cleaning policy/Photographic inspections/Best practice for storage & collection of waste	N/A	No
Twaite Shad [1103]	Restore favourable condition	Not present within area	N/A	N/A	Yes
Atlantic Salmon [1106]	Restore favourable condition	Pollution Water quality Artificial barriers	Buffer zones around site Eco drains/Clean fill/Bunding of fuel etc../Silt fencing/Spill kits, reporting & cleaning policy/Photographic	See above	No

			inspections/Best practice for storage & collection of waste		
Otter [1355]	Restore favourable condition	Water quality	Noise, odour & dust sampling points along the site boundary. NIS refers to water points but not indicated on plans.	See above	Yes
Killarney Fern [1421]	Maintain favourable condition.	Not present within area	N/A	N/A	Yes
Nore Pearl Mussel [1990] Freshwater Pearl Mussel [1029]	Restore favourable condition	Not present within area	N/A	N/A	Yes

Overall Conclusion: Integrity Test

Proposed buffer zones and silt fences to the drainage ditches lie outside of the site boundary and are not within the blue line boundary of the site, and therefore cannot be controlled as part of the proposed development, and therefore the proposed development could adversely affect the integrity of this European site. The levels of fill outlined in the NIS do not correspond with the CEMP and SSFRA.