



An
Bord
Pleanála

Inspector's Report

ABP-318783-24

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| Development | The construction of a dry storage shed and all associated site works. An NIS was submitted following request for Further Information. |
| Location | Dromahoe, Dromagh, Mallow, Co. Cork |
| Planning Authority | Cork County Council |
| Planning Authority Reg. Ref. | 234998 |
| Applicant(s) | Duhallow Sawmills Limited |
| Type of Application | Permission. |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | Third Party |
| Appellant(s) | Wild Ireland Defence CLG |
| Observer(s) | Eilean O'Dalaigh |
| Date of Site Inspection | 16 August 2024 |
| Inspector | Claire McVeigh |

1.0 Site Location and Description

- 1.1. The subject site, stated on application form as 0.28ha, is located off the L1117 in close proximity to the junction with the R583 to Millstreet. Duhallow Sawmills Limited (I note the typographical error in the planning authority documentation which refers to Dunhallow Sawmills Limited) is approximately 3 kilometres northwest of the village of Rathcoole and approximately 60 kilometres northwest from Cork City.
- 1.2. On the site there is an existing shed (332.1 sq.m) with a large area of hardstanding/yard to the front and side. Large piles of timber, timber posts etc are stored on the hardstanding. A stonewall and gated vehicular entrance defines the roadside site boundary to the east and the western and southern boundaries are delineated by hedgerow. The northern boundary timber fencing separates the subject site from the adjoining residential dwelling.

The subject site includes a section of the adjacent agricultural field immediately to the west of the sawmills, there is a gap in the western hedgerow adjacent to the sawmill building and the agricultural field.

The stated number of employees is 2.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a dry storage shed (214.8 sq.m) for storing timber and machinery. The proposed shed is approximately 24 metres in length and approximately 9 metres in width. The mono-pitched roof is approximately 7 metres at its highest point. Green cladding is proposed to the upper sections of the elevation and roof.
- 2.2. A concrete apron, 6 metres in depth, is proposed running along the proposed storage shed's length. A section of hedgerow along the western boundary is proposed to be removed and a new 1m high earthen berm with mixed hedgerow planted along a new western boundary. Three birch trees are proposed to be planted in the northwestern corner of the subject site.
- 2.3. A new surface water drain is proposed, adjacent to the proposed new concrete apron, to collect runoff from the yard and permeable paving is proposed between the new concrete apron proposed and the existing shed.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 15 no. conditions. Conditions are generally of a standard type. The following are noted:

Condition no. 3 (a) use of the dry storage shed restricted to the use specified in the submitted documentation and any change of use, whether within the use class for exempted development shall require planning permission.

Condition no. 3 (b) only internal storage of materials and materials may only be stored externally in the interim between delivery offloading and the storing of same.

Condition no. 4 cutting or removal of trees, hedgerow and clearance of ground vegetation shall not be undertaken between 1st March and 31st August.

Condition no. 5 construction activities to be carried out in accordance with CIRIA Guidelines Control of Water Pollution from Construction Sites – Guide to Good Practice.

Condition no. 6 all works shall be implemented in accordance with mitigation measures specified in section 8 of the Natura Impact Statement.

Condition no. 7 new hedgerow planting shall include plant species as included in section 8.6 of the NIS received (excluding Ash, due to Ash die back).

Condition no. 10 a drainage grating, along with a discharge pipe to a soakaway located within the site, shall be installed at the entrance to the site to the satisfaction of the planning authority.

Condition no. 13 the road boundary walls and piers shall be reduced in height to provide a clear sight distance of 80metres in both directions from the centre point of the entrance 3 metres back from the edge of the public road. This work shall be undertaken before development commences.

Condition no. 14 all roadside boundary works as outlined in site layout are to be undertaken before any development commences.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial planning report dated 10/07/2023

- The proposed development to facilitate storing of timber and machinery associated with the existing business 'Duhallow Sawmills Ltd' operating on the site accords with policy EC 8-14 of the development plan and is acceptable in principle.
- Following screening determines an EIAR not required, and the site is located outside the designated flood risk zones.
- Further Information (FI) sought in respect to a number of matters including landscaping details in respect to proposals for boundary treatment including compensatory hedgerow, ground surface finishes proposals, clarification of the extent of cut and fill required to accommodate the shed given the difference in ground levels to the west, an appropriate assessment screening report/and Natura Impact Statement (NIS) if determined necessary, proposals to provide 80m sightlines in both directions set back 3m from the public road, details of traffic movements, proposals for surface water disposal including details to comply with Conditions no. 3 and 4 of planning register reference 18/6538 and clarification of the intended use of the area immediately to the rear of the existing sawmill building.

Planning report following receipt of FI dated 06/12/2023

- Further information received addressed all items satisfactorily with respect to surface water management, clarification on the amount of cut and fill required, and the proposed modifications to the site entrance drainage to comply with condition 18/6538. The intended use of the dry storage shed is for the internal storage of imported goods only. Temporary storing of materials outside may occur post-delivery offloading on the existing hardstanding area in front of the existing sawmill building on the site. A condition recommended to ensure that all materials are stored internally and may only be externally in the interim between delivery off loading and storing of same.

- The planner's report summarises the report received from the Ecology section of Cork County Council. I note that the ecologist report states that it constitutes the appropriate assessment of the planning authority in respect of this application.

3.2.2. Other Technical Reports

- Area Engineer

1st report dated 7 July 2023:

Roads & Transportation

The applicant is proposing to use the existing entrance (5m wide) onto the public road (L-1117) which is a local primacy road. The sightlines are restricted in both directions by the outside entrance piers.

Further information sought in respect to sightlines and to identify on the site layout the portion of existing front boundary wall/piers required to be removed to achieve the sightlines, and applicant to clarify if this development will increase the traffic/staff entering/existing the business.

Surface water

Notes an open dyke adjacent to the building and clarification sought on whether this is the proposed method of surface water disposal.

The yard is elevated above the public road and the applicant shall submit details on how he proposes to prevent surface water from the site flowing out onto the public road.

Water supply

The applicant is proposing to use the existing connection

Sewage Disposal

N/A

2nd report dated 4 December 2023:

No objection to permission being granted subject to attachment of recommended conditions.

- Ecology

Primary Report dated 10 July 2023

A hedgerow runs in a north-south direction through the site approximately 18m parallel to the western boundary, which is open to the adjacent agricultural field. A drainage ditch, which may be hydrologically connected to the Scarradarragh River, runs from the southern boundary.

Waterbodies and Water quality – The proposed site may be hydrologically connected to the Scarradarragh River which forms part of the Blackwater (Munster)-080 Water Framework Directive monitoring waterbody.

Natura 2000 sites – There are four Natura Sites within 15km of the proposed development. Given the distance and absence of source-receptor pathways (e.g. hydrological, physical etc) potential for the proposed development to give rise to significant impacts to Mullaghanish to Musheramore Mountain SPA, Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC and Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA can be screened out. There is a small drain ditch, adjacent to the proposed site, that flows south and may be hydrologically connected to the Scarradarragh, which in turn is hydrologically connected to the Blackwater River SAC (site code: 2170).

Considers that the primary ecological concern relates to potential for this project to give rise to negative impacts on the Blackwater River SAC.

Requests an appropriate assessment screening report, and if necessary, a Natura Impact Statement (NIS) as further information. A landscaping plan requested as part of the proposal to retain the hedgerow immediately adjacent (west) to the existing sawmill building.

Further information response report dated 4 December 2023

Appropriate Assessment of the application having regard to the details of the project, the site conditions and the information which has been provided in the submitted Natura Impact Statement (NIS).

Satisfied that the Blackwater River SAC is the only European Site of relevance which could be impacted by the proposed development.

Concludes that: *“On the basis of the above assessment and the information provided by the applicants, I am satisfied that the proposed development will not affect the integrity of the Blackwater River (Cork/Waterford) SAC”*

In respect to the landscaping plan recommends that a condition is attached to ensure a multi-species hedgerow is planted.

3.3. Prescribed Bodies

Inland Fisheries Ireland (IFI) no objection to the proposed development subject to works being carried out demonstrating due cognisance of the IFI guideline document for construction works in and adjacent to watercourses.

3.4. Third Party Observations

The planning authority received three observations in relating to the application. Bernard Moynihan, Eilean O'Dalaigh and Peter Sweetman and on behalf of Wild Ireland Defence CLG.

Bernard Moynihan state support of the application.

Eilean O'Dalaigh raises concerns relating to procedural and legal issues, land use zoning, non-compliance with condition no. 3 and no. 4 of planning register reference 18/6538, impact on an existing well, lack of proposals with respect to surface water runoff and pollution controls and consideration of same with respect to the River Blackwater SAC.

Peter Sweetman on behalf of Wild Ireland Defence DLG highlights four distinct legal tasks the planning authority has in assessing the application, firstly assessing the planning merits in accordance with the Planning and Development Act 2000 (As amended), undertake an assessment of the environmental impacts of the development (EIA), assessment under the Habitats Directive noting that the development is within the zone of influences of the Blackwater River (Cork/Waterford) SAC and, an assessment of compliance with the requirements of the Water Framework Directive.

4.0 Planning History

Planning register reference 18/6538: Planning permission granted (February 2019) for the retention of a store for the storage of tools attached to side of existing sawmill. Subject to 4 no. conditions.

Condition no. 3 required a drainage channel to be provided across the full width of the access driveway inside the entrance gate with outlet discharging into the adjacent open drain.

Condition no. 4 surface water shall not be permitted to flow onto the public road from the site.

Planning register reference 84/66: Planning permission granted for a sawmill (April 1984) subject to 12 no. conditions.

Planning register reference 81/2511: Outline planning permission granted (September 1981) for a dwelling house subject to 3 no. conditions.

5.0 Policy Context

5.1. Cork County Development Plan 2022-2028

Strategic Planning Areas: North Cork

Structurally weak rural area

Section 8.15 Rural Economy

County Development Plan Objective EC: 8-13 Rural Economy (Excerpt)

- c) New development in rural areas should be sensitively designed and planned to provide for the protection of the biodiversity of the rural landscape.

County Development Plan Objective EC: 8-14 Business Development in Rural Areas

The development of appropriate new businesses in rural areas will normally be encouraged where:

- The scale and nature of the proposed new business are appropriate to the rural area and are in areas of low environmental sensitivity.

- The development will enhance the strength and diversity of the local rural economy.
- The proposal will not adversely affect the character, appearance, and biodiversity value of the rural landscape.
- The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal.
- The proposal has a mobility plan for employees' home to work transportation.
- Where possible the proposal involves the re-use of redundant or underused buildings that are of value to the rural scene.
- The provision of adequate water services infrastructure; and
- Provision of a safe access to the public road network.

County Development Plan Objective GI 14-9: Landscape

- a) Protect the visual and scenic amenities of County Cork's built and natural environment.
- b) Landscape issues will be an important factor in all land-use proposals, ensuring that a pro-active view of development is undertaken while protecting the environment and heritage generally in line with the principle of sustainability.
- c) Ensure that new development meets high standards of siting and design.
- d) Protect skylines and ridgelines from development.
- e) Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments

County Development Plan Objective WM 11-1: EU Water Framework Directive and the River Basin Management Plan

- a) Protect and improve the County's water resources and ensure that development permitted meets the requirements of the River Basin Management Plan and does not contravene the objectives of the EU Water Framework Directive.

County Development Plan Objective WM 11-10: Surface Water, SuDS and Water Sensitive Urban Design

- a) Require that all new developments incorporate sustainable drainage systems (SuDS). Efforts should be taken to limit the extent of hard surfacing and impermeable paving.
- b) Encourage the application of a Water Sensitive Urban Design approach in the design of new development or other urban interventions. Opportunities to contribute to, protect or re-enforce existing green infrastructure corridors or assets should be maximised.
- c) Optimise and maximise the application of Sustainable Urban Drainage Systems (SuDS) to mitigate flood risk, enhance biodiversity, protect and enhance visual and recreational amenity; all in the most innovative and creative manner appropriate and in accordance with best practices. Proposals should demonstrate that due consideration has been given to nature-based solutions in the first instance in arriving at the preferred SuDS solution for any development.
- d) Provide adequate storm water infrastructure in order to accommodate the planned levels of growth expected for the County.
- e) Where surface water from a development is discharging to a waterbody, appropriate pollution control measures (e.g. hydrocarbon interceptors, silt traps) should be implemented.
- f) The capacity and efficiency of the national road network drainage regimes will be safeguarded for national road drainage purposes

5.2. Natural Heritage Designations

The subject site is located approximately 1.5km from Blackwater River (Cork/Waterford) Special Area of Conservation (SAC) Site Code:002170.

6.0 Environmental Impact Assessment (EIA) Preliminary Examination

See completed Form 2 in Appendix 2. Whilst it has been concluded that there is potential for significant effects on a European site(s), having regard to the

characteristics of the proposed development, its location and the types and characteristics of potential impacts, there is no potential for significant effects on other environmental parameters. Impacts on European sites can be addressed under Appropriate Assessment which I have addressed in Section 9.0 and Appendix 3 of my report.

Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment based on the characteristics and location of the proposed development and types and characteristics of potential impacts.

I am satisfied therefore that EIA is not warranted.

7.0 The Appeal

7.1. Grounds of Appeal

A third-party appeal was received from Peter Sweetman and on behalf of Wild Ireland Defence CLG. I note and acknowledge the contents of the original observation made to the planning authority as attached to appeal submission.

The grounds of appeal can be summarised as follows:

- Concerns raised in respect to the assessment of the application in respect to the Habitats Directive (i.e. Appropriate Assessment) and the Water Framework Directive.
 - In respect to AA issues the appellant contends that the planning authority failed to assess the whole development for appropriate assessment.
 - Mitigation measures have not been designed and taking into account these lacunae the likely effects cannot be assessed.
 - The planning authority failed to carry out an AA separately from the planning decision.
 - The planning authority failed to carry out an assessment as required under the Water Framework Directive.

7.2. Applicant Response

- Concerns raised in respect to the validity of the appellant making the appeal and the observer taking into account that both are not based locally.
- A full Natura Impact Statement (NIS) was prepared for the site and this contained detailed mitigation measures to be adopted on site to prevent any discharge whatsoever from the site.
- Mitigation measures have been taken on board and the design revised and submitted to take account of the NIS. Revised drawing 6416-06 Rev. No. 00 Site Layout Showing NIS Mitigation Measures – submitted with response to appeal.
- Site notices were erected on the date of the notice and the applicant provided with three copies so that they could be replaced in the event that a site notice was dislodged due to wind or passerby removing it.
- The change of land use from agricultural to principally a yard area is immaterial by reason of the small percentage of land involved.
- The water well noted in maps has been covered over many years ago and is not in place in the field.
- Dispute the statement made by the observer that there is no drainage layout design and states that the drainage layout is very clear in the yard. All surface water leads to the hydrocarbon interceptor and in turn leads to the open drain to the rear of the shed. Detail sheet provided to illustrate proposed oil interceptor (KBP-10 Kiely Bypass Class 1, EN 858).
- The applicants will construct a drainage channel across the access driveway and improve sight distances by the alterations to the front boundary. Drawing 6146-04 'Sightlines'.
- The proposed development will not increase traffic to and from the business. The proposed development is the simple covering of existing product which is now being stored outdoors.

7.3. Planning Authority Response

- The planning authority is of the opinion that all relevant issues have been covered in the technical reports already forwarded to the Board as part of the appeal documentation and has no further comment to make in this matter.

7.4. Observations

Observation received from Eilean O'Dalaigh

- Procedural matters with respect to site notice and legal ownership.
- Availability of adequate sightlines not shown.
- The proposed development extends onto agricultural land.
- Conflict in reporting (planner and Cork CC Engineer) with respect to truck movements.
- Issues raised in respect to content relating to 'land take' in submitted Natura Impact Statement (NIS). Issues relating to lack of detail design relating to surface water runoff and hydrocarbon interceptor /bypass interceptor. Submitted '*Supplementary Guidance on Assessment and Construction Management in Margaritifera Catchments in Ireland: Blackwater River (Cork/Waterford) SAC*' (S. Atkinson, M. Magee, E.A Moorkens & M. Heavy December 2023).
- Potential impact on existing old well.

Observation received from Michael Moynihan TD outlining their full support for this planning application.

7.5. Further Responses

A notice under Section 131 of the Planning and Development Act, 2000 issued to the parties requesting observations on the submission received by the Board from the applicant in response to the third-party appeal. For clarity the submission includes Revised drawing 6416-06 Rev No. 00 Site Layout Showing NIS Mitigation measures and supplementary design specification sheet of proposed oil interceptor.

No response to the section 131 notice were received within the statutory timeline.

8.0 **Assessment**

8.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, the reports of the local authority and having inspected the site, and having regard to the relevant local, regional, national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of development
- Traffic Movements/adequacy of sightlines
- Appropriate Assessment
- Water Framework Directive
- Other Matters

8.2. *Principle of development*

8.2.1. The subject site is located on unzoned lands within the open countryside. It is proposed to build a dry storage shed to store the imported timber goods as part of the existing authorised sawmills business at Drumahoe (please refer to planning history section 4.0). It is proposed to extend the site boundary into the adjoining agricultural field to accommodate the dry storage shed and its associated concrete apron including an area of permeable paving between the proposed storage shed and the existing sawmills building.

8.2.2. I am of the view that the provision of a dry storage shed constitutes an ancillary structure to the existing sawmills business that will not, given its intended use and scale, result in an increase in traffic generation to and from the business. The proposal by reason of its design and position within the site will not adversely affect the character of the area, subject to the planting of replacement hedgerow to compensate for the removal of the section of hedgerow to accommodate the development. As such, I consider the additional structure accords with development plan objective EC:8-14 for business development in rural areas and as such is acceptable in principle.

8.3. *Traffic movements/adequacy of sightlines*

- 8.3.1. From my site inspection I noted timber currently being stacked and stored on the yard area to the side and front of the existing sawmills. As noted above, the proposed development is for a dry storage shed to accommodate the timber product and it is submitted by the applicant that it will not result in an intensification of traffic movements to and from the business. I note the observer has raised concerns relating to inconsistency between the planner's report and that of the area engineer's report with respect to truck movements. I am of the view that the planner's reference to truck movements relates principally to the design specification of the concrete apron to 'bear truck movements' rather than in respect to any intensification of movements. As such, I do not consider there to be an inconsistency.
- 8.3.2. The Area Engineer noted in their primary report (7 July 2023) that the sightlines are restricted in both directions by the outside entrance piers at the existing vehicular entrance to the sawmills. Condition no. 13 of the planning authority's decision to grant permission requires the road boundary walls and piers to be reduced in height to provide a clear sight distance of 80metres in both directions from the centre point of the entrance 3 metres back from the edge of the public road. I note the revised drawing submitted with the applicant's response drawing no. 6416-04 'Sightlines' indicating that the existing pier to both sides of the existing entrance to be reduced in height to 1 m to provide 80m sightlines.
- 8.3.3. I consider that the applicant has satisfactorily addressed the restriction to sightlines as identified by the Area Engineer through the proposed reduction in height of the existing entrance piers and this can be addressed by way of condition in the event that the Board is minded to grant permission.

8.4. *Appropriate Assessment*

- 8.4.1. In respect to AA issues the appellant contends that the planning authority failed to assess the whole development for appropriate assessment. On a point of clarity, the planning authority's Ecology – Primary Report (10/07/2023) contains screening for appropriate assessment and concluded that there was insufficient information to conduct a screening assessment and the applicant was requested to submit an appropriate assessment screening report and if it be found that the development, as proposed, poses a risk to the SAC a Natura Impact Statement (NIS) shall be

prepared. Following receipt of the NIS prepared on behalf of the applicant the Ecology- Further Information Response (04/12/2023) contained an assessment which is stated to constitute the Appropriate Assessment of the planning authority in respect of the subject application. The planner's report notes receipt of the Ecologist's report (04/12/2023) and summarises the conclusions of same.

- 8.4.2. Please see Section 9.0 and Appendix 3 of my report which comprises a full and detailed Appropriate Assessment of all aspects of the proposed project including proposed mitigation measures, in combination with other plans or projects, in relation to the Conservation Objectives of the Blackwater River (Cork/Waterford) SAC.

8.5. *Water Framework Directive*

- 8.5.1. The appellant contends that the planning authority failed to carry out an assessment as required under the Water Framework Directive. The report of Cork County's Ecologist indicates that the proposed site may be hydrologically connected to the Scarradarragh River which forms part of the Blackwater (Munster) 080 Water Framework Directive monitoring waterbody. The Blackwater (Munster)-80 is categorised as having a good ecological status but 'At Risk'. The EPA's publication Targeting Measures for Water Quality Outcomes (2024) states that targeted reduction in nitrogen emissions to water are needed in a number of catchments of concern in the south, south/east and east including the Blackwater River catchment. For clarity, the intended use of the shed is for the dry storage of timber associated with the existing sawmills business and not for agricultural purposes and, therefore, there are no nitrate implications.
- 8.5.2. The submitted NIS details in section 8 Natura 2000 mitigation measures for the construction phase and operational phase of the proposed development. Drawing no. 6416-06 illustrates the NIS mitigation measures including a silt fence proposed to retain any sediment or silt to minimise the risk of particles entering the general aquatic environment, notably the downstream SAC. Surface water from the proposed shed roof is proposed to be diverted into the adjacent open drain and all surface water from the yard will be fed through a hydrocarbon interceptor in conjunction with a drainage channel (Aco drain) across the entrance to prevent surface water flow onto the public road, refer to submitted drawing no. 6416-06 'Site

Layout Showing NIS Mitigation Measures. There are no foul water or other operational emissions associated with the proposed development.

- 8.5.3. In conclusion I am of the opinion that the proposed development, taking into account the proposed mitigation measures, would not lead to a deterioration of the water status of the Blackwater water body.

8.6. *Procedural matters*

- 8.6.1. Procedural matters with respect to alleged irregularities in terms of the nature and timing of the erection of the site notice, omissions from the application form and legal ownership have been raised by the observer to the appeal.
- 8.6.2. I highlight that the observer notes that the site notice was in place and visible, whilst acknowledging that they contend that the site notice was not up in the correct position as indicated on the site layout drawing. I am of the view that the public notices sufficiently alerted the observer, and did not prevent the concerned party from making representations.
- 8.6.3. I note that the application documentation was considered acceptable by the planning authority. In my view the omissions at question 2.15 of the application form, with respect to the section of the agricultural field, are not material to the overall understanding of what is proposed in the application having regard to the submitted drawings and NIS.
- 8.6.4. In respect to question of legal ownership of the portion of the subject site within the agricultural field I note that in respect to the Dunhallow Sawmills yard area a letter of consent has been submitted with the application. In relation to the lands west of the Sawmills, currently part of the agricultural field, this portion of the land appears to be on a different folio to that of the Sawmills and different to that of the wider agricultural landholding. As noted by the observer this plot does not yet appear to have been transferred. I highlight to the Board that no evidence is provided that a clear lack of consent is given with respect to the lands in the agricultural field. As such, I refer the Board to Section 5.13 of the Development Management Guidelines (2007) which outline that the planning system is not designed to resolve disputes about title to land and even if there is doubt in relation to the legal title, the planning authority may still decide to grant permission. Such permission is subject to the terms of Section 34(13) of the Planning and Development Act 2000, as amended, which states that 'a person

shall not be entitled solely by reason of permission under this section to carry out any development'. Accordingly, I do not consider there is a reasonable basis to refuse permission on grounds of insufficient title.

- 8.6.5. In respect to the old well stated by the observer as being within the southwestern position of the site I note the applicant's response that the well was covered over many years ago. From my site inspection there was no obvious infrastructure associated with a well evident. I do, however, note that the area contains water dependent planting including willow and rushes and the historic 25" mapping does indicate a spring in the southwestern section of the subject site. I am of the view, given the nature, scale and structure of the proposed dry storage shed major ground works would not be required, that in the absence of any evident well infrastructure there are not sufficient grounds to warrant a refusal on this basis.
- 8.6.6. The above assessment represents my de novo consideration of all planning issues material to the proposed development.

9.0 Appropriate Assessment

- 9.1. The proposed dry storage shed has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Please see Appendix 3 of this report.
- 9.2. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Blackwater River Special Area of Conservation (SAC) (Site Code:002170). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of the site in light of its conservation objectives.
- 9.3. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site No [002170], or any other European site, in view of the site's Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

9.4. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the Conservation Objectives of the Blackwater River (Cork/Waterford) SAC.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of Blackwater River (Cork/Waterford) SAC.

10.0 Recommendation

I recommend that permission be granted for the following reasons and considerations set out below:

11.0 Reasons and Considerations

Having regard to Objective EC: 8-14 'Business Development in Rural Areas' of the Cork County Development Plan 2022-2028 which seek to encourage proposals that will not adversely affect the character, appearance and biodiversity value of the rural landscape, it is considered that, subject to compliance with conditions set out below the proposed development is of a scale and nature appropriate to the rural area and would not result in an intensification of traffic movements. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 17 day of October 2023 and by An Bord Pleanála on the 19 February 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning

authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

The proposed silt fence, as illustrated in drawing 6416-06 received by the An Bord Pleanála on the 19 February 2024, shall be erected as part of the site set up, prior to the commencement of development, and will be monitored daily by the main contractor and silt removed where required. Damaged fences will be required to be repaired immediately.

Reason: To protect the integrity of European Sites.

3. All roadside boundary works, and drainage works at the vehicular entrance as illustrated in site layout plan (Drawings no. 6416-04 Rev 00 and 6416-06 Rev No. 00) shall be carried out prior to construction of the dry storage shed.

Reason: In the interests of road safety.

4. a) Use of the dry storage shed shall be restricted to the use specified in the documentation submitted to the planning authority on the 17 May 2023 and 17 October 2023 and any change of use, whether within the use class for exempted development of the Planning and Development Regulations, 2001, as amended, or otherwise, shall be subject to the prior permission of the planning authority.

b) All goods, including raw materials, manufactured goods, packaging, crates etc. shall be stored or displayed only within the enclosed dry storage shed.

Reason: In the interests of orderly development and protection of the visual amenities of the rural area.

5. The landscaping scheme shown on drawing number 6416-01 Rev No. 01, as submitted to the planning authority on the 17 day of October 2023 shall be carried out within the first planting season following substantial completion of external construction works.

In addition to the proposals in the submitted scheme, the following shall be carried out: New hedgerow planting shall include plant species detailed in section 8.6 of the NIS received by the planning authority on the 17 October 2023 (excluding Ash, due to Ash die back).

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner], shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity and to protect biodiversity.

6. Cutting or removal of trees, hedgerow and clearance of ground vegetation shall not be undertaken between the 1st of March and 31st of August.

Reason: To protect biodiversity.

7. The works shall be carried out in accordance with the Inland Fisheries Ireland's '*Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters*' (2016).

Reason: To protect biodiversity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and

Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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.

Claire McVeigh
Planning Inspector

31 January 2025

Appendix 1 - Form 1

EIA Pre-Screening

| | | | | |
|--|--|--|--|-------------------|
| An Bord Pleanála Case Reference | 318783-24 | | | |
| Proposed Development Summary | The construction of a dry storage shed and all associated site works. A Natura Impact statement (NIS) was submitted following request for further information. | | | |
| Development Address | Dromahoe, Dromagh, Mallow, Co. Cork. | | | |
| 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 | | |
| 2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)? | | | | |
| Yes | √ | Class 10 Infrastructure Projects (b) (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. | Proceed to Q.3 | |
| No | | | | |
| 3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class? | | | | |
| | | Threshold | Comment (if relevant) | Conclusion |
| No | √ | Urban development which would involve an area of 20 hectares is the relevant threshold given the subject site is outside of the business district and the built-up area. | The subject site area is stated as 0.28ha. | Proceed to Q.4. |
| Yes | | | | |

| 4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]? | | | |
|---|---|--|--|
| Yes | √ | Urban development which would involve an area of 20 hectares is the relevant threshold given the subject site is outside of the business district and the built-up area. The subject site is stated as 0.28 ha significantly below the relevant threshold. | Preliminary examination required (Form 2). |

| 5. Has Schedule 7A information been submitted? | | |
|--|---|--------------------------------------|
| No | √ | Conclusion remains as above (Q1-Q4). |
| Yes | | |

Inspector: _____ Date: _____

Appendix 2: Form 2

EIA Preliminary Examination

| | |
|---|--|
| An Bord Pleanála Case Reference | ABP-318783-24 |
| Proposed Development Summary | The construction of a dry storage shed and all associated site works. A Natura Impact statement (NIS) was submitted following request for further information. |
| Development Address | Dromahoe, Dromagh, Mallow, Co. Cork |
| <p>The Board carried 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.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p> | |
| <p>1. Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p> | <p>The proposed development comprises a dry storage shed of (214.8 sq. metres) approximately 24m in length and 9m in width with a mono-pitched roof approximately 7m at its highest point. The proposed development is on a limited site of 0.28ha and does not require the demolition of buildings. A section of existing hedgerow is proposed to be removed with compensatory new hedgerow planting proposed, and the project includes change in the land from agricultural field to hard surfaces for a portion of the site.</p> <p>The project due to its size and nature will not give rise to significant production of waste during both the construction and</p> |

| | |
|---|---|
| | <p>operation phases or give rise to significant risk of pollution and nuisance, given it is intended for dry storage only.</p> <p>The construction of the proposed development does not have potential to cause significant effects on the environment due to water pollution, having regard to mitigation measures contained within the NIS. The project characteristics pose no significant risks to human health. The proposed development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change.</p> |
| <p>2. Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p> | <p>The proposed development is located partly on agricultural lands and partly within the existing service yard for the authorised Sawmills commercial business. The landscape provides sufficient absorption capacity for the additional dry shed structure.</p> <p>The site is not located within or immediately adjacent to any designated site. The subject site is located approximately 1.5km from Blackwater River (Cork/Waterford) Special Area of Conservation (SAC) Site Code: 002170.</p> <p>A Natura Impact Statement (NIS) has been submitted to assess the likely impacts and proposed best practice preventive measures to avoid effects. This matter is addressed in Appendix 3 and Section 9.0 of my report.</p> <p>Noting the threshold that would trigger an AA is different to that</p> |

| | | |
|---|---|------------------|
| | of EIA I am of the opinion that the proposed development is not likely to have potential to significantly effect on other significant environmental sensitives in the area. | |
| 3. Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation). | Having regard to the nature of the proposed development and its size, which is not exceptional in the wider context of the existing sawmills buildings; its location and environmental effects which are anticipated to be localised, short term to temporary, during construction and permanent (after construction) taking into account the proposed mitigation measures, it is not likely that the effects on the environmental factors will be significant. There is no real likelihood of significant cumulative effects with other existing and/or permitted projects. | |
| Conclusion | | |
| Likelihood of Significant Effects | Conclusion in respect of EIA | Yes or No |
| There is no real likelihood of significant effects on the environment. | EIA is not required. | Yes |
| There is significant and realistic doubt regarding the likelihood of significant effects on the environment. | Schedule 7A Information required to enable a Screening Determination to be carried out. | No |
| There is a real likelihood of significant effects on the environment. | EIAR required. | No |

Inspector:

Date:

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)

Appendix 3: Appropriate Assessment

1.0 Appropriate Assessment

1.1. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement (NIS) and associated documents
- Appropriate assessment of implications of the proposed development on the integrity of the European site.

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

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. 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.

The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

1.3. Screening the need for Appropriate Assessment

Appropriate Assessment: Screening Determination

(Stage 1, Article 6(3) of Habitats Directive)

I have considered the proposed dry storage shed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended. A Screening report and Natura Impact Statement (NIS) has been prepared by *Kerry Ecological Services* on behalf of the applicant and the objective information presented in that report informs this screening determination.

Description of the proposed development

It is proposed to construct a dry storage shed partly on the existing hard standing /yard of the existing commercial sawmills and partly on land that is currently in agricultural use.

I have provided a detailed description of the development in my report (Section 2.0) and detailed specifications of the proposal are provided in the NIS and other planning documents provided by the applicant.

In summary the dry storage shed development with a total area of 214.8 sq.m, to include new hard standing area comprising a concrete apron and permeable paving, alterations to eastern and western boundaries of the site, hedgerow removal and new 1m high earthen berm with hedgerow, and ancillary works.

Consultations and submissions

Submissions which raised issues related to screening for appropriate assessment and the AA process generally, were received in relation to the proposed dry storage shed. A summary of each of these submissions and a response to each, is provided below:

Eilean O'Dalaigh Environmental Campaigner

- Potential impacts of drainage from the subject site leading directly down to the River Blackwater, given the application is in the screening zone for the River Blackwater Special Area of Conservation (SAC) and to consider the requirement for petrol interceptors.
- Makes reference to planning register reference 18/6538 for retention of a store for storage of tools attached to the side of existing sawmill subject to conditions, items relating to condition no. 3 (a drainage channel to be

provided across the full width of the access driveway with outlet discharging into the adjacent open drain) and condition no. 4 (surface water shall not be permitted to flow onto the public road from the site) were not carried out.

- Appendix 1 of the submitted NIS is incorrect as it mentions there is no land take involved; the proposed shed is to be based on what is currently existing agricultural land.
- The proposed new shed will be built over an existing old well, originally shown on site layout drawing (6416-01 Rev 00) and not included on site layout drawing (6416-01 Rev 01).
- Hydrocarbon interceptor/bypass interceptor is not shown clearly on Engineers Site layout drawing nor has the specification for same been included.
- *Supplementary Guidance on Assessment and Construction Management in Margaritifera Catchments in Ireland: Blackwater River (Cork/Waterford) SAC* Atkinson, S., Magee, M., Moorkens, E.A. & Heavy, M. (2023) has been attached to submission to inform the decision-making process.

I acknowledge the detail provided with respect to previous planning history on the site and note that the planning authority sought further information in respect to the surfacing/surface water management proposals, area of cut and fill proposed, details on the intended use of the dry storage shed, compliance with conditions no. 3 and 4 of planning register reference 18/6538 and an AA screening report with Natura Impact Statement (if determined required following AA screening).

Subsequently a NIS was submitted in response to the further information request and as noted above, this screening for Appropriate Assessment has been informed by the content of the screening for appropriate assessment report that was submitted with the planning application.

I acknowledge receipt of the supplementary guidance on assessment and construction management in Margaritifera Catchments in Ireland for the River Blackwater (Cork/Waterford) SAC and have had regard to same in my assessment.

Peter Sweetman and on behalf of Wild Ireland Defence CLG

- Highlights the threshold for screening Appropriate Assessment in that the possibility of there being a significant effect on the site will generate the need for appropriate assessment for the purposes of Article 6(3).
- It is not appropriate at the screening stage to take account measures intended to avoid or reduce the harmful effects of the plan or project on that site.
- The NPWS Site Synopsis states: The main threats to the site and current damaging activities include high inputs of nutrients into the river system from agricultural runoff and several sewage plants, dredging of the upper reaches of the Awbeg, over grazing within the woodland areas, and invasion by non-native species, for example Rhododendron and Cherry Laurel.
- This development is in the zone of influence of the Blackwater River (Cork/Waterford) SAC (002170) Appropriate Assessment is required.
- The planning authority failed to assess the whole development for Appropriate Assessment.
- The proposed mitigation measures have not been designed therefore could not be assessed.
- The planning authority failed to carry out an Appropriate Assessment separately from the planning decision.

I acknowledge the issues related to screening for appropriate assessment and the AA process generally.

On a point of clarity, the planning authority's **Ecology – Primary Report** (10/07/2023) contains screening for appropriate assessment and concludes that there is insufficient information to conduct a screening assessment and that the applicant will be requested to submit an appropriate assessment screening report and should it be found that the development, as proposed, poses a risk to the SAC a Natura Impact Statement (NIS) shall be prepared and submitted to the planning authority. Following receipt of the NIS prepared on behalf of the applicant the **Ecology- Further Information Response** (04/12/2023) contained an assessment which is stated to constitute the Appropriate Assessment of the planning authority

in respect of the subject application. The planner's report notes receipt of the Ecologist's report (04/12/2023) and summarises the conclusions of same.

I note also the identified main threats to the Blackwater River SAC as summarised from the NPWS site synopsis and confirm that this information has informed this screening for appropriate assessment.

European Sites

One European site is identified as being located within a potential zone of influence of the proposed development. I note that this SAC overlaps with Blackwater Estuary SPA (004028), Blackwater Callows SPA (004094) and Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161). It is also adjacent to Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (000365). (Conservation Objectives Series, NPWS 2012).

The River Blackwater is one of the largest rivers in Ireland, draining a major part of Co. Cork and five ranges of mountains. In times of heavy rainfall, the levels can fluctuate widely by more than 12 feet on the gauge at Careysville. The peaty nature of the terrain in the upper reaches and of some of the tributaries gives the water a pronounced dark colour. The site consists of the freshwater stretches of the River Blackwater as far upstream as Ballydesmond, the tidal stretches as far as Youghal Harbour and many tributaries, the larger of which include the Licky, Bride, Flesk, Chimneyfield, Finisk, Araglin, Awbeg (Buttevant), Clyda, Glen, Allow, Dalua, Brogeen, Rathcool, Finnow, Owentaraglin and Awnaskirtaun (taken from Site Synopsis, NPWS 2016).

The Blackwater River is located to the east of the proposed development site, within approximately 1.5 km, and is protected by the Blackwater River (Cork/Waterford) Special Areas of Conservation SAC designation. Drainage channels from the site flow southward (c.500m), connecting with a small watercourse running eastward (c.500m) into a tributary stream of the Blackwater River, which in turn flows southward (>500m) into the Blackwater River SAC (section 4.3 of the submitted NIS).

I am satisfied that the Blackwater River Special Area of Conservation as identified in the submitted AA screening and Natura Impact Statement (NIS) is the only European site of relevance which could be impacted by the proposed development applying the source-pathway-receptor model.

| European Site | Qualifying Interests | Distance | Connections |
|---|--|----------|----------------------------|
| Blackwater River (Cork/Waterford) SAC [Site Code 002170] | <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> | 1.5km | Yes, via drainage channels |

| | | | |
|--|---|--|--|
| | Lampetra fluviatilis (River Lamprey) [1099] | | |
| | Alosa fallax fallax (Twaite Shad) [1103] | | |
| | Salmo salar (Salmon) [1106] | | |
| | Lutra lutra (Otter) [1355] | | |
| | Trichomanes speciosum (Killarney Fern) [1421] | | |

Table 1.1

Ecological surveys undertaken by the applicant, using best practice survey methods have identified that the drainage channels link the site to the River Blackwater. The survey indicates that there are no watercourses present on site suitable for Otter. No notable fauna recorded on this site, badger setts and/or signs of badger activity are not present, acknowledging that the working sawmill building, and yards are not attractive to regular use by native fauna, apart from bird species such as Swallow, House Marten and sometimes Bats.

No other habitats of relevance to the River Blackwater SAC are recorded on the development site. There is no non-native invasive plant species recorded.

Likely impacts of the project.

The proposed development will not result in any direct effects on the SAC as it relates to the Blackwater River.

Due to the size and proximity of the proposed development to drainage channels linked to the Blackwater River, impacts generated by the construction and operation of the storage shed development require consideration.

The applicant has applied the source-pathway-receptor model in determining possible impacts and effects of the proposed storage shed development.

Sources of impact include:

- Land use change in a section of the subject site currently an agricultural field, including hedgerow removal.
- Release of sediment, dust, hydrocarbons and other potential pollutants during site works to make the site suitable for construction of the dry storage shed. While this development type does not involve major ground works, some land levelling is required, particularly along the periphery of the

proposed site which may, in unmanaged and wet conditions contribute to increased sediment load to receiving water features.

- Release of operational related pollutants, such as hydrocarbons to surface water.
- In combination activities that could potentially impact on water quality with the proposed developments include agriculture, wastewater treatment and further construction in the area.

Likely significant effects on the European sites in view of the conservation objectives

The primary pathway to the Blackwater River SAC is via the drainage channel system that bounds the proposed development site and connects with a small watercourse running eastward into a tributary stream of the Blackwater River. Given the separation from the Blackwater River, there is approximately 1.5km for the process of dilution of any pollutants or settlement of sediment to occur before reaching the main channel and therefore this is considered an indirect pathway.

As the River is designated for freshwater species including white-clawed crayfish, lamprey species, Salmon, that require high water quality, these sensitive receptors are therefore at possible risk via the pathways identified, particularly during the construction phase.

Based on the information provided in the screening report and Natura Impact Statement (NIS), site visit, review of the conservation objectives and supporting documents, I consider that in the absence of mitigation measures beyond best practice construction methods, the proposed development has the potential to result in the following impacts:

- potential damage to riparian and river habitats associated with inadvertent spillages of hydrocarbons and/or other chemicals during construction phase.
- potential damage to the River Blackwater associated with escapement of silt to the estuary during the construction phase; with many of the habitats and freshwater qualifying interest species dependent on water quality, an impact of sufficient magnitude could undermine the sites conservation objectives.

I concur with the applicants' findings that such impacts could be significant in terms of the stated conservation objectives of the SAC when considered on their own and in combination with other projects and plans in relation to pollution related pressures and disturbance on qualifying interest habitats and species.

In combination effects

The proposed development comprises a dry storage shed as an additional building with associated hard standing within the grounds of the existing sawmills commercial enterprise and proposed to extend into the adjacent agricultural field immediately adjacent (west) of the sawmills.

An examination and analysis of the potential for other plans and/or projects to act in combination with the proposed project to have a significant effect on any European site within its zone of influence is considered in Appendix 1: Matrix of Screening for Appropriate Assessment elements and section 6.5 of the NIS.

Overall Conclusion

Screening determination

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of objective information provided by the applicant and the planning authority's ecologist, I conclude that the proposed development could result in significant effects on the Blackwater River SAC in view of the conservation objectives of a number of qualifying interest features of those sites.

It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000 of the proposed development is required.

1.5. The Natura Impact Statement (NIS)

The application included a NIS prepared by Kerry Ecological Services, received by the planning authority on the 17 October 2023, which examines and assesses potential adverse effects of the proposed development on the following European Site:

- Blackwater River SAC [Site Code 002170]

Ecological surveys undertaken to inform the submitted NIS include:

- Desk Study
- Site surveyed on the 26 September 2023, in accordance with Smith et al., (2011), Faulkes et al., (2013) and the Institute of Ecology and Environmental Management (2011 & 2012).

The applicant's NIS was prepared in line with current best practice guidance and provides an assessment of the potential for adverse effects on the identified European Sites and prescribed mitigation. Residual effects are considered taking into account the proposed mitigation. The potential in combination effects of the proposed project on European Sites, when considered in combination with other plans and projects was considered.

The applicant's NIS concluded that: -

"The Blackwater River SAC is known to support a number of habitats and species listed under Annexes I and II of the E.U. Habitats Directive and occurs approximately 1.5+km away from the proposed development site. Based on the above assessment, there is little potential for a significant impact on this SAC or any Natura 2000 site hosting designated and notable habitat and species. However, any potential for sediment and/or pollutants entering the catchment and the potential for compromising the conservation objectives of the SAC can be addressed by the following mitigation measures, which will ensure that any such impact will not be significant.

As such, there will be no impact on the Conservation Objectives of any Natura 2000 site (NPWS database)".

Having reviewed the documents and submissions, I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the following European site alone, or in combination with other plans and projects:

- Blackwater River SAC

1.6. Appropriate Assessment of implications of the proposed development

The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European site using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

Guidance adhered to in my assessment includes:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service.
- European Commission (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC.
- Official Journal of the European Union (2019/C 33/01) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC.

Guidance also referred to:

- Atkinson, S., Magee, M., Moorkens, E.A. & Heavey, M. (2023). Supplementary Guidance on Assessment and Construction Management in Margaritifera Catchments in Ireland: Blackwater River (Cork/Waterford) SAC <https://e-mussels.eu/api/content/files/2024/02/SUPPLEMENTARY-GUIDANCE-ON-ASSESSMENT-AND-CONSTRUCTION-MANAGEMENT-IN-MARGARITIFERA-CATCHMENTS-IN-IRELAND-BLACKWATER-RIVER-SAC.pdf>
- Atkinson, S., Magee, M., Moorkens, E.A. & Heavey, M. (2024). Guidance on Assessment and Construction Management in Margaritifera Catchments in Ireland. <https://e-mussels.eu/europe/conservation-guidelines>

1.7. European Sites

The following site is subject to Appropriate Assessment:

- Blackwater River (Cork/Waterford) SAC

A description of the site and its Conservation and Qualifying Interests/Special Conservation Interests, including any relevant attributes and targets for these sites, are set out in the NIS and summarised in tables 1.1-1.2 of this report as part of my assessment. I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website (www.npws.ie).

Aspects of the proposed development.

The proposed development would not result in any instream works and would not have a direct impact to catchment flows. Land use change is proposed for a portion of the adjoining agricultural field, I am of the view that proportionally this change could not adversely affect the conservation objectives of the European site.

The main aspects of the proposed development that could adversely affect the conservation objectives of the European site include:

- Impacts to water quality and habitat quality downstream of the subject site through operational impacts¹ (surface water management) and/or through construction related pollution events.

The planning authority's appropriate assessment, refer to Ecology – Further Information Response report, notes that the SAC is designated for 18 qualifying interests (QIs) and that the following QIs may occur in the vicinity of the site:

¹ Having regard to the mitigation strategy (section 6.4) of the Guidance on Assessment and Construction Management in Margaritifera Catchments in Ireland (2024) which states that at the forefront of considerations should be the ability to demonstrate that the project operation will have no negative effects on the Margaritifera populations. Only when it has been established that potential operational impacts can be mitigated should the question around whether the project be constructed or decommissioned safely arise.

- Freshwater Pearl Mussel (*Margaritifera margaritifera*)
- Atlantic Salmon (*Salmo salar*)
- Brook Lamprey (*Lampetra planeri*)
- River Lamprey (*Lampetra planeri*)
- Sea Lamprey (*Petromyzon marinus*)
- Otter (*Lutra lutra*)
- Floating River Vegetation (Water courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachion* vegetation)

I note that the site and proximal habitats are not suitable for otters. Therefore, no disturbance related impacts to otters will occur.

I have reviewed Cork County Council's ecologist report including AA and concur with the conclusions of the planning authority's ecologist with respect to the identified QIs that may occur in the vicinity of the site. Examination and assessment of the aspects of the project that could result in potential adverse effects with regard to the conservation objectives for each qualifying interest that could be affected including targets and attributes is tabulated in AA Summary Matrix Table 1.2 at the end of this appendix.

I highlight for the Board that the applicant's response confirms that mitigation measures included in the NIS have been taken on board and the design has been revised and submitted to take account of these measures. See drawings submitted in response to the appeal - Site Layout Showing NIS Mitigation Measures (DWG: 6416-06 Rev 00), Sightlines (DWG. 6416-04 Rev 00) and Oil Interceptor Specification Sheet.

I have considered the proposed mitigation measures contained within the NIS against the supplementary guidance on assessment and construction management in *Margaritifera* Catchments in Ireland: Blackwater River (Cork/Waterford) SAC (cross referencing with the main Guidance on Assessment and Construction Management in *Margaritifera* Catchments in Ireland) and whilst acknowledging the NIS did not have regard to same, I consider the NIS mitigation measures is consistent with these guidance documents.

The timing of the implementation of mitigation measures and monitoring of same to ensure effectiveness can be addressed by way of condition, for clarity I am of the view that such a condition would not conflict with the mitigation measures contained within the submitted NIS.

A summary of the integrity test is included in table 1.2

Integrity test

Blackwater River (Cork/Waterford) SAC

Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of Blackwater River (Cork/Waterford) SAC in view of the Conservation Objectives of this site.

This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

1.8. Appropriate Assessment Conclusion

The proposed dry storage shed has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Blackwater River (Cork/Waterford) SAC. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of the site in light of their conservation objectives.

Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site No. 002170, or any other European site, in view of the site's Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and ecological monitoring in relation to the Conservation Objectives of the Blackwater River (Cork/Waterford) SAC.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of Blackwater River (Cork/Waterford) SAC.

| Blackwater River (Cork/Waterford) Special Area of Conservation (SAC) [Site Code: 002170] | | | | | | |
|---|---|---|--|---|---|---|
| Summary of key issues that could give rise to adverse effects: Water quality and water dependent habitats | | | | | | |
| Qualifying Interest feature (see section 'Aspects of the proposed development' - QIs that may occur in the vicinity of the site) | Conservation Objectives | Targets and attributes | Summary of Appropriate Assessment | | | Can adverse effects on integrity be excluded? |
| | | | Potential Adverse effects | Mitigation Measures | In combination effects | |
| [3260] Floating River Vegetation | To (M) maintain the favourable conservation condition of Water courses of plain to montane levels with the Ranunculon fluitantis and Callitricho-Batrachion vegetation in the Blackwater River (Cork/Waterford) SAC. | <p>Habitat distribution. No decline, subject to natural processes.</p> <p>Habitat area. Area stable or increasing, subject to natural processes.</p> <p>Hydrological regime: river flow. Maintain appropriate hydrological regimes.</p> <p>Hydrological regime: tidal influence. Maintain natural tidal regime.</p> | <p>Risk of release of silt and or toxic contaminants to watercourses during the construction and decommissioning phase. Potential impact to freshwater qualifying interest species and habitats.</p> <p>Risk of release of contaminated surface water to the nearby watercourse in the post construction phase. Potential impact to freshwater</p> | Construction Phase and Operational Phase Control Measures (as detailed in Section 8 of the NIS) | The proposed development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects. | Yes |

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| | | <p>Substratum composition: particle size range. The substratum should be dominated by the particle size ranges, appropriate to the habitat sub-type (typically sands, gravels and cobbles).</p> <p>Water quality: nutrients. The concentration of nutrients in the water column should be sufficiently low to prevent changes in species composition or habitat condition.</p> <p>Vegetation composition: typical species. Typical species of the relevant habitat sub-type should be present and in good condition.</p> <p>Floodplain connectivity: area. The area of active floodplain at and upstream of the</p> | <p>qualifying interest species and habitats.</p> | | | |
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| | | habitat should be maintained. | | | | |
| [1029] Freshwater Pearl Mussel (Margaritifera margaritifera) | To (R) restore the favourable conservation condition of the Freshwater Pearl Mussel in the Blackwater River (Cork/Waterford) SAC | <p>Distribution. Maintain at 161km.</p> <p>Population size. Restore to 35,000 adult mussels.</p> <p>Population Structure: recruitment. Restore to least 20% of population no more than 65mm in length; and at least 5% of population no more than 30mm in length.</p> <p>Population structure; Adult Mortality. No more than 5% decline from previous number of live adults counted; dead shells less than 1% of the adult population and scattered in distribution.</p> <p>Habitat extent. Restore suitable habitat in more than</p> | <p>Risk of release of contaminated surface water to the nearby watercourse in the operational phase. Potential impact to freshwater qualifying interest species and habitats.</p> <p>Risk of release of silt and or toxic contaminants to watercourses during the construction and decommissioning phase. Potential impact to freshwater qualifying interest species and habitats.</p> | Indirect pathways that would allow impacts to occur were considered in the design of the proposed development and a range of measures outlined in section 8 of the NIS are designed to avoid all water pollution during the operational phase and construction stages. | The proposed development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects. | Yes |

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| | | <p>35km (see map 8) and any additional stretches necessary for salmonid spawning.</p> <p>Water quality: macroinvertebrate and phytobenthos (diatoms). Restore water quality-macroinvertebrates: EQR greater than 0.90; phytobenthos: EQR greater than 0.93.</p> <p>Substratum quality: filamentous algae (macroalgae), macrophytes (rooted higher plants. Restore substratum quality-filamentous algae: absent or trace (<5%).</p> <p>Substratum quality: sediment. Restore substratum quality-stable cobble and gravel substrate with very little fine material; no artificially elevated levels of fine sediment.</p> | | | | |
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| | | <p>Substratum quality: oxygen availability. Restore to no more than 20% decline from water column to 5cm depth in substrate.</p> <p>Hydrological regime: flow variability. Restore appropriate hydrological regimes.</p> <p>Host fish. Maintain sufficient juvenile salmonids to host glochidial larvae.</p> | | | | |
| [1095] Sea Lamprey (Petromyzon marinus) | To (R) restore the favourable conservation condition of Sea Lamprey in the Blackwater River (Cork/Waterford) SAC. | <p>Distribution: extent of anadromy. Greater than 75% of main stem length of rivers accessible from estuary. See map 10 for recorded distribution.</p> <p>Population structure of juveniles. At least three age/size groups present.</p> | <p>Risk of release of silt and or toxic contaminants to watercourses during the construction and decommissioning phase. Potential impact to freshwater qualifying interest species and habitats.</p> <p>Risk of release of contaminated surface water to</p> | Indirect pathways that would allow impacts to occur were considered in the design of the proposed development and a range of measures outlined in section 8 of the NIS are designed to avoid all water | The proposed development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any | Yes |

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| | | <p>Juvenile density in fine sediment. Juvenile density at least 1/m.</p> <p>Extent and distribution of spawning habitat. No decline in extent and distribution of spawning beds.</p> <p>Availability of juvenile habitat. More than 50% of sample sites positive. See map 10 for recorded locations.</p> | the nearby watercourse in the post construction phase. Potential impact to freshwater qualifying interest species and habitats. | pollution during the construction and operational stages. | European Site when considered in-combination with other plans and projects. | |
| [1096] Brook Lamprey (Lampetra planeri) | To (M) maintain the favourable conservation condition of Brook Lamprey in the Blackwater River (Cork/Waterford) SAC. | <p>Distribution. Access to all water courses down to first order streams.</p> <p>Population structure of juveniles. At least three age/size groups of brook/river lamprey present.</p> <p>Juvenile density in fine sediment. Mean catchment juvenile density of brook/river lamprey at least 2/m².</p> | <p>Risk of release of silt and or toxic contaminants to watercourses during the construction and decommissioning phase. Potential impact to freshwater qualifying interest species and habitats.</p> <p>Risk of release of contaminated surface water to the nearby watercourse in</p> | Indirect pathways that would allow impacts to occur were considered in the design of the proposed development and a range of measures outlined in section 8 of the NIS are designed to avoid all water pollution during the | The proposed development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in- | Yes |

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| | | <p>Extent and distribution of spawning habitat. No decline in extent and distribution of spawning beds.</p> <p>Availability of juvenile habitat. More than 50% of sample sites positive.</p> | the post construction phase. Potential impact to freshwater qualifying interest species and habitats. | construction and operational stages. | combination with other plans and projects. | |
| [1099] River Lamprey (<i>Lampetra fluviatilis</i>) | To (M) maintain the favourable conservation condition of River Lamprey in the Blackwater River (Cork/Waterford) SAC | <p>Distribution. Access to all water courses down to first order streams.</p> <p>Population structure of juveniles. At least three age/size groups of river/brook lamprey present.</p> <p>Juvenile density in fine sediment> Mean catchment juvenile density of brook/river lamprey at least 2/m².</p> <p>Extent and distribution of spawning habitat. No decline in extent</p> | <p>Risk of release of silt and or toxic contaminants to watercourses during the construction and decommissioning phase. Potential impact to freshwater qualifying interest species and habitats.</p> <p>Risk of release of contaminated surface water to the nearby watercourse in the post construction phase. Potential impact to freshwater qualifying</p> | Indirect pathways that would allow impacts to occur were considered in the design of the proposed development and a range of measures outlined in section 8 of the NIS are designed to avoid all water pollution during the construction and operational stages. | The proposed development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects. | Yes |

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| | | and distribution of spawning beds. Availability of juvenile habitat. More than 50% of sample sites positive. | interest species and habitats. | | | |
| [1106] Atlantic Salmon (<i>Salmo salar</i>) | To (M) maintain the favourable conservation condition of Atlantic Salmon in the Blackwater River (Cork/Waterford) SAC. | <p>Distribution: extent of anadromy. 100% of river channels down to second order accessible from estuary.</p> <p>Adult spawning fish. Conservation Limit (CL) for each system consistently exceeded.</p> <p>Salmon fry abundance Maintain or exceed 0+ fry mean catchment-wide abundance threshold value. Currently set at 17 salmon fry/5 min sampling.</p> <p>Out-migrating smolt abundance. No significant decline.</p> | <p>Risk of release of silt and or toxic contaminants to watercourses during the construction and decommissioning phase. Potential impact to freshwater qualifying interest species and habitats.</p> <p>Risk of release of contaminated surface water to the nearby watercourse in the post construction phase. Potential impact to freshwater qualifying interest species and habitats.</p> | Indirect pathways that would allow impacts to occur were considered in the design of the proposed development and a range of measures outlined in section 8 of the NIS are designed to avoid all water pollution during the construction and operational stages. | The proposed development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects. | Yes |

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| | | <p>Number and distribution of redds. No decline in number and distribution of spawning redds due to anthropogenic causes.</p> <p>Water quality. At least Q4 at all sites sampled by EPA.</p> | | | | |
| [1355] Otter (Lutra lutra) | To (R) restore the favourable conservation condition of Otter in the Blackwater River (Cork/Waterford) SAC. | <p>Distribution. No significant decline.</p> <p>Extent of terrestrial habitat. No significant decline. Area mapped and calculated as 103ha above high water mark (HWM); 1165.7ha along riverbanks/ around ponds.</p> <p>Extent of marine habitat. No significant decline. Area mapped and calculated as 647.2ha.</p> <p>Extent of freshwater (river) habitat. No significant decline.</p> | <p>Risk of release of silt and or toxic contaminants to watercourses during the construction and decommissioning phase. Potential impact to freshwater qualifying interest species and habitats.</p> <p>Risk of release of contaminated surface water to the nearby watercourse in the post construction phase. Potential impact to freshwater qualifying</p> | Indirect pathways that would allow impacts to occur were considered in the design of the proposed development and a range of measures outlined in section 8 of the NIS are designed to avoid all water pollution during the construction and operational stages. | The proposed development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects. | Yes |

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| | | <p>Length mapped and calculated as 599.54km.</p> <p>Extent of freshwater (lake) habitat. No significant decline. Area mapped and calculated as 25.06ha.</p> <p>Couching sites and holts. No significant decline.</p> <p>Fish biomass available. No significant decline.</p> <p>Barriers to connectivity. No significant increase.</p> | <p>interest species and habitats.</p> <p>Potential for the proposed project to cause disturbance to Otter during the construction and post construction phases.</p> | <p>The site and proximal habitats are not suitable for otters. Therefore, no disturbance related impacts to otters would occur.</p> | | |
| <p>Other QIs not occurring within the vicinity of the site:</p> <p>Estuaries [1130]</p> <p>Mudflats and sandbanks not covered by seawater at low tide [1140]</p> | Not within zone of influence of the project. | | | | | |

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| <p>Perennial vegetation of stony banks [1220]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Old sessile oak woods with ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p> | |
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| <p>Alosa fallax fallax (Twaite Shad) [1103]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p> | |
| <p>Overall conclusion: Integrity Test Following the implementation of mitigation, the construction and operation of this proposed development will not adversely affect the integrity of this European site, and no reasonable doubt remains as to the absence of such effects.</p> | |

Table 1.2: AA Summary Matrix – Blackwater River (Cork/Waterford) SAC