



An
Bord
Pleanála

Inspector's Report ABP-319539-24

Development

Application for Substitute Consent for Stables with ancillary services, including open sand arena, horse walker, dungstead, feed storage silo, staff canteen, toilets and sewage facilities

Location

Ballycrystal, Rossard, Bunclody, Co. Wexford

Local Authority

Wexford County Council

Type of Application

Application for approval made under Section 177E of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)

Applicant

Cashwood Poles LTD

Prescribed Bodies

None

Observers

None

Date of Site Inspection

16th of January 2025

Inspector

Angela Brereton

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Appendix 1- Form 1: EIA Pre-Screening

Addendum Internal Technical Note Ecology – R319539_TN

1.0 Introduction

- 1.1. This report provides an assessment of an application for substitute consent for existing stables with ancillary services, including, open sand area, horse walker, dungstead, feed storage silo, staff canteen, toilets and sewage facilities at Ballycrystal E.D., Rossard, County Wexford, under Section 177E of the Planning and Development Act 2000(as amended). The site is adjacent to the Blackstairs Mountains SAC which is a designated European site. A remedial Natura Impact Statement (NIS) and application under Section 177E was lodged by the applicant Cashwood Poles LTD and subsequently sent for determination to the Board by the Local Authority on the basis of the proposed development's likely significant effect on a European site.
- 1.2. Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.
- 1.3. The Planning and Development, Maritime and Valuation (Amendment) Act, 2022 (Commencement of Certain Provisions) (No. 2) Order 2023 (S.I. 645 of 2023) came into effect on 16th December 2023. The Commencement Order brings into operation sections (10) to (21), sections (23) to (40) and subsections (8) to (12) of section (41) of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Consequently, as now required, the assessment of this application for substitute consent includes consideration of 'exceptional circumstances'.

2.0 Proposed Regularisation Development

- 2.1. Permission is sought for the Regularisation of development which has been constructed consisting of the Existing Stables with ancillary services, including open sand arena, horse walker, dungstead, feed storage silo, staff canteen, toilets and sewage facilities.
- 2.2. This application is accompanied by a Remedial Natura Impact Statement.

- 2.3. Documentation submitted with the application to the Council includes a letter from Brendan Buck Planning (BPS) & Development Consultants which provides a history and rationale for the Substitute Consent Application.

3.0 Site and Location

- 3.1. The site is located in the rural area c.10kms to the south of the town of Bunclody and c. 15kms west of Enniscorthy, Co. Wexford. It is within the Townland of Ballycrystal, Rossard and is accessed via the narrow county road network off the R746, to the south of Butler's Cross Roads. The application site (1.98ha) is located in an uplands area c.3km northeast of Killealy and is accessed from the local roads network.
- 3.2. There is a sizable recently constructed stables complex with sand arena, paddock, storage sheds, hardcore driveway and concrete apron, that has been recently constructed on site. Structures include, existing sheds to the south and the large equestrian shed is to the north of the paddock area. There were several horses seen in separate stalls in this large shed on the day of the site visit. There is a feed storage silo and a raised area for bale storage to the east of this building. There is a parking and yard area on the eastern part of the site. There is an open sand arena and an open dungstead area to the north of the building. Also, a smaller storage shed to the north that as seen on site, contained hay and a tractor. The existing gallops and a field area that appears to be used in association with the equestrian use, is to the west, outside but adjoining the red line boundaries. In view of the scale of the sheds/stables, no. of horses and facilities provided, this would appear to be a commercial operation. There was no signage noted on site or on the approach access roads.
- 3.3. Ballycrystal Guest House is to the south of the site and there is a separate entrance to this property. There are two one-off houses with accesses on the opposite side of the road to the site and another to the north of the site.
- 3.4. The Blackstairs Mountains SAC lies c. 234m to the west of the site and a mountain can be seen from the site. The Urrin River is to the west adjacent to the land holding.

4.0 Planning History

- 4.1. Planning history details on file include the following:

Invalidation of previous Substitute Applications

Two previous Substitute Consent applications relevant to the regularisation of this development on the subject site, were declared invalid by the Board:

Ref. nos. ABP-319427-24 and ABP-318851-24 refer.

Copies of Invalidation decisions are on file.

Planning History

As noted in the Planners Report the relevant planning history, from Wexford County Council includes the following:

- 20231371 – WCC Refuse to Consider – Similar development, NIS not included.
- 20230500 – WCC Refuse to Consider: *Having regard to the nature and location of the development seeking retention located on a site which has a hydrological link to the Blackstairs Mountain Special Area of Conservation, it is the view of the Planning Authority that an Appropriate Assessment is required. Having regard to Section 34 12(c) the Planning Authority cannot consider this application for retention.*
- 20090498 – Permission granted subject to conditions to Thomas Baker for the erection of an agricultural building (167.25sq.m) Lean to type shed.
- 20071564 – Permission granted subject to conditions to Thomas Baker for the renovation and extension of an existing outbuilding to provide 1no. dwelling house, the provision of waste water treatment system and percolation area, the provision of a new vehicular access from the public road and associated site development works.

Planning Enforcement history includes regard to the following files:

- 0248-2022 – Unauthorised No. 2 Storage Sheds, Concrete Apron, Sand Area, Storage Area for Horse Manure.
- 0169-2019 – Unauthorised entrance, access road, and horse gallops.

5.0 Planning Authority Report

5.1. A report on the application was received from the Council and on the 31st of July 2024. This provides that in accordance with the requirements of Section 129 of the Planning and Development Act, 2000 (as amended) that the Planning Authority requests that the issues noted in their report (dated 29th of July 2024), be taken into account when deciding the above mentioned substitute consent. Their Report, has regard to the locational context, planning history and policy. It includes a summary of the Referrals received from the Council's Agricultural Scientist, Environment Section, Roads Section. Their Assessment includes the following:

5.2. Treatment of Waste

They provide that the comments of the WCC Agricultural Scientist are of serious concern to the Planning Authority. It is stated that the farmyard is not in compliance with S.I. No. 113 of 2022 EU (Good Agricultural Practice for the Protection of Waters) for the following reasons:

- The existing dungstead (407m³ capacity) will not meet the requirement as set out by S.I. 113 of 2022.
- There is no soiled water collection in place for the existing uncovered dungstead.
- Given the current farm waste storage on the holding, the development may give rise to water pollution.

The Planner notes that it would appear from the details submitted that the current set up is an uncovered dungstead which goes to an apparent septic tank and percolation area which may also take loading from the staff toilets and canteen. That this is not acceptable. In addition, they are concerned that the applicant doesn't appear to have submitted any details of the size and condition of the wastewater treatment system.

5.3. Natura Impact Assessment

The submitted rNIS identifies that there is a possibility that water quality modification could occur should enrichment of water outflows enter the nearby Blackstairs Mountain SAC without attenuation. A number of mitigation measures are set out in order to avoid such enrichment. They provide that it has not been demonstrated to

the satisfaction of the Planning Authority that such measures have or will be implemented on site and therefore they consider that permission should be refused.

5.4. Design, Layout and Materials

They do not consider that there are significant impacts in terms of visual amenity in this rural area.

5.5. Access

They note that access is from a County Road, where 65m sightlines are required for this development and have not been indicated on the site layout. They provide that the achievement of sightlines will require works to the roadside boundary to the north of the entrance within the applicant's ownership.

5.6. Water Supply

This is from the Killealy Public Water Supply.

5.7. Effluent Treatment

They note that the septic tank and percolation area is beside the dungstead. That no details of the size and condition of the wastewater treatment system have been submitted.

5.8. Drainage

A detailed drainage layout for the entire site is required. This is to demonstrate the clear separation of clean and dirty waters as well as all proposed attenuation measures – soakpits etc..

5.9. Flood Risk Assessment

OPW Flood Map Category C.

5.10. Conclusion and Recommendation

The Planning Authority provides that for the reasons outlined, that they do not consider that substitute consent should be granted for the development. They recommend that permission be refused for the Reasons and Considerations below:

1. Having regard to the existing and proposed means of waste disposal arising from the development and associated activities on site taken in conjunction with the lack of adequate information submitted to demonstrate that such disposal can take place in an environmentally safe manner, it is considered that the proposed development would have a detrimental impact on its receiving environment which includes the Backstairs Mountains SAC. The proposed development would therefore be contrary to Objectives ED 102 and NH04 of the WCDP 2022-2028, would be prejudicial to public health and would be contrary to the objectives of the EU Habitats Directive. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development would be prejudicial to public health because inadequate information has been received in order to fully assess how the proposed surface water and wastewater arrangements will be treated on site to required standards. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. The proposed development would endanger public safety by reason of traffic hazard because it has not been demonstrated that adequate sight distances can be achieved at the main entrance to the farm or that adequate measures have been undertaken to prevent surface water entering onto local roads network in accordance with the required standards set out in the WCDP 2022-2028 (Vol.2 Development Management Manual). The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.11. I note that this substitute consent is for the 'Regularisation of development' as described in the Public Notices. As seen onsite this is essentially a 'Retention Development for Regularisation' of the works carried out. The Planning Authority has also included a schedule of 10no. detailed compliance type and development contributions conditions, should it be decided to grant permission.

5.12. The Planning Authority requests that the issues noted in their Report be taken into account when deciding the aforementioned file.

6.0 First Party Response

6.1. BPS Planning & Development Consultants have submitted a First Party response to the issues raised including in the Planner's Report on behalf of the applicants. Their response is summarised as follows:

6.2. Timescale

- They provide that given the short timescale to respond that it has not been possible to prepare new drawings or reports or to take the opportunity to discuss with the project ecologist or the Council.
- They emphasise that the applicant will fully address any conditions applied by ABP within a reasonable timeframe.

6.3. Response to the WCC submission

Description

- This facility had to be built during Covid as no livestock/horse could be sold or traded during that time and they needed to be housed. As such stables and associated development were required.
- The maximum amount of stock numbers held in this facility at any one time is approx. 50 horses, which need to be exercised and managed in an appropriate manner. All development is ancillary to the storage/stabling of the horses, and is required to meet applicable standards as regards animal welfare.
- They provide details of the family run equine business of buying/selling livestock horses and note that it is providing local employment.
- The driveway and manoeuvring areas for vehicles are as minimal as possible.
- WCC has previously granted the applicant a large 167sq.m agricultural building on this farm, therefore, there was no reason to believe that such agricultural developments would not be supported especially when built for good reasons.

6.4. Enforcement

- They have regard to the issue of Exempted Development. They note that the applicant's farm is sited such that an NIS is required, so that exempted developments are de-exempted and, as such, even a relatively standard agricultural developments require planning permission.
- They provide comments relative to enforcement. Noting that they have now applied to ABP with a Substitute Consent application which includes a remedial NIS.

6.5. Response to Referrals

WCC Agricultural Scientist

- They submit that the WCC Agricultural Scientist is referring to the wrong project and /or application. They note reference made in error to protected structures.
- They could have provided clarification relative to the concerns raised, including ecology.
- The applicant is entirely willing to comply with S.I. No. 113 of 2022 (Good Agricultural Practice for Protection of Waters).
- They provide that the Council's recommended conditions would address this matter.

WCC Environment Section

- They note that WWC Environment Section recommended that Further Information be requested. They provide that there has not been time to appoint a suitably qualified person to confirm that the existing wastewater treatment system is adequately sized to treat and dispose of effluent generated by the development.
- They request that matters raised be dealt with by condition. They refer to the Council's condition no. 5 to address this issue. Noting that three months is sufficient time to prepare the compliance submission.
- BPS notes that the WC Environment Section confirms that the Site Layout Plan submitted to ABP remains that as submitted to WCC. *That is, no further*

unauthorised works have been undertaken by their client who has only sought to obtain retention permission to regularise the site.

WCC Roads Section

- They provide that prior to responding to the WCC Roads Section's points, it is necessary to clarify the vehicular accesses to the site. That the application does not include any proposed changes to the existing road entrances shown in Fig. 2.
- This entrance is historic and has always been used to serve the farm.
- No sightlines are shown for this entrance as no amendments are shown on the drawings submitted.
- The main entrance to the site is via the existing guesthouse.
- No additional works are proposed to the entrance which would require permission from any other landowner.
- The planning application does not provide for new works such as concrete or installation of drainage etc. at the existing agricultural entrance.
- They recommend the inclusion the Council's condition no. 8 requiring that this 'ancillary service' entrance meet all technical requirements.
- They provide that should works be required, the roadside boundary is within the applicant's ownership.
- They note that BPS and Ennis Martin Architects have visited the southeast site entrance, and do not consider it to be hazardous in its present state. However, they agree that the requirements of WCC Roads Section would make it safer.

6.6. Response to Development Plan

- The development is supported by national, regional and local planning policies which seek to encourage agriculture, the equine industry, rural diversification, rural employment etc.
- The applicant operates a modest rural business within his farm landholding, and this should, at least in principle, be supported and encouraged. The ecologist involved in this project found no significant concerns to arise and generally considered the proposal to be standard for a rural area.

- They provide details of the planning policy documents that guided this application, including reference to the WCDP 2022-2028, the RSES, the Governments 'Charter for Rural Ireland' (2016), the Government document 'Realising Rural Potential: The Action Plan for Rural Development' (DoAHRRGA) 2017.
- They refer the Board to Policies and Objectives set out in Volume 1 of the WCDP 2022-2028 noting that those in Vol 2 are taken as read. Section 6.7.6.1 is very supportive of rural agricultural development.

6.7. Response to 'Biodiversity'

- An rNIS has been submitted by a suitably qualified and experienced ecologist which has visited the site. No significant environmental concerns arise.
- No EIAR is required under the Planning Acts and Regulations.

6.8. Response to 'Conservation Area', 'Zone of Archaeology', etc

The subject site is not in a conservation area, nor in the curtilage or attendant grounds of a protected structure. There are no registered monuments in the area, the site is not in a Zone of Archaeology etc.

6.9. Response to Development Contributions

- They are aware that they must comply with WCC Development Contributions Scheme 2018 and do not object to ABP's including WCC's recommended conditions 6 and 7 in this regard to a grant of permission.

6.10. Response to Policy

- They refer to the policies aforementioned in Section 2.4 of this letter. They consider the policies raised have been fully addressed. The aim is to support agricultural and equine policies and objectives.

6.11. Response to Treatment of Waste

- They consider that the points made by the WCC Agricultural Scientist and WCC Environment Section and in the Planner's Report have been addressed and can reasonably be addressed by way of condition.
- That the project ecologist has confirmed that in their opinion there is nothing taking place on site at present which would likely cause any significant environmental impacts including on any Natura 2000 site.

6.12. Response to NIS

- They submit that the WCC reading of the NIS is wholly unreasonable. This Substitute Consent planning application is made with the expectation that conditions will be applied to a grant of permission by ABP. These conditions will be addressed as required, including regarding the NIS.
- They have regard to the findings of the AA Screening Report, noting that the Planner's Report states that '*there is a possibility that water quality modification could occur should enrichment of water outflows enter the nearby Blackstairs Mountain SAC without attenuation*'.
- They note that on this basis an NIS was prepared which contains mitigation measures recommended by the ecologist so as to avoid such enrichment. The rNIS was prepared to implement these measures by way of ABP attaching a condition requiring this. They reference the inclusion of condition no.2 of the Planner's Report.
- They are unclear as to why the Planner's Report would recommend refusal as regards the rNIS recommendations as it was to anticipate mitigation measures which would have been needed had the development been proposed to the Council by way of a planning application before it was built.
- Their project ecologist has done this and their client awaits permission from ABP to complete the works.

6.13. Response to Design and Layout

- BPS agrees with the opinion of WCC that the 'as built' equine facility would have 'No significant impact – in terms of visual amenity in this rural area.'

6.14. Response to Access

- They refer to their response to 'Referrals' in Section 2.3 of this letter should be 'taken as read'.
- They confirm that should any roadside works be required for sightlines, these would pertain only to lands in their client's ownership. That no permission is required from any other party.

6.15. Response to Water Supply

- The subject site is served by public water supply. There are no wells on the site which could be contaminated and/or any setback distances from same that arise as regards wastewater treatment.

6.16. Response to Effluent Treatment

- The WCC Planner's Report notes the location of the septic tank and percolation area. These were inspected by the project ecologist before they issued their report.
- They refer to Section 2.3 (Referrals) of this report where they consider that the issues raised relevant to Effluent Treatment can be addressed by conditions.

6.17. Response to 'Flood Risk Assessment'

- The site is not at risk of flooding including from pluvial events. There is no risk of unanticipated surface water run-off from the site.
- They request that planning permission be granted subject to applicable conditions including the recommendations of the rNIS, which they submit can be fully implemented to ensure that all surface waters are not enriched and then pass towards and into the Blackstairs Mountain SAC.

6.18. Response to Conclusion and Recommendation

- The project team does not consider the conclusion and recommendation reached by WCC to be the correct one. They consider that the issues of concern could have been addressed by way of Further Information.
- They have not had time relative to timescales (ABP) to address areas where insufficient information has been supplied.
- The only fair and reasonable way to provide this information with clarity is by way of compliance submissions following the application to ABP of conditions to a grant of permission.
- The WCDP 2022-2028 is supportive of agricultural and equine developments and the proposed decision of WCC to refuse is incorrect as their client can, with adequate time, provide all the necessary information which would allow the 'in principle' acceptance of this development to move to a full acceptance of this development on all grounds.

- They note that WCC has previously granted their client a large shed on his farm under permission reg.ref. 20090498. That there is no concern that a properly built shed at this location would cause adverse impacts.

6.19. Response to Reasons and Considerations

- They note that WCC recommends that 3no. possible reasons for refusal be applied, unless ABP grants planning permission and then 10no. conditions should be applied.
- They provide a response to each of the suggested conditions. They note that they are prepared to provide the outstanding information and to comply with these conditions.
- They seek to comply with the relevant Regulations and Guidelines including the 'European Communities Good Agricultural Practice for the Protection of Waters Regulations (2014) and the relevant best practice guidelines. Also as regards to Natura 2000 sites.
- The project team submits that there is no single significant reason why this application should be refused and that permission should be granted so that they can regularise the planning status of the facility and address the remaining environmental and roads issues which arise primarily from lack of information.

6.20. Conclusion and Recommendation

- They submit that having regard to planning policies and objective in the NPF, the RSES, the WCDP 2022-2028 that the development proposed for retention is acceptable in principle and is supported in practice by planning policy.
- They provide a summary of these policies, noting that outstanding issues including relative to agricultural usage and roads and further amendments can be addressed by way of conditions.
- They note that their client will pay all development contributions under the WCC Development Contributions Scheme 2018.

6.21. Recommendation

- They submit that the development proposed for retention is acceptable in principle as regards national, regional and local planning policies and that the development be permitted to be retained in practice.

- That the development comprises a traditional form of agricultural and/or equine buildings. That it appears wholly rural and appropriate within the landscape.
- The building and ancillary development is functional and efficient, sympathetic to surroundings and does not impact adversely on the environment (as confirmed by the rNIS previously submitted to ABP).
- The conditions proposed by WCC to address matters raised by internal referrals if applied to a grant of permission will further ensure that the proposal addresses all best practice and/or statutory requirements as regards water, wastewater, agricultural waste, roads etc.
- They commend this Substitute Consent and submit that the planning application should be granted subject to conditions.

7.0 Policy Context

The following policy and guidelines are considered relevant to the proposed development:

- National Planning Framework – Project Ireland 2040
- Southern Region Spatial and Economic Strategy (RSES)
- Climate Action Plan 2024
- Traffic and Transport Assessment Guidelines (2014)
- Development Management, Guidelines for Planning Authorities (2007)
- The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).
- Development Management Guidelines for Planning Authorities (2007).

Other relevant Guidance:

- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009).
- Realising our Rural Potential: The Action Plan for Rural Development' (Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, 2017)

- The European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022, (S.I. No. 113 of 2022).

7.1. Wexford County Development Plan 2022-2028

Volume 1 – Written Statement

Section 6 – Economic Development Strategy

Section 6.3 refers to Climate Action and Economic Development. Objectives relative to supporting the green economy include:

- *Support the agriculture sector to transition to economically and environmentally viable farming methods that reduce greenhouse gas emissions, are beneficial for local biodiversity and rural communities whilst still delivering high quality food and providing a high standard of animal welfare.*

Section 6.4 - Policy Context. Reference is had to the National Planning Framework and to the Government's Rural Development Policy. This includes the document: '*Realising our Rural Potential: The Action Plan for Rural Development*' (Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, 2017).

Strategic Economic Development Objectives for the County are included.

Section 6.6.5 has regard to Place Objectives and measures to enhance the local environment.

Objective ED49: *To ensure that commercial development in rural areas is related to agriculture, horticulture or other rural related resource or activity. Exceptions to this objective are detailed in Section 6.7.6, of this chapter, Chapter 7 Tourism Development, Chapter 12 Coastal Zone Management and Marine Spatial Planning, Volume 8 County Retail Strategy and Volume 10 Energy Strategy.*

Section 6.7.5 refers to The Green Economy:

Objective ED85: *To develop the county as a leading innovator in the green economy in areas such as sustainable agriculture, sustainable construction, the production of renewable energy and the bio-economy, and to support development of enterprises and technologies that employ green technologies and support a low carbon economy.*

Section 6.7.8 concerns the Rural Economy and Objectives include those that support rural economic diversification:

Objective ED90 - To enhance the competitiveness of our rural areas by supporting innovation in rural economic development and enterprise through the diversification of the rural economy into new sectors and services including ICT based industries and those addressing climate change and sustainability.

Objective ED91 - To facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.

Objective ED98 - To ensure all developments permitted in rural areas in accordance with Objective ED49, including agricultural, horticultural and rural diversification do not impact negatively on the quality of the environment or character of the rural area or rural settlement. Applications for all such developments will be required to submit details to demonstrate that the proposed development:

- Will not result in the contamination of potable water, surface or ground waters, or impact on natural or built heritage;*
- Is appropriate in terms of scale, location, design and that the character of the farm or settlement is retained and enhanced where possible;*
- When located on a farm, it is located within, or adjacent to, existing farm buildings, unless the applicant has clearly demonstrated that the building must be located elsewhere for essential operational or other reasons;*
- Is appropriately sited so as to benefit from any screening provided by topography or existing landscaping and does not seriously impact on the visual amenity of the area;*
- Will not result in an unacceptable loss of residential amenity by reason of noise, odour or pollution;*
- Will not result in a traffic hazard,*
- Will provide for adequate waste management; and*

- *Where possible will restore and/or enhance built and/or natural heritage.*

Section 6.7.6.1 – Agricultural Development

This notes that agriculture includes: *...the training of horses and the rearing of bloodstock, the use of the land as grazing land, meadow land etc.*

Objective ED101 - *To facilitate the modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential amenity. Planning applications for new agricultural structures must clearly outline the use of the structure (livestock / equine / pig / poultry / storage) subject to Objectives ED97 and ED98.*

Objective ED102 - *To ensure agricultural waste is managed and disposed in a safe, efficient and sustainable manner having regard to the environment and in full compliance with the European Communities Good Agricultural Practice for the Protection of Waters Regulations (2014) and relevant best practice guidelines.*

Section 6.7.6.2 refers to Rural Diversification including Agri-Food. *The Planning Authority recognises that a balance needs to be maintained between facilitating appropriate forms of rural development and protecting the rural environment. Farm based enterprise including agri-tourism proposals, open farms/pet farms and equestrian activities will be facilitated subject to environmental and development management standards.*

Rural Diversification Objectives ED104 – ED107 refer.

Section 6.7.6.7 refers to the Breeding and Racing community in Co. Wexford and support for the Equine Industry. Objectives ED129 and ED130 refer.

Objective ED129: *To support and promote the equine industry in the county as an economic and employment provider.*

Chapter 13 – Heritage and Conservation

Section 13.2 refers to Natural Heritage, including Natura 2000 Sites. Table 13.1 refers.

Objective NH04: *To protect the integrity of sites designated for their habitat and species importance and prohibit development which would damage or threaten the integrity of these sites. Such sites include Special Areas of Conservation (SACs) and*

candidate SACs, Special Protection Areas (SPAs), Natural Heritage Areas (NHAs) and proposed NHAs, Nature Reserves, Refuges for Fauna and RAMSAR sites. To protect protected species wherever they occur.

Volume 2 Development Management Manual

Section 6 Transport and Mobility

Section 6.1.4 refers to Country Roads/Green Routes.

Section 6.2 to Assessment of Road Traffic Safety.

Section 6.2.5 to Design Speeds – Table 6-5 refers.

Section 6.2.6 to Siting and Design of Access/Egress Points. This includes regard to Sightlines and Visibility.

8.0 Screening

8.1. Environmental Impact Assessment

- 8.1.1. The application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended), which is for the regularisation of development for a stables with ancillary services, including open sand arena, horse walker, dungstead, feed storage silo, staff canteen, toilets and sewage facilities is not a class of development under the classes listed Schedule 5 of the Planning & Development Regulations 2001 (as amended) and therefore no EIA screening is required.

8.2. Appropriate Assessment

- 8.2.1. Consideration of the Likely Significant Effects on a European Site Article 6(3) of the Habitats Directive. The requirements of Article 6(3) as related to appropriate assessment of a project under part XA (Substitute Consent) are considered fully in this section. The areas addressed in this section are as follows:

- Screening for appropriate assessment
- Appropriate assessment of implications of this development for regularisation on the integrity of each European site.
- The Remedial Natura Impact Statement and Supplemental Information

- 8.2.2. The application is accompanied by an AA Screening report and a remedial NIS which describes the development for regularisation, the project area and the surrounding area and includes for the implementation of mitigation measures.
- 8.2.3. The Appropriate Assessment document has been prepared by Gerard Tobin, an Ecological Consultant and is informed by desk study including reference material from the NPWS website and data base and by field surveys.
- 8.2.4. The rNIS together with supplemental information concludes that, following an examination, analysis and evaluation of the relevant information, including the nature of the predicted effects from the development proposed for regularisation, and mitigation measures to avoid such effects, that the said development will not adversely affect the integrity of any European site, either alone or in combination with other plans and projects.

Further Consideration

- 8.2.5. It needs to be ascertained that the rNIS submitted, identified and characterised the possible implications of the development on the European sites, in view of the site's conservation objectives, and provided information to enable the Board to carry out an appropriate assessment of the proposed works.
- 8.2.6. I have noted the comments of the Inspectorate Ecologist and have included a discussion as to the adequacy of the screening report and the rNIS relevant to this Substitute Consent Application made under Section 177E of the Planning and Development Act 2000 (as amended) in the Assessment below.

9.0 Assessment

9.1. Introduction

- 9.1.1. Having assessed the documentation submitted, undertaken a site visit and having regard to the relevant policies pertaining to the subject site in this rural area, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development proposed for regularisation, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

- Exceptional Circumstances
- Principle of the Development /Application

- Planning History/Unauthorised Development
- Design and Layout and Visual Impact
- Access and Roads
- Agricultural Development - Landspreading
- Wastewater and Surface Water Management
- Appropriate Assessment – Remedial NIS

9.2. Exceptional Circumstances

- 9.2.1. The tests / matters to have regard to in considering exceptional circumstances in an application for substitute consent are set out in Section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Section 30 amends Section 177K of the 2000 Act. In considering whether exceptional circumstances exist, the Board is required to have regard to the matters set out under the criteria as set out within this part of the Act as follows:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.

- 9.2.2. The EIA Directive seeks to provide for an assessment of the likely significant effects of a development on the environment prior to decision making, and to take account of these effects in the decision making process. The Habitats Directive seeks to ensure the conservation of a wide range of rare, threatened or endemic animal and plant species and the conservation of rare and characteristic habitat types. The current application refers to the Habitats Directive and includes a remedial NIS.

- 9.2.3. It is noted that the current application is for a regularisation of development similar to a previous proposal (Reg.Ref. 20230500) that was invalidated as noted in the Planning History Section above. This then included a Referral response from the Department of Housing, Local Government and Heritage, which provided:

The applicant has failed to acknowledge the proximity of the development site to the Blackstairs Mountains SAC within the planning application. Additionally, the applicant has included lands located within the SAC as part of a proposed effluent spread area. The River Urrin is located along the border of this proposed effluent spread area.

Given the potential for the development proposal to generate negative impact on habitats within the Blackstairs Mountains SAC, and given the potential negative impacts on water quality in the River Urrin arising from the development proposal due to proposed spreading of effluent, it is recommended that AA is required for the development proposal.

- 9.2.4. This substitute consent application now submitted, includes an Appropriate Assessment Screening Report and a remedial NIS, and as such, I am satisfied that the proposed development would not circumvent the purpose and objectives of the Habitats Directive.
- 9.2.5. Having regard to the nature and scale of the development, comprising stables with ancillary services, including open sand arena, horse walker, dungstead, feed silo, staff canteen, toilets and sewage facilities, I am satisfied that this development is not of a class under Schedule 5, Parts 1 and 2 of the Planning and Development Regulations 2001 (as amended) and the requirement to undertake a remedial Environmental Impact Assessment does not arise in this case.

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised.

- 9.2.6. The BPS response submitted provides a rationale for the construction of the stables and ancillary works and provide that they originally considered (prior to enforcement action being taken) that the development as constructed and now proposed for regularisation was exempt as agricultural development. They did not consider the development was unauthorised and refer to the agricultural exemption under Section 4(1)(a) of the Planning and Development Act 2000 (as amended). Their response includes: *However, our client's farm is sited such that an NIS is required, exempted developments are de-exempted, and as such, even relatively standard agricultural developments require planning permission.* The current application seeks to regularise the situation and includes a remedial NIS.
- 9.2.7. They note that during the Covid shutdown the applicant was left with unsold livestock/horses and nowhere to house them. They submit that this facility had to be built during Covid as no livestock/horses could be sold or traded during that time and they needed to be housed. They did not consider that this emergency issue would raise the issue there is now. The maximum number of horses to be held at the facility at any one time is 50. These horses need to be exercised and managed in an

appropriate manner, and the stables and all associated and ancillary development were required to meet the appropriate standards as regards the welfare of animals.

9.2.8. They have regard to the permission previously granted by WCC for a 167sq.m shed, and submit that they had no reason to think that such agricultural developments would not be supported, especially when built for good reasons. That the 'as built' whole of the development requiring retention appears as would a farm which has carried out agricultural development under Section 4(1)(a) of the Planning and Development Act 2000 (as amended).

9.2.9. Having regard to the above, in my opinion, the applicant's knowledge of the site planning history would not preclude the granting of substitute consent in this instance if deemed appropriate by the Board, given that this process is the only mechanism through which the status of the existing development may be regularised.

(b) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.

9.2.10. No, having regard to the documentation submitted, I would not consider this to be the case. The applicant advertised their intention to lodge this application by the appropriate form of public notice as submitted to the Board on the 9th of April 2024. This development does not require the undertaking of a remedial Environmental Impact Assessment. The application is accompanied by a remedial NIS which is included on the application file. It is noted that there are no third party submissions to this report.

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.

9.2.11. No actual or likely significant effects on the environment due to the development proposed for regularisation have been identified. The site is proximate to the Blackstairs Mountains SAC. The qualifying interests of the SAC are Northern Atlantic wet heaths with *Erica tetralix* [4010] European dry heaths [4030] and are not water based. The rNIS screening submits that there is a slight possibility that water quality modification could occur should enrichment of water outflows enter the nearby SAC

without attenuation. In addition, as noted in the Inspectorate Ecologist Report, a hydrological pathway may exist for adverse effects on the integrity of a European site via the River Urrin and possible links to the Slaney River Valley SAC, some 14kms southeast of the site. It is noted that this SAC is some distance from the site. There maybe a low potential for some hydrological links due to landspreading proximate to the site and the River Urrin and the Blackstairs Mountains SAC.

- 9.2.12. The remedial NIS which accompanies the application sets out detailed mitigation measures which seek to avoid any future impacts on the Blackstairs Mountains SAC, in the event substitute consent is granted for the completion of the development.

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

- 9.2.13. No remedial mitigation measures are identified / required.

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.

- 9.2.14. On-site works undertaken resulted in enforcement action being taken by Wexford County Council and details are provided in the Planning History Section above. The BPS response provides that at all times the applicants have sought to engage with the Council relative to enforcement. They submit as noted above that they considered that the works undertaken in this agricultural area constituted exempted development, prior to enforcement action being taken. In any event, it must be noted that enforcement is a matter for the Council and is not within the remit of the Board. In my opinion, the applicant is making appropriate efforts to regularise the status of the existing development on the site through the substitute consent procedure.

(g) such other matters as the Board considers relevant.

- 9.2.15. These matters are considered in full, within the following sections of my report. In addition, I note the Planner's Report from WCC and submissions received from BPS on behalf of the applicant with reference to this current application for substitute consent and also the exceptional circumstances as they have been set out and reiterated. Given the foregoing, I am satisfied that the applicant has adequately demonstrated there are exceptional circumstances pertaining with specific reference to Section 177K(1J) of the Planning and Development Act, 2000 (as amended). This

is as amended by Section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022.

9.3. Principle of Development/Application

- 9.3.1. The application for Substitute Consent relates to stables with ancillary services including open sand arena, horse walker, dungstead, feed storage silo, staff canteen, toilets and sewage facilities. This is a retrospective application seeking regularisation of planning in that the said unauthorised works have already taken place and the stables and ancillary works appear to be complete and operational. It is of note that the issue of a regularisation application, similar to a retention application, is whether the works would have been considered appropriate and done in the first place had permission been applied for and subsequently been granted.
- 9.3.2. Details on file include that this facility is fundamentally an agricultural development with livestock/horses making up the primary farming business of buying/selling, and/or trading livestock/horses. That it is a family run business and is providing valuable employment and is important to the well-being of the area. That it is providing an important facility for the horse breeders in the surrounding area. That the farm has always raised livestock and employs 5-6 full time employees and some casual workers during the summer months.
- 9.3.3. The BPS response to the Planner's Report submits that the development proposed for retention is acceptable in principle as regards national, regional, and local planning policies. The development comprises a traditional form of agricultural and/or equine buildings. That the development appears wholly rural and appropriate within the landscape. That the building and ancillary development is functional and efficient, sympathetic to their surroundings, and does not impact adversely on the environment. This application includes a Remedial NIS. They submit that the conditions proposed by WCC to address matters raised by internal referrals will also, if applied to a grant of permission, further the proposal addresses all best practice and/or statutory requirements as regards water, wastewater, agricultural waste etc.
- 9.3.4. The site is located within a rural area where the predominant land use is agriculture. The application site and landholding form part of an existing agricultural complex and is in use as a stables and ancillary works to support the equine industry. The Policy Section as noted above, refers to Strategic Economic Objectives in the Wexford

CDP 2022-2028, which include support for sustainable agricultural diversification and the equine industry, which do not negatively impact on the environment or the rural character of the area. These include Section 6.7.6 Rural Economy Objectives including ED98, which provides the criteria for rural development including regard to impact on surface or groundwaters, siting, access/traffic hazard, waste management etc. Also, Section 6.7.6.1 refers to Agricultural Development Objectives including ED102 relative to the disposal of agricultural waste (referred to in the Council's recommendation for refusal), and Objective ED129 that seeks to support and promote the Equine Industry.

- 9.3.5. Therefore, the proposal as an agricultural /equine activity is considered to be acceptable in principle. However, the issues raised, as discussed in the sections below, note the Local Authority proposed reasons for refusal, including regarding inadequate information being submitted relevant to waste disposal, surface water and wastewater, and not demonstrated as being in compliance with current standards have been noted. Also concerns relative to the impact on the environment and the rNIS, scale of operations, access and sightlines.

9.4. Planning History/ Unauthorised Development

- 9.4.1. This is referred to by the applicant relevant to the permission that was granted by the Council for the erection of an agricultural building (167.25sq.m) lean to type shed, which has been constructed and is close to the southern boundary of the site. Condition no.2 of this permission restricted the use of the agricultural building to '*dry storage only*'. As has been noted in the Exceptional Circumstances Section above, the applicant considers that the granting of this permission, supports the established agricultural use of the site. Access is via the existing entrance, which is also in use for the stables, in the current application.
- 9.4.2. As noted in the documentation submitted, Planning Enforcement history includes regard to the following files:
- 0248-2022 – Unauthorised No. 2 Storage Sheds, Concrete Apron, Sand Area, Storage Area for Horse Manure.
 - 0169-2019 – Unauthorised entrance, access road, and horse gallops.

9.4.3. Aerial photographs on the Enforcement File history show that these works were constructed between 2019-2022. It is noted that Warning Letters and Enforcement Notices to remove unauthorised works were served on Tom O'Connor (April 2023) and Gerard O'Connor, Cashwood Poles.

9.4.4. The BPS response notes that the applicants originally considered the works to be exempted development under Section 4(1)(a) of the Planning and Development Act 2000 (as amended).

4.(1) The following shall be exempted development for the purposes of this Act:-

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use of the purpose of any building occupied together with land so used:

9.4.5. They also refer to the Planning and Development Regulations 2001 (as amended). Schedule 2, Part 3 refers to *Exempted Development Rural*. They specifically refer to the exemptions in Class 6 *Agricultural Structures*. This includes: *Works consisting of the provision of roofed structure for the housing of ...horses.. having a gross floor space not exceeding 200sq.m (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.*

9.4.6. However, I would note that the restrictions on exemption include:

- 1. No such structure shall be used for any purpose other than the purpose of agriculture.*
- 2. The gross floor space of such structure together with any other such structures situated within the same farmyard or within 100metres of that complex shall not exceed 300sq.m gross floor space.*
- 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*

9.4.7. It would appear when considering the size of the shed and the scale of operations that the stables are for commercial/agricultural use for the housing of up to 50 no.

horses. In addition, taking into account the area of agricultural shed previously permitted (167sq.m) and the stables and ancillary buildings/works now proposed for regularisation the exemption relative to gross floor area has been used up.

Therefore, in any event taking into account the scale and nature of this proposal and the locational context relative to the Blackstairs Mountains SAC, and the need for remedial NIS, it would not constitute exempted development.

- 9.4.8. The BPS response includes that no further unauthorised works have been undertaken by the applicant who has only sought to obtain retention permission to regularise the site.

9.5. Design and Layout and Visual Impact

- 9.5.1. As shown on the drawings submitted, the stables, open sand area, dungstead and all ancillary works and services are located in the northern part of the site. The paddock is located to the south of these and the parking area is in the eastern part of the site, all shown within the red line boundary. The existing gallops to the west, is located outside of the redline boundary and Ballycrystal House is further to the south. The area of the subject site is given as 1.98ha.
- 9.5.2. Regard is had to the floor plans and elevations submitted. This provides that the area of Building 1 (stables) which includes the stalls (50. no. shown) for the horses, wash bays, canteen, tack room, toilet and storage area is 2076sq.m. Building 2 is the smaller building to the northwest and is 156sq.m and appears to be used for storage. Therefore, the total floor area of the buildings for Regularisation is 2232sq.m. The stables building has a pitched roof and varies in height from c. 7.8m to 8.4m.
- 9.5.3. The buildings have dark green cladding, and in view their siting, set back from the road and boundary hedges, I would not consider that they are visually prominent in this rural area.

9.6. Access and Roads

- 9.6.1. The site is accessed via the narrow road network off the R746 which is further to the east. As shown on the plans there is an existing recessed and gated agricultural entrance to the southeast of the site. This is from the narrow road to the east of the site and is too narrow for two cars to pass. Sightlines are currently not sufficient in

either direction, particularly to the north. On site I noted that there is a mirror to aid visibility on the lane opposite the entrance.

- 9.6.2. There is another access to the north of the site and the equestrian shed, but this appears to be shared with the house to the north. Sightlines are not adequate for the northern access, which is not recessed. However, it is not proposed that this be used to serve the stables. Traffic in the area appears to be low. The access road to the site is via a 'T-junction' onto the local road to the south of the site.
- 9.6.3. It is noted that the Council's reason 3 recommends refusal on the grounds of traffic hazard as it has not been demonstrated that adequate sightlines are available. Regard is had to Section 6.2.6 of Volume 2 of the WCDP 2022-2028 which refers to Siting and Design of Access/Egress Points. This includes regard to Sightlines and Visibility. Where the Road speed limit is greater than 60kph the sightline requirement (from a point 3m back for the edge of the public road) is 65m. This also refers to the Design and Construction of Access/Egress points and to Surface Water Management. Also to impacts on Existing Mature Trees and Existing Built Features at the Road Frontage.
- 9.6.4. The Council's Roads Section provides that given the scale of the development and the number of employees it is important that the required sightlines of 65m in either direction are achieved. They note that this will require remedial works and query that some of these will be outside the landholding. This includes that sightlines be measured from a point 3m back from the edge of the public road at the centre point of the proposed access in a straight line at the near roadside edge in both directions. That all works required to achieve sightlines be included in the site edged red. If the required works will be outside the control of the applicant, written permission from the required landowner and a signed site layout clearly showing the extent of the work required must be submitted.
- 9.6.5. The BPS response notes that the southeast corner of the site maintains what has always been an agricultural entrance to the farm. That Google Street View Maps from 2004 show this entrance. That the development is agricultural, and this entrance remains appropriate. That no sightlines are shown on the drawings submitted for this existing entrance as no amendments are proposed. Noting, that agricultural entrances exist throughout rural areas and do not offer the same sightlines as entrances to houses etc.

- 9.6.6. BPS having clarified the continuing usage of the existing agricultural entrance acknowledge that WCC or ABP may prefer to take this opportunity to convert the existing southeast agricultural entrance into a formal entrance with drawings and details confirmed as acceptable by the WCC Roads. They refer to ancillary service entrance meeting all technical requirements. Also, noting that the lands along the roadside boundary are in the applicant's ownership, that all works required will be to the requirements of the WCC Roads Section.
- 9.6.7. The Council also provides that surface water drainage at the access point be addressed. The BPS response notes that the planning application does not provide for new works such as concrete or installation of drainage etc, at the existing agricultural entrance.
- 9.6.8. As the application site is in commercial usage for the stabling of horses, I would consider that it is important that it can be demonstrated that adequate sightlines in accordance with standards, are available in both directions at the entrance on lands in the ownership of the applicants. I would note that sightlines at this entrance are currently inadequate and that drawings need to be submitted to show that adequate sightlines are available, within the applicant's landholding. It appears that some set back of roadside boundary hedging maybe required.

9.7. Wastewater and Surface Water Management

- 9.7.1. Regard is had to the Site Layout Plan submitted, which indicates on-site drainage. This includes wash water surface gullies, ebb and flow tank for the sand arena and notes that the wwts and percolation area appears to be located close to the northern site boundary. The latter is shown (nos.4 & 5) on the Site Layout Plan Key. It also shows 'Existing Surface Water Lines which lead to existing stream to the west' and refers to the '6 inch map for the position of the stream.'
- 9.7.2. The Council's Environment Section notes that the applicant appears not to have submitted any details about the size and condition of the wastewater treatment system. Noting the no. of employees at 5-6, and some seasonal workers in the summer months. Additionally, they note that the percolation area appears to be very close to one of the buildings for retention. They recommended that F.I be sought to submit a report compiled by a suitably qualified person confirming that the waste

water treatment system is adequately sized to treat and dispose of the effluent generated by the Development. That this development should include:

- a) Details of the size and condition of the existing septic tank /wastewater treatment unit
- b) Details of the size and condition of the existing percolation area/polishing filter.
- c) Photographs of any exploratory works carried out
- d) Date of installation of the wastewater treatment system is known.
- e) Details of any maintenance records available.

They note that the rNIS lists several mitigation measures to be implemented.

- 9.7.3. It is noted that the Council's reason 2 recommends refusal because inadequate information has been received in order to fully assess how the proposed surface water and wastewater arrangements will be treated on site to required standards and would be prejudicial to public health. Having regard to the details/plans submitted I would consider that sufficient details have not been provided.
- 9.7.4. The BPS response provides that in view of the limited timelines, that there has not been time to appoint a suitably qualified person to confirm that the existing wastewater treatment system, is adequately sized to treat and dispose of effluent generated by the development. They provide that this matter can be adequately addressed by way of condition. That it is intended to comply with Condition no. 5 of the Council's suggested schedule of conditions. This refers to supplying the relevant details confirming the existing wastewater treatment is adequate, in accordance with the Council's Environment Section request. They provide that as stated in this condition, three months is sufficient time to prepare the compliance submission. In addition, that the project ecologist has confirmed that in their opinion, there is nothing taking place on site at present which would likely cause any significant environmental impacts including on any Natura 2000 site.

9.8. Agricultural Development - Landspreading

- 9.8.1. The details submitted note that the applicants have calculated Manure storage based on 0.4 cubic metres/week/horse based on a 20 week storage period, therefore 400 cubic metres is required for manure which they have the capacity for. That as

the applicant has an uncovered manure pit, they have an effluent storage tank to take the runoff. The tank is to be emptied by a vacuum tanker every 7-10 days, the capacity required for this is 01 cubic metres per horse to Department of Agriculture Guidelines S.108. They provide that they have also allowed for stable water wash in their soiled water tank of 0.05 cubic metres per horse. That is requires 75 cubic metres which their client currently has on site. It is noted that the drawings submitted show the location of the dungstead and include 'Section B-B', showing the 407 cubic meter capacity.

- 9.8.2. They provide that Cashwood Poles have lands available for the spread of dung and manure effluent. They refer to two separate Folio Nos. containing 15.17ha and 28.76ha respectively. Folio Maps have been submitted 'Land available for spread of manure and effluent'. It is noted that these lands are more proximate and adjoin and (in the case of Folio no. WX11200) overlap the Blackstairs Mountains SAC.
- 9.8.3. It is of note that the referral from WCC Agricultural Scientist provides that the farmyard is non-compliant and the existing storage facility is not in compliance with S.I 113 of 2022. That the current set up is an uncovered dungstead where it goes to an apparent septic tank and percolation area. They query as to whether the wastewater from the toilets go there. They provide this is not in any means acceptable. They recommended that the application be refused planning permission for reasons to include:
1. The existing dungstead (407cubic meter capacity) will not meet the requirements set out by S.I No.113 of 2022.
 2. There is no soiled water collection in place for the existing uncovered dungstead.
 3. Given the current farm waste storage on the holding, the development may give rise to water pollution.
- 9.8.4. BPS query the status of this referral. They provide that the applicant is entirely willing to comply with S.I. No. 113 of 2022 (Good Agricultural Practice for Protection of Waters). This is dealt with under separate remit.
- 9.8.5. It is noted that the development should be designed and constructed in accordance with the Department of Agriculture, Food and the Marine specifications as per the European Communities (Good Agricultural Practice of Waters) Regulations, 2022

(S.I 113 of 2022). Objective ED102 of the Wexford CDP 2022-2028, refers. These Regulations give legal effect to Ireland 's national Nitrates Action Programme under the EU Nitrates Directive and are currently in force. The Gap Regulations address issues such as minimum capacity for storage of effluent and soiled water, the duty of the occupier in relation to nutrient management, periods when land spreading is prohibited, minimum distance to wells and rivers, and other such matters. The scope of the GAP regulations includes horses. The Board is not a competent authority under the GAP Regulations and therefore has no role in the enforcement of land spreading activities.

- 9.8.6. Regard is had to Article 6(3) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna. To CJEU judgements relative to certain categories of projects, and it is considered that landspreading may be a project for the purposes of the Habitats and Birds Directives. It is also noted that the Fifth Nitrates Action Programme was subject to AA. This considers the potential for adverse effects that implementation of the NAP could have on the integrity of any European site, with respect to its conservation objectives, structure and function.
- 9.8.7. An in-combination assessment must be a more limited assessment than the assessment of the project itself. It is noted that at all farms, regardless of whether licensed by the EPA or not, are required to operate within the legislation defined in S.I. 113 of 2022, regarding manure storage, minimisation of soiled water and general good agricultural practice, etc.
- 9.8.8. The Board is the competent authority in respect of development consent applications and appropriate assessment under the Habitats Directive. This is in parallel with other regulatory regimes, for example under the GAP Regulations. The Board is precluded from granting permission where it cannot rule out a significant effect on a European site.

10.0 Appropriate Assessment

10.1. Stage 1 Screening

- 10.1.1. The application is accompanied by a remedial AA screening assessment and an rNIS. The remedial NIS considers the impact of the development which has already been carried out on relevant European sites. In this regard I note that this application

was lodged in 2023, and as such, the requirements which now apply under Part 2, S.27 (2B)(b) of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022 concerning the submission of a remedial Natura Impact Statement for the development applies.

- 10.1.2. The screening assessment undertaken on behalf of the applicant concluded that the potential for significant effects could not be ruled out for one no. European Site within the intervening area in view of the conservation objectives of this site and thus Stage 2 was required. Regard is had to the summary of the Stage 1 assessment below.

Step 1: Description of the project

- 10.1.3. I have considered this substitute consent application for the regularisation of existing stables with ancillary services, including, open sand arena, horse walker, dungstead, seed storage silo, staff canteen, toilets and sewage facilities at Ballycrystal E.D, Rossard, Co. Wexford, in light of the requirements of S177U of the Planning and Development Act 2000, as amended. In addition, S177E as amended by Section 27 of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. An AA Screening report has been prepared on behalf of the applicant and the objective information informs this screening determination.

Screening

- 10.1.4. The report provides a brief description of the proposed development and project area characteristics. It focuses on the lands in which the stables are situated. Habitats are classified as Buildings and artificial surfaces (BL1). Terrestrial fauna and invertebrate fauna assumed to be in the area are listed. A site visit was carried out by the report author, Gerard Tobin Ecologist, on 17th August 2003. Regard is had to the issues raised, further below and to the additional issues raised in the Technical Note from the Inspectorate Ecologist included as an Addendum to this Report.

Step 2: Potential impact mechanisms from the project

- 10.1.5. Having regard to the location of the site relative to the nearest Natura 2000 site there is no likelihood for direct impact in the form of:
- Habitat loss or deterioration
 - Species disturbance or mortality
- 10.1.6. There is a possibility of indirect impacts in the form of the following:

- Surface water pollution resulting in changes to environmental conditions such as water quality/ habitat degradation.
- Ground water pollution/ alteration of flows- effects on groundwater dependent habitats.

European Sites

10.1.7. The Screening Report provides an Identification of Relevant European Sites (Natura 2000) within the zone of influence of the proposed development site. It is noted that only the proximate Blackstairs Mountains SAC is identified.

The Qualifying Interests and General Conservation Objectives of the Blackstairs Mountains SAC Designated Natura 2000 site are as shown on Table 1 below:

European Site (code) and distance from proposed development	List of Qualifying interest/Special Conservation Interest	General Conservation Objectives	Connections (source, pathway receptor)	Considered in further screening Y/N
Blackstairs Mountains SAC (site code: 000770) c.234m to the west of the site.	Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030]	To maintain the favourable conservation condition of the Annex I habitats(s) for which the SAC has been selected.	There is source – pathway – connectivity i.e there is a small potential for outflows from the development to the Blackstairs Mountains SAC that could potentially be	Yes

			negatively affected via potential water quality modification. In addition hydrological links between the development site and the River Urrin have not been ruled out.	
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Assessment of likely Effects (Direct/Indirect)

10.1.8. The Screening Report provides that potential negative impacts on Natura 2000 sites from the development are not anticipated with mitigation measures in place at the design stage. That the development is to occur on an already degraded site and as such will not contribute to a change in any way that could affect the Natura sites. While the Screening Report refers to the proposed development, this proposal is for the regularisation of the development. I noted on-site that the construction and ancillary works appear to be complete, and that regularisation is sought rather than for a proposed new development, that has not taken place.

In-combination Effects

10.1.9. The Screening Report provides that based on available information and data, potential negative impacts from the development are not anticipated with mitigation measures in place at design stage. That the proposed development is to occur on an already degraded site and as such will not contribute to a change in any way that could affect Natura sites.

10.1.10. It notes that based on the available information and data there is a potential for negative impact from the proposed development on the SAC's or SPA's located within 15 km of the project site. That it is however, of such a scale that it will cause

neither change nor have any significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites within the threshold distance with the implementation of mitigation measures at the design stage.

- 10.1.11. It provides that more specifically there will be no reduction in habitat area; no disturbance or key species, habitat or species fragmentation; no reduction in species density; no changes in key indicators or conservation value, no change in water quality and no climate change brought about to the SAC and SPA sites within the 15 kms zone with implementation of these mitigation measures.

Screening Report Conclusion – Stage I AA

- 10.1.12. The Screening Report concludes that this process was carried out to ascertain if the project was likely to have significant effects on the Natura 2000 sites within the threshold of the project site. That following the review of the project in accordance with the Guidelines for Planning Authorities entitled ‘Appropriate Assessment of Plans and Projects in Ireland’ this screening has established that the project poses potential for negative impacts namely a potential increase in enrichment of the adjoining Blackstairs Mountrain SAC and as such requires further appropriate assessment.

Comments on the Screening Report

- 10.1.13. I refer to the Inspectorate Ecologist Technical Note which notes that as stated in the Screening Report there is a small potential for outflows from the development to the Blackstairs Mountains SAC that could potentially be negatively affected via potential water quality modification. That the headwaters of the Urrin River are included within the Blackstairs Mountain SAC and are located adjacent to/overlap the folio lands (WX11200). These lands are identified as ‘Land available for spread of manure and effluent’ in the documentation submitted and adjoin/overlap the SAC.
- 10.1.14. In view of the details submitted the applicant, Cashwood Poles Limited have identified lands available for the spread of dung and manure effluent. They refer to two separate Folio Nos. containing 15.17ha and 28.76ha respectively. Folio Maps have been submitted ‘*Land available for spread of manure and effluent*’. The larger of the two land parcels: Folio WX11200 (28.76 hectares) overlaps with the boundary of the Blackstairs Mountain SAC (site code 000770). The Urrin River runs through the SAC adjacent to the border of Folio WX11200. The lands in which the stables are situated are proximate to the Blackstairs Mountains SAC (c.234m).

- 10.1.15. The Inspectorate Ecologist notes that the land spreading of manure and effluent activity associated with the proposed development is not described in the Screening Report. The report does not describe the local characteristics of the lands available for spreading of manure and effluent (for example habitat description).
- 10.1.16. As landspreading is not specifically discussed in the AA screening section of the Report, it is unclear if the effects of landspreading from the development on European sites have been considered in the screening assessment. That the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022, SI 113 of 2022 (amended in 2023 to SI 62/2023) [the GAP Regulations], have not been referenced in this Screening Report and considers that they could have been considered at screening stage. This is enforced by local authorities and the Environmental Protection Agency. The Department of Agriculture, Food and Marine oversee the implementation of the Regulations, which form part of the Fifth Nitrates Action Programme.
- 10.1.17. It is noted that the site layout drawing in the file (PD230002) shows “*existing surface water lines*” extending from the development site towards the “*stream to the west*” which is the Urrin River. Thus, there is evidence of a hydrological pathway from the development to the Blackstairs Mountain SAC. The Urrin River flows into the Slaney River Valley SAC (000781) at Enniscorthy. The boundary of the Slaney River Valley SAC from the proposed development is approximately 6.4km. The distance from the boundary of the Slaney River Valley SAC to the proposed development following the flow of the Urrin River itself is c. 17.8km. Thus, there is evidence of a potential hydrological pathway from the proposed development to the Slaney River Valley SAC via the Urrin River. It is noted that the qualifying interests of the Slaney River Valley SAC include mobile freshwater species such as lamprey, salmon and otter. The Slaney River Valley SAC or any likely impacts are not identified in the report. It is the Inspectorate’s Ecologist’s view that the Slaney River Valley SAC should have been considered at AA screening stage given the hydrological pathway.
- 10.1.18. They note that the River Barrow and River Nore SAC (002162) is located c.3km from the proposed development, however this SAC is located in a different water catchment. That there is no hydrological pathway between the proposed development and the River Barrow and River Nore SAC. Therefore, this SAC can be screened out.

Conclusion – Stage 1 AA

- 10.1.19. The details submitted with the AA Screening, have shown that having regard to the precautionary principle the impacts on the nearby Blackstairs Mountains SAC cannot be ruled out in the absence of mitigation measures for the regularisation of this development. The potential for in-combination or negative effects on the Slaney River Valley SAC has not been considered in the AA screening report. The potential impacts of landspreading in proximity and overlapping the Blackstairs Mountains SAC has also not been considered.
- 10.1.20. The project development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, 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. 000770, in view of the site's Conservation Objectives, and Appropriate Assessment and submission of a Stage 2 NIS is therefore required.

10.2. Stage 2 – Appropriate Assessment

- 10.2.1. The application was accompanied by a remedial Natura Impact Statement, which provides a description of the development, the project site and the surrounding area. The rNIS contained a Stage 1 Screening Assessment which concluded that a Stage 2 Appropriate Assessment was required. This was based on potential negative impacts on the Blackstairs Mountains SAC i.e:
- There is a slight possibility that water quality modification could occur should enrichment of water outflows enter the nearby SAC without attenuation.

Mitigation Measures

- 10.2.2. As the works proposed for Regularisation have been constructed on site, the following measures relative to the Blackstairs Mountains SAC are described in the rNIS as: *Measures at operational stage that will prevent negative impacts on the SAC within the possible impact zone.*

1. Due to the possibility of runoff of enriched outflows during the operational phase of the development all activities and storage of materials will be carried out in such a way as to minimise impact. Surface water runoff will be intercepted and then attenuated through permeable soils. Wheel washing, of vehicles, will be carried out on site, when necessary and grey water from this process will be attenuated before discharge. This will prevent fouling of road surfaces and subsequent discharge to gulley traps in the roads.
2. Runoff will be separated and managed to remove any potential negative impacts on watercourses.
3. Any drains or culverts will operate in such a way that water flow will be attenuated into the adjoining soils.
4. All vehicles will be refuelled on site on a bunded surface.
5. Drip trays will be used under any vehicles employed in the operation on site.
6. No drains will be cleared unless flooding of the site is evident and cleared water will be attenuated through soils before discharge.
7. No unnecessary removal of vegetation.
8. All grey water will be directed to attenuation areas before discharge.
9. All foul water will be treated on site and away from the SAC area.
10. Netting will be erected around the site during the operational phase to intercept windblown debris.
11. All road gullies will be trapped.
12. No land spreading of dung or effluent within the SAC.
13. Dungsteads will not be located within the SAC.
14. Dungsteads will be located on a bunded surface.

10.2.3. They also provide that all foul water will be treated on site and away from the riparian area. That with the implementation of these measures at the operational stage of the development at Ballycrystal all potential negative impacts on nearby SAC's and SPA's can be prevented.

Best Practice Guidelines

10.2.4. Stage 2 provides that Best practice procedure and guidelines and mitigation measures for the protection of the riparian and aquatic environment have been prepared for the protection of the conservation interests of the identified Natura 2000 sites. The proposed development works have been identified as having the potential to cause direct water quality impacts and indirect water quality impacts. That the statement provides the details of how each process adheres to the mitigation measures: timing of works, limiting access outside the proposed works area, biosecurity protocols and water quality protection measures. The rNIS provides a list of Guidelines relative to the Environment and Water Quality, noting that best practice methods included should have due regard to the relevant sections of these Guidelines.

Water Quality Protection

10.2.5. The rNIS provides that any oiling or refuelling of machinery that maybe required for minor machinery used during the proposed works will be stored appropriately in bunded tanks in the site compounds to ensure no spillages occur. Noting that the site compound will have security to deter vandalism, theft and unauthorised access. That machinery will be checked for leaks prior to its use on site and prior to working. All wash water, tool washings and any waste/grey water stored securely and removed; no waste is to be stored on site.

10.2.6. They have regard to the septic tank and secondary effluent treatment system. Noting that the development is within an area of low probability of flooding as indicated by the Geological Survey of Ireland (GSI) Flood risk assessment at Flood info.ie (2022). That vulnerability of the SAC/SPA from effluent treatment on site is thus improbable.

Biosecurity

10.2.7. They provide that Biosecurity measures will follow NRA Guidelines and provide details. That all equipment to be used on site will be steam cleaned before dispatching to site, and all hired equipment will be treated on site with an approved biocide/cleaning agent.

Implications for Conservation Objectives

10.2.8. They refer solely to the Blackstairs Mountains SAC. They have regard to the Conservation Objectives of SAC. They note that favourable conservation status is defined for Annex 1 habitats and Annex II species in the Habitat Directive (1992) and

refer to Articles 1 and 2. They have regard to the document outlining the conservation objectives for the Natura 2000 sites identified (NPWS), where each conservation interest is discussed separately as a conservation objective. Noting that attributes and targets given in these conservation objectives were based on best available information at the time of writing.

10.2.9. They note that the existing development works at Ballycrystal have been identified as having the potential for water quality impacts due to the works on the proposed site. They submit that the implementation of the mitigation measures prescribed for the works will result in these impacts being reduced to imperceptible in scale. That with mitigation there are no impacts arising from the works which would have the potential to affect the conservation status of the Annex I and Annex II species lists as qualifying interests of the Natura 2000 sites identified (Blackstairs Mountains SAC). They note that the proposed works will not affect the conservation objectives of these sites or have an adverse effect on the requirements to meet the conservation objectives with regard to the restoration of Annex I habitats and Annex II species to favourable conservation status.

10.2.10. That water quality is identified as a key sensitivity of the water-dependent qualifying interests of the SAC/SPA sites. That measures to protect water quality are included in the mitigation measures provided. That the proposed works are limited in scale and will comply with the required mitigations to ensure that there will be no further impacts arising which would affect the coherence of the SAC/SPA's ecological structure and function; particularly with regard to the Annex II populations recorded in the study area. That the proposed works are not identified as having the potential to adversely affect the conservation objectives of the identified Natura 2000 sites or with the integrity of the site affect provided mitigation measures are followed.

Conclusion of rNIS

10.2.11. This concludes that the current rNIS has been undertaken to evaluate the potential impacts of the proposed development at Ballycrystal, Co. Wexford, with regard to the effects upon the conservation objectives and qualifying interests (including habitats and species) of both the identified Natura 2000 sites and the local environment. That the report details how the procedures will adhere to the mitigation measures (timing of works, biosecurity protocols and water quality protection measures). Noting that

the statement includes details of the site layout and water quality protection measures. They provide that the mitigation measures proposed are considered to be sufficient to ensure that potential impacts regarding water quality, invasive species and disturbance are minimised.

10.2.12. It is concluded by the Ecologist who prepared the rNIS that from the evidence presented in the current assessment, that the potential direct, indirect and cumulative impacts that may arise from the proposed works do not have the potential to affect the integrity of the Blackstairs Mountains SAC. That the proposed development is within an area of low probability of flooding as indicated by the Geological Survey of Ireland (GSI) Flood risk assessment map at Flood info.ie (2022). That vulnerability of the SAC from effluent treatment on site is thus classed as of low probability. That with the implementation of these measures at operational stage of the existing development all potential negative impacts on nearby SAC's and SPA's can be prevented.

Comments on the rNIS Report Conclusion

10.2.13. I refer to the Inspectorate Ecologist Technical Note which provides a review of and notes some concerns about the content of the rNIS and these include the following:

- It is unclear if the most up to date site specific conservation objectives of the Blackstairs Mountains SAC have been considered in the report i.e. targets and attributes, current conservation status, pressures threats and conditions underpinning site integrity.
- They have regard to the mitigation measures detailed in the report and note that some are site specific and relate to the prevention of polluted surface water runoff into the field drainage (*"surface water lines"*) to the west of the development site which provide connectivity to the Urrin River within the SAC to the west. It is the Inspectorate Ecologist view that these types of mitigation measures are well established and effective in reducing water quality impacts on receiving waters.
- They refer to page 9 of the report which states that *"the current proposal will have no impact in-combination with other plans or projects as it is of such a scale and close to an already serviced area"*. The Inspectorate Ecologist has noted previously, that it is unclear if the effects of landspreading from the

proposed development on European sites have been considered in the assessment. However, they note that points 12-14 of the mitigation measures (page 9) reference land spreading and dungstead management. It is their understanding that these measures would normally be covered as standard under the GAP Regulations.

- It is their understanding that the Board has an established practice of imposing conditions related to the GAP Regulations and the carrying out of an in-combination assessment of associated landspreading as part of either AA screening or AA.
- It is the opinion of the Inspectorate Ecologist that the likely effects on the Slaney River Valley SAC should be considered at AA Screening Stage, in view of hydrological pathway connections.
- That potential water quality impacts from the proposed development on the Urrin River and on both the Blackstairs Mountains SAC and Slaney River Valley can be addressed having regard to compliance with the GAP Regulations and the application of site specific mitigation measures as proposed in the rNIS.

Appropriate Assessment Conclusion

10.2.14. Having carried out screening for Appropriate Assessment of the project, it was concluded in by the Applicant's Ecologist, that the development may have a significant effect on the:

- Blackstairs Mountains SAC (site code: 000770)

Consequently, a remedial NIS was required of the implications of the project on the qualifying interests/special conservation interests of this site in light of their conservation objectives.

10.2.15. As concluded where potentially significant adverse effects were identified a range of detailed mitigation measures have been developed to reduce and avoid impacts on the Blackstairs Mountains SAC. The review of the project has concluded that no significant ecological impacts upon this Natura 2000 site are likely to arise should the project be regularised with this committed mitigation. That the rNIS carried out considers that it has demonstrated that subject to the mitigation measures proposed the project:

- Will have no direct adverse impacts on the designated site; and
- Will have no indirect adverse impacts upon the designated site.

10.2.16. That there will be no likelihood for significant effects on any European sites, and there will be no adverse effects on European site integrity during the operation of the development in combination with other plans or projects.

10.2.17. However, I am concerned that insufficient information/scientific evidence has been submitted as to whether it can be said with certainty, that the operations of this proposal for regularisation, will not impact significantly on the qualifying interests and conservation objectives of the Blackstairs Mountains SAC. In addition, the Inspectorate Ecologist noted that likely effects on the Slaney River Valley SAC are not described in the report. That it is their view that this SAC should be considered at the AA screening state given the hydrological pathway. I would consider that in-combination and cumulative impacts of the project when taken together with other plans and projects have not been dealt with in either the remedial screening report or the rNIS.

It is also of note that details have not been submitted relative to the potential for impacts from landspreading (it has been noted that Folio no. WX11200) overlaps the the Blackstairs Mountains SAC. It has been noted that the application to land of fertiliser i.e land spreading, is regulated by the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022, S.I 113 OF 2022 (amended in 2023 to SI 62/2023) [the GAP Regulations], and compliance with this document has not been referenced in the rNIS.

10.2.18. I would consider that the Potential for In-Combination/Cumulative Impacts has not been adequately addressed. A Findings of No Significant Effects has not been submitted. Therefore, having regard to the precautionary principle, it cannot be said with confidence, that the proposal will not impact on the integrity of the Natura 2000 sites, including the Slaney River Valley SAC.

10.2.19. On the basis of the information provided with the application, including the remedial Natura Impact Statement submitted, and in light of the submissions made, including the Technical Note by the Inspectorate Ecologist and the assessment carried out above, the Board cannot be satisfied that following an Appropriate Assessment the development proposed for regularisation individually, or in combination with other

plans or projects would not adversely affect the integrity of the Blackstairs Mountains SAC and/or the Slaney River Valley SAC in view of the sites Conservation Objectives. In such circumstances the Board is precluded from granting planning permission.

11.0 Recommendation

I recommend that permission be refused for the Reasons and Considerations below.

12.0 Reasons and Considerations

1. On the basis of the information provided with the substitute consent application for the proposed regularisation of the development that has been carried out and which includes landspreading activities and hydrological pathways to the Urrin River, and the details provided in the remedial Natura Impact Statement, the Board cannot be satisfied that this development individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Blackstairs Mountains SAC (Site Code: 000770), or the Slaney River Valley SAC (site code 000781) or any other European site, in view of the sites Conservation Objectives. In such circumstances the Board is precluded from granting permission.
2. The Board is not satisfied on the basis of the information submitted that it has been demonstrated that the surface water and waste water arrangements in place are sufficient and in accordance with the required standards to serve the development proposed for regularisation. The development would therefore be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.
3. The development is located along a minor road which is inadequate in width and alignment and it has not been demonstrated that adequate sight distances can be achieved within the applicant's landholding at the entrance to serve the development proposed for regularisation. Or that adequate measures have been undertaken to prevent surface waters entering onto the local road network in accordance with the required standards set out in the Wexford County Development Plan 2022-2028 (Volume 2, Section 6.2.6

Development Management Manual). As such it has not been demonstrated that the proposal would not endanger public safety by reason of traffic hazard and it would therefore be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

28th of February 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-319539-24
Proposed Development Summary	Application for Substitute Consent for Stables with ancillary services, including open sand arena, horse walker, dungstead, feed storage silo, staff canteen, toilets and sewage facilities.

Development Address		Ballycrystal, Rossard, Bunclody, Co. 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 ✓	Tick if relevant and proceed to Q2.
			No	Tick if relevant. 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)?				
Yes			Proceed to Q3.	
No	✓	The development proposed for Regularisation is not within a Class specified in Part 1 or Part 2, Schedule 5.	Tick if relevant. No further action required	
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?				
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required	
No			Proceed to Q4	
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?				

Yes			Preliminary examination required (Form 2)
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5. Has Schedule 7A information been submitted?		
No	✓	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes	Tick/or leave blank	Screening Determination required

Inspector: _____ **Date:** _____