



An
Coimisiún
Pleanála

Inspector's Report

ABP-319970-24

Development

Development comprising of 2 No. Cubicle Sheds, total floor area 3,770m² (Cow Welfare Units), associated concrete feed passages, total area 1,485m². Slurry Lagoon, total capacity 4,095m³ (Sealed Effluent Storage). Silage Pit, total floor area 1,180m² (Winter Feed Storage), accompanying Concrete Apron, total floor area 545m², adjoining concrete yards, total floor area 1,263m² and associated site works.

Location

Forest Lower, Mountmellick, Co. Laois.

Local Authority

Laois County Council

Type of Application

Application for approval made under Section 177E of the Planning and Development Act, 2000, as amended, for Substitute Consent.

Applicant(s)	Mark Rochford
Prescribed Bodies	Department of Housing, Local Government and Heritage: Development Applications Unit Transport Infrastructure Ireland
Observer(s)	None.
Date of Site Inspection	29 th January, 2026
Inspector	Robert Speer

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1.0 Introduction

- 1.1. This report provides for an assessment of an application for substitute consent under Section 177E of the Planning and Development Act, 2000, as amended, for the retention of 2 No. cubicle sheds and associated concrete feed passages, a slurry lagoon, silage pit and accompanying concrete apron, adjoining concrete yards, and associated site works, at Forest Lower, Mountmellick, Co. Laois. The site is approximately 430m north of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) which is a designated European site. The application is accompanied by a Remedial Natura Impact Statement (NIS) and has been lodged by the applicant (Mark Rochford) directly with the Commission under Section 177E of the Act 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 Commission 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 Commission 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'.
- 1.4. This report has been informed in part by the additional analysis provided by Mr. Emmet Smyth, Senior Environmental Scientist with An Coimisiún Pleanála, in the accompanying 'Memorandum' and 'Technical Note' (dated 19th September, 2025 and 19th February, 2026 respectively) which have been appended as separate documents. For the purposes of clarity, the Commission is advised that the 'Memorandum' reviews the subject development as regards adherence to the European Union, Good Agricultural Practice for the Protection of Waters, Regulations, 2025 while the 'Technical Note' assesses the proposal in the context of

wider water pollution considerations. I would concur with the findings of both these reports and recommend that the Commission have regard to same.

2.0 Site and location

2.1. The application site is located in the rural townland of Forest Lower, Co. Laois, approximately 2km north-northwest of Mountmellick and c. 10km west-southwest of Portarlinton, in an area which is typically rural in character and dominated by a rolling patchwork of agricultural fields interspersed with intermittent instances / groupings of one-off rural housing, farmyards and associated outbuildings. It has a stated site area of 1.4 hectares, is irregularly shaped, and forms part of a larger complex of farm buildings (including cubicle, calving & storage sheds, a hay barn, silage pits, slurry lagoons, a milking parlour, and milk storage & collection facilities) located at the western end of a minor local road (L20971) which supports a wider dairy farm operation. The site itself encompasses the north-western extent of the existing farmyard and is dominated by those structures for which substitute consent has been sought (i.e. cubicle sheds 'A' & 'B' and their associated feed passages, 2 No. silage pits, the slurry lagoon, and associated concrete aprons & yards etc.) along with another longer established cubicle / slatted shed. It is bisected by an existing accessway which extends through the farmyard from the public road to afford access to surrounding agricultural fields via a series of trackways. The site topography generally falls in a southerly direction towards the River Barrow with the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) located approximately 430m to the south.

3.0 Development Description

- 3.1. The development the subject of this application for substitute consent consists of the following:
- 2 No. cubicle / cow feed sheds (cow welfare units) identified as Shed 'A' (floor area: 1,795m²) and Shed 'B' (floor area: 1,975m²) on the site layout plan with a combined total floor area of 3,770m² and associated concrete feed passages (floor area: 1,485m²).

- A silage pit (for the storage of winter feed) comprising two bays identified as 'Pit 01' (floor area: 565m²) and 'Pit 02' (floor area: 615m²) on the site layout plan with a combined total floor area of 1,180m² and the accompanying concrete apron (floor area: 545m²).
- An effluent storage slurry lagoon with a volumetric capacity of 4,095m³.
- Adjoining concrete yards (floor area: 1,263m²) and associated site works.

3.2. **Accompanying Documents:**

- 'Statement of Exceptional Circumstances' prepared by William J. Smyth.
- Report (including 'Farmer Full – Fertiliser Plan 2023') prepared by DA Dempsey Agri.
- 'Habitats Directive Appropriate Assessment Screening and Remedial Natura Impact Statement (rNIS)' prepared by Kingfisher Environmental Consultants.
- Drawings & photographs
- Public notices
- Application form
- Letter of consent to agent
- Cover letter prepared by JK Design, Architectural Drawing, Design & Planning.

4.0 **Planning History**

4.1. **On Site:**

- 4.1.1. PA Ref. No. 17224. Application by Mark Rochford for permission to (1) Construct a cubicle shed, (2) Construct a cubicle shed adjacent to existing unroofed feed area / stand off yard, (3) Construct an extension to existing milking parlour collection yard, (4) Construct 2 No. concrete aprons to be used as silage storage areas, and (5) All associated site works. On 22nd June, 2017 the Planning Authority issued a request in accordance with Section 177T(5) of the Planning and Development Act, 2000, as amended, for the applicant to submit a Natura Impact Statement for the proposed development which included an advisory note seeking clarification as to the planning

status for an existing unroofed feed area and a slatted shed with associated underground tanks on site. Following the receipt of a response to this request, on 27th October, 2017 the applicant was advised that adverse impacts on the conservation objectives of the River Barrow and River Nore Special Area of Conservation could not be reasonably ruled out and therefore a Stage 2 Appropriate Assessment was required, however, given that there was an element of retention involved, the Planning Authority would not be in a position to deal with the application. The applicant was thus directed to apply to An Bord Pleanála for leave to apply for Substitute Consent (Part XA) in accordance with Section 177(c) of the Act with that element of the application seeking retention having to be accompanied by a remedial NIA in accordance with Section 177F and 177G of the Act.

- 4.1.2. PA Ref. No. 2360504. Application by Mark Rochford for permission to retain 2 No. cubicle sheds, slurry lagoon, silage pit and associated site works. Pursuant to Section 34(12) of the Planning and Development Act, 2000 as amended, the Planning Authority refused to consider this application for retention on the basis that if an application for permission had been made in respect of the development concerned before it was commenced, it would have required an appropriate assessment to assess the potential impacts on the River Barrow and River Nore SAC.

5.0 Legislative and Policy Context

- 5.1. **EU Habitats Directive (92/43/EEC):** This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Articles 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).
- 5.2. **European Communities (Birds and Natural Habitats) Regulations, 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require that where an appropriate assessment has already been carried out by a 'first' public

authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.

- 5.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), with the latter two forming part of the European Natura 2000 Network.
- 5.4. **Planning and Development Act, 2000 (as amended):** Part XA of the Planning and Development Act, 2000, as amended, sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives. The basis for substitute consent is set out in Part XA of the Planning and Development Act, 2000, as amended, and Section 177E references applications for substitute consent.

Decision of the Board:

- 5.4.1. Section 177K(1A)(a) of the Act states the following:

'The Board shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board'.

- 5.4.2. Section 177K(1J) states:

'In considering whether exceptional circumstances exist under subsection (1A)(a) the Board shall have regard to the following matters:

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

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

(c) 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;*
- (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;*
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
- (g) such other matters as the Board considers relevant’.*

5.4.3. Section 177K(2) states as follows:

‘When making its decision in relation to an application for substitute consent, the Board shall consider the proper planning and sustainable development of the area, regard being had to the following matters:

- (a) the provisions of the development plan or any local area plan for the area;*
- (b) the provisions of any special amenity area order relating to the area;*
- (c) the remedial environmental impact assessment report, or remedial Natura impact statement, or both that report and that statement, as the case may be, and, where section 177E(2A)(b) applies, the environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, submitted with the application or in accordance with a requirement under subsection (2CA), (2CB) or (2CC);*
- (d) the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was or is proposed to be carried out;*
- (e) the report and the opinion of the planning authority under section 177I;*
- (f) any submissions or observations made in accordance with regulations made under section 177N;*

- (g) any report or recommendation prepared in relation to the application by or on behalf of the Board, including the report of the person conducting any oral hearing on behalf of the Board;*
- (h) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact;*
- (i) conditions that may be imposed in relation to a grant of permission under section 34(4), 282(3) or 293(7);*
- (j) the matters referred to in section 143;*
- (k) the views of a Member State where the Member State is notified in accordance with regulations under this Act;*
- (l) any relevant provisions of this Act and regulations made thereunder’.*

5.4.4. **Laois County Development Plan, 2021-2027:**

Chapter 9: Rural Laois:

Section 9.2: Agriculture:

Section 9.2.1: Sustainable Food Production:

Policy Objectives for Agriculture and Food Production:

- RL 1:* Maintain a vibrant and healthy agricultural sector based on the principles of sustainable development whilst at the same time finding alternative employment in or close to rural areas to sustain rural communities.
- RL 2:* Facilitate the development of agriculture while ensuring that natural waters, wildlife habitats and conservation areas are protected from pollution.
- RL 3:* Work with the Eastern and Midlands Regional Assembly and other relevant stakeholders in identifying areas of high value agricultural land in the County to address the need for sustainable food supplies.

Agriculture Development Management Standard:

- DM RL 1: General Consideration for Agricultural Buildings:*

Agricultural developments have the potential to impact on the environment and the landscape. The traditional form of agricultural buildings is disappearing with the onset of advanced construction methods and wider range of materials. Some new farm buildings have the appearance of industrial buildings and due to their scale and mass can have serious major visual impacts.

In dealing with applications for agricultural developments the Planning Authority will have regard to the following:

- 1) Require that buildings be sited as unobtrusively as possible and that the finishes and colour used will blend the development into its surroundings.
- 2) The proposed developments shall meet with the requirements of the Department of Agriculture with regard to storage and disposal of waste.
- 3) The Council accepts the need for agricultural buildings and associated works (walls, fences, gates, entrances, yards) to be functional but they will be required to be sympathetic to their surroundings in scale, material and finishes.
- 4) Buildings should relate to the landscape. Traditionally this was achieved through having the roof a darker colour than the walls.
- 5) Appropriate roof colours are dark grey, dark reddish brown or a very dark green. Where cladding is used on the exterior of the farm buildings dark colours should be used.
- 6) Location and impacts on the road network and other associated uses.
- 7) Ensure it does not have an undue negative impact on the visual / scenic amenity of the countryside and identify mitigating measures where required.

All agricultural buildings should be located an adequate distance from any watercourse to reduce the risk of contamination.

Section 9.6: Commercial Developments in Rural Areas:

Policy Objectives for Rural Development:

- RL 4:* Support the expansion, diversification and intensification of agriculture and the agri-food sector by facilitating appropriate related development subject to environmental and planning considerations.
- RL 13:* Have regard to Laois' Landscape Character Assessment, as well as more general planning considerations, such as transport, environmental sensitivities, habitat considerations, the need for buffer zones around water bodies in its determination of planning applications related to land-based economic activities.
- RL 18:* Protect rural amenities, natural archaeological and natural heritage, visual amenities, eco-systems, conservation areas, landscape and scenic views from adverse impacts of agricultural practices and development particularly in high amenity areas and ensure that it is appropriate in nature and scale, and ensure it does not have an undue negative impact on the visual/scenic amenity of the countryside and identify mitigating measures where required. Integrate into the landscape, including the minimal use of signage.
- RL 21:* Laois County Council will implement the objectives and targets at county level of the EU 'A Farm to Fork strategy', published in May 2020. The Council will also implement the targets of the 14 point EU Nature Restoration Plan in the 'EU Biodiversity Strategy for 2030 - Bringing nature back into our lives'. Agricultural development proposals must demonstrate compliance with the targets and policies of both strategies, with those agricultural installations below the Industrial Emissions Directive thresholds for EPA licencing will be subject to appropriate assessment screening and that assessment of these impacts should follow EPA Guidance published in May 2021.

Chapter 10: Infrastructure:

Section 10.2: Surface Water, Drainage and Flooding:

Section 10.2.2: Flooding Risk Management:

- FRM 2:* Ensure that all development proposals comply with the requirements of the Planning System and Flood Risk Management-Guidelines for

Planning Authorities' (DEHLG 2009) and to ensure that the Justification Test for Development Management is applied to required development proposals and in accordance with methodology set out in the guidelines and new development does not increase flood risk elsewhere, including that which may arise from surface water runoff.

FRM 3: Support the implementation of recommendations in the CFRAM Programme to ensure that flood risk management policies and infrastructure are progressively implemented.

FRM 4: Support the implementation of recommendations in the Flood Risk Management Plans (FRMP's), including planned investment measures for managing and reducing flood risk.

FRM 7: Protect and enhance the County's floodplains and wetlands as 'green infrastructure' which provides space for storage and conveyance of floodwater, enabling flood risk to be more effectively managed and reducing the need to provide flood defences in the future, subject to normal planning and environmental criteria.

FRM 13: Ensure new development does not increase flood risk elsewhere, including that which may arise from surface water runoff

Flood Risk Development Management Standard:

DM FRM 1: Flood Risk Assessments:

Flood risk management will be carried out in accordance with the Flood Risk Management Guidelines for Planning Authorities, Department of Environment, Community and Local Government (2009). Development proposals on lands that may be at risk of flooding should be subject to a flood risk assessment, prepared by a suitably qualified person, in accordance with the guidelines.

Proposals for minor development to existing buildings in areas of flood risk (e.g. extensions or change of use) should include a flood risk assessment of appropriate detail.

For any development proposal in an area at moderate or high risk of flooding that is considered acceptable in principle (i.e. has passed the

Plan Making Justification Test), the site specific FRA must demonstrate that appropriate mitigation measures can be put in place and that residual risks can be managed to acceptable levels. This includes a number of mitigation measures, which could include:

- Site Layout and Design
- Ground Levels, Floor Levels and Building Use
- Raised Defences
- Green Corridor

The precise solution will depend on the site specific details, all of which shall adhere to the Flood Risk Management Guidelines for Planning Authorities, Department of Environment, Community and Local Government (2009), or where relevant more up to date guidance.

Section 10.4.2: *Environmental Protection:*

Water Quality Policy Objectives

- ES 17:** Implement the provisions of water pollution abatement measures in accordance with National and EU Directives and other legislative requirements in conjunction with other agencies as appropriate.
- ES 18:** Maintain and improve the water quality in rivers and other water courses in the county, including ground waters. The Council will have cognizance of, where relevant, the EU's Common Implementation Strategy Guidance Document No. 20 and 36 which provide guidance on exemptions to the environmental objectives of the Water Framework Directive.
- ES 21:** Ensure the protection of all High Status Water Bodies in the county by complying with the requirements of the Local Government (Water Pollution) Act 1977, (as amended), the Nitrates Directive (91/676/EEC), the European Communities Environmental Objectives (Surface Waters) Regulations 2009, the European Communities (Groundwater) Regulations 2010; which standards and objectives are included in the River Basin Management Plans, and other relevant Regulations.

Section 10.4.2.5: *Groundwater Protection:*

In County Laois, the main pressures on waterbodies are from nutrients related to agriculture. The objective of the Nitrates Directive is the prevention of the pollution of ground water and surface waters by nitrates from agricultural sources. The Council works with the Department of Agriculture, Food and the Marine to achieve the maximum protection of waters from nitrate and phosphorous pollution, and will seek compliance with any bye-laws made under the Local Government (Water Pollution) (Amendment) Act 1990 in relation to agricultural activities in those parts of the county, which have been prescribed in the byelaws.

Groundwater Protection Policy Objectives:

- ES 23:* Ensure, through the implementation of the relevant River Basin Management Plan and their associated Programmes of Measures and any other associated legislation, the protection and improvement of all drinking water, surface water and ground waters throughout the county.
- ES 24:* Protect and develop, in a sustainable manner, the existing groundwater sources and aquifers in the County and control development in a manner consistent with the proper management of these resources, in accordance with the County Water Source Protection Zones.
- ES 27:* Ensure the protection of groundwater dependant Natura 2000 sites which rely on the continued supply of groundwater resources to secure the key environmental conditions that support the integrity of the site and through the protection of groundwater standards as defined by the National River Basin Management Plan 2018 – 2021 (and any subsequent Plan). Where no detailed Plan for protection of a specific source is available wastewater discharge will not be permitted within a radius of 200 metres of that source.
- ES 29:* Continue efforts to improve water quality under the Local Government (Water Pollution) Act 1977, (as amended) and by implementing the measures outlined under the Nitrates Directive (91/676/EEC) and complying with the requirements of the Surface Water Legislation Environmental Objectives (Surface Waters) Regulations 2009, the European Communities (Groundwater) Regulations 2010; which

standards and objectives are included in the River Basin Management Plans, and other relevant Regulations.

ES 33: Encourage the use of catchment-sensitive farming practices, in order to meet Water Framework Directive targets, European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, as amended and comply with the relevant River Basin Management Plan.

ES 36: Ensure that developments that may adversely affect water quality will not proceed unless mitigation measures are employed, such as settlements ponds, interceptors etc.

Chapter 11: Biodiversity and Natural Heritage:

Section 11.4: Designated Sites:

Section 11.4.1: Special Areas of Conservation (SAC):

Policy Objectives for Biodiversity and Designated Sites:

BNH 1: Protect, conserve, and seek to enhance the county's biodiversity and ecological connectivity.

BNH 2: Conserve and protect habitats and species listed in the Annexes of the EU Habitats Directive (92/43/EEC) (as amended) and the Birds Directive (2009/147/EC), the Wildlife Acts 1976 and 2010 (as amended) and the Flora Protection Orders.

BNH 3: Support and co-operate with statutory authorities and others in support of measures taken to manage proposed or designated sites in order to achieve their conservation objectives and maintain the favourable conservation status and conservation value of Sites under National and European legislation and International Agreements and maintain and / develop linkages between them where feasible.

BNH 5: Projects giving rise to significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall not be permitted on the basis of this Plan (either individually or in

combination with other plans or projects). Screening for AAs and AAs undertaken shall take into account invasive species as relevant.

BNH 6: Assess, in accordance with the relevant legislation, all proposed developments which are likely to have a significant effect (directly or through indirect or cumulative impact) on designated natural heritage sites, sites proposed for designation and protected species

BNH 13: It is a policy objective of the Council to require new developments to identify, protect and enhance ecological features by making provision for local biodiversity (for example, through provision of swift boxes or bricks, bat roost boxes, green roofs, etc.) and improve the ecological coherence of wider green infrastructure.

Development Management Standard for Designated Sites:

DM BNH 2: *Appropriate Assessment:*

Article 6(3) and 6(4) of the Habitats Directive requires an Appropriate Assessment of any plan or project whether within or outside a designated Natura 2000 site, which does not directly relate to the management of the site but may impact upon its conservation objectives. All planning applications shall be screened for Appropriate Assessment and a Phase II Appropriate Assessment carried out if necessary.

Where full Appropriate Assessment is required, the assessment shall be based on best scientific knowledge, by a person with ecological expertise. It shall address the potential impacts of the plan or project on the conservation objectives of any Natura 2000 site. The impacts assessed must include the indirect and cumulative impacts of approving the plan or project, considered with any current or proposed activities, developments or policies impacting on the site. The potential impacts of policies outside Natura 2000 sites but potentially impacting upon them (known as 'ex situ' impacts) must also be included in the assessment. (Refer to: Appropriate Assessment of Plans and projects in Ireland, Guidance for Planning Authorities, DEHLG (2009).

Section 11.7: *Waterways and Wetlands:*

Policy Objectives for Waterways and Wetlands:

- BNH 31:** Protect waterbodies and watercourses from inappropriate development, to ensure they are retained for their biodiversity and flood protection values and to conserve and enhance where possible, the wildlife habitats of the County's rivers and riparian zones, lakes, canals and streams which occur outside of designated areas to provide a network of habitats and biodiversity corridors throughout the county.
- BNH 32:** Promote and develop the Barrow Blueway initiative and work with State Agencies, landowners, local communities and other relevant groups to protect and manage inland waters, river corridors and their floodplains from degradation and damage, and to recognise and promote them as natural assets of the urban and rural environment.

Section 11.10: *Landscape:*

Laois County Council has prepared a Landscape Character Assessment to identify specific areas that are characterised by sensitive landscapes. (See Figure 11.6) Sensitive areas include upland areas, visually open and expansive areas and areas in the vicinity of natural heritage or built heritage assets or scenic views.

The Assessment will help developers select less sensitive sites for development. Landscape Character Types are distinct types of landscape that are relatively homogenous in character. They are generic in nature in that they may occur in different localities throughout any defined area. Nonetheless, where they do occur, they commonly share similar combinations of geology, topography, land cover and historical land use. For example, blanket bog uplands are distinct landscape character types and are recognisable as such whether they occur in County Laois or other counties.

(The proposed development site is located within the '*Lowland Agricultural Area*' LCA as shown on Map 11.7: '*Landscape Character Assessment*' of the Development Plan, which is considered to be of '*Low Sensitivity*' by reference to Table 11.6: '*Landscape Sensitivity*' wherein it is described as having the capacity to generally

accommodate a wide range of uses without significant adverse effects on the appearance or character of the area).

Policy Objectives for Landscape Character Areas:

- LCA 1:** Ensure that consideration of landscape sensitivity, as indicated in Table 11.6 of the Plan, is an important factor in determining development uses. In areas of high landscape sensitivity, the design, type and the choice of location of proposed development in the landscape will also be critical considerations.
- LCA 2:** Protect and enhance the county's landscape, by ensuring that development retains, protects and, where necessary, enhances the appearance and character of the existing local landscape and conserve valuable habitat including any European and National Designations.
- LCA 3:** Seek to ensure that local landscape features, including historic features and buildings, hedgerows, shelter belts and stone walls, are retained, protected and enhanced where appropriate, so as to preserve the local landscape and character of an area, whilst providing for future development.

Policy Objectives for Lowland Agricultural Areas:

- LCA 12:** Recognise that this lowland landscape character area includes areas of significant landscape and ecological value, which are worthy of protection, particularly the 18th and 19th century estate landscapes and associated parkland & woodland to develop them as a tourism resource.
- LCA 13:** Continue to permit development that can utilise existing structures, settlement areas and infrastructure, whilst taking account of the visual absorption opportunities provided by existing topography and vegetation.
- LCA 14:** Recognise that the lowlands are made up of a variety of working landscapes, which are critical resources for sustaining the economic and social wellbeing of the county.

LCA 15: Promote good agricultural practices to create a sustainable rural economy and support incentives for smaller rural/family farms to manage their land to avoid loss of hedgerows and field patterns.

Chapter 13: General Location and Pattern of Development:

Section 13.3.4: Design and Rural Development

6.0 European and National Natural Heritage Designations

6.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

6.1.1. *European Sites:*

- River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 430m south of the site.
- Mountmellick Special Area of Conservation (Site Code: 002141), approximately 4.4km east-southeast of the site.
- Slieve Bloom Mountains Special Protection Area (Site Code: 004160), approximately 5.6km west of the site.
- Slieve Bloom Mountains Special Area of Conservation (Site Code: 000412), approximately 8.4km southwest of the site.

6.1.2. *National Designations:*

- Clonreher Bog Natural Heritage Area (Site Code: 002357), approximately 6.3km south of the site.
- Ridge of Portlaoise Proposed Natural Heritage Area (Site Code: 000876), approximately 7.2km south of the site.
- Slieve Bloom Mountains Proposed Natural Heritage Area (Site Code: 000412), approximately 8.4km southwest of the site.
- Raheen Lough Proposed Natural Heritage Area (Site Code: 000917), approximately 8.6km north of the site.
- Emo Court Proposed Natural Heritage Area (Site Code: 000865), approximately 9.5km east-southeast of the site.

7.0 Prescribed Bodies

7.1. The following prescribed bodies were invited to comment:

- Laois County Council
- Department of Housing, Local Government and Heritage (Development Applications Unit)
- Irish Water
- Transport Infrastructure Ireland
- Department of Agriculture, Food and Marine
- Department of Communications, Climate Action and Environment
- An Taisce
- Inland Fisheries Ireland
- The Heritage Council
- Environmental Protection Agency

7.2. Two prescribed bodies responded as follows:

7.2.1. ***Transport Infrastructure Ireland:*** Requests the Commission to have regard to the provisions of official national road policy as set out in the DoECLG's '*Spatial Planning and National Roads, Guidelines for Planning Authorities*' and relevant TII Publications in its assessment of the application.

7.2.2. ***Department of Housing, Local Government and Heritage: Development Applications Unit:***

- *Nature Conservation:*

States that the Remedial Natura Impact Statement is not considered to provide for an adequate assessment of the potential for the development to adversely affect the conservation objectives of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) due to the increased landspreading of slurry arising from the development.

The response continues by noting that the applicant's landholding, on which slurry is to be spread, bounds the River Barrow and the SAC for over 2km

before stating that the landspreading arising due to the development is considered to form an intrinsic part of the project which requires assessment pursuant to the Article 6(3) of the Habitats Directive. The Department proceeds to reference Sample Case Study 3 of the OPR's Practice Note PN01: *'Appropriate Assessment Screening for Development Management'* which is considered to outline a case similar to the subject development and advises that *'land spreading of nutrient rich effluent would occur at certain times of the year and impacts may be significant due to the proximity and pathway to the SAC and the sensitivity of the QI to changes in water quality'*.

The River Barrow and River Nore SAC is noted as having been designated for a number of water-dependent species and habitats which are known or presumed to occur within the zone of influence of the development and have specific water quality requirements that are outlined in their respective Site Specific Conservation Objectives:

- Atlantic Salmon (Conservation status = Unfavourable Inadequate)
- White-clawed crayfish (Conservation status = Bad)
- River Lamprey (Conservation status = Unknown)
- Brook Lamprey (Conservation status = Favourable)
- Watercourses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachium* vegetation (Conservation status = Unfavourable Inadequate).

The Conservation Objective for Atlantic Salmon is to restore the favourable conservation condition of the species in the River Barrow and River Nore SAC, which is defined, inter alia, by the target for at least an EPA Q value of Q4 at all sites sampled by the EPA. The Department notes that the most recent water quality monitoring within the Barrow_040 waterbody downstream of the development (2023) is moderate (3-4) (Barranagh's Bridge) while the latest upstream river Q value is good (4) (Twomile Bridge) (2023). It is further noted that landspreading of slurry will occur close to the Barrow_040 river waterbody which is described as being at risk of not meeting its Water Framework Directive (2000/60/EC) obligations due to the presence of nutrients from agriculture.

Within the Agricultural Report prepared by Dempsey Agri, it is noted that 5,327.4m³ of slurry is produced on the farm from 211 cattle (18-24 months), 314 cattle (6-12 months) and 700 dairy cows. The RNIS also states that *'Slurry spreading is closed for the period of 1 October to 12 January in order to protect surface waters. The applicant will adhere to Statutory Instrument S.I. No. 113 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022] and Statutory Instrument S.I. No. 393 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022]'*.

Having considered the submitted particulars, the Department has submitted that it is not clear that the general nationwide provisions of the above regulations or the 'Farm Full – Fertiliser Plan' are sufficient to ensure that the subject development will not adversely affect the integrity of the River Barrow and River Nore SAC, in particular relating to water quality and the target to achieve at least Q4 for Atlantic Salmon and to secure the lasting preservation of this species within the site. Furthermore, appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects in light of the best scientific knowledge in the field (C-127/02 paragraph 61) and, therefore, it has also been submitted that further information is required in relation to the matter which may require input from a suitably qualified hydrologist.

- *In Combination Effects:*

While noting that the RNIS states *'There has not been nor will there be any cumulative impact upon any Natura 2000 sites in combination with other plans and projects'*, it is the position of the Department that the potential for in-combination effects with the existing landspreading of slurry within the project's zone of influence has not been assessed. In this regard, it is submitted that the Habitats Directive does not circumscribe the scope of either 'plan' or a 'project' by reference to particular categories of either with the key limiting factor instead being whether or not they are likely to have a significant effect on a site. The term 'project' should be given a broad interpretation to include both construction works and other interventions in the natural environment. It should also be noted that plans / projects extend beyond

those covered by the Planning and Development Act, 2000. Therefore, the Department is of the view that further information is required in relation to in-combination effects of existing landspreading of slurry within the project's zone of influence.

8.0 Observers

8.1. None.

9.0 Planning Authority Report

9.1. None received.

10.0 Applicant's Response to the submission received from the Department of Housing, Local Government and Heritage: Development Applications Unit:

10.1. The response prepared by JK Design on behalf of the applicant is supported by two reports prepared by Kingfisher Environmental Consultants and DA Dempsey Agri., the contents of which can be summarised as follows:

10.2. *Kingfisher Environmental Consultants:*

10.2.1. *Landspreading:*

- The rNIS fully assesses the potential for the development (including landspreading) to adversely affect the conservation objectives of the River Barrow and River Nore SAC. The development does not give rise to any new activity or intensification of landspreading as the landbank has exponentially increased while the slurry application rates of organic manures (especially nitrogen) have reduced in accordance with the Nitrates Directive.
- Prior to construction of the subject works, the lands in question (which included an established bull house and slatted tank) were already in agricultural use as grazing for the adjacent dairy unit. Accordingly, there has been no change in the agricultural use of the land (which also applies to the

overall farmholding) and no new practices have been introduced with the lands having been managed as dairy cow grazing for many years.

- Effluent is temporarily stored in the lagoon during the closed winter period before being periodically removed by tanker and spread within the landholding in compliance with the Department of Agriculture's 'Code of Practice for Landspreading'. Clean stormwater runoff is carefully segregated and collected in a clean surface water system before being discharged to an open field ditch to the southeast of the site.
- DA Dempsey Agri. has provided a detailed Nutrient Management Report for the dairy farm and has made the following independent findings:

'The enclosed "Farmer Full – Fertiliser Plan 2023" outlines the total quantity of slurry, soiled water, dairy washings and farmyard manure produced on the holding together with the associated storage facilities.

All silage effluent from existing silage bases is piped to existing slatted tank / slurry lagoon adjacent. No additional storage capacity required for silage effluent as all effluent will be land spread prior to the 01st of October annually. The quantity of silage effluent produced during the closed period 01st October to the 12th of January, will be negligible.

The quantity of soiled water generated from the silage bases is based on a maximum average area of 25 percent been in use during the closed period (the length of the silage base in the fertiliser plan is entered as 25 percent of the total length).

The production of dairy washing and soiled water from the collecting yard is based on all dairy cows been dried off from milk production for a minimum period of 55 days during the closed period. The figures entered for average number of cows and maximum number of cows milked at any time represents the maximum extent of the production of dairy washing and soiled water during the closed period, with historical figures less than those used in calculations'.

- Slurry spreading is closed for the period 1st October to 12th January in order to protect surface waters. The applicant will adhere to S.I. No. 114 of 2022

(European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022) & S.I. No. 393 of 2022 (European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2022).

- The accompanying report prepared by DA Dempsey Agri. demonstrates beyond any reasonable scientific doubt that landspreading activities both before and after the development accord with the Nitrates Directive and all applicable legislation.

'An updated nutrient management plan has been provided to reflect changes in the Nitrates legislation which came into force in 2024. The enclosed "Farmer Full – Fertiliser Plan 2024" outlines the total quantity of slurry, soiled water, dairy washings and farmyard manure produced on the holding together with the associated storage facilities. This plan also outlines the spread lands to which all slurry, soiled water, dairy washings and farmyard manure are applied. This information is also available in the "Farmer Full – Fertiliser Plan 2023".

A map has been provided which outlines the areas to which slurry may be applied. The area selected for slurry spreading is based on the existing soil fertility and the proposed cropping of the land. Under the Nitrates Regulations no land spreading of organic manures is permitted on soils with a Phosphorus Index (P Index) of 4 unless all soils with a P index of 3 or below have been exhausted. The slurry is applied to fields which have the lowest organic loading from grazing livestock. The fields which are cut for silage or zero grazed throughout the year are grazed during the shoulders of the year, February / March and October / November. As these fields are not grazed to the same extent by livestock these are considered the most suitable locations for land spreading of organic manures. This ensures that there is an even distribution of organic nutrient loadings across the entire holding subject to the restriction on land spreading organic manures on soils with a P index of 4. The proposed maximum quantity of nutrients to be applied to the holding is outlined in pages 6 through 12 of the plan. The quantities applied per hectare are within the limits set down in European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2022 (S.I. No. 113 of 2022)

and as amended. There are several conditions outlined in S.I. 113 and as amended which afford protection to water bodies.

Table 1 outlines the total quantity of organic nitrogen produced on the holding from the period 2014 to 2024. This holding has applied for a Nitrates Derogation during each of these years. The maximum permitted organic nitrogen per hectare from 2014 to 2023 by way of derogation is 250Kg Organic Nitrogen per Hectare (250 Kg/N/Ha). The maximum figure has been reduced to 220Kg/N/Ha for 2024 and thereafter. As part of the Derogation Terms and Conditions the applicants must adhere to stricter standards to protect water quality which exceed the minimum requirements outlined in the S.I. 113 and as amended’.

- The farm complied with the Nitrates Directive pre-development and continues to accord with same. The subject development did not result in an increase or intensification of slurry spreading on the farm as the land bank increased exponentially while slurry application were rates reduced in line with the requirements of the Nitrates Directive.
- There have no incidents as regards slurry spreading under the farm fertiliser plans. All lands included in the Farm Fertiliser Plan have always been subject to landspreading and no new practices have occurred as a result of the development. To imply that water quality in the River Barrow and River Nore may have been affected by landspreading from the development is unscientific and unfounded.
- The landspreading of organic manures as a natural fertiliser is integral to farming systems and is established best practice carried out under the Nitrates Directive and Good Agricultural Practice for the Protection of Waters Regulations, 2022. A farmer is entitled to manage his farmland as he deems appropriate subject to the above guidance. The appropriate assessment screening relates to the development site as outlined in red on the site location and layout maps.
- The landspreading of organic manures is a standard design measure incorporated into agricultural development and can be considered during screening for appropriate assessment in line with *Eco Advocacy v. An Bord*

Pleanala (Case ECJ C-721/21) when the European Court of Justice found that standard design measures could be taken into account in Stage 1 Screening (the Court found that where measures are incorporated into the design of a project not with the aim of reducing the negative effects of that project on the protected site concerned, but as standard features required for all projects of the same type, those elements could not be regarded as indicative of probable significant harm to the site).

- The inclusion of spreadlands in screening for the purposes of appropriate assessment is outside of the remit of the planning authority once the applicant has demonstrated compliance with the Nitrates Directive and Good Agricultural Practice for the Protection of Waters Regulations, 2022 (as is the case in the subject instance). The Development Applications Unit of the National Parks and Wildlife Service are attempting to expand the scope of the substitute consent application to every part of the farm which is not supported by case law.

10.2.2. *Sample Case Study 3 in the Office of the Planning Regulator's Guidance on Appropriate Assessment Screening:*

- With regard to the Development Applications Unit citing of the aforementioned sample case study, the development area is limited to that within the red line boundary of the submitted particulars and does not extend to include the spreadlands.
- By way of clarity, the OPR's Practice Note PN01: *'Appropriate Assessment Screening for Development Management'* states the following:

'For the avoidance of doubt, Practice Notes do not have the status of Ministerial Guidelines under Section 28 of the Planning and Development Act 2000, as amended. They are issued for general information purposes only, in accordance with the OPR's statutory remit to engage in education, training and research activities. Practice Notes cannot be relied upon as containing, or as a substitute for, legal advice. Legal or other professional advice on specific issues may be required in any particular case'.

Therefore, as Sample Case Study 3 is not case law and does not form part of any ministerial guidance, it cannot be relied on as a 'like-for-like' scenario for the development before the Commission.

Sample Case Study 3 refers to the *'Construction of a pig house (1,600 weaners) with slatted floor and slurry tank underneath, an extension to existing concrete yard and ancillary site works'* and further states that the *'Application does not include details of land-spreading / disposal of slurry arising from the development'*.

Due to this absence of information, the case study states the following as regards potential impacts:

'Water pollution from land spreading of slurry from the slatted tank. No detail is provided of the amount of effluent arising from the proposed development, the quantity of land required for disposal (land spreading) or the locations for land spreading. A general statement is made that activities will be carried out in accordance with the EU (Good Agricultural Practice for the Protection of Waters) Regulations 2017.'

'Land spreading of nutrient rich effluent would occur at certain times of the year and impacts may be significant due to the proximity and pathway to the SAC and the sensitivity of the QI to changes in water quality'.

It is considered that the Development Applications Unit's reference to the aforementioned case study is misleading and disingenuous in light of the comprehensive information provided with the subject application as regards landspreading (despite any such activity satisfying the criteria set out in ECJ C-721/21).

Furthermore, the very nature of pig units is such that they rely on third party lands for landspreading or anaerobic digestion to manage the effluent produced. They do not as a rule have large privately owned or managed landbanks upon which to sustainably landspread effluent and, therefore, are not comparable to a privately owned dairy farm with its own landbanks.

10.2.3. Water Quality of the River Barrow and River Nore:

- There is no scientific evidence to support the suggestion that the subject farm has caused a reduction in water quality downstream of the landspreading areas. In contrast, the applicant has demonstrated beyond reasonable scientific doubt that his landspreading activities fully comply with all Directives and Statutory Instruments pertaining to the landspreading of organic manures.
- The water monitoring point at Barranagh's Bridge is located downstream of the applicant's farm and the Mountmellick Wastewater Treatment Plant (WWTP) and in this regard it is of relevance to note that the 2022 and 2023 Annual Environmental Reports (available from the Environmental Protection Agency) for the WWTP show persistent exceedances of the permitted discharge levels. An inspection of the WWTP by the EPA on 6th March, 2024 can be summarised as follows:

'Wastewater discharges from Mountmellick have been identified as a pressure putting the Owenass_020 waterbody at risk of not meeting its environmental objective during the characterisation for the third cycle of Ireland's River Basin Management Plan. EPA inspectors carried out a site visit at Mountmellick wastewater treatment plant (WWTP) to follow up on this and assess compliance with the licence. There have been some ammonia Emission Limit Value (ELV) breaches year-to-date and ortho-phosphate in all samples over the past year breached the ELV.'

The wastewater discharge licence requires Uisce Éireann to provide nutrient removal to comply with the ELVs in the licence by 31/12/2019. Uisce Éireann has failed to carry out this work. Uisce Éireann's representatives advised that the outstanding work is due for completion shortly. Uisce Éireann must take all steps necessary to ensure the upgrade works are completed and that discharges from Mountmellick WWTP comply with the ELVs at all times. Discharges from Mountmellick WWTP breached the emission limit values (ELVs) for both ammonia and ortho-phosphate in the last 12 months. Uisce Éireann's representatives advised that process optimisation will begin in the aeration basin to resolve the ammonia breaches, however, the ortho-phosphate breaches are still ongoing and recurring'.

Therefore, the assertions by the Development Applications Unit must be questioned given the proven non-compliance of the Mountmellick WWTP.

10.2.4. *National Standards for Landspreading in accordance with the Nitrates Directive:*

- With regard to the suggestion by the Development Applications Unit that the general provisions of the S.I. No. 113 of 2022 (European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022) and S.I. No. 393 of 2022 (European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2022), or the Farm Full Fertiliser Plan, may not be sufficient to ensure that the development will not affect the integrity of the River Barrow and River Nore SAC, with particular reference to water quality and the target to achieve at least Q4 for Atlantic Salmon and securing the lasting preservation of the species within the site, Dempsey Agric. have responded as follows:

'The quantities applied per hectare are within the limits set down in European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2022, (S.I. No. 113 of 2022) and as amended. There are several conditions outlined in S.I. 113 and as amended which afford protection to water bodies. An extract of the main points are included in Appendix 1 contained herein'.

It is disingenuous and misleading to suggest *"it is not clear"* that adherence to the Nitrates Directive as implemented in Ireland by the above referenced Statutory Instruments will be *"sufficient to ensure that the development will not affect the integrity of the River Barrow and River Nore SAC"*. There is no higher standard that farmers can achieve than to meet the specific measures set out in the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2022 (S.I. No. 113 of 2022), as amended.

- It would appear that the Development Applications Unit has an issue nationally as regards the landspreading of organic manures and questions the European and national legislation which regulates same. The applicant has met his obligations under the Nitrates Directive as enacted and this should be acknowledged by the Commission in its decision-making.

10.2.5. *In-Combination Effects:*

- The Development Application Unit's comments as regards in-combination effects are rejected. The in-combination effects have been described in full and comprehensively assessed. The National Parks and Wildlife Service are not the prescribed body to carry out Appropriate Assessment which is the role of the planning authority and (in this case) the Commission.
- Landspreading within the zone of influence of the subject application has been fully assessed and goes above and beyond what is required for this type of standard agricultural development.

10.2.6. Conclusions:

- The landspreading of organic manures is a standard measure incorporated into the design of the agricultural development and may be considered during screening for Appropriate Assessment as per *Eco Advocacy v. An Bord Pleanála (C-721/21)*.

Where measures are incorporated into the design of a project not with the aim of reducing the negative effects of that project on the protected site concerned, but as standard features required for all projects of the same type, those elements cannot be regarded as indicative of probable significant harm to that site.

- The landspreading of organic manures is integral to farming systems and is established best practice when carried out under the Nitrates Directive and the Good Agricultural Practice for the Protection of Waters Regulations, 2022.
- The inclusion of spreadlands for Appropriate Assessment screening purposes is outside of the remit of the planning authority once the applicant has demonstrated compliance with the Nitrates Directive and the Good Agricultural Practice for the Protection of Waters Regulations, 2022. The Development Applications Unit is attempting to expand the scope of the subject application to any farm within the catchment area of the River Barrow and River Nore.
- The applicant's farm has been and continues to be compliant with the Nitrates Directive. The subject development did not lead to any increase or intensification of slurry spreading on the farm as the land bank has increased

exponentially and slurry application rates reduced in line with the requirements of the Nitrates Directive.

- All lands included in the Farm Fertiliser Plan have always been subject to landspreading and no new practices have resulted from the development. Therefore, to imply that *“the potential for in combination effects with the existing landspreading of slurry within the project zone of influence has not been addressed”* is without merit and unfounded.

10.3. DA Dempsey Agri.:

- An updated nutrient management plan has been provided to reflect changes in the Nitrates legislation which came into force in 2024. The accompanying “Farmer Full – Fertiliser Plan, 2024” outlines the total quantity of slurry, soiled water, dairy washings and farmyard manure produced on the holding together with the associated storage facilities and spreadlands (this information is also available in the “Farmer Full – Fertiliser Plan, 2023”). A map has also been supplied to outline the areas on which slurry may be applied.
- The selection of areas for slurry spreading is based on the existing soil fertility and the proposed cropping of land. Under the Nitrates Regulations no landspreading of organic manures is permitted on soils with a Phosphorus Index (P Index) of 4 unless all soils with a P Index of 3 or below have been exhausted. Slurry is applied to fields which have the lowest organic loading from grazing livestock. The fields which are cut for silage or zero grazed throughout the year are grazed during the shoulders of the year (February / March & October / November) and, therefore, as these fields are not grazed to the same extent by livestock they are considered the most suitable locations for landspreading of organic manures. This ensures that there is an even distribution of organic nutrient loadings across the entire holding subject to the restrictions on land spreading of organic manures on soils with a P Index of 4.
- The proposed maximum quantity of nutrients to be applied to the holding is outlined in Pages 6-12 of the “Farmer Full – Fertiliser Plan, 2024”. The quantities applied per hectare are within the limits set down in the European Communities (Good Agricultural Practice for the Protection of Waters)

Regulations, 2022, as amended (S.I. No. 113). There are several conditions outlined in S.I. No. 113 as amended which afford protection to water bodies (please refer to Appendix 1 of the submission for an extract of the main points).

The following table outlines the quantity of organic nitrogen produced on the holding from 2014 to 2024. The holding has applied for a Nitrates Derogation during each of these years. The maximum permitted organic nitrogen per hectare from 2014 to 2023 by way of derogation is 250Kg Organic Nitrogen per Hectare (250Kg/N/Ha). The maximum figure has been reduced to 220Kg/N/Ha for 2024 and thereafter. In accordance with the derogation terms and conditions, the applicant must adhere to stricter standards to protect water quality in excess of the minimum requirements outlined in S.I. No. 113 (as amended).

Nitrogen (Kg)	Phosphorus (Kg)	Year	Land (Ha)	Nph (N/Kg/Ha)	Period From	Period To
70481	10262	2024	435.22	*162	01/01/2024	31/10/2024
85670	12016	2023	423.32	202	01/01/2023	31/12/2023
92212	13242	2022	421.09	219	01/01/2022	31/12/2022
95808	13742	2021	418.25	229	01/01/2021	31/12/2021
83871	12485	2020	427.68	196	01/01/2020	31/12/2022
84802	12625	2019	353.42	240	01/01/2019	31/12/2019
84264	12487	2018	342.7	246	01/01/2018	31/12/2018
76282	11267	2017	342.7	223	01/01/2017	31/12/2017
65237	9629	2016	259.04	**252	01/01/2016	31/12/2016
60394	8922	2015	243.36	248	01/01/2015	31/12/2015
59119	8765	2014	238.43	248	01/01/2014	31/12/2014

*The projected figure for 2024 is 194Kg/N/Ha.

**The applicant exported organic nitrogen in 2016 to reduce the quantity applied to the lands farmed to 247Kg/N/Ha.

The holding complied with the Nitrates Directive and all associated regulations pre-development and continues to accord with same. The subject

development did not result in an increase or intensification of stocking rates or associated organic nitrogen per hectare. The additional lands included in recent years were rented / leased from holdings which were traditionally intensively farmed. The inclusion of this additional land bank has not led to any increase in landspreading or organic manures in the catchment area. The holding is subject to regular inspections by the Department of Agriculture and is also subject to inspection by Laois County Council. There have been no sanctions for non-compliance since the construction of the development which is the subject of this application for substitute consent.

11.0 Environmental Impact Assessment (EIA) Screening

11.1. This application for substitute consent under Section 177E of the Planning and Development Act, 2000, as amended, pertains to the regularisation of development comprising 2 No. cubicle sheds and associated concrete feed passages, a slurry lagoon, silage pits and accompanying concrete apron, adjoining concrete yards, and associated site works. The development in question is not a class for the purposes of Environmental Impact Assessment as per the classes of development set out in Schedule 5 of the Planning and Development Regulations, 2001, as amended (or Part V of the 1994 Roads Regulations). Therefore, no mandatory requirement for EIA arises and there is also no requirement for a screening determination. Please refer to Form 1 in Appendix 1 of this report.

12.0 Water Framework Directive Screening

12.1. I have concluded, on the basis of objective information, that the subject development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment (refer to Appendix 2 for details).

13.0 Assessment

13.1. From my reading of the file, inspection of the site, and assessment of the relevant local, regional and national policies, I am satisfied that the issues for consideration in this instance can be assessed under the following headings

- Exceptional circumstances
- The proper planning and sustainable development of the area
- Appropriate assessment

These are assessed as follows:

13.2. Exceptional Circumstances:

13.2.1. Section 177K(1A)(a) of the Planning and Development Act, 2000, as amended, states that the Commission shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify a grant of such consent. In this regard, I would refer the Commission to the '*Statement of Exceptional Circumstances*' prepared by William J. Smyth and submitted with the application documentation wherein the applicant has put forward his case for exceptional circumstances. I would also advise the Commission that no submissions have been received from interested persons or the planning authority as to the existence or absence of exceptional circumstances justifying a grant of substitute consent.

13.2.2. In considering whether exceptional circumstances exist under subsection (1A)(a), the Commission is required to have regard to those matters set out under Section 177K(1J) of the Act which are examined as follows:

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

In my opinion, the regularisation of the development concerned would not circumvent the purpose and objectives of either the EIA Directive or the Habitats Directive in that the application does not concern a class of development specified in Schedule 5 of the Planning and Development Regulations, 2001, as amended, while the subject application for substitute consent has been accompanied by a remedial Natura

Impact Statement prepared in accordance with the Habitats Directive which is to be evaluated and determined on its merits.

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

From a review of the available information, including the planning history of the site, historical aerial photography, and the '*Statement of Exceptional Circumstances*' submitted in support of the subject application, it would appear that the existing dairy operation conducted from the applicant's landholding and, more specifically, the complex of farm buildings of which the subject site forms part, has resulted from the amalgamation of several adjoining farms to form a single larger enterprise by which economies of scale can be achieved. In this regard, it has been submitted that the existing slurry lagoon (the regularisation of which forms part of the subject application) was constructed in 2013 as a 'centralised' facility to replace several other smaller slurry pits present on the constituent farms while additional works, including the construction of a slatted shed and concrete slabs, were carried out thereafter. By way of explanation, the applicant has tendered that it was his belief at the time that the aforementioned works involved the replacement (centralisation) of existing development and were within the limits of exempted development. At this point, it is of further relevance to note that an examination of aerial photography serves to confirm that an unroofed feed area (since incorporated into Cubicle Shed 'B') was also constructed on site during the period 2011-2013 in addition to new silage pits located to the south of the original farm complex (beyond the limits of the subject application).

- 13.2.5. On 8th May, 2017 the subject applicant sought permission under PA Ref. No. 17/224 for the construction of a new cubicle shed; a cubicle shed adjacent to the existing unroofed feed area / standoff yard; an extension to the existing milking parlour collection yard; 2 No. concrete aprons to be used as silage storage areas; and all associated site works. On 22nd June, 2017 the Planning Authority issued notice pursuant to Section 177T(5) of the Planning and Development Act, 2000, as amended, requesting the applicant to carry out a Natura Impact Assessment for the proposed development. This notice included an 'Advice Note' which advised that the existing unroofed feed yard (previously identified as having been constructed between 2011 and 2013) exceeded the allowance set out in Class 8 of Part 3 of

Schedule 2 of the Planning and Development Regulations, 2001, as amended, and thus was not exempted development. It was further noted that although drawings of an existing slatted shed and tanks had accompanied the planning application, permission had not been sought for their retention. Therefore, the applicant was requested to clarify the planning status of the existing unroofed feed area and the slatted shed with its associated underground tanks before being further advised that the Planning Authority would not be in a position to permit any further development on the subject site in advance of the regularisation of the planning status of existing development. Following consideration of the Natura Impact Statement received on 24th October, 2017 in response to the Section 177T(5) notice, the Planning Authority determined that adverse impacts on the conservation objectives of the River Barrow and River Nore Special Area of Conservation could not be reasonably ruled out and thus a Stage 2 Appropriate Assessment was required (notwithstanding that an NIS had already been submitted for the proposed development). The applicant was notified accordingly by way of correspondence dated 27th October, 2017 and was further instructed that as there was an element of retention involved, the Planning Authority would not be in a position to process the application and that regularisation would require the applicant to apply to An Bord Pleanála for leave to apply for substitute consent in accordance with Section 177C of the Act with any element seeking retention needing to be accompanied by a remedial Natura Impact Statement.

- 13.2.6. At this point, it can be confirmed that on 22nd June, 2017 the Planning Authority had informed the applicant of the presence of potentially unauthorised works on site (including an unroofed feed area since incorporated into Cubicle Shed 'B') and that the development then proposed (which encompasses directly comparable, if not identical, elements of the development for which substitute consent has since been sought, including Cubicle Shed 'A', the northernmost section of Cubicle Shed 'B', a silage pit, and associated concrete aprons etc.) required Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement.
- 13.2.7. While I would acknowledge the applicant's questioning of the procedural approach applied by the Planning Authority in its determination of PA Ref. No. 17/224, the conclusions remain as outlined in the preceding paragraph.

- 13.2.8. On 3rd July, 2017 the Department of Agriculture, Food and the Marine issued a 'Restriction Notice' under Section 42 of the Animal Health and Welfare Act, 2013 to Mr. Gerard Rochford with respect to the farm herd which declared the holding a 'restricted holding' due to a possible TB outbreak and imposed a number of restrictions on the farm operation (a copy of this notice is included at Appendix VII of the applicant's '*Statement of Exceptional Circumstances*'). In response, the applicant seemingly adopted the position that the mandatory requirements of the 'Restriction Notice' necessitated animal welfare management measures which could only be achieved through construction of those facilities previously the subject matter of PA Ref. No. 17/224. Accordingly, he completed the development which is presently the subject of the application for substitute consent thereby increasing the extent of works requiring regularisation. The '*Statement of Exceptional Circumstances*' seeks to further rationalise the construction of the development by commenting that while the applicant knowingly added to the totality of development needing authorisation in late 2017, it was done '*under emergency conditions (herd restrictions / quarantine) and was more by way of adding to existing capacity than beginning some new type of activity with unknown potential for impact / emissions*'. In this regard, it is of further relevance to note that the works purportedly carried out in response to the 'Restriction Notice' actually exceed those previously considered under PA Ref. No. 17224 in that they include for the roofing of the previously unroofed feed yard (resulting in the creation of Cubicle Shed 'B'). In effect, the subject works are of a greater scale and extent than those previously determined by the Planning Authority as requiring the submission of an NIS.
- 13.2.9. In the interest of completeness, I would advise the Commission that the applicant subsequently lodged a further planning application under PA Ref. No. 2360504 on 28th November, 2023 for permission to retain the 2 No. cubicle sheds, slurry lagoon, silage pit and associated site works. This was accompanied by a Stage 1 Screening Report for Appropriate Assessment which sought to obviate any requirement for Stage 2 Appropriate Assessment on the basis that case law (i.e. *Eco Advocacy v. An Bord Pleanala*, C-721/21) had established that where measures had been incorporated into a project not with the aim of reducing the negative effects of that project on the protected site, but as standard features required for all projects of the same type, those elements could not be regarded as indicative of probable

significant harm to the protected site. In effect, the case was put forward by the applicant that the standard design measures incorporated into the subject development could be taken into account when screening the proposal for the purposes of appropriate assessment, however, the Planning Authority ultimately refused to consider the application for retention on the basis that if an application for permission had been made in respect of the development concerned before it was commenced, it would have required an appropriate assessment to assess the potential impacts on the River Barrow and River Nore SAC.

13.2.10. Following consideration of the foregoing, in my opinion, the subject development can be subdivided into two distinct groupings by reference to the timing of the respective constructions. In the first instance, the existing slurry lagoon appears to have been constructed in 2013 in response to the amalgamation of a number of smaller holdings with a view to providing a 'centralised' facility to replace several other smaller slurry pits present on the constituent farms. This was seemingly constructed to the necessary standards of the Department of Agriculture at the time while additional works followed, including the construction of a slatted shed and concrete slabs. By way of explanation, the applicant has sought to rely on his belief that these works amounted to the replacement of existing development and thus were within the limits of exempted development. While it is regrettable that the applicant would not appear to have sought the prior advice of the Planning Authority as regards the status of the aforementioned works and any need for planning permission, given the nature and intention of this aspect of the wider development (i.e. with a view to replacing existing structures and consolidating operations within an already established farmyard following the amalgamation of several adjoining farms to form a single larger enterprise), I am amenable to the position offered that the applicant could reasonably have had a belief that the development in question was not unauthorised.

13.2.11. With respect to the remainder of the subject development (in reference to the construction of Cubicle Sheds 'A' & 'B' and the associated concrete feed passages; the silage pit identified as 'Pit 01' and 'Pit 02' and the accompanying concrete apron; the adjoining concrete yards; and the associated site works), it should be noted that these works were carried out after the lodgment of PA Ref. No. 17/224 on 8th May, 2017 (which had sought permission for the construction of a new cubicle shed; a

cubicle shed adjacent to the existing unroofed feed area / standoff yard; an extension to the existing milking parlour collection yard; 2 No. concrete aprons to be used as silage storage areas; and all associated site works) and after the 22nd June, 2017 when the Planning Authority issued notice pursuant to Section 177T(5) of the Planning and Development Act, 2000, as amended, requesting the applicant to carry out a Natura Impact Assessment for the then proposed development while also advising of certain unauthorised development on site. Accordingly, it is apparent that the applicant had accepted that the works required planning permission and had also been informed of the need for Stage 2 Appropriate Assessment in advance of his decision to proceed with their construction. The case has thus been put forward that the decision to proceed with the works was warranted by way of emergency response to the mandatory obligations imposed by the Department of Agriculture, Food and the Marine through its service of a 'Restriction Notice' on 3rd July, 2017 under Section 42 of the Animal Health and Welfare Act, 2013 with respect to the applicant's farm herd which declared the holding a 'restricted holding' due to a possible TB outbreak and imposed a number of restrictions on the farm operation. Such notices are used for disease control and welfare purposes and typically include requirements such as the isolation of any potentially infected 'reactor' from the herd and the restriction of animal movements onto and off the holding (as was the case in this instance). It is my understanding that Section 42 notices more commonly relate to the temporary management / control of farming practices as opposed to any requirement to carry out prescribed works, although I would concede that this does not preclude the possibility of being required to undertake certain works.

- 13.2.12. Therefore, the pertinent issue is whether the applicant could reasonably have had a belief that the development was not unauthorised on the basis that the works in question would be permissible given the 'emergency' conditions arising on site due to the service of the Section 42 notice and the need to comply with its requirements. In this regard, I would draw the Commission's attention to the wording of some aspects of the notice, such as Item No. 2 which requires the recipient '*To take all reasonable steps*' to prevent the infection of animals susceptible to TB, including preventing a reactor, inconclusive reactor, or any animal suspected of being infected with TB from being in contact with other susceptible animals, which could be interpreted as affording weight to a belief by the applicant that the works were not

unauthorised (as distinct from any actual authorization). Conversely, it is questionable whether the full extent of any part of the works carried out by the applicant could reasonably have been held to be necessary in order to address the requirements of the notice or any emergency actions arising in terms of infection control and animal welfare.

- 13.2.13. Having considered the available information, on balance, it is feasible that the applicant could reasonably have had a belief that the development was not unauthorised by reference to his interpretation of the emergency measures arising consequent on the service of the Section 42 notice, although the Commission may wish to consider this matter further. In the event the Commission is not satisfied that the applicant could reasonably have had a belief that the aforementioned development was not unauthorised (in reference to the construction of Cubicle Sheds 'A' & 'B' and the associated concrete feed passages; the silage pit identified as 'Pit 01' and 'Pit 02' and the accompanying concrete apron; the adjoining concrete yards; and the associated site works), it may also wish to consider whether it would be appropriate to distinguish between the previously identified two sets of works for which substitute consent has been sought with a view to issuing a split decision, or to refuse the application in its entirety.

- 13.2.14. ***(c) 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:***

It is my opinion that the ability to carry out an appropriate assessment and to provide for public participation in such an assessment has not been substantially impaired. The applicant advertised their intentions by the appropriate form of public notice and submitted them to the Commission, dated 18th June, 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. Submissions were received from Transport Infrastructure Ireland and the Department of Housing, Local Government and Heritage (Development Applications Unit) which have been considered as part of this assessment. No other third-party submissions have been received.

13.2.15. ***(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:***

The application has been accompanied by a Remedial Natura Impact Statement (rNIS) pertinent to the subject development as has been constructed on site and its continued use. The screening exercise included as part of the rNIS has employed the source-pathway-receptor model of risk assessment to identify the River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 400m south at its nearest point, as the only European Site within the 'zone of influence' by reference to a hydrological connection downstream via land drains that occur south of the development site. It proceeds to state that without mitigation measures, there is uncertainty as to whether the subject development could have had significant indirect effects on the SAC due to the hydrological pathway and the potential for effluent from the development to negatively affect water quality of the River Barrow thereby impacting on certain qualifying interests that occur in the part of the SAC relevant to the site (i.e. River & Brook Lamprey, Otter, Atlantic Salmon, White-Clawed Crayfish, and some examples of Floating River Vegetation [3260] as complete distribution of this habitat is not currently known). The Remedial NIS submitted with the application sets out the mitigation measures implemented during both the construction and operational phases of the development to avoid significant effects on the SAC.

13.2.16. These matters are addressed further under the heading appropriate assessment below. They are not such as to indicate that exceptional circumstances do not exist in this case.

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

The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated is not such as to indicate that exceptional circumstances do not exist in this case.

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

The Planning Authority has identified further historical instances of potentially unauthorised development on site in reference to another slatted shed with associated underground tanks and an unroofed feed area (which has since been incorporated into Cubicle Shed 'B'), although these are comparatively minor relative to the subject matter of the current supplication. It is also of note that the applicant was afforded the opportunity by the Planning Authority to clarify the planning status of these structures and that any concerns as regards the unroofed feed area are now moot given its incorporation into Cubicle Shed 'B' and the subject application.

13.2.19. On balance, it is my opinion that the aforementioned instances of unauthorised development are not of such significance as to impact on consideration of the subject application.

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

Nothing occurs under this heading.

13.2.21. In this instance, I am satisfied that exceptional circumstances exist to allow the Board to grant substitute consent.

13.3. The Proper Planning and Sustainable Development of the Area:

13.3.1. **The Principle of the Development:**

On the basis that the development in question is intended for agricultural purposes, and as the subject site forms part of a larger established farmyard in a rural area where the predominant land use is agriculture, I am of the opinion that agriculturally-related developments such as that proposed are an inherent part of rural life and should generally be accommodated within such areas. Accordingly, in light of the foregoing, and having regard to the scale and the intended use of the proposed development for agricultural purposes as part of a wider dairy operation, I am of the opinion that the subject proposal is acceptable in principle at this location.

13.3.2. **Overall Design & Layout / Visual Impact:**

The overall design and layout of the cubicle sheds, feed passages, slurry lagoon, silage pits, concrete yards & aprons, and the associated site works, is typical of similar agricultural construction common to rural areas and in this regard it is of relevance to note that the development will form part of an active farm complex already characterised by a variety of comparable farm buildings (including cubicle,

calving & storage sheds, a hay barn, milking parlour, and milk storage & collection facilities). Furthermore, the construction is recessed back from the public road and is largely screened from view by existing buildings both on site and within the immediate surrounds as well as by intervening landscaping and hedging etc. Accordingly, having regard to the foregoing, and in light of the specifics of the site context, including its location within the less sensitive '*Lowland Agricultural Area*' landscape character area, which is described as having the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area, I am satisfied that the proposal will not unduly impact on the visual amenity of this rural area.

13.3.3. Flooding Implications:

From a review of the available information, it is apparent that consideration needs to be given to the potential flooding implications of the subject development given that lands in the immediate site surrounds are known to be at risk of flooding from the River Barrow and surrounding watercourses. In this respect, I would advise the Commission that on examination of the most up-to-date flood mapping for the area prepared by the Office of Public Works as part of its CFRAM programme (which is available on www.floodinfo.ie and has informed the development of Flood Risk Management Plans for specific areas), it can be confirmed that the proposed cubicle sheds, feed passages, silage pits, and concrete yards & aprons etc. are all located in Flood Zone 'C' (where the probability of flooding is lowest) as defined by the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*'.

- 13.3.4. With respect to the slurry lagoon, it would appear that this construction is also located within Flood Zone 'C' (as evidenced from a review of the high, medium and low probability scenarios detailed in the OPW's mapping of 'Community-Scale Flood Events – Present Day' ('Mountmellick Tile 3') as well as the Environmental Protection Agency's SEA mapping of 'River Flood Extents - Present Day'), although it should be acknowledged that this reference mapping has limitations in terms of identifying flood risk in any given area. An examination of the OPW's estimation of the high, medium and low probability scenarios for both the Mid-Range Future Scenario (Modelled extents that take in the potential effects of climate change: increase in rainfall of 20%) and the High-End Future Scenario (Modelled extents that take in the potential effects of climate change: increase in rainfall of 30%) would

further suggest that the slurry lagoon falls within Flood Zone 'C' although it is situated at the limit of Flood Zone 'B'. Regrettably, the County Laois Strategic Flood Risk Assessment appended to the Laois County Development Plan, 2021-2027 does not provide any further clarity as to flood extents in the immediate vicinity of the application site.

- 13.3.5. In addition to the foregoing, it is of relevance to note that the existing slurry lagoon is enclosed on all sides by a combination of the existing farmyard and raised earthen embankments / berms with the result that the storage capacity is situated above ground level and is sealed from any potential encroachment by floodwaters. It is also my opinion that given the comparatively small area involved, should any displacement of floodwaters occur, the effects arising will be minimal.
- 13.3.6. With regard to concerns that landspreading associated with the subject development could pose a risk of water pollution given the location of an area of the spreadlands within the known floodplain and proximate to the River Barrow and River Nore Special Area of Conservation, it should be noted that the spreading of organic fertilisers is managed under the Good Agricultural Practice for Protection of Waters Regulations, 2025. These regulations are for the purpose of preventing water pollution. They provide for the limitation of quantities of nitrates and phosphate that can be directly applied to land. Surface water is protected through the provision of buffers from surface water features. Groundwater is protected by the prohibition of direct discharge to groundwater and measures to prevent indirect pollution through discharge to ground and percolation through the soil. Therefore, I am satisfied, subject to the adherence to the GAP Regulations, 2025, that no in-combination or cumulative impacts arise from any landspreading associated with the proposed development.

13.4. Appropriate Assessment:

13.4.1. Introduction:

In this section of my report, I carry out a Stage 1 and 2 Appropriate Assessment in relation to the development. I have assessed the applicant's 'Appropriate Assessment Screening' and 'Remedial Natura Impact Statement' (as supplemented by the additional details received from the applicant on 25th November, 2024 in response to the submission made by the Department of Housing, Local Government

and Heritage: Development Applications Unit). I have reviewed the submissions received regarding issues relating to Appropriate Assessment and have analysed the applicant's documentation, which has sought to address the various concerns raised.

- Compliance with Articles 6(3) of the EU Habitats Directive
- Appropriate Assessment Screening Determination
- Appropriate Assessment - Stage 2

13.4.2. Compliance with Articles 6(3) of the EU Habitats Directive:

Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European Site.

13.4.3. Issues Raised in relation to Appropriate Assessment:

Planning Authorities, Prescribed Bodies and Public Observations:

Department of Housing, Local Government and Heritage (Development Applications Unit):

- States that the Remedial Natura Impact Statement does not provide for an adequate assessment of the potential for the development to adversely affect the conservation objectives of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) due to the increased landspreading of slurry arising from the development.
- Considers the landspreading arising due to the development to form an intrinsic part of the project which requires assessment pursuant to the Article 6(3) of the Habitats Directive.
- While noting the commitment to adhere to S.I. No. 113 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022] and S.I. No. 393 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022], it is not clear that the general provisions of the Regulations or the submitted 'Farm Full – Fertiliser Plan' will be sufficient to ensure that the development does not adversely

affect the integrity of the River Barrow and River Nore SAC, with particular reference to water quality and the target to achieve at least 'Q4' for Atlantic Salmon and to secure the lasting preservation of the species within the site.

- Appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects in light of the best scientific knowledge in the field and, therefore, further information is required.
- The potential for in-combination effects with the existing landspreading of slurry within the project's zone of influence has not been assessed. The term 'project' should be given a broad interpretation to include both construction works and other interventions in the natural environment. It should also be noted that plans / projects extend beyond those covered by the Planning and Development Act, 2000. Therefore, further information is required in relation to in-combination effects of the existing landspreading of slurry within the project's zone of influence.

13.4.4. **The Remedial Natura Impact Statement (RNIS):**

The application was accompanied by an Appropriate Assessment (AA) Screening Report (Stage 1) and RNIS (Stage 2) which was prepared in line with current best practice and describes the development, the project site and the surrounding area. The RNIS contains a Stage 1 Screening Assessment which concluded that a Stage 2 Appropriate Assessment was required as follows:

'Screen in due to uncertainty.

The SAC is outside of the site area and separated by 0.4km of agricultural lands. No qualifying interest are within the existing development site and no suitable habitats exist to support the qualifying species.

However, without mitigation measures it is uncertain whether the development for Substitute Consent could have had significant indirect effects on the River Barrow and River Nore SAC and its qualifying interests due to the hydrological linkage between the sites and the potential for effluent from the development negatively affecting water quality of the River Barrow and thus the following qualifying interests.

Only the interests that occur in this part of the River Barrow and River Nore SAC catchment are relevant to this site. These are aquatic animals - the River

and Brook Lamprey (Lampetra planeri, Lampetra fluviatilis), Otter (Lutra lutra), Atlantic Salmon (Salmo salar) and White-Clawed Crayfish (Austropotamobius pallipes). In addition, there may be some examples of floating river vegetation (3260) as the complete distribution is not currently known.

A stage 2 remedial Natura Impact Statement (rNIS) will be required due to the fact that there is uncertainty as to the potential for significant effects upon the River Barrow and River Nore SAC and due to the need to apply for Substitute Consent'.

13.4.5. **Appropriate Assessment Screening Determination (See Appendix 3 of this Report):**

Significant effects cannot be excluded

13.4.6. In accordance with Section 177U of the Planning and Development Act, 2000 (as amended) and on the basis of the information considered in this Remedial AA screening, I conclude that it is not possible to exclude that the development alone did not give rise to significant effects on the River Barrow and River Nore SAC in view of the conservation objectives of a number of qualifying interest features of that site. Remedial Appropriate Assessment is required.

13.4.7. This determination is based on:

- The information presented in the 'Habitats Directive Appropriate Assessment Screening and Remedial Natura Impact Statement (rNIS)' prepared by Kingfisher Environmental Consultants;
- The 'Submission in relation to Application for Substitute Consent under Section 177E of the Planning and Development Act, 2000 (as amended)' prepared by Kingfisher Environmental Consultants and received by the Commission in response to a submission made by the Department of Housing, Local Government and Heritage: Development Applications Unit;
- The zone of influence of potential impacts;
- The Qualifying Interests and Conservation Objectives of the European Site;
- The hydrological pathway connecting the project site to the SAC; and
- The uncertainty as to the potential for significant effects upon the River Barrow and River Nore SAC and the requirement for mitigation measures to

avoid / reduce potential harmful effects on the Qualifying Interests of the European Site.

13.4.8. **Appropriate Assessment - Stage 2 (Appendix 4 of this Report):**

Appropriate Assessment Conclusion: Integrity Test

In screening the need for Appropriate Assessment, it was determined that the development could result in significant effects on the River Barrow and River Nore Special Area of Conservation in view of the conservation objectives of that site and that Appropriate Assessment under the provisions of S177U / 177AE was required.

Following an examination, analysis and evaluation of the NIS, all associated material submitted, and taking into account observations on nature conservation, I consider that adverse effects on site integrity of the River Barrow and River Nore Special Area of Conservation can be excluded in view of the conservation objectives of that site and that no reasonable scientific doubt remains as to the absence of such effects.

My conclusion is based on the following:

- Detailed assessment of construction and operational impacts.
- The development will not affect the attainment of conservation objectives for the River Barrow and River Nore Special Area of Conservation.
- Effectiveness of mitigation measures.
- Application of planning conditions to ensure these measures if permission is granted.

(Please refer to Appendix 4 of this report).

14.0 Recommendation

14.1. Having regard to the foregoing, I recommend that Substitute Consent should be granted for the development for the reasons and considerations and subject to the conditions set out below:

15.0 Reasons and Conditions

15.1. In coming to its decision, the Commission had regard to the following:

- a) the provisions of the Planning and Development Act, 2000, as amended, and in particular Part XA,
- b) the applicable national, regional and local planning policy, including in particular the provisions of the Laois County Development Plan 2021-2027,
- c) the remedial Natura Impact Statement submitted with the application for substitute consent, and documentation on file generally,
- d) the submissions and observations received by the Commission,
- e) the planning history of the site,
- f) the pattern of development in the area,
- g) the nature and scale of the development the subject of this application for substitute consent, and
- h) the report of the Commission's Inspector, including in relation to potential significant effects on the environment.

Appropriate Assessment: Stage 1

The Coimisiún considered the Screening Report for Appropriate Assessment and all other relevant submissions and carried out an appropriate assessment screening exercise in relation to the potential effects of the development on designated European sites. The Coimisiún noted that the development is not directly connected with or necessary for the management of any European Site and considered the nature, scale, and location of the development, as well as the report of the Inspector. The Coimisiún agreed with the screening exercise carried out by the Inspector.

The Coimisiún considered that an appropriate assessment of the implications of the development for the River Barrow and River Nore Special Area of Conservation as a European Site required further investigation.

Appropriate Assessment: Stage 2

The Coimisiún considered the Remedial Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the development for the River Barrow and River Nore Special Area of Conservation.

The Coimisiún considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment as well as the report of the Inspector. In completing the assessment, the Coimisiún considered the likely direct and indirect impacts arising from the development both individually or in combination with other plans or projects, the mitigation measures which are included as part of the current proposal and the Conservation Objectives for the European Site. In completing the Appropriate Assessment, the Coimisiún accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the development on the aforementioned European Site, having regard to the site's Conservation Objectives.

In overall conclusion, the Coimisiún was satisfied that the development did not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation or any other European Site in view of the site's Conservation Objectives.

Proper Planning and Sustainable Development

Having regard to the nature, scale and extent of the development and to the acceptability of the environmental effects, and noting that the integrity of European Sites were not adversely affected in view of the relevant sites' conservation objectives as set out above, and subject to compliance with the conditions set out below, the Commission is satisfied that to grant substitute consent for the development is in accordance with the proper planning and sustainable development of the area

16.0 Conditions

1. The grant of substitute consent shall be in accordance with the plans and particulars submitted to An Coimisiún Pleanála with the application on the 19th day of June, 2024, as amended by the further plans and particulars received by An Coimisiún Pleanála on the 25th day of November, 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures contained in the submitted remedial Natura Impact Statement shall be implemented.

Reason: To protect the integrity of European Sites.

3.

- a) Slurry generated by the development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022 (S.I. No. 393/2022) (as amended).
- b) Where slurry or manure generated by the development is moved to other locations, details of such movements are to be notified to the Department of Agriculture, Food & the Marine in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022 (S.I. No. 393/2022) (as amended).
- c) Where a slurry or manure is removed by a third party, by agreement, to be land spread elsewhere, details of such an agreement (to include name of third party, lands to be spread, amounts of material) should be furnished to the local authority in which said lands are located.

Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of watercourses.

4. All soiled waters and slurry generated by the development shall be conveyed through properly constructed channels to the existing storage facilities. No soiled waters or slurry shall discharge or be allowed to discharge to any drainage channel, stream, watercourse or to the public road. The storage facilities shall be properly maintained to the Planning Authority's satisfaction and emptied as required to prevent the discharge of polluting matter to any watercourse or aquifer and to comply with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022 (as amended).

Reason: In the interest of public health and to prevent water pollution.

5. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, watercourses or to appropriately sized soakaways. Uncontaminated waters shall not be allowed to discharge to soiled water and/or slurry tanks or to the public road.

Reason: In order to ensure that the capacity of soiled water tanks are reserved for their specific purposes.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 3 months of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Coimisiún Pleanála to determine the proper application of the terms of the Scheme.

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

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

Robert Speer
Senior Planning Inspector

12th March, 2026

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

Case Reference	ABP-319970-24
Proposed Development Summary	Development comprising of 2 No. Cubicle Sheds, total floor area 3,770m ² (Cow Welfare Units), associated concrete feed passages, total area 1,485m ² . Slurry Lagoon, total capacity 4,095m ³ (Sealed Effluent Storage). Silage Pit, total floor area 1,180m ² (Winter Feed Storage), accompanying Concrete Apron, total floor area 545m ² , adjoining concrete yards, total floor area 1,263m ² and associated site works.
Development Address	Forest Lower, Mountmellick, Co. Laois.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ No. No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	

3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	
4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____

Date: _____

Appendix 3 – AA Screening Determination (Stage 1)

Screening for Remedial Appropriate Assessment Screening Determination	
Step 1: Description of the project and local site characteristics Case File: ABP-319970-24	
Brief description of project	The construction of the following as an extension of an existing farmyard which in turn forms part of a wider dairy operation: • 2 No. cubicle / cow feed sheds (cow welfare units) identified as Shed 'A' (floor area: 1,795m²) and Shed 'B' (floor area: 1,975m²) on the site layout plan with a combined total floor area of 3,770m² and associated concrete feed passages (floor area: 1,485m²). • A silage pit (for the storage of winter feed) comprising two bays identified as 'Pit 01' (floor area: 565m²) and 'Pit 02' (floor area: 615m²) on the site layout plan with a combined total floor area of 1,180m² and the accompanying concrete apron (floor area: 545m²). • An effluent storage slurry lagoon with a volumetric capacity of 4,095m³. • Adjoining concrete yards (floor area: 1,263m²) and associated site works. Please refer to Section 3.0 of the Inspector's Report.
Brief description of development site characteristics and potential impact mechanisms	The subject site is located in the rural townland of Forest Lower, Co. Laois, approximately 2km north-northwest of Mountmellick and c. 10km west-southwest of Portarlinton, in an area which is typically rural in character and dominated by a rolling patchwork of agricultural fields interspersed with intermittent instances

/ groupings of one-off rural housing, farmyards and associated outbuildings. It has a stated site area of 1.4 hectares, is irregularly shaped, and forms part of a larger complex of farm buildings (including cubicle, calving & storage sheds, a hay barn, silage pits, slurry lagoons, a milking parlour, and milk storage & collection facilities) located at the western end of a minor local road (L20971). The site itself encompasses the north-western extent of the existing farmyard and is dominated by those structures for which substitute consent has been sought (i.e. cubicle sheds 'A' & 'B' and their associated feed passages, 2 No. silage pits, the slurry lagoon, and associated concrete aprons & yards etc.) along with another longer established cubicle / slatted shed. It is bisected by an existing accessway which extends through the farmyard from the public road to afford access to surrounding agricultural fields via a series of trackways. The site topography generally falls in a southerly direction towards the River Barrow.

The nearest European Sites are listed in Section 6.1.1 of this report and are also referenced in the submitted '*Habitats Directive Appropriate Assessment Screening and Remedial Natura Impact Statement*'. The closest such site is the River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 430m to the south, while the Mountmellick Special Area of Conservation (Site Code: 002141) is located c. 4.4km to the east-southeast of the site.

Slurry from the cubicle sheds is drained via slatted channels to a lined slurry lagoon (with certification having been provided that the excavation and preparation works along with the installation of the

	geomembrane-lining meet the minimum requirements of the Department of Agriculture and Food's Specification S126: 'Minimum Specification for Geomembrane-Lined Slurry / Effluent Stores and Ancillary Works'). All open yards are concreted and soiled water / effluent from same is directed to the slurry storage system. This includes slatted channels from the two cubicle houses and a channel at the lowest south-eastern corner which diverts yard drainage to another open slurry tank (outside of the substitute consent area) but which is pumped back to the main slurry lagoon. The effluent collection system serving the silage pits directs any silage effluent via two underground sealed pipes to the slurry lagoon. Slurry is landspread in accordance with the Department of Agriculture's 'Code of Practice for Landspreading', the Farm Nutrient Management Plan, and the Good Agricultural Practice for Protection of Waters Regulations, 2025. Clean roof waters are collected separately and discharged via an underground collection system to the open ditch to the southeast corner of the site. The impact mechanisms of concern regarding effects to conservation features of European Sites are associated with the construction and operational phases of the development and potentially comprise: - The release of pollutants via hydrological linkages.
Remedial AA Screening Report	Yes - Prepared by Kingfisher Environmental Consultants
Remedial Natura Impact Statement	Yes - Prepared by Kingfisher Environmental Consultants

Relevant submissions	<i>Department of Housing, Local Government and Heritage: Development Applications Unit:</i> - States that the Remedial Natura Impact Statement does not provide for an adequate assessment of the potential for the development to adversely affect the conservation objectives of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) due to the increased landspreading of slurry arising from the development. - Considers the landspreading arising due to the development to form an intrinsic part of the project which requires assessment pursuant to the Article 6(3) of the Habitats Directive. - While noting the commitment to adhere to S.I. No. 113 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022] and S.I. No. 393 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022], it is not clear that the general provisions of the Regulations or the submitted 'Farm Full – Fertiliser Plan' will be sufficient to ensure that the development does not adversely affect the integrity of the River Barrow and River Nore SAC, with particular reference to water quality and the target to achieve at least 'Q4' for Atlantic Salmon and to secure the lasting preservation of the species within the site. - Appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects in light of the best
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	scientific knowledge in the field and, therefore, further information is required. - The potential for in-combination effects with the existing landspreading of slurry within the project's zone of influence has not been assessed. The term 'project' should be given a broad interpretation to include both construction works and other interventions in the natural environment. It should also be noted that plans / projects extend beyond those covered by the Planning and Development Act, 2000. Therefore, further information is required in relation to in-combination effects of the existing landspreading of slurry within the project's zone of influence.
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The planning application was accompanied by the following documentation:

- Statement of Exceptional Circumstances' prepared by William J. Smyth.
- Report (including 'Farmer Full – Fertiliser Plan 2023') prepared by DA Dempsey Agri.
- 'Habitats Directive Appropriate Assessment Screening and Remedial Natura Impact Statement (rNIS)' prepared by Kingfisher Environmental Consultants.
- Drawings & photographs
- Public notices
- Application form
- Letter of consent to agent
- Cover letter prepared by JK Design, Architectural Drawing, Design & Planning.

The additional information provided by way of response to the submission received from the Department of Housing, Local Government and Heritage: Development Applications Unit includes the following:

- 'Submission in relation to Application for Substitute Consent under Section 177E of the Planning and Development Act, 2000 (as amended)' prepared by Kingfisher Environmental Consultants

- ‘Development of Agricultural Structures located at Forest, Mountmellick, Co. Laois, Ref: ABP-319970-24’ (including ‘Farmer Full – Fertiliser Plan 2024’) prepared by DA Dempsey Agri.
- Cover letter prepared by JK Design, Architectural Drawing, Design & Planning.

Step 2. Identification of relevant European sites using the Source-Pathway-Receptor model

The site is not located within or directly adjacent to any designated European Sites.

The screening exercise included in Section 2 of the ‘*Habitats Directive Appropriate Assessment Screening and Remedial Natura Impact Statement (rNIS)*’ submitted with the initial application has utilised the ‘Source-Pathway-Receptor’ model of impact assessment to identify those European Sites within the zone of influence of the subject development. Considering the characteristics of the development, it has been held that the zone of influence comprises that area within an approximate 1km radius of the application site and that any impacts beyond this distance can be ruled out. In this regard, the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) has been determined to be the only European Site within the zone of influence on account of indirect hydrological pathways between the project site and the SAC arising from land drains that occur south of the development site.

In reference to the Mountmellick Special Area of Conservation (Site Code: 002141), which occurs approximately 4.4km east-southeast of the project site, this comprises a fen habitat along a disused section of the Grand Canal and, therefore, in the absence of any ecological connectivity with the project site, it has been screened out from further consideration.

While it is acknowledged that other Natura 2000 sites fall within 5-10km of the project site, these are considered to be outside the zone of influence and have been screened out due to the large intervening distances, the dilution effect upon waters, and the assessment that there will be no likely significant effects upon these sites.

I would concur with these conclusions.

European Site (code)	Qualifying interests Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connections	Consider further in screening Y/N
River Barrow and River Nore Special Area of Conservation (Site Code: 002162)	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Reefs [1170] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260] European dry heaths [4030] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]	c. 430m south of the site	Indirect hydrological connectivity via land drains.	Yes

	Petrifying springs with tufa formation (Cratoneurion) [7220] Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Austropotamobius pallipes (White-clawed Crayfish) [1092] Petromyzon marinus (Sea Lamprey) [1095] Lampetra planeri (Brook Lamprey) [1096] Lampetra fluviatilis (River Lamprey) [1099] Alosa fallax fallax (Twaite Shad) [1103] Salmo salar (Salmon) [1106]			
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	Lutra lutra (Otter) [1355] Vandenboschia speciosa (Killarney Fern) [6985] CO002162.pdf			
Mountmellick Special Area of Conservation (Site Code: 002141)	Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016] ConservationObjectives.rdl	c. 4.4km east-southeast of the site.	None.	No.

An ecological survey of the site and its surrounds (with cognisance also being taken of the receiving environment prior to construction of those structures for which substitute consent has been sought) undertaken by the applicant has concluded that the project site is situated outside the riparian zone associated with the River Barrow and River Nore SAC and that none of the habitats or species found within the site boundary are listed as qualifying interests for Natura 2000 sites in the area. However, the survey has identified 2 No. drainage ditches within the area of the project site which provide a hydrological linkage to the River Barrow and, by extension, the River Barrow and River Nore SAC. While the potential for direct impacts on the SAC can be ruled out due to the intervening separation distance, uncertainty arises as regards indirect impacts due to the hydrological connectivity.

The screening exercise has determined that only those qualifying interests that occur in this part of the SAC catchment are relevant to the subject development site. These are limited to aquatic animals (i.e. Brook Lamprey, River Lamprey, Otter, Salmon & White-clawed Crayfish) as well as '*Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation*' given that the full distribution of this habitat within the SAC remains unknown. The aforementioned species and habitats are sensitive to potential impacts from the development considering their known occurrences downstream (and proximity) to the lands in question.

Step 3. Describe the effects of the project (if any, alone or in combination) on European Sites

The project site is not located within or directly adjacent to a European site, and there are no designated habitats located on site. Therefore, it is not considered that the subject development will result in any direct loss or degradation to the habitats or species designated for the River Barrow and River Nore SAC. However, due to the size and scale of the development and its proximity and

hydrological connectivity to the SAC via drainage ditches, impacts generated by the construction and operation of the development require consideration.

Sources of impact and likely significant effects are detailed in the Table below.

AA Screening matrix

Site name	Possibility of significant effects (alone) in view of the conservation objectives of the site*	
	Impacts	Effects
River Barrow and River Nore SAC: - Lampetra planeri (Brook Lamprey) [1096] - Lampetra fluviatilis (River Lamprey) [1099] - Lutra lutra (Otter) [1355] - Salmo salar (Salmon) [1106] - Austropotamobius pallipes (White-clawed Crayfish) [1092] - Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation [3260]	<i>Direct:</i> None. <i>Indirect:</i> A pathway for indirect effects on the identified aquatic qualifying interests of the SAC in terms of water quality deterioration and habitat degradation via surface water pathways during construction and operation of the development. Release of silt and sediment during construction works. Release of construction related compounds, including hydrocarbons. Loss / leakage of soiled waters / effluent from the development during site operations. Excessive landspreading of slurry etc. and nutrient enrichment downstream.	Potential for indirect effects on identified qualifying interests via a deterioration in water quality and habitat degradation.
	Likelihood of significant effects from proposed development (alone): Yes.	

Step 4 Conclude if the development resulted in likely significant effects on a European site
It is not possible to exclude the possibility that the development alone resulted in significant effects on the River Barrow and River Nore Special Area of Conservation from effects associated with a deterioration in water quality and habitat degradation. A remedial appropriate assessment is required on the basis of the possible effects of the project 'alone'. Further assessment in-combination with other plans and projects is not required at screening stage.

Appendix 4 – Remedial Appropriate Assessment (Stage 2)

Remedial Appropriate Assessment

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

Taking account of the preceding screening determination, the following is an appropriate assessment of the implications of the development of 2 No. cubicle sheds, associated concrete feed passages, slurry lagoon, silage pit, accompanying concrete apron, adjoining concrete yards, and associated site works, in view of the relevant conservation objectives of the River Barrow and River Nore Special Area of Conservation based on scientific information provided by the applicant and considering expert opinion set out in observations on nature conservation.

The information relied upon includes the following:

- ‘Habitats Directive Appropriate Assessment Screening and Remedial Natura Impact Statement (rNIS)’ prepared by Kingfisher Environmental Consultants.
- Report (including ‘Farmer Full – Fertiliser Plan 2023’) prepared by DA Dempsey Agri.
- ‘Submission in relation to Application for Substitute Consent under Section 177E of the Planning and Development Act, 2000 (as amended)’ prepared by Kingfisher Environmental Consultants and received by the Commission on 25th November, 2024.
- ‘Development of Agricultural Structures located at Forest, Mountmellick, Co. Laois, Ref: ABP-319970-24’ (including ‘Farmer Full – Fertiliser Plan 2024’) prepared by DA Dempsey Agri. and received by the Commission on 25th November, 2024.

I am satisfied that the information provided is adequate to allow for Appropriate Assessment. I am satisfied that all aspects of the project which could result in significant effects are considered and assessed in the RNIS and mitigation measures designed to avoid or reduce any adverse effects on site integrity are included and assessed for effectiveness.

Submissions / Observations

Department of Housing, Local Government and Heritage: Development Applications Unit:

- States that the Remedial Natura Impact Statement does not provide for an adequate assessment of the potential for the development to adversely affect the conservation

objectives of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) due to the increased landspreading of slurry arising from the development.

- Considers the landspreading arising due to the development to form an intrinsic part of the project which requires assessment pursuant to the Article 6(3) of the Habitats Directive.
- While noting the commitment to adhere to S.I. No. 113 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022] and S.I. No. 393 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022], it is not clear that the general provisions of the Regulations or the submitted 'Farm Full – Fertiliser Plan' will be sufficient to ensure that the development does not adversely affect the integrity of the River Barrow and River Nore SAC, with particular reference to water quality and the target to achieve at least 'Q4' for Atlantic Salmon and to secure the lasting preservation of the species within the site.
- Appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects in light of the best scientific knowledge in the field and, therefore, further information is required.
- The potential for in-combination effects with the existing landspreading of slurry within the project's zone of influence has not been assessed. The term 'project' should be given a broad interpretation to include both construction works and other interventions in the natural environment. It should also be noted that plans / projects extend beyond those covered by the Planning and Development Act, 2000. Therefore, further information is required in relation to in-combination effects of the existing landspreading of slurry within the project's zone of influence.

European Sites:

River Barrow and River Nore SAC (Site Code: 002162)

Summary of Key issues that could give rise to adverse effects (from screening stage):

- **Water quality and habitat degradation (construction and operation)**

See Table 3.2.2.1 of the RNIS.

Qualifying Interest features likely to be affected	Conservation Objectives Targets and attributes (summary- inserted)	Potential adverse effects	Mitigation measures (summary) Section 3.3.1 of the RNIS
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Lampetra planeri (Brook Lamprey) [1096]	Restore favourable conservation condition Distribution: Access to all watercourses down to first order streams; Population Structure: At least three age/size groups of brook/river lamprey present; Juvenile Density in fine sediment: Mean catchment juvenile density of brook/river lamprey at least 2/m²; No decline in extent and distribution of spawning beds; and more than 50% of sample sites positive as regards the availability of juvenile habitat.	Water quality degradation and / or alteration of habitat quality would undermine conservation objectives. (this determination is contrary to that set out in the RNIS).	Adherence to good practice construction. Site clearance and preparation: Appropriate storage of excavated material away from drainage features or other sensitive areas. Excavated material brought to low-lying areas and spread out, tilled and sown with grass seed. All building foundations constructed in accordance with Dept. of Agriculture specification. S0111.
Lampetra fluviatilis (River Lamprey) [1099]	Restore favourable conservation condition Distribution: Greater than 75% of main stem and major tributaries down to second order accessible from estuary; Population Structure: At least three age/size groups of brook/river lamprey present; Juvenile Density in fine sediment: Mean catchment juvenile density of brook/river lamprey at least 2/m²; No decline in extent and distribution of spawning beds; and more than 50% of sample sites positive as regards the availability of juvenile habitat.	Water quality degradation and / or alteration of habitat quality would undermine conservation objectives. (this determination is contrary to that set out in the RNIS).	All sheds constructed in accordance with Dept of Agriculture specifications S101 & S1232. Silage pit walls and floors constructed in accordance with Dept. of Agriculture specifications, including S128. The slurry lagoon conforms to Dept. of Agriculture specification S126 and is lined with heavy duty HPDE membrane to prevent any leakage to surface or ground water. It includes an in-built leak detection system.
Lutra lutra (Otter) [1355]	Restore favourable conservation condition No significant decline in distribution; No significant decline in the extent of terrestrial habitat; No significant decline in the extent of marine habitat; No significant decline in the extent of freshwater (river and lake) habitats; No significant decline in couching sites and holts; No significant decline in fish biomass available.	Degradation of water quality may adversely affect foraging / fish biomass.	All construction in substantial compliance with relevant standards and specifications. Sufficient slurry storage capacity provided for all stock as required under the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2022.
Salmo salar (Salmon) [1106]	Restore favourable conservation condition Distribution: 100% of river channels down to second order accessible from estuary; Adult spawning fish: Conservation	Water quality degradation and / or alteration of habitat quality would undermine conservation objectives	All slurry from the cubicle sheds and soiled waters from the concreted open yard areas are collected via a dedicated drainage

	limit (CL) for each system consistently exceeded; Salmon fry abundance: Maintain or exceed 0+ fry mean catchment-wide abundance threshold value. Currently set at 17 salmon fry/5 min sampling; No significant decline in out-migrating smolt abundance; No decline in number and distribution of spawning beds due to anthropogenic causes; and at least Q4 water quality at all sites sampled by EPA.		system and directed to the fenced slurry lagoon which accords with the minimum requirements of the Department of Agriculture and Food's Specification S126: 'Minimum Specification for Geomembrane-Lined Slurry / Effluent Stores and Ancillary Works'. Clean roof waters are collected separately and discharged via an underground collection system to the open ditch to the southeast corner of the site.
Austropotamobius pallipes (White-clawed Crayfish) [1092]	Maintain favourable conservation condition No reduction from baseline distribution; Population structure: Juveniles and / or females with eggs in at least 50% of positive samples; No alien crayfish species; No instances of disease; At least Q3-4 water quality at all sites sampled by EPA; and no decline in heterogeneity or habitat quality.	Water quality degradation and / or alteration of habitat quality would undermine conservation objectives.	Effluent is temporarily stored in the slurry lagoon during the closed winter period before being periodically removed by tanker and spread within the landholding in compliance with the Department of Agriculture's 'Code of Practice for Landspreading', the Farm Nutrient Management Plan, and the Good Agricultural Practice for Protection of Waters Regulations, 2022, as amended.
Water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation [3260]	Maintain favourable conservation condition No decline in habitat distribution; Habitat area stable or increasing; Maintain appropriate hydrological regimes; Groundwater discharge: Groundwater flow to the habitat should be permanent and sufficient to maintain tufa formation; Substratum should be dominated by large particles and free from fine sediments; Groundwater and surface water should have sufficient concentrations of minerals to allow deposition and persistence of tufa deposits; The concentration of suspended solids in the water column should be sufficiently low to prevent excessive deposition of fine sediments; The concentration of nutrients in the water column should be sufficiently low to prevent	Water quality degradation and / or alteration of habitat quality would undermine conservation objectives.	

	changes in species composition or habitat condition; Typical species of the relevant habitat sub-type should be present and in good condition; and the area of active floodplain at and upstream of the habitat should be maintained.		
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Assessment of issues that could give rise to adverse effects in view of conservation objectives:

Given the hydrological link from the project site via surface waters, the potential arises for indirect downstream effects on the identified aquatic qualifying interests of the River Barrow and River Nore SAC in terms of water quality deterioration and habitat degradation during both the construction and operation phases. Good water quality is necessary to maintain / restore those qualifying interests and a decrease in water quality could compromise the conservation objectives of those species and habitats.

Mitigation Measures:

Measures to control pollution & protect surface water quality:

Construction:

Adherence to standard good practice during the construction phase of the project has sought to mitigate the potential for water pollution by preventing fine sediments, concrete / cement, hydrocarbons or any other pollutants from reaching watercourses and the River Barrow. These are standard pollution control measures that are regularly used on construction sites. During the course of the site clearance and preparation works, excavations were limited to the footprint of the development with the material removed being stored in appropriately designated areas away from any drainage feature or other sensitive areas before being brought to low-lying areas of the farm to be spread out, tilled and sown with grass seed. Shed floors, the silage slab, and the yards were constructed using shuttered footprints and concrete was poured by way of continuous in-situ pours with provision also made for saw cut or proprietary expansion joints. Concrete pours were controlled and good workmanship dictated that no spillage occurred beyond the development footprint.

All construction works are stated to be in substantial compliance with the relevant standards and specifications, including Dept. of Agriculture specifications (e.g. S101, S120, S123, S126, S128 &

S1232), while certification has been provided that the excavation and preparation works along with the installation of the geomembrane-lining for the slurry lagoon meet the minimum requirements of the Department of Agriculture and Food's Specification S126: 'Minimum Specification for Geomembrane-Lined Slurry / Effluent Stores and Ancillary Works'.

Operation:

The proposed development includes for a series of embedded design measures which will serve to prevent pollution and protect water quality during development operations. Automated slurry scrapers in the cubicle sheds direct slurry towards two slatted slurry channels which in turn drain all effluent directly to the fenced slurry lagoon positioned downgradient. All open yards are concreted and all soiled waters / effluent from these yards flow to intercepting channels to be directed to the slurry storage system. This includes strategic slatted channels from the cubicle houses and a channel at the lowest south-eastern corner which diverts any yard drainage to another open slurry tank (outside of the substitute consent area) but which is pumped back to the main slurry lagoon. The effluent collection system serving the silage pits directs any silage effluent via two underground sealed pipes to the slurry lagoon. The slurry lagoon was constructed in 2013 and certification has been provided that the excavation and preparation works along with the installation of the geomembrane-lining (to prevent any leakage to surface or ground water) meet the minimum requirements of the Department of Agriculture and Food's Specification S126: 'Minimum Specification for Geomembrane-Lined Slurry / Effluent Stores and Ancillary Works'. An additional environmental safeguard has been provided by way of an in-built leak detection system whereby any leaks can be readily identified.

Sufficient slurry storage capacity has been provided for all stock as required under the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2022.

Effluent is temporarily stored in the slurry lagoon during the closed winter period before being periodically removed by tanker and spread within the landholding in compliance with the Department of Agriculture's 'Code of Practice for Landspreading', the Farm Nutrient Management Plan, and the Good Agricultural Practice for Protection of Waters Regulations, 2022, as amended.

With regard to concerns that landspreading associated with the subject development could pose a risk of water pollution given the location of spreadlands proximate to the River Barrow and River Nore Special Area of Conservation, and the hydrological connectivity to the European Site provided by way of land drains, it should be noted that the spreading of organic fertilisers is managed under the Good Agricultural Practice for Protection of Waters Regulations, 2022, as amended. These

regulations are for the purpose of preventing water pollution. They provide for the limitation of quantities of nitrates and phosphate that can be directly applied to land. Surface water is protected through the provision of buffers from surface water features. Groundwater is protected by the prohibition of direct discharge to groundwater and measures to prevent indirect pollution through discharge to ground and percolation through the soil. Therefore, I am satisfied, subject to the adherence to the GAP Regulations, 2025, that no in-combination or cumulative impacts arise from any landspreading associated with the proposed development.

Having reviewed the mitigation measures set out in the RNIS, I am satisfied that the preventative measures which are aimed at interrupting the source-pathway-receptor are targeted at the key threats to protected habitats and species and by arresting these pathways or reducing possible effects to a non-significant level, adverse effects can be prevented.

In-combination effects

I am satisfied that in-combination effects have been assessed adequately in the RNIS (as supplemented by the additional details (the 'Submission in relation to Application for Substitute Consent under Section 177E of the Planning and Development Act, 2000 (as amended)' prepared by Kingfisher Environmental Consultants, and the 'Development of Agricultural Structures located at Forest, Mountmellick, Co. Laois, Ref: ABP-319970-24' (including 'Farmer Full – Fertiliser Plan 2024') prepared by DA Dempsey Agri.) provided by the applicant in response to the submission received from the Department of Housing, Local Government and Heritage: Development Applications Unit.

I would further refer to the Technical Note compiled by Mr. Emmet Smyth, Senior Environmental Scientist, which states that the subject development cannot be deemed solely responsible for the drop in water quality status within the Barrow_040 waterbody from Q4 at Monitoring Station Ref. RS14B010300 (Two-mile Bridge) to Q3-4 at Monitoring Station Ref. RS14B010500 (Barranagh's Bridge). While it is acknowledged that there are significant pressures arising from agriculture and the associated land type within the development area as well as those attributable to the release of urban wastewater to the Owenass_020 waterbody which drains to the Barrow_040 waterbody, it is the Commission's view that the Mountmellick Wastewater Treatment Plant's under-performance is the significant pressure on the lower section of the Owenass_020 waterbody prior to meeting the Barrow_040 waterbody downstream of the subject site. On this basis, it is considered reasonable to conclude that provided the subject development adheres to the requirements of the Good Agricultural Practice for Protection of Waters Regulations, 2025 (as set out in Mr. Smyth's initial memorandum dated 19th September, 2025), its continued operation, including any associated

landspreading activities, will afford the requisite level of protection to waters and will negate against any further deterioration in downstream water quality

Accordingly, I am satisfied that the applicant has demonstrated satisfactorily that no significant residual effects will remain post the application of mitigation measures and there is therefore no potential for in-combination effects.

Findings and conclusions

The applicant determined that following the implementation of mitigation measures the construction and operation of the development alone, or in combination with other plans and projects, will not adversely affect the integrity of this European site.

Based on the information provided, I am satisfied that adverse effects arising from aspects of the development can be excluded for the River Barrow and River Nore Special Area of Conservation. No direct impacts are predicted. Indirect impacts have, and can be, mitigated through the measures described to prevent the release of construction-related pollutants, the loss / leakage of soiled waters / effluent from the development during site operations, and downstream nutrient enrichment consequent on excessive or inappropriate landspreading activities. I am satisfied that the mitigation measures to prevent adverse effects have been assessed as effective and can be implemented and conditioned if permission is granted.

Reasonable scientific doubt

I am satisfied that no reasonable scientific doubt remains as to the absence of adverse effects.

Site Integrity

The development will not affect the attainment of the Conservation Objectives of the River Barrow and River Nore Special Area of Conservation. Adverse effects on site integrity can be excluded and no reasonable scientific doubt remains as to the absence of such effects.

Appropriate Assessment Conclusion: Integrity Test

In screening the need for Appropriate Assessment, it was determined that the development could result in significant effects on the River Barrow and River Nore Special Area of Conservation in view of the conservation objectives of that site and that Appropriate Assessment under the provisions of S177U / 177AE was required.

Following an examination, analysis and evaluation of the NIS, all associated material submitted, and taking into account observations on nature conservation, I consider that adverse effects on site integrity of the River Barrow and River Nore Special Area of Conservation can be excluded in view of the conservation objectives of that site and that no reasonable scientific doubt remains as to the absence of such effects.

My conclusion is based on the following:

- Detailed assessment of construction and operational impacts.
- The proposed development will not affect the attainment of conservation objectives for the River Barrow and River Nore Special Area of Conservation.
- Effectiveness of mitigation measures proposed.
- Application of planning conditions to ensure these measures if permission is granted.

Appendix 4: WFD IMPACT ASSESSMENT STAGE 1: SCREENING

Step 1: Nature of the Project, the Site and Locality

An Bord Pleanála ref. no.	ABP-319970-24	Townland, address	Forest Lower, Mountmellick, Co. Laois.
Description of project	Development comprising of 2 No. Cubicle Sheds, total floor area 3,770m ² (Cow Welfare Units), associated concrete feed passages, total area 1,485m ² . Slurry Lagoon, total capacity 4,095m ³ (Sealed Effluent Storage). Silage Pit, total floor area 1,180m ² (Winter Feed Storage), accompanying Concrete Apron, total floor area 545m ² , adjoining concrete yards, total floor area 1,263m ² and associated site works.		
Brief site description, relevant to WFD Screening,	The development site is located in the rural townland of Forest Lower, Co. Laois, approximately 2km north-northwest of Mountmellick and c. 10km west-southwest of Portarlinton, in an area which is typically rural in character and dominated by a rolling patchwork of agricultural fields interspersed with intermittent instances / groupings of one-off rural housing, farmyards and associated outbuildings. The site itself encompasses the north-western extent of a larger complex of farm buildings (including cubicle, calving & storage sheds, a hay barn, silage pits, slurry lagoons, a milking parlour, and milk storage & collection facilities) which supports a wider dairy farm operation and is dominated by those structures for which substitute consent has been sought (i.e. cubicle sheds 'A' & 'B' and their associated feed passages, 2 No. silage pits, the slurry lagoon, and associated concrete aprons & yards etc.) along with another longer established cubicle / slatted shed. The wider topography generally falls in a southerly direction with an open ditch to the southeast draining the site towards the River Barrow approximately 430m to the south (i.e. the application site is located within the BARROW_040 WFD River Sub Basin and drains towards the BARROW_040 River		

	Waterbody). The underlying soils at the site are characterised by Limestone till (Carboniferous) while the site is described as 'Poorly Drained' in the National Soils Hydrology Mapping. Foul effluent generated on site is collected and stored for future landspreading while clean waters are directed to the open ditch to the southeast. A water supply is obtained from a private on-site well.
Proposed surface water details	All clean roof waters are collected separately and discharged via an underground collection system to the open ditch to the southeast corner of the site.
Proposed water supply source & available capacity	An existing well located to the east of the slurry lagoon which forms part of the subject application for substitute consent.
Proposed wastewater treatment system & available capacity, other issues	Automated slurry scrapers in the cubicle sheds direct slurry towards two slatted slurry channels which in turn drain all effluent directly to the fenced slurry lagoon positioned downgradient. The slurry lagoon was constructed in 2013 and certification has been provided that the excavation and preparation works along with the installation of the geomembrane-lining meet the minimum requirements of the Department of Agriculture and Food's Specification S126: 'Minimum Specification for Geomembrane-Lined Slurry / Effluent Stores and Ancillary Works'. All open yards are concreted and all soiled waters / effluent from these yards flow to intercepting channels to be directed to the slurry storage system. This included strategic slatted channels from the two cubicle houses and a channel at the lowest south-eastern corner which diverts any yard drainage to another open slurry tank (outside of the substitute consent area) but which is pumped back to the main slurry lagoon. The effluent collection system serving the silage pits directs any silage effluent via two underground sealed pipes to the slurry lagoon. Slurry is landspread in accordance with the Farm Nutrient Management Plan

Others?			Not applicable.			
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
River Waterbody	c. 430m to the south.	BARROW_040	Moderate	At risk	Nutrients from agriculture.	Surface water runoff to drainage ditch with hydrological connection onwards to the River Barrow.
Groundwater waterbody	Underlying site	Portlaoise IE_SE_G_107	Good	Not at risk	No pressures.	Percolation to ground.

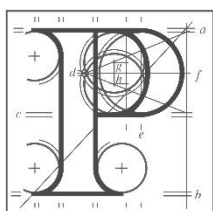
Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.							
CONSTRUCTION PHASE							
No.	Component	Water body receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.
1.	Site clearance & construction	BARROW_040	Potential overland flow to drainage ditches.	Spillages & accidental release of hydrocarbons	Standard best practice construction measures	No.	Screened out.
2.	Site clearance & construction	Portlaoise IE_SE_G_107	Drainage through soil / bedrock	Spillages & accidental release of hydrocarbons	Standard best practice construction measures.	NO.	Screened out.
OPERATIONAL PHASE							
1.	Surface runoff.	BARROW_040	Potential overland flow to drainage ditches.	Release of contaminated	All slurry from the cubicle sheds and soiled waters from	No.	Screened out.

				runoff / soiled waters.	the concreted open yard areas are collected via a dedicated drainage system and directed to the fenced slurry lagoon which accords with the minimum requirements of the Department of Agriculture and Food's Specification S126: 'Minimum Specification for Geomembrane-Lined Slurry / Effluent Stores and Ancillary Works'. Clean roof waters are collected separately and discharged via an underground collection system to the open ditch to the southeast corner of the site		
2.	Groundwater discharges	Portlaoise IE_SE_G_107	Drainage through soil / bedrock	Excessive landspreading of slurry etc. and nutrient enrichment downstream	All slurry from the cubicle sheds and soiled waters from the concreted open yard areas are collected via a dedicated drainage system and directed to the fenced slurry lagoon	No.	Screened out.

					which accords with the minimum requirements of the Department of Agriculture and Food's Specification S126: 'Minimum Specification for Geomembrane-Lined Slurry / Effluent Stores and Ancillary Works'. Effluent is temporarily stored in the slurry lagoon during the closed winter period before being periodically removed by tanker and spread within the landholding in compliance with the Department of Agriculture's 'Code of Practice for Landspreading', the Farm Nutrient Management Plan, and the Good Agricultural Practice for Protection of Waters Regulations, 2025.		
DECOMMISSIONING PHASE							

1.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
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Appendix 5:



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Memorandum ABP-319970-24

To: Robert Speer
From: Emmet Smyth
Re: ABP-319970-24
Date: 19th September 2025

Overview:

Reference ABP-319970-24, Application for Substitute Consent under Section 177E for agricultural development. The development maybe described as the following, 2 No. Cubicle sheds, total floor area 3770m² cattle welfare units associated concrete feed passages with a total area of 1485m², a Slurry lagoon (sealed effluent storage) of 4095m³, Silage pit of 1180m² and accompanying concrete apron, adjoining concrete yards and associated site works at Forrest Lower, Mountmellick, Co. Laois.

Site overview.

The hydrogeology of the site can be summarised as follows: it is underlain by tills chiefly derived from limestones, in and around the structures subject of this application with surrounding lands made up of Alluvial soil and gravels derived from limestones. The subsoils are poorly drained peaty gleys in the area of the structures subject of this application, surface water and groundwater gleys, Rendzinas and Lithosols, Alluvial soils towards the River Barrow SAC. The site subject of this application is classified

by GSI as having moderate vulnerability in the areas of the structures with high vulnerability towards the River Barrow SAC. The site is underlain by a Locally Important Aquifer with moderately productive bedrock in local zones. Groundwater flow can be inferred from topography and likely flows Northeast and Southwest towards watercourses away from the structures. There are 2 wells mapped within the area of the structures with a location accuracy to within 2km.

Legislation.

The European Union, Good Agricultural Practice for the Protection of Waters, Regulations, 2022, **Article 7(2)(b) states that; Storage facilities being provided on a holding shall comply with such construction specifications for those facilities as may be approved from time to time by the Minister for Agriculture, Food and the Marine.**

This will afford the following protections regarding the surface waters.

S123 document 'Bovine livestock Units and slatted units' as issued by the Minister for Agriculture, Food and the Marine states that; As a general guide, a storage facility for silage effluent/slurry/soiled water should be located not less than 50m from any waterbody in the case of new farmyards, and not less than 10m in the case of extensions/modifications to an existing facility. The minimum distance between a storage facility and a public/private water supply source, either surface or ground, shall be 60m for new farmyards and this may be reduced to not less than 30m for existing farmyards subject to a hydro-geological survey. In vulnerable situations this distance shall be increased up to 300m.

In this instance the separation distances applicable are ≥ 10 metres from any waterbodies given that the subject development is an extension to an existing facility. In addition, the storage facility (the slurry lagoon) shall be a minimum of ≥ 30 m subject to a hydro-geological survey, this was not included with this application and as such a 60-metre separation from a water source would be applicable.

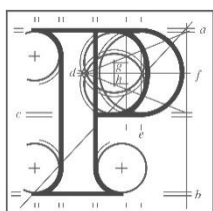
S126 & S126A documents, minimum Specification for Geomembrane-lined Slurry/Effluent Stores, and Ancillary Works and accepted contractors for

Geomembrane Lined Slurry/Effluent Stores respectively. The aforementioned separation distances would be applicable. In addition to this the store must be installed by a contractor prior approved by the Department this has been submitted to the local Authority.

The European Union, Good Agricultural Practice for the Protection of Waters, Regulations, 2022 outlines the strict conditions that the applicant must adhere to regarding the associated landspreading activities associated with the spreading of the contents of the slurry lagoon subject of this application. Strict adherence to the same will afford the requisite level of protection to the waters bordering any spreadlands and negate against any further deterioration in downstream water quality.

Emmet Smyth.

Appendix 6:



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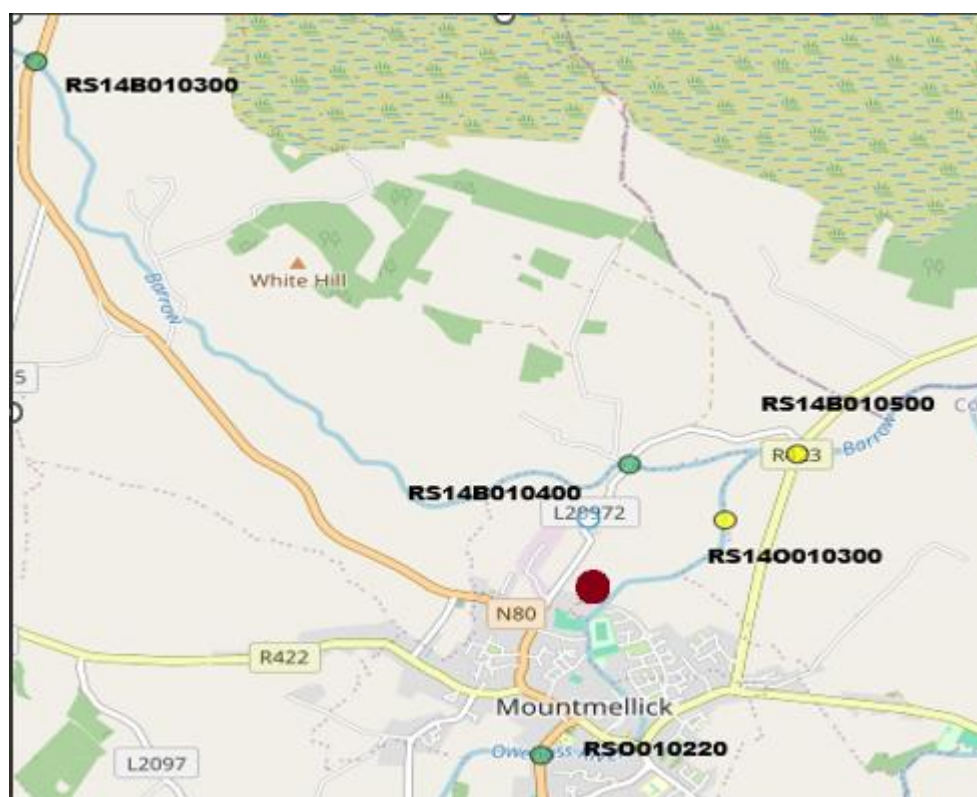
Technical Note R319970_TN2.

To: Robert Speer, Senior Planning Inspector
From: Emmet Smyth, Senior Environmental Scientist
Re: ABP-319970-24
Date: 19th February 2026.

The subject site sits between two branches of the Barrow_040 waterbody (one to the north and one to the south) which both flow west to east before meeting c.1.3km to the east of the subject development. The branch to the north of the subject development is currently not part of the Environmental Protection Agency's monitoring programme. The branch to the south of the subject development is monitored upstream of the development at the end of the Barrow_030 Waterbody at Two-mile Bridge (RS14B010300) and downstream of the development at Barranagh's Bridge Barrow_040 (RS14B010500). The condition of the waters is as follows.

Monitoring Station Reference RS14BO10300 is located upstream of the subject development on the waterbody (Barrow_030) and is at Q4 based on 2023 data. While there is a second monitoring station located downstream of the subject development at Reference (Barrow_040) RS14BO10400, this is pre-WFD with no monitoring having been carried out at this point since 1989 when it was also recorded as Q4. The next monitoring station (Barrow_040) at Reference RS14BO10500 is also located

downstream of the subject development and downstream of the confluence with the Owenass River (Owenass_020) and is at Q3-4 moderate status based on 2023 data. A drop in water quality has been noted between Monitoring Station References RS14BO10300 and RS14BO10500, The Owenass_020 waterbody, which meets the Barrow_040 downstream of the subject development, comes through the town of Mountmellick with Monitoring Station Reference RS14O010220 located at 'Br. North of Irishtown House' circa 1.5km upstream of the town's wastewater treatment plant having recorded a water quality of Q4 (Good Status). The river receives treated effluent from the wastewater treatment plant between this monitoring point and Monitoring Station Reference RS14O010300 c.1km downstream of the plant. Monitoring Station Reference RS14O010300 is noted to be Q3-4 or moderate status and this is the quality of the water as it meets the Barrow_040 waterbody. See figure below showing the locations of the monitoring stations referenced. Mountmellick Wastewater treatment plant denoted by the red dot.



The pressures identified for the Owenass_020 waterbody are listed as Urban Wastewater and Agriculture, which are both deemed to be significant. Consequently,

this waterbody is deemed to be at risk of not attaining the objectives of the Water Framework Directive.

Regarding the identification of agriculture as a pressure, this is attributed to lands that have a high Pollution Indication Potential (PIP) for phosphorus which is expected given the poorly draining soils and the agriculture type. Between the 2 monitoring points on the Owenass_020 there are some PIP '3' lands, which would be deemed to be on the lower end of the high pollution potential. High risk areas for phosphorus loss typically have poorly draining soils and dominant overland flow pathways whereas areas with freely draining soils and substantial groundwater pathways are at high risk for nitrogen loss.

Regarding the pressure from urban wastewater, ambient monitoring has shown a significant deterioration in ammonia and ortho-phosphate concentrations downstream of the wastewater treatment plant. In addition, there have been a number of overflows from the wastewater treatment plant during periods of heavy rainfall as is supported by the Annual Environmental Report for the year 2024 issued by Uisce Eireann for the Mountmellick Wastewater Treatment Plant. Regarding levels of ortho-phosphate (as P), Total Oxidised Nitrogen (as N) and Total Ammonia (as N), there is a clear deterioration in water quality as a direct consequence of the wastewater treatment plant effluent discharge to this waterbody. During the year 2024 there were 3 exceedances of the licence parameter for Total Ammonia (as N) and 12 exceedances for Ortho-phosphate (as P). The Ortho-phosphate exceedances are attributed to the fact that the wastewater treatment plant is not designed for phosphorus removal. I would see the wastewater treatment plant's performance as the significant pressure on the lower section of the Owenass_020 waterbody prior to meeting the Barrow_040 waterbody.

The identified pressures on the Barrow_040 waterbody are agriculture and forestry with the latter being deemed significant. It is largely the land type or the PIP index

lands ranked 1 & 2 across the sub-basin, that are deemed to be the primary issues of concern. The PIP ranking system is based on a combination of the stocking rates across the farms and the ground conditions across the sub-basin as an indicative tool.

The Owenass-020 discharges to the River Barrow c.1.5 km downstream of the Mountmellick Wastewater Treatment System. Downstream of the confluence of the Barrow_040 and the Owenass_020, Monitoring Station Ref. RS14O010300 has recorded a Q-value of Q3-4 or moderate status thereby indicating a drop in the upstream status on the Barrow_040. In this regard, it is very difficult to rule out the impact of the wastewater treatment plant on the Owenass_020 and subsequently on the Barrow_040 waterbody.

From a review of the available information, the subject development cannot be deemed solely responsible for the drop in water quality status within the Barrow_040 waterbody from Q4 at Monitoring Station Ref. RS14B010300 to Q3-4 at Monitoring Station Ref. RS14B010500. There are significant pressures arising from agriculture and the associated land type within the development area as well as those attributable to the release of urban wastewater to the Owenass_020 waterbody which drains to the Barrow_040 waterbody. In this regard, it is my opinion that the Mountmellick Wastewater Treatment Plant's performance is the significant pressure on the lower section of the Owenass_020 waterbody prior to meeting the Barrow_040 waterbody downstream of the subject site. On this basis, it is considered reasonable to conclude that provided the subject development adheres to the requirements of the Good Agricultural Practice for Protection of Waters Regulations, 2025 (as set out in my initial memorandum dated 19th September, 2025), its continued operation, including any associated land spreading activities, will afford the requisite level of protection to waters and will negate against any further deterioration in downstream water quality.

Emmet Smyth, Senior Environmental Scientist.