



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-322529-25

### Question

Whether 1) the felling of trees, drainage and infilling of lands, 2) the breaking/extraction of rock on the site for the purpose of recontouring the lands and 3) the widening of an entrance onto the local road is or is not development or is or is not exempted development.

### Location

Arthurstown, Ardee, Co Louth

### Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

UD/24/140

Applicant for Declaration

Alan and Leona Hannify

Planning Authority Decision

No declaration/Is the Referrer

### Referral

Referred by

Louth County Council

Owner/ Occupier

John McCann

Observer(s)

Alan and Leona Hannify

**Date of Site Inspection**

26<sup>th</sup> November 2025

**Inspector**

Kenneth Moloney

## Contents

1.0 Site Location and Description .....	4
2.0 The Question .....	4
3.0 Planning Authority Declaration.....	5
3.2. Planning Authority Reports .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Louth County Development Plan 2021-2027, as varied.....	5
5.2. Natural Heritage Designations .....	6
6.0 The Referral.....	6
6.2. Planning Authority Response.....	9
6.3. Owner/ occupier's response.....	10
6.4. Further Responses .....	13
7.0 Statutory Provisions.....	19
8.0 Relevant Referrals .....	22
9.0 Assessment.....	23
10.0 EIA Screening.....	34
11.0 Appropriate Assessment .....	34
12.0 Water Framework Directive .....	35
13.0 Recommendation .....	35
Appendix 1 – Form 1: EIA Pre-Screening	
Appendix 2 – Form 2: EIA Preliminary Examination	

## 1.0 Site Location and Description

- 1.1. The referral site is located in a rural area, situated approximately 3km to the southwest of Tallanstown, Co. Louth.
- 1.2. The referral site is a large agricultural field measuring approximately 11 ha and used for tillage. Natural hedgerows form the site boundaries.
- 1.3. The site has access onto a local rural road, the L5199, and there are three houses located on the opposite side of the public road to the referral site.
- 1.4. The undulating topography is a feature of the site as the gradient falls steadily from the public road to a low-lying area and then rises and falls again to a second low lying area, before rising again.

## 2.0 The Question

- 2.1. The questions for determination are as follows.

1. Whether the felling of trees, drainage and infilling of lands on the subject site at Arthurstown, Co. Louth is or is not development and whether such works is or is not exempted development.

I would consider, having regard to the submissions on the file, that the wording of is more appropriately reworded as follows.

Whether the felling of trees, drainage and infilling of lands for the purpose of land reclamation on the subject site at Arthurstown, Co. Louth is or is not development and whether such works is or is not exempted development

2. Whether the breaking/extraction of rock on the site for the purpose of recontouring the lands is or is not development and is/is not exempted development.
3. Whether the widening of an entrance onto the local road is or is not development and whether such entrance is or is not exempted development.

### **3.0 Planning Authority Declaration**

- 3.1.1. No declaration made by the Planning Authority. The Planning Authority on the 1<sup>st</sup> of May 2025, in accordance with Section 5(4) of the Planning and Development Act, 2000 (as amended), referred a referral to the Commission for determination.

### **3.2. Planning Authority Reports**

- None

#### **3.2.1. Other Technical Reports**

- None

### **4.0 Planning History**

- None

#### **4.1. Enforcement History**

- Planning Ref: UD/24/140 – Case relates to alleged unauthorised works on lands at Arthurstown, Ardee, Co Louth.

### **5.0 Policy Context**

#### **5.1. Louth County Development Plan 2021-2027, as varied.**

- 5.1.1. The referral site is located in a rural area outside of any settlement and is not zoned.

#### **5.1.2. Chapter 8**

- Section 8.9 refers to wetlands. The Louth Wetland Survey determined the wetland status of more than 300 sites, considered likely to support wetland habitats on the basis of underlying soils, topography, historical mapping and aerial photography.
- The CDP advises that planning legislation requires that work or development, which involves the drainage or reclamation of a wetland requires planning permission where the wetland is greater than 0.1ha.

- Section 8.11 ‘Trees, Woodlands and Hedgerows’, refers to the following relevant policies.
  - NBG 31 – Removal of trees and hedgerows only outside nesting season.
  - NBG 33 – Incorporation of significant hedgerows and trees into development proposals.

## 5.2. Natural Heritage Designations

- Dundalk Bay SAC (site code 000455) – 14.3 km east
- Dundalk Bay SPA (site code 004026) – 14.3 km east
- Stabannan-Braganstown SPA (site code 004091) – 8.1 km east
- Louth Hall And Ardee Woods pNHA (site code 001616) – 2 km northeast

## 6.0 The Referral

- 6.1. The following is a summary of the applicant’s case, submitted to the Planning Authority.

### Introduction

- Prior to works on the landholding, the topography dropped from the roadside along its south-eastern boundary towards a tree-lined watercourse and wet woodland. The land then rose steeply towards the north-western boundary.
- The tree-lined watercourse was a wetland, which traversed the landholding from the southwest to northeast and provided drainage for the sloped land either side.
- A second watercourse traversed the northern part of the landholding.
- It is alleged that unauthorized works took place on the landholding resulting in the removal of wetlands, alteration to the landscape and widening of vehicular entrance.

### Development of Wetlands

- The key statutory provisions are Class 11, Part 3 of Schedule 2 of the Regulations. Any development exceeding 0.1 ha of wetlands is not exempted development.
- The term '*wetlands*' is defined in Article 5, Part 2 of the Regulations.
- The definition of '*wetlands*' in the regulations is not subject to a formal designation by the Local Authority or any other statutory organisation.
- The EPA provides guidance in defining wetlands in their publication, Irish Wetland Types – An Identification Guide and Field Survey Manual (2018). A Wetland is defined as '*an area of land that is saturated with water either permanently or seasonally, and where the water table is near or at the surface*'.
- The EPA guidance also refers that wetlands include all '*.....swamps and marshes and wet grasslands*'. The EPA emphasizes 'all'.
- Louth County Council (LCC) undertook an enforcement case on the subject lands following a complaint from the NPWS regarding ongoing works to wetlands.
- The correspondence from the complainant included aerial map<sup>1</sup> and photographs<sup>2</sup> of a water course.
- The Enforcement Office of LCC concluded that the works are exempted development under Article 8C of the Regulations. The Report concludes that the area of marsh on the site is not a designated wetland as such is not afforded protection.
- There is no formal designation of wetlands.
- Appendix B of the submission includes correspondence from Wetlands Survey Ireland confirming that the mapping of wetlands is not exhaustive.
- The Commission are referred to previous ABP decision (ABP-303109-18).

---

<sup>1</sup> Fig. 9 of applicant's submission

<sup>2</sup> fig. 10 of applicant's submission

- The Planning Inspector's report concluded that a former marl hole met the definition of wetlands, and that the area exceeds 0.1 ha. ABP issued an order confirming that the works were not exempted development.
- The position of LCC Enforcement Office is contrary to the position of ABP (ABP-303109-18) and relevant experts (EPA and Wetlands Survey Ireland) and is inconsistent with the definition of wetlands in Article 5, Part 2 of the Regulations.

#### Mineral Extraction and Processing

- The development on the site included the extraction of subsurface minerals.
- The works also included the use of mechanical processes to break the minerals into aggregates on the landholding.
- The Minerals Development Acts, 1940-1979, defines minerals as '*all substances in, on or under land.....*'.
- The Enforcement Office of LCC noted rock breaking in the centre of the site as the landowner was lowering the rock area and the excavated rock was being placed in the wet areas of the field.
- It is submitted that the rock breaking exercise was extensive across the landholding and took place over a number of months.
- The excavation of rock and the use of industrial rock breaking equipment is an industrial process which requires planning permission.
- The EPA Guidance '*Guidance to Planners, Planning Authorities, An Bord Pleanála on the Management of Excess Soil and Stone from Developments*' defines normal industrial practice as '*in the context of soil and stone, normal industrial practice is taken to mean physical steps such as modification or size or shape by mechanical treatment*'.
- It is questioned, given the EPA definition of 'normal industrial practice', the opinion of the Enforcement Office Report which determined that extraction and processing of rock is exempted development.



- The overall landholding is 11.6 ha, and it is estimated that approximately 6.7 ha relates to extraction and processing of minerals, and this therefore raises questions regarding the absence of an EIA.

#### Widening of Site Access

- Historically the access entrance had a width of 4m.
- This access was extended to c. 11 metres as part of unauthorised development.
- A Warning Letter was issued to the landowner on the 17<sup>th</sup> of December 2024.
- The landowner advised the Enforcement Office in LCC that the entrance will be restored, however this did not occur within 12 weeks of the Warning Letter issuing.
- OPR guidance '*A Guide to Planning Enforcement in Ireland*' advises that the PA should make its decision on further action within 12 weeks of sending a Warning Letter.
- This 12-week period has elapsed.
- There is a need for the Council's Enforcement team to act expeditiously on this issue.

#### Importation of Material

- Several loads of material have been deposited to the site, without planning permission or permit.
- This matter is currently under investigation by the PA.

#### EIA

- The need for screening of EIA and the undertaking of an EIA remains pertinent to the case.

### **6.2. Planning Authority Response**

- None

### 6.3. Owner/ occupier's response

The following is a summary of a response by the landowner.

- The works on the land are exempt having regard to Article 8C of the Regulations, 2001, as amended.
- It is noted from the PA's Enforcement Report that the Officer confirms that the works are exempt having regard to Article 8C of the Regulations. The Report also states that the area of marsh on the site is not a designated wetland.
- The new field gate has been installed to the same width as the previous field gate.

#### Nature of plant and machinery within the lands

- There is no restriction to machinery on site pursuant to land reclamation under Article 8C contrary to in paragraphs 2.3 – 2.10 of the third-party submission<sup>3</sup>, to PA.

#### Infilling of lands

- Illustrations by the applicant of machinery relates to tractor spreading farmyard manure to improve soil conditions. This is not waste material.
- No infill material or soils from outside lands were brought onto the site.
- Reprofilling and infilling within the lands were carried out solely by utilizing soils from the site.

#### Wetlands

- The site is not a recorded wetland by Irish Wetlands.
- All known wetlands are recorded on [www.wetlandsurvey.ie](http://www.wetlandsurvey.ie)
- Ditches that previously traversed the site are not wetlands and instead falls within the definition of a watercourse under Section 2 of the Arterial Drainage Act, which states '*watercourses includes rivers, streams and other natural watercourses also canals, drains and other artificial watercourses*'.

---

<sup>3</sup> Dated 14<sup>th</sup> March 2025

- These watercourses are included in an historical OS map, accompanying the submission.
- There is a clear distinction between a wetland and a watercourse. A wetland is defined under Article 5(1) of the Planning and Development Regulations.
- The drainage works are exempt having regard to Article 8B of the Planning and Development Regulations.
- Provision of culverts / pipes which have since been installed within the lands to serve as land drains are exempt development under Schedule 2, Part 3, Class 3 of the Regulations.
- Article 6, Schedule 2, Part 3, Class 3 and Article 8B of the Regulations do not have a restriction on such works not to be exempted development.
- Schedule 2, Part 3, Class 3 provides for the construction of any gully, drain pond, trough, pit or culvert. These land drains have been piped and fall within the classification of a gully, drain, culvert. These works fall within land drainage and Article 8B applies.

### Precedents

- The complainant's submitted precedent is distinguishable from the development on the referral site, as follows.
  - According to the wetlands database the lands are not within a wetland.
  - The PA's Enforcement Report confirms that the lands are not a designated wetland.
  - The watercourse traversing the lands is wholly distinguishable from a wetland.
  - The lands on the referral site are agricultural land which differs from the lands of the applicant's precedent case 303109-18.
- A relevant precedent case is RL2472. The Board concluded the infilling of lands was development but exempted development as the disposal of inert soil and stones on low-lying ground for the purposes of land reclamation for productive agricultural works under section 2(1) of the Act.

- The works came within the scope of development under section 3(1) of the 2000 Act, and they came within the scope of the exemption under Class 11, Part 3, Schedule 2 of the Regulations.
- In RL2472 the Board decided that the works did not give rise to traffic hazard of road users and therefore did not come within scope of the restriction on that exemption as set out Article 9(1)(a)(iii).
- The development is exempt having regard to Article 8C, given that no road transportation is required to facilitate the infilling of lands, as there was stored topsoil in-situ.

#### Importation of Material

- Paragraphs 7.1 and 7.3 of the complainant's submission refers to imported material. However, this was farm-yard manure which was spread on the lands and not waste material.

#### Question no. 1

*Whether the felling of trees, drainage and infilling of lands is or is not development and whether such works is or is not exempt development.*

- The Planning Inspector in case reference 303109-18 confirms that the removal of trees and vegetation within an agricultural landholding is not development.
- Article 8B of the Regulations confirms that there is an exemption for field drainage for agricultural lands, other than reclamation of wetlands.
- The provision of culverts / pipes installed on the site to serve land drains are exempt development under Schedule 2, Part 3, Class 3 of the Regulations.

#### Question no. 2

*Whether the breaking of rock/extraction of rock on the site for the purposes of recontouring the land is or is not development and whether such works is or is not exempt development*

- These works are exempt under Article 8C of the Regulations.

- The breaking of rocks and associated recontouring of ground levels on the site was necessitated by rock outcrops in places.
- The definition of quarrying under the Mines and Quarries Act, 1965, is relevant. Section 3(2) of this Act defines quarry, *as an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither mine nor merely a well or bore-hole or a well and bore hole combined.*
- Article 8C of the Regulations does not distinguish between recontouring of lands, soils or rock within agricultural lands, but simply refers to recontouring of land.
- Rock outcrops are typically found on agricultural land and in this case the rock outcrops were removed and lands then recontoured and finished in topsoil.
- The prohibition of rock breaking within an agricultural holding would be contrary to the provisions of Article 8C of the Regulations.

#### Question no. 3

*Whether the widening of an entrance onto local road is or is not development and whether such works is or is not exempt development*

- The field gate has been installed to the same width of the previous field gate.

#### Conclusion

- The submission confirms that none of the restrictions in Article 9(1) of the Regulations would apply to the development.

### **6.4. Further Responses**

- 6.4.1. The applicant made a submission to ACP, following a request. The content of this submission is similar to that of the applicant's submission to the PA. The following is a summary of the applicant's submission to ACP.

#### Introduction

- Two tree-lined watercourses comprised of wetlands, both of which traversed the lands along the southwest to northeast alignment. The wetlands provided drainage for the sloping land on either side and fed into the wider drainage network.

#### Felling of Trees, Drainage and Infilling of Lands

- The question for consideration is as follows.

*Whether the felling of trees, drainage and infilling of lands is or is not development and whether such works is or is not exempted development*

- The activities in respect of the above question may be described in accordance with Section 2 of the Act.
- Article 8B of the Regulations provides exemptions for field drainage for agriculture, other than drainage and/or reclamation of wetlands.
- Article 8C of the Regulations provides exemptions for land reclamation works, other than reclamation of wetlands.
- Article 8C of the Regulations refers to land reclamation works “within a farm holding” and it is queried whether the two land folios (Folio LH5421 and Folio LH12824) were part of the same farm holding when the land reclamation works commenced in summer of 2024.
- Schedule 2, Part 3, Class 11 of the Regulations is clear in stating that development consisting of the carrying out of drainage and /or reclamation of wetlands shall not exceed an area of 0.1 ha. Any development exceeding 0.1 ha of wetlands is not exempted development.
- It is calculated that the works that have been undertaken include wetlands with combined area of approximately 2.3 ha. This exceeds the 0.1 ha allowed under exempted development provisions.

#### Mineral Extraction and Processing

- The question for consideration is as follows.

*Whether breaking/extraction of rock on the site for the purpose of recontouring the lands is or is not development and whether such works is or is not exempted development*

- The activities in respect of the above question may be described in accordance with Section 2 of the Act.
- It is submitted that there was on-going extraction of sub-surface minerals and the use of a mechanical process to break the minerals into smaller aggregates from July to November 2024.
- Louth County Council's Enforcement Report identified rock breaking on site and includes photos of works illustrating stockpiles of aggregates across the landholding, along the eastern site boundary.
- Minerals are defined in the Minerals Development Act 1940 – 1979.
- Quarry is defined in Section 2(1) of the Act, which makes specific reference to storage and ancillary processes.
- It is estimated that the physical extraction took place over an area of 6.7 ha and the extracted minerals were stored in stockpiles on the wider area of the site, as such the quarry area extended beyond 6.7 ha.
- The Enforcement Officer, in correspondence dated 3<sup>rd</sup> March 2025, concluded that extraction and breaking of rock is exempted development on the basis that the rock was not being exported from the owner's lands.
- The advice of the Enforcement Officer is contrary to the definition of a quarry as set out in Section 2(1) the Act, and various decisions by ABP, such as precedent case RL15.RL3465.
- In case reference RL15.RL3465, the Planning Inspector concluded the excavation of rock for the purpose of land reclamation constitutes development, and the Board determined that the excavation of rock did not come within the scope of Article 8C of the Regulations.
- In summary, the works involving the breaking / extraction of rocks is development and the works undertaken meets the definition of a quarry, meaning the works are not exempted development.

### Widening of Entrance onto the Local Road

- The question for consideration is as follows.

*Whether the widening of an entrance onto the local road is or is not development and whether such works is or is not exempted development*

- The historic vehicular entrance onto L5119 had a width of 4 metres.
- The established entrance was widened in July 2024, which involved the removal of hedgerow.
- The width of the entrance increased to 11 metres. The entrance was later increased to 14.4 metres.
- The widening of the entrance falls within the definition of works under section 2 of the Act.
- Article 9(1)(a)(ii) of the Regulations is relevant.
- Referral case reference ABP-301137-18 is also relevant. The development related to the widening of an agricultural entrance and the Planning Inspector concluded that the restriction for exempted development under Article 9(1)(a)(ii) is applicable. The Board concluded that the widening of the existing farm gate was development and not exempted development.

### **6.5. Applicant's Response to the Landowner's Submission**

- 6.5.1. The following is a summary of the applicant's second submission to ACP, in response to the landowner's submission to ACP.

#### Observation of Matter 1

- The submission by the landowner contending that wetlands did not exist is contrary to submissions by the NPWS and neighbouring residents.
- The landowner's submission basis its viewpoint on that of the Enforcement Office's report.
- The view of LCC in respect of wetlands has changed, thus referring the Section 5 application to ACP.



- LCC's initial Enforcement Report (dated 19<sup>th</sup> August 2024) considered that wetlands were present on the referral site. The Enforcement Office subsequently concluded that wetlands were not present on the referral site. LCC's Senior Planner subsequently concluded it is not clear whether wetlands exist / or existed on the site and referred the issue to ACP.
- A planning enforcement complaint and correspondence submitted by NPWS (dated 3<sup>rd</sup> July 2024) confirms that the referral site had two wetlands.
- The landowner's submission makes no reference to the NPWS submission.
- Contrary to the view taken in the landowner's submission it is not necessary that a wetland is mapped on the Wetland Survey of Ireland.
- In precedent case ABP-303109-18, the Planning Inspector concluded that the former 'marl hole' met the definition of a wetland.
- Submissions from neighbouring residents (Appendix C) also confirms that wetlands existed on the referral site.
- The landowner submitted OS maps, and it is noted that these maps are not a resource for identifying wetlands and the identification of '*flow direction*' on the OS map does not preclude a watercourse or aquatic feature from being a wetland.
- Wetlands are defined in Article 5 of the Planning and Development Regulations, 2001.
- Wetland Surveys Ireland mapping identifies wetlands on the referral site. This is based on GSI (Quaternary Map of Ireland).
- It is submitted that the terms such as watercourse or ditches are normally manmade features whereas wetlands are naturally occurring features.
- The definition of wetlands in the Planning Regulations, supersedes the definition of wetlands in the Arterial Drainage Act, 1945.
- The EPA defines a wetland in its publication Irish Wetland Types, 2018.
- The infilling of wetlands, on a site exceeding 0.1ha, is not exempted development.

- The development of the site is not exempted development in accordance with Article 8B and 8C.

#### Observation on Matter 2

- The landowner's admission that the landholding included rock outcrops and necessitated the breaking of rock is welcomed.
- A relevant referral precedent case is RL15.RL3465. This case involved the excavation of rock outcrop. The Planning Inspector concluded that the excavation of rock for land reclamation constitutes development. The Inspector also included that the excavation falls within the definition of a quarry.
- The Board's Order confirmed that works undertaken in the site did not come within the scope of Article 8C of the Regulations and was not exempted development.
- Contrary to the landowner's submission Article 8C must be read in the context of Section 2(1) of the Act.
- Rock breaking equipment was imported to the referral site, including excavators and diggers.

#### Observation on Matter 3

- Contrary to the landowner's submission the subject field gate was removed, and the entrance was subject to widening which involved the removal of a section of hedgerow. This increased the width of the entrance from 4 metres to 11 metres.
- It is contended that further works took place in March 2025, which extended the entrance to approximately 14.4 metres.
- The assertion by the landowner that the field gate is the same width is incorrect.
- There is an enforcement case in respect of this field gate widening (Appendix D and F).

- The public road (L5119) is approximately 4.25m in width and Article 9(1)(a)(ii) is applicable. The widening of the entrance onto a public road that exceeds 4m is not exempted development.

## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000, as amended.**

#### **7.1.1. Section 2(1) of the Act states the following:**

- ‘development’ has the meaning assigned to it by Section 3;
- ‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ....’
- “Quarry” means an excavation or system of excavations made for the purposes of, or in connection with, the getting of minerals, (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely well or borehole or a well or borehole combined and shall be deemed to include:
  - (i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such materials but, subject thereto, does not include any place at which any manufacturing process is carried on;
  - (ii) any place occupied by the owner of a quarry and used for the depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;
  - (iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;

- (iv) a conveyor or aerial rope way provided for the removal from the quarry of material or refuse.

7.1.2. Section 3(1)(a) states that:

- 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land'.

7.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act,

7.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.

7.1.5. Section 4(4) provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

## 7.2. Planning and Development Regulations, 2001, as amended.

7.2.1. Article 5 'Wetlands' means natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.

7.2.2. Article 6(1) of the Planning and Development Regulations 2001, as amended, (hereinafter referred to as 'the Regulations') provide that 'subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1'.

7.2.3. Schedule 2 of Part 3 (Rural) of the Regulations set out the classes of exempted development and Class 3 and Class 11 is relevant.

<b>Column 1</b>	<b>Column 2</b>
<b>Description of Development</b>	<b>Conditions and Limitations</b>
<i>Minor works and structures</i>	

<p><b>Class 3</b></p> <p>Works relating to the construction or maintenance of any gully, drain, pond, trough, pit and culvert, the widening or deepening of a watercourse, the removal of obstructions from a watercourse and the making or repairing of embankments in connection with any foregoing works.</p>	
<p><i>Land Reclamation</i></p> <p><b>Class 11</b></p> <p>Development consisting of the carrying out of drainage and/or reclamation of wetlands</p>	<p>1. The area to be affected shall not exceed 0.1 hectares</p> <p>2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above</p>

7.2.9. Article 8 relates to works specified in a drainage scheme, and the following is relevant.

- Article 8B states '*works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetlands, shall be exempted development*'.
- Article 8C states '*land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding shall be exempted development*'.

7.2.10. As provided for in Article 9(1)(a), the development to which article 6 relates, shall not be exempted development, under certain circumstances and the restrictions and

limitations are outlined in this Article. Of relevant to the referral before the Commission is as follows:

Article 9(1)(a)(ii)

*'consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width'.*

Article 9(1)(a)(viiB)

*comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

Article 9 (c)

*if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,*

## **8.0 Relevant Referrals**

- 8.1.1. ABP-303734-19: The Board determined on the 10<sup>th</sup> of June 2019 that the infilling and drainage of wetland and the construction of a road access within, and adjacent to, Lough Lene SAC at Lough Lene, Collinstown, County Westmeath, is development and is not exempted development. The Board accepted the Inspector's recommendation. The Inspectors Report notes, that the wetland area infilled exceeded the 0.1ha threshold, and cannot therefore avail of Class 11, Part 3, Schedule 2 of the Regulations. Further the Inspector's Report notes that having regard to Class 1 (c) of Schedule 5, Part 2 it cannot be concluded that the development would not meet or exceed the 2-ha threshold for mandatory EIA.
- 8.1.2. ABP-301137-18 The Board determined on the 6<sup>th</sup> of February 2019 that the alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate and the upgrading, resurfacing and widening of a private road at Gowran Demesne, Gowran, County Kilkenny is development and is not exempted

development. The Board accepted the Inspector's recommendation. In this case the alteration to existing farm gate field entrances to form a vehicular entrance is in relation to an access onto a public road that exceeds 4m in width. The Inspector's Report concludes that the alteration to existing farm gate field entrances to form a vehicular entrance would not be exempted development having regard to Article 9(1)(a)(ii) of the Regulations.

- 8.1.3. RL15.RL3465: The Board determined on the 6<sup>th</sup> of July 2016 that activities undertaken at Rathory, Reaghstown, Ardee, County Louth are development and are not exempted development. The Board accepted the Inspector's recommendation. The Inspector's Report notes, that aggregate excavated from the subject site was used for land reclamation works and that land reclamation works constitute exempted development under the provisions of Section 4(l) of the Act and Article 8C of the Regulations. The Inspector concluded that the land reclamation may constitute exempted development in accordance with the provisions of the Act, however there is no provision in Schedule 2 of the Regulations that would exempt the excavation of rock.

## **9.0 Assessment**

### **9.1. Introduction**

- 9.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the felling of trees, drainage and infilling of lands for the purpose of land reclamation, or the breaking/extraction of rock on the site for the purpose of recontouring the lands, or the widening of an entrance onto the local road, having regard to the proper planning and sustainable development of the area, but rather whether or not the matters in question constitutes development, and if so falls within the scope of exempted development.

### **9.2. Is or is not development**

- 9.2.1. Section 2(1) of the Planning and Development Act 2000, as amended, defines "works" as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal... .

- 9.2.2. Section 3(1)(a) of the Act defines development as the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land and in effect relates to both works and the material change in the use of land or structures.
- 9.2.3. I note the definition of 'works' outlined above, and having examined same, I am of the opinion that (1) the felling of trees, drainage and infilling of lands, (2) breaking/extraction of rock on the site for the purpose of recontouring the lands, and (3) the widening of an entrance onto the local road, amounts to 'works' within the meaning of Section 2 (1) of the Act and is therefore development within the meaning of Section 3 of the Act, as a consequence of the works undertaken.

### 9.3. **Is or is not exempted development**

- 9.3.1. I will examine each of the questions in turn.

#### 9.3.2. **Question 1**

- *Whether the felling of trees, drainage and infilling of lands on the subject site for the purpose of land reclamation is or is not development and whether such works is or is not exempted development.*

- 9.3.3. The first issue to consider in this matter is whether the referral site contained / contains wetlands, as this has implications for available exemptions in respect of felling of trees, drainage and infilling of lands for the purpose of land reclamation. It is also notable that the parties to this referral have different viewpoints on whether the referral site contained / contains wetlands and as such whether available exemptions in Schedule 2, Part 2, Class and/or Class 11, and Article 8 of the Planning and Development Regulations, 2001, as amended, (hereafter referred to as the Regulations) would apply.
- 9.3.4. The applicant's submission argues, having regard to the definition of a wetland in Article 5 of the Regulations, the NPWS submission on the file, EPA Guidance and previous Board decision (ABP-303109-18), that the referral site contained wetlands, which have now been removed.
- 9.3.5. In arguing the case the applicant refers the Commission to previous ABP decision (ABP-303109-18). In this case the Planning Inspector's report concluded that a



former marl hole met the definition of wetlands, and the Board concurred with the Inspector's recommendation. ABP issued an order confirming that the works were not exempted development as the affected area of the site exceeded the 0.1 ha threshold imposed in the conditions and limitations in respect of Schedule 2, Part 3, Class 11.

9.3.6. On the other hand, the landowner's submission to ACP argues that the referral site is not a recorded wetland by Irish Wetlands, as contained on [www.wetlandssurvey.ie](http://www.wetlandssurvey.ie). The landowner's submission argues that ditches that previously traversed the site are not wetlands and instead falls within the definition of a watercourse under Section 2 of the Arterial Drainage Act, which states '*watercourses includes rivers, streams and other natural watercourses also canals, drains and other artificial watercourses*'.

9.3.7. I would acknowledge that there are several available definitions in respect of wetlands, however the most relevant definition of a wetland for this Section 5 application before the Commission is that of Article 5 of the Regulations, as this specifically relates to exempted development.

9.3.8. Article 5 of the Regulations defines wetlands as follows:

*'Wetlands means natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water'.*

9.3.9. I noted from my site assessment that the topography was a distinct feature of the referral site. In this regard the gradient falls steadily from the public road (L5119) to a low-lying area situated approximately 100 – 125 metres within the site. The gradient of the site then rises and falls again to a second low-lying area, before rising again towards the northern boundary of the subject site.

9.3.10. I would note from the documentation on the file, including that contained in the applicant's submissions to both the PA and ACP, also the submission and photographs on the file from the NPWS, (appended to the applicant's submission 30<sup>th</sup> May 2025), and Louth County Council's Enforcement Report, that the referral site contained two separate channels of flowing water. These channels of water, based on the available documentation, traversed the site along the southwest to northeast alignment. The channels of water are located approximately in the same

location of the two low-lying areas on the site as described above. The landowner's submission indicates the flow of direction of these water channels, based on historic OS Maps (25 Inch Map), is from southwest to northeast across the site.

- 9.3.11. Separately I noted from Google Earth (2019 and 2022) that the banks of these former water channels were lined with vegetation. In later Google Earth imagery (23<sup>rd</sup> July 2024) the vegetation along the banks of both water channels is predominantly removed and the channels remain in position.
- 9.3.12. During my site assessment I observed that the water channels are entirely removed from the site and all vegetation, located previously alongside the channels is also entirely removed. I also observed ponding of water along the first low-lying area on the site, and more significant ponding of water within the second low-lying area. These areas of water on the site would at the time of my site assessment, in my view, resemble shallow inundation, or saturation, by standing water consistent with Article 5 of the Regulations.
- 9.3.13. I have reviewed [www.wetlandssurvey.ie](http://www.wetlandssurvey.ie) and I note that the main mapping portal does not identify the referral site as a wetland. Nonetheless the website [www.wetlandssurvey.ie](http://www.wetlandssurvey.ie) also includes additional mapping that designates the referral site as '*Wetland Indicating Sediment*' which would indicate that a wetland is present on the referral site. Notwithstanding, the definition of wetlands in Article 5 of the Regulations would take primacy over recorded wetlands on this website.
- 9.3.14. I would consider on the basis of available information on the file that there is no doubt that the site contained two separate water channels that traversed the referral site. I would also consider, based on the definition of '*wetlands*' as contained in Article 5 of the Regulations, that these water channels are wetlands as they comprised of natural, or possibly artificial areas, which were either constant or periodic shallow inundations of flowing water. Overall, I am satisfied that the referral site contained two separate wetlands.
- 9.3.15. The next step is to establish whether the development, which relates to felling of trees, drainage and infilling of lands for the purpose of land reclamation, on the referral site which contained wetlands, would be exempted development. Section 4(1) of the Act sets out provisions in relation to exempted development. The felling of

trees, drainage and infilling of lands for the purpose of land reclamation would not comply with any of these provisions.

9.3.16. Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development. This is done by Article 6, which provides that development of a class specified in Schedule 2 of the Regulations shall be exempted provided that the conditions and limitations attached to those various classes are met.

9.3.17. In respect of drainage works and land reclamation in rural areas I would consider that both Class 3 and Class 11 of Part 3, Schedule 2 of the Planning and Development Regulations, 2001 (as amended), are relevant considerations.

9.3.18. Article 8 of the Regulations provides exemptions in respect of works specified in a drainage scheme.

9.3.19. Schedule 2, Part 3, Class 11 of the Planning and Development Regulations, 2001

Schedule 2, Part 3, Class 11 of the Regulations states:

*'development consisting of the carrying out of drainage and/or reclamation of wetlands'.*

9.3.20. The conditions and limitations of Class 11 require that the area of wetland to be affected shall not exceed 0.1 ha. There is no information on the file precisely indicating the scale of the affected area, however I would note from the documentation on the file that both the NPWS submission and Louth County Council's Enforcement Report state that the affected area measures approximately 1.2 ha. The applicant's submission concludes that the affected area of wetland measures approximately 2.3 ha, and I have estimated, that the affected area is approximately 1.1 ha. All these estimations in respect of the affected area of wetland would significantly exceed the threshold in the conditions and limitations of 0.1 ha.

9.3.21. I would therefore be satisfied that the affected area of wetland exceeds the 0.1 ha threshold and as such the available exemption under Schedule 2, Part 3, Class 11 of the Regulations, would not apply to the development.

9.3.22. Schedule 2, Part 3, Class 3 of the Planning and Development Regulations, 2001

In relation to Schedule 2, Part 3, Class 3 of the Regulations, this exemption relates to the maintenance of any gully, drain, pond, trough, pit and culvert, the widening or deepening of a watercourse, the removal of obstructions from a watercourse and repairing of embankments. I would consider that Class 3 would not relate to the removal of a watercourse or the infilling of a wetland, and as such this exemption would not be available in this instance.

9.3.23. Article 8B and Article 8C of the Planning and Development Regulations, 2001

9.3.24. The landowner's submission also asserts that the said works, which are drainage works are exempt having regard to Article 8B and Article 8C of the Regulations. It is my interpretation that both Article 8B of the Regulations provides exemptions for field drainage for agriculture, other than drainage and/or reclamation of wetlands, and Article 8C of the Regulations provides exemptions for land reclamation works, other than reclamation of wetlands. I have concluded above that the referral site contained two separate wetlands, and as such any drainage works that is exempted development in accordance with Article 8B and 8C of the Regulations, would not be available in this instance.

Conclusion

9.3.25. I would therefore conclude that the development the subject of Question 1 is not exempted development.

**9.4. Restrictions on exempted development**

9.4.1. I have noted above that there are no relevant exempted development provisions in respect of Question 1 of the referral before the Commission. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations, 2001 (as amended), refers to restrictions on exempted development.

9.4.2. In respect of the restrictions on exempted development set out in sub article 9(c) of the Regulations or in Section 4 (4) of the Planning and Development Act, consideration needs to be given to whether an environmental impact assessment would have been required. Part 2 of Schedule 5 of the Planning and Development

Regulations 2001, as amended, details development for which an EIS is required. The relevant class in this instance is as follows:

- Class 1 (c) refers to “*development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected*”.

9.4.3. In the absence of clear detail in relation to the baseline environment and the extent of wetland that has been drained and / or reclaimed or impacted I cannot conclude that the development would not meet or exceed the 2-hectare threshold for mandatory EIA. I would therefore submit that on the basis of the available information, the need for an EIS cannot be excluded.

9.4.4. **Question no. 2**

- *Whether the breaking/extraction of rock on the site for the purpose of recontouring the lands is or is not development and is/is not exempted development.*

9.4.5. The first issue to consider in this matter is whether the breaking/ extraction of rock on the landholding constitutes quarrying, as it is an issue in determining whether the development is exempted and the parties to this referral are not agreed on this matter.

9.4.6. I would note that the applicant’s submission to the PA asserts that development on the site included the extraction of subsurface minerals which involved the use of mechanical processes to break the minerals into aggregates on the landholding. The applicant further submits that the Minerals Development Acts, 1940-1979, defines minerals as ‘*all substances in, on or under land.....*’, and argues that the excavation of rock and the use of industrial rock breaking equipment is an industrial process which requires planning permission.

9.4.7. The landowner in contrast argues that the breaking of rocks and associated recontouring of ground levels on the site was necessitated by rock outcrops in places. I note that the landowner submits that rock outcrops are typically found on agricultural land and I acknowledge that it is the landowner’s position that the excavation of rocks was necessary on the site to improve agricultural land.

- 9.4.8. However, notwithstanding the landowner's arguments, I would consider that the excavation of rocks and the development undertaken on the referral site is quarrying, consistent with the definition of a 'quarry' in Section 2(1) of the Act, which I have referred to in para. 7.1.1 above, and means the excavation in connection with, the getting of minerals or products of minerals. Furthermore, I have no reason to doubt the landowner's argument that the breaking/extraction of rock on the site relates solely to recontouring of the land, and as such is not a type of quarrying undertaken for commercial purposes.
- 9.4.9. In addition, I have no reason to doubt the landowner's argument that images included in the applicant's submission of agricultural machinery illustrating importation of material to the referral site relates to the spreading of farmyard manure.
- 9.4.10. Therefore, and having regard to the above considerations, I would conclude that the breaking/ extraction of rock on the landholding constitutes quarrying, consistent with the definition of a quarry in section 2(1) of the Act.
- 9.4.11. The next step is to establish whether the rock breaking/extraction of rock on the site for the purpose of recontouring the lands undertaken on the referral site would be exempted development. Section 4(1) of the Act sets out provisions in relation to exempted development. The breaking/extraction of rock on the site for the purpose of recontouring the lands would not comply with any of these provisions.
- 9.4.12. Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development.
- 9.4.13. Schedule 2, Part 3 of the Planning and Development Regulations, 2001
- 9.4.14. The landowner's submission also refers to precedent case RL.2472 as the Board concluded in this case that the infilling of lands was development but exempted development as the disposal of inert soil and stones on low-lying ground for the purposes of land reclamation for productive agricultural comes within the scope of the exemption Class 11, Part 3, Schedule 2 of the Regulations. However, the Board order pertaining to RL.2472 was determined on the 20<sup>th</sup> of June 2008 and predates the 2011 amendments to, Schedule 2, Part 3, Class 11 of the Regulations. Prior to 2011, Class 11 did not refer to wetland, as such I would not consider RL.2472 to be

a relevant precedent for this current case before the Commission, where the land reclamation affects wetlands.

- 9.4.15. I have reviewed Part 3 (Exempted Development – Rural) of Schedule 2 of the Regulations, and I would conclude that there is no available exemption for the breaking/extraction of rock for the purpose of recontouring rural lands.
- 9.4.16. Article 8C of the Planning and Development Regulations, 2001
- 9.4.17. Article 8C states '*land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding shall be exempted development*'.
- 9.4.18. The landowner's submission argues that breaking/extraction of rock on the site for the purpose of recontouring the lands is exempted development having regard to Article 8C of the Regulations. However, the said Article 8C relates specifically to works specified in a drainage scheme confirmed by the Minister of Finance, carried out by, on behalf of, or in partnership with the Commissioners, which would not apply to the development on the referral site.
- 9.4.19. Furthermore, I have concluded above in section 9.3 of this report that the referral site contained wetlands, and as such the exemption in accordance with 8C of the Regulations only applies to land reclamation other than wetlands.
- 9.4.20. In respect of the excavation of rock on the referral site, the landowner submits that Article 8C of the Regulations does not distinguish between recontouring of lands, soils or rock within agricultural lands, but simply refers to recontouring of land. Notwithstanding this argument by the landowner, my interpretation of Article 8C is that it relates specifically to land reclamation, rather than solely the recontouring of lands, and that there is no standalone exemption for the excavation/breaking of rock.
- 9.4.21. I refer the Commission to relevant referral case RL15.RL3465 and in this case the Inspector's report concluded that the land reclamation works constitute exempted development having regard to Article 8C of the Regulations, however the excavation of rock for the purposes of land reclamation constitutes development for which there is no exemption available. The Board accepted the Inspector's recommendation that the activities undertaken at the site are development and are not exempted development.

9.4.22. I would therefore consider, as previously determined by the Board in referral case RL15.RL3465, that the breaking/extraction of rock on the site for the purpose of recontouring the lands is development, for which there is no exempted development provision available.

9.4.23. **Restrictions on exempted development**

9.4.24. I have noted above that there are no relevant exempted development provisions in respect of Question 2 of the referral before the Commission. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations, 2001 (as amended), refers to restrictions on exempted development.

9.4.25. However, in the instance of breaking/extraction of rock on the site for the purpose of recontouring the lands there are no restrictions in Article 9 of the Regulations in my opinion.

9.4.26. **Question no. 3**

- *Whether the widening of an entrance onto the local road is or is not development and whether such entrance is or is not exempted development.*

9.4.27. Section 4(1) of the Act sets out provisions in relation to exempted development. The widening of an entrance onto the local road would not comply with any of these provisions.

9.4.28. Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development.

9.4.29. The applicant submits that historically the access entrance to the referral site had a width of 4m, and the access was extended to c. 11 metres as part of unauthorised development. In response the landowner's submission argues that the field gate has been installed to the same width of the previous field gate and simply an old field gate was removed and replaced by a new field gate.

9.4.30. However, I noted from my site assessment that the field entrance onto the local rural road (L5199) is materially different to the previous field entrance. I also noted that



part of the adjoining hedgerow to the field entrance is removed. The field entrance, at the time of my site assessment, was larger in size than the previous field entrance to the site and this is based on photographic documentation on the file and images from Google Street View (2009). There is also no planning history pertaining to the referral site permitting an enlarged vehicular field entrance.

- 9.4.31. I have reviewed Part 3 (Exempted Development – Rural) of Schedule 2 of the Regulations, and I would conclude that there is no available exemption for the widening of an entrance onto the local road. Accordingly, the development in respect of Question 3 is not exempted development having regard to the provisions of the Act and the Regulations.

## **9.5. Restrictions on exempted development**

- 9.5.1. I have noted above that there are no relevant exempted development provisions in respect of Question 3 of this referral. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations 2001, (as amended), refers to restrictions on exempted development.
- 9.5.2. In this regard I have assessed the development involving the widening of an entrance onto the local road in relation to the relevant Article 9 restrictions. I would conclude Article 9(1)(a)(ii), which states *'consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width'* would be relevant in this instance.
- 9.5.3. The applicant has submitted that the width of the public road is approximately 4.25 metres, and I have estimated that the width of the public road exceeds 4 metres, and as such Article 9(1)(a)(ii) would be a relevant restriction.
- 9.5.4. Referral case reference ABP-301137-18 is a relevant precedent in this instance. ABP-301137-18 related to the widening of an agricultural entrance and the Planning Inspector's report concluded that Article 9(1)(a)(ii) is applicable. The Board concurred with the Inspector and concluded that the widening of the existing farm gate was development and not exempted development.

- 9.5.5. Accordingly, should any exemption be available in accordance with Article 6 of the Regulations for the development then Article 9(1)(a)(ii) would de-exempt these exemptions.

## **10.0 EIA Screening**

- 10.1.1. The development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). In the absence of clear detail in relation to the baseline environment and the extent of wetland that has been drained and / or reclaimed or impacted I cannot conclude that the development would not meet or exceed the 2-hectare threshold for mandatory EIA. I would therefore submit that on the basis of the available information, the need for an EIS cannot be excluded.

## **11.0 Appropriate Assessment**

- 11.1. I have considered case ABP-322529-25 in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 11.2. The closest European Sites, part of the Natura 2000 Network, is the Stabannan-Braganstown SPA located approximately 8.9 km. The Dundalk Bay SAC and the Dundalk Bay SPA are both located 14.3 km to the east of the referral site.
- 11.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 11.4. The reason for this conclusion is as follows:
- Location-distance from nearest European site.
  - The absence of any ecological pathway from the development site to the nearest European Site.
- 11.5. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

11.6. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## 12.0 Water Framework Directive

12.1.1. Refer to Appendix 3. I conclude that on the basis of objective information, that the proposed development, subject to standard construction practice during construction phase, 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.

## 13.0 Recommendation

13.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the felling of trees, drainage and infilling of lands for the purpose of land reclamation on the subject site at Arthurstown, Co. Louth is or is not development or is or is not exempted development:

Whether the breaking/extraction of rock on the site for the purpose of recontouring the lands is or is not development and is or is not exempted development.

Whether the widening of an entrance onto the local road is or is not development and whether such entrance is or is not exempted development.

**AND WHEREAS** Louth County Council referred this referral for review to An Coimisiún Pleanála on the 6<sup>th</sup> day of May 2025.

**AND WHEREAS** An Coimisiún Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (e) Article 5, article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) Previous referrals to the Commission, including RL2564 and ABP-301137-18,
- (h) The documentation on the file, including submissions on behalf of the applicant, Alan and Leona Hannify, and the landowner, John McCann,
- (i) the pattern of development in the area

**AND WHEREAS** An Coimisiún Pleanála has concluded that:

- (a) the felling of trees, drainage and infilling of lands for the purpose of land reclamation, the breaking/extraction of rock on the site for the purpose of recontouring the lands, and the widening of an entrance onto the local road constitutes works that come within the scope of section 2(1) of the Planning and Development Act, 2000, as amended,

- (b) the said works constitute development that comes within the scope of section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) the said works do not come within the scope of the exemption provided under article 6(1) and Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) the said works do come within the scope of the restrictions on exemptions set out at
- article 9 (1)(a)(ii) of the Planning and Development Regulations, 2001, as amended, whereby the works consisted of the material widening of a means of access to a public road, the surfaced carriageway of which exceeds four metres in width;
  - article 9(c) of the Planning and Development Regulations, 2001, as amended, whereby the need for Environmental Impact Assessment cannot be excluded.
- (e) Furthermore, the said works do come within the scope of the restrictions on exemptions, as set out under Section 4(4) of the Planning and Development Act, 2000, as amended, insofar as it is considered that the need for Environmental Impact Assessment cannot be excluded.

**NOW THEREFORE** An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the the felling of trees, drainage and infilling of lands for the purpose of land reclamation, or the breaking/extraction of rock on the site for the purpose of recontouring the lands, or the widening of an entrance onto the local road is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

---

Kenneth Moloney  
Senior Planning Inspector

19<sup>th</sup> December 2025

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	ABP-322529-25
<b>Proposed Development Summary</b>	Whether 1) the felling of trees, drainage and infilling of lands for the purpose of land reclamation, 2) the breaking/extraction of rock on the site for the purpose of recontouring the lands and 3) the widening of an entrance onto the local road is or is not development or is or is not exempted development.
<b>Development Address</b>	Arthurstown, Ardee, Co Louth.
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (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)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.  <input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1.	
<b>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?</b>	

<input type="checkbox"/> 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.  <b>No Screening required.</b>	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.  <b>EIA is Mandatory. No Screening Required</b>	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b>  <b>OR</b>  <b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	<p>Class 1 (a) of Part 2: Projects for the restructuring of rural land holdings</p> <p>Class 1 (c) of Part 2: Drainage / reclamation of wetlands: threshold 2 ha.</p>

<b>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)?</b>	
<b>Yes</b> <input type="checkbox"/>	<b>Screening Determination required (Complete Form 3)</b>
<b>No</b> <input checked="" type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_



## Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	ABP-322529-25
<b>Proposed Development Summary</b>	Whether 1) the felling of trees, drainage and infilling of lands for the purpose of land reclamation, 2) the breaking/extraction of rock on the site for the purpose of recontouring the lands and 3) the widening of an entrance onto the local road is or is not development or is or is not exempted development.
<b>Development Address</b>	Arthurstown, Ardee, Co Louth.
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>  (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The development involves felling of trees, drainage and infilling of lands, the breaking/extraction of rock on the site for the purpose of recontouring the lands and the widening of an entrance onto a public road.</p> <p>During the construction phase the development would generate waste. However, given the moderate size of the development, I do not consider that the level of waste generated would be significant in the local, regional or national context.</p> <p>No significant waste, emissions or pollutants would arise during the construction or operational phase due to the nature of the development. Any potential contamination arising from the development would be limited in scale, having regard to modest scale of the existing use would have a localised impact. No demolition works are proposed.</p> <p>The development, by virtue of its land reclamation type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change.</p> <p>The development involved the removal of two separate field boundaries as part of the land reclamation, and the restructuring of an agricultural field, however having regard to the limited scale of the field boundary works the development would have a localised impact.</p> <p>The development involved the removal of two wetlands, and the affected wetland is estimated to range in area from approximately 1.1 ha to 2.3 ha. The exact area of affected wetland is not available from the information on the file. In the absence of clear detail in</p>

	relation to the baseline environment and the extent of wetland that has been drained and / or reclaimed or impacted I cannot conclude that the development would not meet or exceed the 2-hectare threshold for mandatory EIA. I would therefore submit that on the basis of the available information, the need for an EIS cannot be excluded.
<b>Location of development</b>  (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	<p>The subject site is not located within or adjoins any environmentally sensitive sites or protected sites of ecological importance, or any sites known for cultural or historical significance.</p> <p>The nearest designated European Sites to the referral site is the Stabannan-Braganstown SPA located approximately 8.9 km. The Dundalk Bay SAC and the Dundalk Bay SPA are both located 14.3 km to the east of the referral site.</p> <p>Given that there are no hydrological connections I have concluded in my AA Screening that the development would not likely have a significant effect on any European site.</p> <p>I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.</p>
<b>Types and characteristics of potential impacts</b>  (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the scale and nature of development in question, its location removed from any sensitive habitats / features, the likely limited magnitude and spatial extent of effects, and the absence of in combination effects, there is no potential for significant effects on the environment.
<b>Conclusion</b>	
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>
<b>There is no real likelihood of significant effects on the environment.</b>	N/A

There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	
There is a real likelihood of significant effects on the environment.	The need for EIAR cannot be excluded.

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

DP/ADP: \_\_\_\_\_ Date: \_\_\_\_\_

(only where Schedule 7A information or EIAR required)

### Appendix 3 – WFD Impact Assessment Stage 1

WFD IMPACT ASSESSMENT STAGE 1: SCREENING			
Step 1: Nature of the Project, the Site and Locality			
<b>An Coimisiún Pleanála ref. no.</b>	ABP-322529-25	<b>Townland, address</b>	Arthurstown, Ardee, Co Louth.
<b>Description of project</b>		Whether 1) the felling of trees, drainage and infilling of lands, 2) the breaking/extraction of rock on the site for the purpose of recontouring the lands and 3) the widening of an entrance onto the local road is or is not development or is or is not exempted development.	
<b>Brief site description, relevant to WFD Screening,</b>		The referral site is located in a rural area, situated approximately 2.5km – 3km to the southwest of Tallanstown, Co. Louth. The referral site is a large agricultural field measuring approximately 11 ha and used for tillage. Natural hedgerows form the site boundaries.	
<b>Proposed surface water details</b>		Natural site drainage	
<b>Proposed water supply source &amp; available capacity</b>		N/A	

Proposed wastewater treatment system & available capacity, other issues			N/A			
Others?			No			
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	140 meters to southeast.	GLYDE_060 IE_NB_06G02 0900	Moderate	At Risk	Ag, Unknown	Yes – surface run-off
Groundwater Waterbody	Underlying site	Louth IEGBNI_NB_G_019	Good	Not at risk	None	Yes – site is underlain

<b>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.</b>							
<b>CONSTRUCTION PHASE</b>							
N o.	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	<b>Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.</b>
1.	<u>Surface</u> Site clearance	GLYDE_060	Existing surface water run-off	Hydrocarbon spillages	Standard construction practice	No	Screened out
2.	<u>Ground</u> Site clearance	Louth	Pathway exists	Spillages	As above	No	Screened out

OPERATIONAL PHASE							
1.	Surface run-off	GLYDE_060	Surface water drainage system in the area	Site servicing	Standard operational management.	No	Screened out
2.	Discharges to Ground	Louth	Pathway exists	Site servicing	Standard operational management.	No	Screened out
DECOMMISSIONING PHASE							
1.	NA	NA	NA	NA	NA	NA	NA