Inspector's Report
ACP-324191-26

Question	1. Whether the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the resurfacing of the original service yard is or is not development or exempted development; 2. Whether the reoccupation and continued use of the warehouse buildings and the service yards referred to in no.1, for warehousing and associated use, involved development and is or is not development and is or is not exempted development.
Location	Newrath, County Kilkenny.

Declaration

Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	DEC 934
Applicant for Declaration	Zinc Properties Limited
Planning Authority Decision	Is not exempted development

Referral

Referred by	Zinc Properties Limited

Owner/ Occupier	Zinc Properties Limited
Observer(s)	Newrath Residents and Business Association (NRBA)
Date of Site Inspection	09/07/2026
Inspector	Conor McGrath

Contents

1.0 Introduction

1.1. This referral relates to certain acts, operations and use of lands and buildings at Newrath, Co Kilkenny. There is a concurrent planning appeal relating to these lands under ref. PL-501200-KK-26. Having regard to the interrelationship between the matters the subject of this referral and the concurrent appeal, it is considered appropriate that the reports in relation to both cases should be read together.

2.0 Site Location and Description

2.1. This section 5 referral relates to an existing commercial / industrial site located, at Newrath, Co. Kilkenny. The lands are located between Waterford City to the southeast and the M25 Motorway toll bridge crossing the River Suir to the northwest, upstream of the city. The lands comprise part of a larger landholding extending to the northwest.

2.2. The lands are accessed from the R448 to the northeast, via local road L34083. Access to the site is across the Waterford – Dublin trainline via an automatic, gated level crossing. To the north east of the site, on the opposite side of the railway, there are several light industrial / commercial buildings.

2.3. The lands are bounded to the southwest by the River Suir, which comprises part of the Lower River Suir SAC at this location. The main part of the site is separated from the riverbank by a low concrete wall, however this area is excluded from the referral site. An existing pier / jetty projecting into the river is also excluded.

2.4. To the east, an existing drain runs parallel to the railway, which connects to the River Suir to the north and south of the referral lands. This feature is referred to as the "back drain" in case correspondence. The drain is partly culverted through the site, including at the site entrance. The wider site is extensively hard surfaced.

2.5. There are four buildings identified on the site and an extensive area of hardstanding.

- Building A (Warehouse) is the largest and main structure on the site, located centrally thereon. The building has a complicated form, with multiple roof slopes and levels. The building comprises concrete walls and cladding to upper wall levels and roof slopes.There are loading docks on the northeastern and northwestern sides of the building.

  To the northeast and to the northwest of the building are a number of container units. Those to the northeast are refrigerated units.

- Building B (office / reception), located to the north of Building A and adjacent to the site entrance from the east, comprises a 2-storey, flat-roof, building. This building was unoccupied at date of inspection.

- Building C (Workshop) is located on the northeastern boundary, and comprises a simple, double-height industrial building. At time of inspection it was in use for warehousing.

- Building D (Warehouse) is located on the southeastern part of the site, comprising a double-height storage building.

Buildings C&D have been reclad / reroofed in recent times, while Building A has been substantially repaired / reclad and reroofed. There are a number of storage containers on the eastern boundary of the site. At time of inspection all buildings except the office were in use for the storage of dry, bulk goods.

3.0 The Question

On 23rd January 2026, Zinc Properties Ltd. requested a declaration from Kilkenny Co. Co. on the following question:

1. Whether the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building on the site, and the resurfacing of the original service yard, involve development and if so, were they exempted development;

2. Whether the reoccupation and continued use of the warehouse buildings and the service yards referred to in 1, for warehousing and associated use, involved development and, if so, was the use exempted development.

3.1. **Applicants case:**

3.1.1. The request outlined that the previous and proposed use comprised storage and warehouse use in the 2 warehouse buildings (Buildings A and D) and office / reception / staff facilities in the office / reception building (Building B).

3.1.2. It advised that following fire damage some time ago, the former workshop (Building C) was repaired. Storage and warehousing use of this workshop is advised to be the subject of a current separate planning application / appeal (ACP-501200-KK). Only the repairs (Recladding and reroofing) to that workshop building are stated to be the subject of this referral.

3.1.3. The cover letter accompanying the request for a declaration noted, inter alia, the following:

- An oil storage and distribution business operated from the northern end of the site up to c.2021. All other uses had ceased at that time.
- Buildings on the site are understood to be pre-63 structures.
- All works carried out comprise repair and renewal works, and internal alterations.
- The exceptions were alterations to Building A, involving removal of a structure projecting above the main roof and removal of a single-storey lean-to on the northern elevation. Submitted drawings illustrate the changes.
- There was no extension to the original structures or material alteration to internal layout or external appearance.
- Other works involved removal and replacement of sections of broken concrete yard area and tarmacadam with concrete finish, within the scope of 4(1)(h).
- Use of ground northwest of the larger warehouse to temporarily store materials from refurbishment, was incidental and not considered to be development. This was the area of a permitted coal yard (90/674). This use is not included in the application due to its incidental and temporary nature.

- While the property was underused, it was never vacant or abandoned. Use up to 1990 comprised primarily the storage and distribution of manure and fertiliser. There was also ongoing berthing use.
- From 1990 it operated as a coal handling and an oil storage and distribution facility. Buildings were in use for storage purposes, with occupiers identified.
- The entire property has been used for storage, distribution and warehousing since 1963, with no material change of use since repair and upgrading of the buildings.
- An AA Screening report was submitted with the application.

For clarity the following were stated not to comprise part of the S.5 application and are the subject of the concurrent planning appeal (PL-324191-KK-26):

1. Construction of 2 no. Loading docks to existing warehouse (Building A).
2. Extension of the existing concrete service yard north eastwards.
3. Erection of a new section of retaining boundary wall along the northeast boundary,
4. Change of use of Building C from its previous use as a workshop to new use as Warehouse.
5. The siting of 5 no. temporary refrigeration containers, northeast of Building A.
6. The siting of 6 no. temporary containers for Waterford Crane Hire on part of the service yard to the east of the site.
7. The siting of 1 no. Temporary office cabin for Waterford Crane Hire on part of the service yard to the east of the site.
8. The siting of 1 no. Temporary canteen cabin to the northwest of warehouse building A.

Together with associated site works.

4.0 Planning Authority Declaration

4.1. Kilkenny Co. Co. issued a declaration on 10/03/2026, which stated that:

Whereas Kilkenny County Council has concluded that

The works included the construction of a retaining wall adjacent to the back drain of the River Suir and extensive concrete works which, due to proximity of these concrete works to the drain and the presence of a direct hydrological pathway / connection from works to Lower River Suir SAC itself, the planning authority considers that it cannot beyond any reasonable doubt be sure that the works had no potential to impact the conservation objectives of the River Suir SAC and that mitigation measures were not required. In the presence of such doubt, the development must, in accordance with the precautionary approach, be subject to a Stage 2 Appropriate Assessment (Natura Impact Statement)

Now therefore Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2022 Act, hereby decides that the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building on the site, and the resurfacing of the original service yard, the reoccupation and continued use of the warehouse buildings and the service yards referred to in 1, for warehousing and associated use, at Newrath, Waterford, Co. Kilkenny X91 F671, is development which is NOT exempt development. Planning Permission is required.

4.2. Planning Authority Reports

4.2.1. Planning Reports (09/03/2026)

The report notes the planning history on the site. Except for installing 2 no. loading docks in the larger warehouse structure, all works involved repairing and renewal works and internal alterations. The exception to the main building involved removal of part the structure projecting above the main building roof and removal of a single-storey lean-to.

The planners report notes that site clearance works, reroofing and recladding of structures and works to hardstanding areas were complete at the time that an enforcement notice was issued (May 2022 ENF22021), however, concrete yard extension, erection of section of wall and concrete loading areas were under construction and nearing completion. The use of the main building for warehousing had commenced. The timeline was:

- Site clearance late 2021 / early 2022.
- Works to buildings – commenced Feb 2022 and complete in or around June 2023.
- Current tenant moved in Sept. 2022.
- Loading docks installed September 2023.

The site is zoned for Business Industry and Technology Parks in the Ferrybank LAP 2017. Buildings have been present for a significant time period. Notwithstanding the conclusions of the applicants AA Screening Report, the works included the construction of a wall adjacent to the back drain and extensive concrete works. Due to proximity to the SAC and direct hydrological connection, it cannot be demonstrated that the works had no potential to impact the conservation objectives of the SAC. Any construction to protect the back drain and River Suir would constitute mitigation. If this was an application for permission, a stage II NIS would be required. An EIAR would not be required.

Demolitions: Removal of the projection above roof level and lean-to (Building A), not required for warehouse use, would not materially affect its external appearance rendering it inconsistent with the character of the structure or other structures on the site. The demolitions do not therefore constitute exempted development.

Removals: The area to NW of oil storage tanks was in use with a few storage containers from 1996-2011/13, however, is no longer in use. The oil storage tanks were removed in 2025, and refurbishment materials were stored temporarily on the ground. Containers, portacabin, portaloo and vehicles parked on the jetty were since cleared.

Repair and Maintenance: Works to buildings involve repairs to existing buildings and routine maintenance. Activities do not constitute development requiring planning permission, as limited in scale and nature. While general repairs and maintenance may constitute works, development, I do not consider them to constitute exempted development.

Use of ground to northwest of the larger storage warehouse to temporarily store material from refurbishment was an incidental use of the land.

Abandonment of use: The information provided has not been substantiated with sufficient evidence. Ordinarily further information would be requested to demonstrate uses of buildings as far back as records allow.

Temporary uses: It is not considered necessary to include temporary use of land to northwest of the main building to store material from refurbishment in the application, as argued by the applicant.

Groundworks: Other works involved breaking up and removing older sections of concrete yard and replacing them with new concrete, and replacing hardcore yard area and tarmacadam surfaced yard with a concrete finish, and general tidying up.

Conclusion:

The proposed development are works and are development, however, are not exempted development due to the following reason:

The works included the construction of a retaining wall adjacent to the back drain of the River Suir and extensive concrete works which, due to proximity of these concrete works to the drain and the presence of a direct hydrological pathway / connection from works to Lower River Suir SAC itself, the planning authority considers that it cannot be demonstrated beyond any reasonable doubt be sure that the works had no potential to impact the conservation objectives of the River Suir SAC and that mitigation measures were not required (notwithstanding design including of drainage systems). In the presence of such doubt, the development must, in accordance with the precautionary approach, be subject to a Stage 2 Appropriate Assessment (Natura Impact Statement).

Footnote: There is insufficient information contained in the submitted documentation pertaining to the stated continuance / non-abandonment of the warehousing use of the building(s). Insufficient direct supporting evidence has been provided in this regard.

AA Screening Report:

The assessment notes that the works include the construction of a retaining wall and extensive concrete works adjacent to the back drain of the River Suir. It cannot be demonstrated beyond any reasonable doubt be sure that the works had no potential to impact the conservation objectives of the River Suir SAC and that mitigation measures were not required (notwithstanding design including of drainage systems)

5.0 Planning History

5.1. History referenced in files correspondence includes:

PA ref: 3657. Permission granted 2nd January 1974 to Goulding Plastics for modifications and additions to warehouses etc.

PA ref. 82/775. Proposed retail store refused by PA and An Bord Pleanála. This appears to relates to a site to the east of the railway.

PA ref: 84/621. Permission granted 23rd January 1985 to Ellenwater Ltd for a berthing facility.

PA ref: 85/694. Permission granted 21st April 1986 to Smurfit Plastics for hoppers and stores.

PA ref: 90/451. Permission granted 29th July 1991 to Newrath Industries Ltd for alterations to wharf.

PA ref: 90/674 ABP ref. PL10.5/86184: Permission granted 31st March 1992 to Tedcastle Morris Ltd for a coal handling depot.

Other:

01/1653: (Referenced in the documentation as extension to wharf but appears to refer to a site further to the north of the referral site). Permission was granted to extend existing wharf, for retention of existing shop and office, retention of authorised petrol station and use as oil storage depot and permission for new depot arrangement.

5.2. Reference is made in planning authority reports to enforcement notices served in 2022 (**ENF22021**) in relation to site clearance works, re-roofing and recladding of structures and works to hardstanding areas, to include hardstanding areas and retaining wall. Enforcement notice (**ENF25036**) required removal of unauthorised loading docks, removal of 8 no. unauthorised containers, 2 no portacabins and a portaloo,

5.3. **Concurrent planning application and appeal:**

PA ref. 2660070 / ACP-501200-KK-26: Permission sought for retention of:

1) Construction of 2 no. Loading docks to existing warehouse building A.

2) Extension of the existing concrete service yard north eastwards (840-sq.m.)

3) Erection of a new section of retaining boundary wall along the boundary with the backdrain.

4) Change of use of Building C (380-sq.m.) from workshop to Warehouse use.

5) The siting of 5 no. Temporary refrigeration containers to the northeast of building A (12 x 2.5 x 3m)

6) The siting of 6 no. Temporary containers on part of the service yard to the east of the site (6 x 2.5 x 3m), southeast of Building C.

7) The siting of 1 no. Temporary office cabin on part of the service yard to the east of the site (6 x 2.5 x 3m), southeast of Building C

8) The siting of 1 no. Temporary canteen cabin to the northwest of warehouse Building A (12 x 3 x 3m).

9) Associated works, including drainage works.

The planning authority decided to refuse permission for the following reasons:

1. The development to be retained includes the existing concrete service yard (840 sqm) and a new extensive concrete section of retaining boundary wall adjacent to the back drain to the River Suir. There is a direct hydrological pathway / connection from these works to the Lower River Suir SAC. It cannot be demonstrated beyond reasonable doubt that the works undertaken had no

potential to impact the conservation objectives of the SAC and that mitigation measures were not required (notwithstanding design of drainage systems etc.).

2. The retention of 2 no. loading docks to Building A and the placement of 5 no. refrigeration containers and 1 no. temporary canteen cabin proximate within the vicinity is to serve a building which if granted would consolidate an existing unauthorized development.
3. The retention of change of use from a workshop to a warehouse for Building C accesses directly across a concrete hardstand and supporting infrastructure which was not considered exempt and is therefore considered unauthorized development. This concreted hardstand and supporting infrastructure would require a Stage 2 NIS due to its proximity and direct pathway and hydrological connection to the SAC. The change of use would consolidate the unauthorized development.
4. The temporary storage containers, and temporary office cabin are sited to serve Building C. As access to these structures' transverses directly across an area of concrete hardstand which was not considered exempt and is therefore not considered lawful. This concreted hardstand and supporting infrastructure would require a Stage 2 NIS due to its proximity and direct pathway and hydrological connection to the SAC. The placement of temporary storage containers, and temporary office cabin would consolidate the unauthorized development.

6.0 Policy Context

6.1 Kilkenny County Development Plan

Objective 1A To implement the provisions of Articles 6(3) and 6(4) of the EU Habitats Directive and ensure that any plan or project within the functional area of the Planning Authority is subject to appropriate assessment …..…………...

Newrath is identified as part of the Waterford MASP area. Section 4.3.2.1 notes that Ferrybank and Belview Port (Port of Waterford) will be developed as part of an agreed Waterford Metropolitan Strategy.

Section 10.2.6 addresses Flooding, while section 10.2.8 deals with Surface Water Drainage.

Variation no. 6: To incorporate a Settlement Plan for Ferrybank/Belview into the KCCDP, as part of a new Volume 3, Settlement Plans, adopted 23/03/2026.

6.2 Ferrybank - Belview Framework Plan (March 2026)

This plan replaces the 2017 Ferrybank/Belview LAP as the statutory planning document for the area.

5.5 Zoning Objectives for Ferrybank - Belview - To maximise Ferrybank / Belview's potential as part of a compact Waterford City, it's crucial to have adequate land for employment and housing. This ensures existing and future housing needs are met and helps to ensure housing availability, which is vital for attracting businesses to invest in the area.

5.6 Land Use Zones

- Permissible use means a use, which is acceptable in the relevant zone. However, it is still the subject of the normal planning process.
- Open for consideration means a use which may be permitted where the Council is satisfied that the individual proposal or development will be compatible with the policies and objectives for the zone and will not conflict with the permitted uses and also conforms with the proper planning and development of the area.

Non-conforming uses: Throughout the Plan area there are uses which do not conform to the zoning objectives for their zone. Extensions and improvements of premises accommodating these uses may be permitted where the proposed development would not seriously injure the amenities of the area or prejudice the proper planning and development of the area.

The subject site is zoned: **Business, Enterprise and Technology Parks**.

Objective: To facilitate the development and expansion of business, enterprise and technology, with no large-scale office use allowed.

Permissible Uses: Cafe, Car Park, Childcare Facilities (crèche/nursery), Enterprise Centre / Campus Industry, Data Centre, Energy Park, Open Space, Park and Ride facility, retail which is ancillary to the primary use.

Open for Consideration: Advertising Board, ATM, Car Repair/ Sales, Cultural / Recreational building, Education, Playground, Public House, Restaurant, Service / Petrol Station, Battery/Energy Storage, Recycling Centre (bottle banks, etc), Utility and Electricity Infrastructure.

Overriding Flood Risk-related Limitation on the above Land Use Zones

There are a number of instances where Flood Risk Zones A and B overlap with a variety of the above land-use zoning objectives. Uses under all zoning objectives shall be limited to water compatible uses in Flood Zone A, and less vulnerable or water compatible uses in Flood Zone B. Detailed, site specific Flood Risk Assessment will be required in these areas. This limitation shall take primacy over any other provision relating to these land use zoning objectives.

Section 8.6 notes that this Plan provides two related employment/ economic development zoning designations for Belview and the port:

• Business, Enterprise and Technology Parks (BETP), and

• Port Facilities and Industry (PFI).

These zones will facilitate the development and expansion of portal facilities and associated industries and the development of an energy centre of excellence associated with the Offshore Renewable Energy (ORE) sector.

6.3 SFRA Variation no. 6 (March 2026)

The SFRA for the Framework Plan identifies the subject site as being located in Flood Zone A.

The subject lands were subject to a Justification Test in the SFRA. The site failed the test, however, it was noted that “these lands are associated with existing development / infrastructure and the “Overriding Flood Risk-related Limitation on the above Land Use Zones” from Section 5.7 (sic) of the Framework Plan would significantly limit future development. The land use zoning objective reflects the existing use of the site and therefore the zoning is retained”.

6.4 The Planning System and Flood Risk Management Guidelines 2009

The guidelines set out requirements relating to land uses in Flood Zones.

The key principles of the Guidelines’ risk-based sequential approach are:

- Avoid development in areas at risk of flooding. If this is not possible, consider substituting a land use that is less vulnerable to flooding. Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.
- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

The Guidelines identify Warehousing, Commercial and Industrial as Less Vulnerable Uses.

6.5 Natural Heritage Designations

The referral site is immediately bounded by the Lower River Suir SAC (002137) to the southwest.

7.0 The Referral

7.1. Referrer's Case

The referrer, Zinc Properties Limited, make the following points in their referral of the planning authority declaration to the Commission:

- The works comprising construction of retaining wall and concrete yard extension form part of a separate planning application and were carried out after the works and use the subject of this referral. They had no bearing thereon.
- The wall and concrete yard extension occur on lands that were relatively untouched at the time of these works, and remote from the repair, alteration and improvement works to buildings and yard or use thereof. The use had recommenced before the wall and yard extension were carried out.
- The non-original projection above the main building roof (Building A) was unauthorised and its removal would not have required permission.
- Notwithstanding, the removal of the projection and demolition of a small lean-to to Building A, did not alter the character of the warehouse rendering it inconsistent with itself or buildings in the vicinity, as acknowledged in the planner's report.
- The planners report acknowledges that other works involve repair and routine maintenance of buildings and open yard areas.
- There is no reason given as to why they were not considered exempted development.
- The planners report indicates that past use was not substantiated.
- Commercial rates were charged on the property to 2021, and subsequent to the current owners taking possession. The improvement works undertaken have resulted in a higher rates valuation.
- Rates would not have been demanded and paid had the site been vacant.
- Previous enforcement letters did not reference unauthorised use or abandonment of use of the buildings (except for the unauthorised loader docks).

- Reference to “use” was included in the question to provide clarity, following discussions with the planning authority.
- The PA did not have regard to s.4(1)(h) or section 4(4), which are relevant and raised in the application for declaration. An AA screening report accompanied the application.
- The PA were mistaken to screen the works and use in, as the retaining wall and concrete yard were completed after the relevant works and use.
- The PA screening assessment refers to the retaining wall and concrete yard extension, not the works the subject of the referral. No regard was had to the applicants screening report.
- The PA therefore assessed works not part of the section 5 referral.

The referral is accompanied by copies of PA correspondence and reports, Rates Demands from Kilkenny Co. Co. for 2017, 2018 and 2022 and a Rates Customer Statement 01-01-2022 to 09-02-2026.

7.2. **Planning Authority Response**

A response to the referral from Kilkenny Co. Co. was received outside the relevant period. A subsequent S.132 request was issued to the planning authority, a response to which was received on 02/096/2026, which made the following comments:

- With regard to construction works for concrete hard surfacing and retaining wall, the majority of the concrete surfacing is included in the red line boundary, noted as service yard. The timing of works is irrelevant as they are ancillary to the function of the buildings subject to the S.5 and form part of the red line boundary.
- As the resurfacing and retaining wall occur within the red line boundary, the level of bearing on works to the building, and reoccupation and usage thereof, is irrelevant.

- Disagree that the land on which the retaining wall and yard extension is located is untouched. Historic aerial imagery indicates that areas of yard within the site boundary including adjacent to the back drain have been (re)surfaced.
- A typo is acknowledged in the original Planners report under “Demolitions”, which should have concluded that demolitions of lean-to and projection above the roofline, do constitute exempted development.
- A typo is acknowledged in the original Planners report under “Repairs and Maintenance”, which should have concluded that repairs to existing buildings and routine maintenance of open yard areas, are considered to constitute exempted development.
- With regard to historic use of the property, while there may be evidence as regards (non-)abandonment of use, the two questions posed in the request are inextricably linked and are considered under a single declaration. Any element of work would impact the overall decision.
- The Council did not require further information as one of the elements in the request already affected the declaration, namely the requirement for an NIS.
- The declaration application complies with s.4(1)(h) as the external appearance of the structure does not change significantly and is not inconsistent with the character of the structure or those surrounding.
- Under Section 4(4), however, as Stage II AA is required, the development cannot be exempted development. The question included the term “service yard” and drawings include the service yard adjacent to the back drain to the northeast, notwithstanding their inclusion in the separate planning application.
- The planners report included reference to relevant legislative provisions.
- The surfacing of the concrete service yard and construction of block wall form part of the red line boundary, and therefore form part of the S.5 request, notwithstanding PA ref. 2660070.
- Irrespective of timing or sequencing of works, surfacing works and block wall directly adjoin the back drain with direct connection to the SAC, and constitute *resurfacing of the original service yard* as per the description.

- These works cannot be screened out for AA.
- Aerial Photography indicates that concrete works took place across a broad area between the SAC and drainage channel, particularly to the northeast of the site.
- The planner's report concluded that Stage II AA was required notwithstanding the design of works, including drainage systems, and given proximity and pathway to the SAC. Any measures during construction would constitute mitigation.
- The phrasing of the declaration application, including the term "service yard" serving the warehouse buildings, includes concrete surfacing and related works including perimeter wall adjacent to the drainage channel (inextricably linked).

The competent authority for AA Screening is the planning authority, who had regard to the submitted screening report.

7.3. **Observers**

The observation from Newrath Residents and Business Association (NRBA) notes that the organisation supports the declaration of the planning authority.

8.0 Statutory Provisions

8.1. **Planning and Development Act, 2000 as amended**

Section 2 Definitions –

"*development*" has the meaning assigned to it by section 3, and "develop" shall be construed accordingly.

"*exempted development*" has the meaning specified in section 4.

"*structure*" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, "*works*" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) In this Act, except where the context otherwise requires, "*development*" means—

(a) 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, or

(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).]

Section 4(1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Section 4(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

8.2. **Planning and Development Regulations, 2001**

Article 5 Interpretation

‘‘repository’’ means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

‘‘industrial building’’ means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

‘‘light industrial building’’ means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is- (a) for or incidental to the making of any article or part of an article, or for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes- (i) a vehicle, aircraft, ship or vessel, or (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;

‘‘industrial undertaker’’ means a person by whom an industrial process is carried on and “industrial undertaking” shall be construed accordingly;

Article 6.

(1) In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

(2) 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.

Article 9 Restrictions on exemption.

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(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.

SCHEDULE 2 Article 6 PART 1 Exempted Development – General

CLASS 13 refers to the repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving, where the width of any such private footpath or paving shall not exceed 3 metres..

Class 21 refers to development carried out by an industrial undertaker on land occupied and used by such undertaker, while Class 22 refers to storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building.

Class 50 refers to the demolition of a building, or buildings, within the curtilage of (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex.

PART 4 Exempted development – Classes of Use

CLASS 4 - Use as a light industrial building.

CLASS 5 - Use as a wholesale warehouse or as a repository.

9.0 Assessment

9.1. Scope of the Question

The question put to the planning authority related to:

1. Whether the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the resurfacing of the original service yard involve development and if so, were they exempted development;
2. Whether the reoccupation and continued use of the warehouse buildings and the service yards referred to in no.1, for warehousing and associated use, involved development involved development and, if so,

The application to the planning authority under S.5(1) was accompanied by drawings illustrating the alterations to the buildings, generally comprising the following:

- Building A: Removal of a double height element on the southeastern end of the building which projected above the adjacent ridge height. Removal of a single-storey lean-to element on the northeastern elevation. Recladding and roofing of the large parts of the structure.
- Building B: Revisions to doors and fenestration to this office building.
- Building C: Works to repair / replace cladding and roofing to workshop.
- Building D: Recladding of the structure, and provision of a new door on northwestern and southwestern elevations.

The referral also includes the extensive resurfacing of the "original service yard" which has been completed. The extent of the referral site which was subject to resurfacing is indicated on the site layout plan (dwg. 23025 PP-01), and submitted documentation describes the works as:

- removal of sections of broken concrete, laying of new concrete,

- replacing compacted hardcore with concrete finish,
- replacing tarmacadam surface with concrete finish.

There is no information with regard to the extent or area of yard which were subject to these different treatments, or the extent of works required to complete these resurfacing works. The definition of what comprised the "original" yard is not set out or evidenced.

A section of the resurfaced yard along the northeastern boundary was stated to be excluded from the referral and is subject to a separate concurrent planning application / appeal under ref. PL-510200-KK-26. That application relates to :

1. Construction of 2 no. Loading docks to existing warehouse building A. One located on the northwestern elevation and one on the northeastern elevation.
2. Extension of the existing concrete service yard north eastwards (840-sq.m.)
3. Erection of a new section of retaining boundary wall to the northwest of the site entrance, along the boundary with the backdrain.
4. Change of use of Building C (380-sq.m.) from its use as a workshop to new use as Warehouse,
5. The siting of 5 no. Temporary refrigeration containers to the northeast of building A (12 x 2.5 x 3m)
6. The siting of 6 no. Temporary containers for Waterford Crane Hire on part of the service yard to the east of the site (6 x 2.5 x 3m), southeast of Building C. 1 no. for use as a staff canteen, 5 no. for storage.
7. The siting of 1 no. Temporary office cabin for Waterford Crane Hire on part of the service yard to the east of the site (6 x 2.5 x 3m), southeast of Building C
8. The siting of 1 no. Temporary canteen cabin to the northwest of warehouse Building A (12 x 3 x 3m).
9. Associated development including drainage infrastructure.

These elements are clearly stated in the declaration request to not comprise part of the question before the commission. Notwithstanding this, there are interrelationships and dependencies between the two cases, which create a level of complexity in their assessment. It is therefore appropriate to consider the scope of the referral before the commission. I note the following in this regard:

The PA declaration referred to the construction of the retaining wall and extensive concrete works in proximity to the backdrain in screening the development in for the purposes of AA (items no. 2 and 3 above). While the first party argue that these were not in scope of the referral, the PA response to the Commission states that it was not considered that those elements could be separated out from the other elements identified. The PA determined all elements of the development, including repairs to buildings not to be exempt because the concrete surfacing of the service yard areas was screened in for AA. I note that the other elements were not specifically screened for AA, notwithstanding that the PA report concluded (as clarified in their s.132 response) that they were otherwise considered to constitute exempted development.

The submitted drawings indicate the extent of resurfaced yard the subject of this referral. The basis for the exclusion of the extended yard area to the northeast, and its inclusion in the separate application for permission is not rationalised in the documentation and appears arbitrary. There is no distinction on the ground between these areas and available information indicates that they are served by the same drainage network. The degree to which these elements can be separated out for AA purposes remains uncertain.

Two loading docks in Building A are included in the separate planning application. These docks include a ramped section which extends 25m from the building into the adjoining resurfaced yard areas which are the subject of this referral. Based on the cited enforcement history on the site, works to hardstanding areas took place in 2022. While the application documentation states that these loading docks were constructed in September 2023 after completion of warehouse building alterations and repairs and reoccupation of the building, it is clear from publicly available imagery that the northeastern loading dock and ramp, and adjoining resurfaced yard was in situ in August 2022. Resurfacing of the yard to north of Building A and installation of northwestern loading docks had not taken place by September 2023. Having regard to the physical and functional inter-relationship between the loading docks and ramps and the overall resurfaced yard, it is not clear that the resurfacing of the yard areas can be practically or realistically separated out from the installation of the loading docks and ramps.

In distinguishing between elements the subject of this referral and development the subject of planning application and appeal ref ACP-501200-KK-26, the referrers state that the retaining wall was complete after the works the subject of the referral. The available evidence indicates, however, that the wall was in-situ in August 2022, while resurfacing works were still underway across the site.

I further note that the description of resurfacing works within the referral does not refer to the installation of any drainage infrastructure. The Engineering report and drawings accompanying the concurrent planning application clearly indicate that drainage infrastructure has been installed across the wider site, including petrol interceptors discharging to the adjoining backdrain. It is not, in my view, possible to separate the resurfacing works from such integrated drainage infrastructure.

In this regard, I am not satisfied on the basis of the available information, that in relation to the resurfacing works the referral description accurately reflects the development which has taken place on the site or that a full and proper determination on the question can be made in this context.

9.2. Is or is not development

Question 1: The application to the planning authority and subsequent referral to the Commission describe the repairs and alterations to buildings and resurfacing of the original service yard under question 1 sufficiently to determine that they do constitute works and therefore do constitute development. This is not in dispute between the parties.

Question no. 2: This question relates to the reoccupation and continued use of the warehouse buildings and the original service yards for warehousing and associated use. I note that the change of the workshop (Building C) to warehousing use is the subject of the separate retention planning application and appeal and is not in the scope of this referral.

There appears to be no dispute in this instance that the main buildings on the site are generally pre-63. The planning history pertaining to the site indicates that there have been distribution activities carried out thereon for some considerable time. This includes separate use for oil and coal storage and distribution. The applicants have set out the history of uses on the site and of the buildings thereon. I conclude on the basis of the information available that the established use of the property was as warehouse / distribution.

I note that the planning authority assessment and declaration do not specifically address the use of the buildings, or whether a material change has arisen. The planning authority reports instead consider the question in the context of the principle of *Abandonment of Use* and concluded that there was insufficient information to substantiate the first party arguments. This position of the planning authority in this regard would support a conclusion that there was historic warehouse and distribution uses on the site.

It is the case that a property may be vacant / not in use for some time, however, this does not equate to abandonment. For abandonment to occur there must be a factual cessation of activity and an intention not to resume such activity on the site. I note that no other use had been carried out at the site and no permission for any alternative use thereon had been granted. While the condition of the structures had evidently deteriorated over time and the intensity of use appears to have been low in recent years, they were not removed from the site and there is evidence of storage and distribution uses on the overall site over time. The proposed reoccupation and continued use of the buildings for warehousing purposes would be in accordance with the established use on the site.

The question refers also to the reoccupation and use of the original service yards for warehousing and associated use. I consider that the continued use of the original service yard areas associated with the buildings would be in accordance with the established use on the site. Any use not ancillary to or associated with warehousing use of buildings on the site is considered to be outside the scope of the question 2 as framed.

The question as worded, however, refers to the reoccupation and continued use of the service yards “referred to in no.1”, for warehousing and associated use. The service yard in question no. 1 is the resurfaced yard. The conclusion on the use of the resurfaced yard is therefore dependent on the conclusion under section 9.3 below. Where the resurfacing works are deemed to be not exempt, then the use of that area would not be exempted development.

The question before the Commission does not involve an expansion of the footprint of buildings. The question refers to the reoccupation and continuation of the use of the buildings and does not provide for a change in the established use thereof. During my inspection of the property I observed relatively low levels of activity, noting two arrivals and one departure of goods vehicles, and departure of one other service vehicle, over the course of 1.5 – 2hrs. There is no evidence that any intensification of use arises, and therefore that a material change of use arises. On the basis of the available evidence, I conclude that the reoccupation and use of the warehouse buildings and original service yards for warehousing and associated use (subject to the caveat above) does not constitute development.

9.3. Is or is not exempted development

Building A: Works to Building A comprise recladding and reroofing of large sections of this building, and removal of subsidiary elements to this very large structure of varying height and form. No extension of the building was involved. Having viewed the site and buildings thereon and examined the drawings accompanying the referral and available historic imagery, I concur with the first party that the repair and recladding works do not render the building inconsistent or out of character with itself or its surroundings. In this regard, I note also the pattern of development on adjoining lands to the east. Further, I do not consider that the removal of elements of the building have rendered /would render the building inconsistent or out of character with itself or its surroundings.

Building B: Works comprise revisions to doors and fenestration to this office building. No extension to the building arises. Having visited the site, reviewed the documentation on file and available historic images, I concur with the first party that the works do not render the building inconsistent or out of character with itself or its surroundings.

Building C: Works comprising the repair / replacement of cladding and roofing to the workshop, previously subject to fire damage. Having reviewed the documentation on file, visited the site and based on available historic images, I concur with the first party that the works do not render the building inconsistent or out of character with itself or its surroundings.

Building D: Recladding of the structure, including new door on northwestern and southwestern elevations. Having visited the site, reviewed the documentation on file and available historic images, I concur with the first party that the works do not render the building inconsistent or out of character with itself or its surroundings.

I conclude that the above repair and alteration works, comprising development, would be exempt under s.4(1)(h) of the Act.

Yard resurfacing: With regard to the upgrade / resurfacing of the service yards under Question no. 1, the documentation describes this as comprising:

- removal of sections of broken concrete, laying of new concrete, or
- replacement of compacted hardcore with concrete finish, or
- replacement of tarmacadam surface with concrete finish.

There is limited detail on the extent of the original surfaces across the site or the different works undertaken. I have already identified concerns with regard to the scope of the development described in the referral which does not appear to adequately reflect the nature or scope of the development undertaken on the site, and that the associated and ancillary development carried out on the site cannot be severed therefrom, in order to permit a proper determination in this case. This relates inter alia, to the exclusion of drainage infrastructure which appears to be integral to the resurface areas, the relationship with loading dock and ramps and the basis for excluding areas of resurfaced yard from the question.

I am therefore of the view that this element of the subject development cannot be determined to clearly and unambiguously fall within the exempted development provisions of the Act.

Other Exemptions:

I note that no case has been made for an exemption under any other class by the referrer, including any class relating to industrial undertakings. Based on the information on the file there does not appear to be any other applicable exemption in this case.

9.4. Restrictions on exempted development

9.4.1. Section 4(4) restricts exemptions under the Act, where an environmental impact assessment or appropriate assessment of the development is required.

- I refer to the EIA Screening below wherein it is determined that EIA is not required.
- I refer to the conclusions of the AA screening assessment below, whereby it is determined that:
    - the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building **and** the reoccupation and use of the warehouse buildings and original service yards are not likely to have had significant effects on the conservation objectives of the Lower River Suir SAC.
    - that it cannot be excluded that the resurfacing of the original service yards are likely to have had significant effects on the conservation objectives of the Lower River Suir SAC.

It is therefore concluded that

- The restrictions under S.4(4) do not apply to the repairs and alterations carried out to the 2 storage warehouse buildings, workshop and the office/reception building and the reoccupation and use of the warehouse buildings and original service yards and that they are therefore exempted development, and that

- The restrictions under S.4(4) do apply the resurfacing of the original service yard and therefore such works are not exempted development.

10.0 EIA Screening

10.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the nature, scale, characteristics and location of the subject development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

11.0 AA Screening

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the following development comprising,

- Repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the reoccupation and use of the warehouse buildings and the service yards;

individually or in combination with other plans or projects would not be likely to give rise to significant effects on the River Suir SAC in view of the conservation objectives of this site and are therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- Nature and scope of the works, and the established uses on the site.

And further

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the resurfacing of the service yards, alone or in combination with other plans and projects will give rise to significant effects on the River Suir SAC in view of the sites conservation objectives. Appropriate Assessment is required.

This determination is based on:

- the extent and nature of the works described in the section 5 application and referral,
- the uncertainty with regard to the relationship with other development carried out on the site, and the potential in-combination effects of such development.
- the proximity of such works to the European site and to watercourses and drains which provide pathways to the SAC, and the potential impacts on water quality, and impacts on habitat quality and potential disturbance.

12.0 Recommendation

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

WHEREAS a question has arisen as to

1. Whether the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building on the site, and the resurfacing of the original service yard, involve development and if so, were the exempted development;
2. Whether the reoccupation and continued use of the warehouse buildings and the service yards referred to in 1, for warehousing and

associated use, involved development and, if so, was the use exempted development.

AND WHEREAS Zinc Properties Limited requested a declaration on this question from Kilkenny County Council and the Council issued a declaration on the 10th day of March 2026 stating that the matter was development and was not exempted development:

AND WHEREAS Zinc Properties Limited referred this declaration for review to An Coimisiún Pleanála on the 30th march 2026:

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

i. Section 2(1) and Section (3)(1) of the Planning and Development Act, 2000, as amended,
ii. Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
iii. Section 4(4) of the Planning and Development Act, 2000, as amended
iv. The documentation provided with the application to the planning authority and on referral to An Coimisiún.
v. the planning history of the site, and the pattern of development in the area,
vi. The nature and scale of the works and use the subject of the referral.

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) The repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building on the site, and the resurfacing of the original service yard, involved works and therefore comprise development.

(b) Having regard to the history of uses on the site, the reoccupation and continued use of the warehouse buildings, for warehousing and associated use, does not constitute a material change of use and does not constitute involve development.

(c) By reason of the nature of the repairs and alterations to the buildings, such development would comprise works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

(d) The commission is not satisfied that the works for the resurfacing of the original service yard, as described in application correspondence or in the referral, adequately reflect the extent and scope of works which have been undertaken on the site, or that such development can be realistically or practically assessed in isolation from other such development, and as such are incomplete. On this basis, An Coimisiún is not in a position to reach a proper determination on the question in this regard.

(e) Further, with regard to the resurfacing of the original service yard, by reason of the likely nature and extent of the works required and the proximity of such works to the River Suir SAC, and adjacent watercourses and drains discharging to the River Suir, it cannot be excluded that such development would not be likely to have, or have had, significant effects on the conservation objectives of the River Suir SAC.

(f) the continued use of the service yards referred to in question 1 for warehousing and associated use cannot be deemed to constitute exempted development, as the works for the resurfacing of those service yards are deemed to be not exempt.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act as amended, hereby decides that

a) the repairs and alterations carried out to the 2 storage warehouse buildings, is development and is exempted development.

b) the reoccupation and continued use of the warehouse buildings for warehousing and associated use, does not constitute development within the meaning of section 3 of the act.

c) The resurfacing of the original service yard, is not exempted development having regard to the restriction on exemptions for such works under Section 4(4) of the Planning and Development Act 200, as amended.

d) the continued use of the resurfaced service yards for warehousing and associated use cannot be deemed to constitute exempted development as the works for the resurfacing of those service yards are deemed to be not exempt.

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.

Conor McGrath ADP
20/07/2026

Form 1 - EIA Pre-Screening

Case Reference	ACP-324191-26
Proposed Development Summary	1. Whether the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the resurfacing of the original service yard is or is not development or exempted development; 2. Whether the reoccupation and use of the warehouse buildings and the service yards referred to in no.1, for warehousing and associated use, involved development and is or is not development and is or is not exempted development.
Development Address	Newrath, County Kilkenny.
	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. (The referral relates to both use and works) ☐ 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.**	State the Class here
☒ 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)**	**Class 10(b)(iv) Urban Development** - (c.2ha subthreshold)

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: Conor McGrath Date: 20/07/2026

Form 2 - EIA Preliminary Examination

Case Reference	ACP-324191-26
Proposed Development Summary	1. Whether the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the resurfacing of the original service yard is or is not development or exempted development; 2. Whether the reoccupation and use of the warehouse buildings and the service yards referred to in no.1, for warehousing and associated use, involved development and is or is not development and is or is not exempted development.
Development Address	Newrath, County Kilkenny
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	The development comprises alterations to an existing long established commercial site. These include repair and replacement of cladding and external finishes to buildings, resurfacing of yard areas, amendments to the larger building including removal of subsidiary elements, and recommencement of use of the buildings. Continuation of existing use comprises part of the question before the Commission. Use comprises palletised storage of dry goods. Low levels of vehicular activity were observed on site.
Location of development The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance.	The site is zoned for Business, enterprise and Technology, with long established commercial development thereon. The site itself is not sensitive, comprising brownfield lands, accessed from the regional and local road network, via an automated level crossing. The Lower River Suir is a sensitive receptor, immediately adjacent to the site, designed as an SAC. There are no sites or features of cultural interest on or adjoining the site. There are intervening commercial uses between the site and residential development to the northeast. The site is an established commercial site, however, it is located within Flood Zone A. There are development plan limitations on land uses within such zones.

Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the characteristics of the development and nature of the works, it is not considered that the development is likely to result in significant environmental effects. The relationship and likelihood of significant effect on the adjoining SAC is considered further in the AA screening assessment. While development should be subject to an SSFRA, flood risk to development would be localised and significant in terms of EIA.
Conclusion	
Likelihood of Significant Effects	**Conclusion in respect of EIA**
There is no real likelihood of significant effects on the environment.	**EIA is not required.** The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

Inspector: Conor McGrath Date: 20/07/2026

DP/ADP: ______________________ Date: ______________

(only where Schedule 7A information or EIAR required)

AA Screening

Screening for Appropriate Assessment Test for likely significant effects	
Step 1: Description of the project and local site characteristics	
Brief description of project	1. Whether the repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the resurfacing of the original service yard is or is not development or exempted development; 2. Whether the reoccupation and use of the warehouse buildings and the service yards referred to in no.1, for warehousing and associated use, involved development and is or is not development and is or is not exempted development.
Brief description of development site characteristics and potential impact mechanisms	The development the subject of the referral includes repairs and alterations to, and use of existing commercial / industrial buildings and resurfacing of extensive yard areas on this brownfield site at Newrath, Co. Kilkenny. The site is bounded by the Lower River Suir SAC to the southwest and a watercourse (backdrain) to the east.
Screening report	Y
Natura Impact Statement	N
Relevant submissions	PA declaration relates to likley significant effects on the SAC.

The development is not required for or directly connected with the management of any European site.

Commentary

The submitted AA Screening Report makes the following points:

- The site comprises buildings, artificial surfaces, and Spoil & Bare Ground / Recolonising Bare Ground.
- No protected species were found within the site, which has little value for flora. Therefore the works have not and will not directly or indirectly impact upon habitats or species of any Natura 2000 Site.
- The Lower River Suir SAC is the only European site within the ZOI. The site is not located within the SAC and habitats on-site have no conservation value for the SAC.
- The site has operated historically as an industrial facility, used in connection with the river.
- The works the subject of the referral do not constitute development requiring planning permission, are limited in nature and scale, and therefore comprise minor works with no potential to give rise to significant effects on the SAC.
- The adjoining concrete wall provides physical separation from the River Suir (main channel). No works were carried out between the buildings and the wall. Accordingly, there is no pathway for direct or indirect impacts and the works had / will have no direct effect on the integrity of the SAC.
- There are standard design measures incorporated into the design of the exempted development works, not with the aim of reducing negative effects on the European Site. These may be considered at Stage I screening.

Potential Impacts are identified as:

Impact	**Significance**
Loss of habitat area	No loss
Fragmentation	No fragmentation
Disturbance	No disturbance

Species population density	No change or replacement
Water resource	No relative change to surface waters
Water quality	No significant impact

- The site is physically separated from the SAC. The development did not compromise or affect the maintenance of habitats, or their favourable conservation status.
- Works took place on non-priority habitats, with no loss of SAC area, and no impact on Annex II flora or fauna.
- All works came within the scope of s.4(1)(h).
- The buildings were in historical use and there is no potential new impact or significant impact upon the maintenance of species or habitats.
- No new hydrological connectivity with a European Site was created, and the works did not, and will not, compromise or negatively affect water quality.
- There are no effects on mitigation measures for other plans or projects.
- There will be no cumulative effect.

It states that it is reasonable to conclude that the conservation objectives of a European Site will be met if its habitats and species are maintained at a favourable conservation status.

Conclusion:

- The works have had no significant impact on surface water quality.
- Ther will be no loss of site area, habitats or species, due to the minor nature of works and location outside the SAC.
- The works are not mitigation measures as defined in EJC C-721/21, as they are standard features of projects of this nature, not intended to reduce negative effects on any Natura site.
- There is no potential for cumulative effects.
- The works, individually, or in combination with other plans or projects did not have and will not have any significant effects on the lower River Suir SAC.

Step 2. Identification of relevant European sites using the Source-pathway-receptor model				
Lower River Suir SAC [002137] (QI's as per SI of 2024)	**Conservation Objective**	**Distance from proposed development (km)**	**Ecological connections[2]**	**Consider further in screening Y/N**
• Atlantic salt meadows • Old sessile oak woods with Ilex and Blechnum in the British Isles • Alluvial forests with Alnus glutinosa and Fraxinus excelsior • Taxus baccata woods of the British Isles*	To restore the favourable conservation condition	Adjacent	Water – run-off, both direct run-off and indirect via the backdrain. Air – dust, noise and disturbance	Yes
• Water courses of plain to montane levels • Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels	To maintain the favourable conservation condition			
• Freshwater Pearl Mussel • Sea Lamprey • Brook Lamprey • River Lamprey • Twaite Shad • Salmon	To restore the favourable conservation condition			

• White-clawed Crayfish • Otter	To maintain the favourable conservation condition			
River Barrow and River Nore SAC [002162]	**Conservation Objective**	**Distance from proposed development**	**Ecological connections2**	**Consider further in Screening Y/N**
• Estuaries • Mudflats and sandflats not covered by seawater at low tide • Reefs • Salicornia and other annuals colonising mud and sand • Water courses of plain to montane levels • European dry heaths • Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels • Petrifying springs with tufa formation	To maintain the favourable conservation condition	c.11km downstream	Weak indirect pathway via the River Suir	Yes
• Atlantic salt meadows • Mediterranean salt meadows • Old sessile oak woods with Ilex and Blechnum	To restore the Favourable conservation condition			

in the British Isles • Alluvial forests with Alnus glutinosa and Fraxinus excelsior				
• Desmoulin's Whorl Snail • White-clawed Crayfish • Killarney Fern	To maintain the Favourable conservation condition			
• Freshwater Pearl Mussel • Sea Lamprey • Brook Lamprey • River Lamprey • Twaite Shad • Salmon • Otter	To restore the Favourable conservation condition			

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

Site name	**Possibility of significant effects (alone) in view of the conservation objectives of the site***	
	Impacts	**Effects**

Site 1: Lower River Suir SAC [002137]	Direct: No works were carried out within the SAC and there was no direct loss or fragmentation of habitat which were QI's for the site. Indirect: There was potential for disturbance from noise and activity (visual disturbance) on the site during the works. There was potential for run-off of contaminating materials and water during the extensive resurfacing activities. Pathways include direct run-off, backdrain and via the drainage network on the site.	Potential disturbance / displacement of qualifying interests, including potential ex-situ disturbance during construction. Contaminated run-off had the potential to negatively impact on habitat quality / function, including water quality.
	Likelihood of significant effects from proposed development (alone):	Y
	If No, is there likelihood of significant effects occurring in combination with other plans or projects?	NA
	Possibility of significant effects (alone) in view of the conservation objectives of the site?	Yes
	Impacts	**Effects**
Site 2: River Barrow and River Nore SAC [002162]	No direct impacts Potential indirect impacts unlikely having regard to the scale of development, separation from the subject site and the dilution effects	No significant effects likley

	arising in the intervening watercourse.	
	Likelihood of significant effects from proposed development (alone):	N
	If No, is there likelihood of significant effects occurring in combination with other plans or projects?	N
	Possibility of significant effects (alone) in view of the conservation objectives of the site*	None

Further Commentary / discussion

The site is bounded on its southwestern and southern side by the SAC. The backdrain to the east of the site provides a connection to the SAC and it is noted that drainage from the site discharges to that drain / watercourse.

Notwithstanding the conclusions of the AA Screening report accompanying the declaration request, I note the following:

- I note that it is not stated when the site visit / site surveys informing the baseline assessment were undertaken or the extent of such surveys. There is no description of the site pre-development works.
- The report does not consider habitats immediately adjoining the subject site, either within the SAC or ex-situ, and the potential for QI's to occur therein, eg. otter, salt meadow. While the Screening report references the Conservation Objectives document for the SAC (2017) it does not recognize the objective to Restore the Conservation Status of certain qualifying interests including in particular Atlantic Salt Meadow.
- Supporting documents for the SAC identify the potential presence of Atlantic Salt Meadow along the shoreline / western boundary of the site. It has not been demonstrated that

construction or operational phases would / did not compromise the restoration objective or make it more difficult, particularly due to drainage discharge.

- The Screening Report does not adequately identify potential pathways between the development site and the SAC, including the back drain bounding the site to the east or the on-site drainage network. Surface water is understood to discharge to this backdrain and works occurred immediately adjacent thereto. Conclusions on the absence of impacts are not supported by any assessment thereof.
- The Screening Report indicates that works the subject of the separate application for retention were carried out after the building upgrades, resurfacing works and reoccupation of the buildings, however, the available evidence indicates that this is not the case in respect of all works. The assessment of in-combination effects is therefore considered incomplete.
- The scope of the referral does not adequately reflect or include the extent of works undertaken across the site and which cannot be practically or realistically severed therefrom, including drainage infrastructure and loading dock ramps. Despite statements in the referral, the retaining wall was in-situ while surfacing works were underway on the site.
- The Screening Report does not provide detail on or assess the nature of works / construction activity undertaken, particularly, the extent and nature of works associated with the surfacing of the service yard. Concerns in this regard relate particularly to the management of run-off during construction stage, ex-situ habitat loss, construction emissions including noise and dust.
- It is clear from plans and details accompanying the concurrent planning application / appeal (ACP-501200-KK-26) that an extensive drainage network has been installed across the resurfaced areas of the site, including the installation of petrol interceptors, which network discharges to the backdrain at two locations. No assessment of the effect of construction works is set out in the AA Screening Report, or its interaction with culverts on the site. It is not clear that such works can be severed from the resurfacing works the subject of the referral. While the installation of petrol interceptors may be considered to comprise a standard operational design feature, there has been no adequate consideration of the construction activity across the site associated therewith.

- To the northwest of Building A, outside the subject referral site, is an open “sump”, which is directly bounded by the resurfaced yard to the south and east. The drainage network drawings accompanying ACP-501200-26, (dwg. no. PUL090-Dwg.1.01) indicate that this resurfaced area of the site ,including the loading dock ramp, drains to this open “sump”. It is not clear that this does not discharge to the SAC and drainage is not assessed in the submitted screening report. Further, the relationship between a culvert identified in the engineering drawings to the east of the “sump” and the resurfacing works in this area is not clear.
- While the development plan identifies the site as being located within Flood Zone A, there is no consideration of the risk to the SAC from inundation of the site or of the implications of the extensive impermeable surfaces provided thereon.

Recladding and other repairs and alterations to the buildings did not involve any material change to the buildings, which were in situ for a considerable period, and emissions from such works are not considered likley to have had significant effects on the SAC. No excavation or expansion of building footprint was associated with such works. Having regard to the nature of the works, and their temporary nature, significant effects on the qualifying interests of the SAC are not considered likely.

There is a history of activity on the site. While the Screening report does not specifically consider the use of the buildings, the historic use of the buildings and site is acknowledged. Levels of operational activity on the site are not significant, and the continued use of the buildings for warehousing / storage purposes would not be likely to give rise to significant effects on the qualifying interests of the SAC.

Step 4 Conclude if the proposed development could result in likely significant effects on a European site

I conclude that the following development would not result in likely significant effects on the River Suir SAC and would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required. No mitigation measures are required to come to these conclusions.

- Repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the reoccupation and continued use of the warehouse buildings and the service yards;

Further,

It is not possible to exclude the possibility that the following works alone would result in, or have resulted in, significant effects on the Lower River Suir SAC from effects associated, in particular, with impacts on water quality, and indirect impacts on habitat quality and disturbance.

- the resurfacing of the original service yards, and associated works which cannot be practically or realistically separated therefrom.

Screening Determination

Finding of no likely significant effects

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the following development comprising,

- Repairs and alterations carried out to the 2 storage warehouse buildings, a workshop and the office/reception building and the reoccupation and continued use of the warehouse buildings and the service yards;

individually or in combination with other plans or projects would not be likely to give rise to significant effects on the River Suir SAC in view of the conservation objectives of this site and are therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:
- Nature and scope of the works, and the established uses on the site.

And further

That significant effects cannot be excluded

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the resurfacing of the service yards, alone or in combination with other plans and projects will give rise to significant effects on the River Suir SAC in view of the sites conservation objectives. Appropriate Assessment is required.

This determination is based on:

- the nature and extent of the works described in the section 5 application and referral,
- the uncertainty with regard to the relationship with other development carried out on the site, and the potential in-combination effects of such development.
- The proximity of the works to the SAC and to watercourses and drains which provide pathways to the SAC, and the potential impacts on water quality, habitat quality and potential disturbance.