



An
Coimisiún
Pleanála

Inspector's Report ACP-324231-26

Question

Whether the replacement of a concrete slurry tank with a new concrete slurry tank is or is not development or is or is not exempted development.

Location

Baile na nGall Mor, An Rinn,
Dungarvan, Co. Waterford

Declaration

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

D5/2026/9

Applicant for Declaration

Declan Morrissey

Planning Authority Decision

No declaration

Referral

Referred by

Declan Morrissey

Owner/ Occupier

Declan Morrissey

Observer(s)

None

Date of Site Inspection

5th August 2026

Inspector

Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The site is located in a rural area situated to the immediate east of An Rinn, Co. Waterford.
- 1.2. The subject site is situated on agricultural lands and is located approximately 100m from the public road, which is situated to the north of the site.
- 1.3. The referral site adjoins a small housing development to the immediate east, Pairc an Chroaire, which comprises of 6 no. detached houses.
- 1.4. The referral site itself comprises of a cattle shed and an adjoining slurry tank structure which is unroofed.

2.0 The Question

- 2.1. The question for consideration is as follows.

Whether the replacement of a concrete slurry tank with a new concrete slurry tank is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

- 3.1. No declaration made by the Planning Authority. The applicant on the 23rd of April 2026, 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

4.1.1. Section 5

- Ref. D5/2025/35

Waterford City and Council determined on the 24th of November 2025 that the replacing of an existing concrete slurry tank with a new concrete tank, like for like in dimensions, is development and **is not exempted development**.

5.0 Policy Context

5.1. Waterford City and County Development Plan, 2022 – 2028

- 5.1.1. The appeal site is zoned HA ‘High Amenity’ and the stated objective for these lands is as follows:

‘Protect highly sensitive and scenic location from inappropriate development that would adversely affect the environmental quality of the locations. Natural Heritage Designations’.

5.2. Natural Heritage Designations

- Dungarvan Harbour SPA (Site Code: 004032) 420m north.
- Helvic to Ballyquin SPA (Site Code: 004192) 190m south.
- Helvic Head SAC (Site Code: 000665) 450m south.
- Dungarvan Harbour pNHA (Site Code 000663) – 420m northwest.
- Helvic Head pNHA (Site Code 000665) – 450m south.

6.0 The Referral

6.1. Referrer’s Case

- 6.1.1. The following is an outline of the referrer’s case.

Original Construction Work

- The concrete slurry tank was constructed in 1980.
- The slurry tank is part of an agricultural development as ancillary effluent treatment.

- The 1980 development was constructed as follows.
 - More than 10m from the public road.
 - Wider than 4m.
 - Floor area less than 400 sq. m.
 - Structures always used for the purpose of agriculture.
 - Structure more than 100m from the public road.
 - No dwelling house within 100m of the development.
- The works were carried out in accordance with S.I. No. 65 of 1977, Class 7 of the 1963 Act.

Proposed Works

- Replace existing concrete tank with new concrete tank of the same dimensions as part of maintenance and improvement.
- The works will 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.
- The works are exempted development having regard to S. 4(1)(h) of the Act.

Previous Assessment

- The previous Section 5 application, Ref. D5 2025-35, was incorrectly assessed.
- The exempted development provisions were assessed under the provisions of the 2000 Act, and not the S.I. No. 65 of 1977, Class 7, of the 1963, Act, which was enforceable at the time of construction of the original works.

6.2. Planning Authority Response

- None

6.3. Further Responses

- None

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'
- 'agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and 'agricultural' shall be construed accordingly.

7.1.2. Section 3(1) 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, and include the following;

- Section 4(1)(a) which provides for development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;
- Section 4(1)(h) which provides for the carrying out of works for the maintenance, improvement or alteration of any structure that only affect the interior of the structure, or which do not materially affect the external

appearance so as to render it inconsistent with the character of neighbouring structures.

- 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 6(1) of the Planning and Development Regulations 2001, as amended, 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'.
- 7.2.2. Schedule 2 of Part 3 (Rural) of the Regulations set out the classes of exempted development and Class 6 and Class 8 are relevant.

Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Agricultural Structures</i> Class 6 Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure) and any ancillary provision for effluent storage.	 1. No structure shall be used for any purpose other than the purpose of agriculture. 2. The gross floor space of such structure together with any other structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 sq. metres gross floor space in aggregate.

	3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution. 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road. 5. No such structure within 100 metres of any public road shall exceed 8 metres in height. 6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing for the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof. 7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.
<i>Agricultural Structures</i>	

Class 8 Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 sq. metres, and any ancillary provision for effluent storage.	1. No such structure shall be used for any purpose other than the purpose of agriculture. 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 sq. metres gross space in aggregate. 3. Effluent storage facilities adequate to serve the structures having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution. 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road. 5. No such structure within 100 metres of any public road shall exceed 8 metres in height. 6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing for the structure) or other residential building or school, hospital, church or building used for
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	public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof. 7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.
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- 7.6.5. 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.

8.0 Relevant Referrals

- 8.1. 26.RL2625: The Board determined on the 30th of September 2009 that the change of use of two underground tanks within a farmyard from storing cattle slurry to storing food sludge from a food processing factory effluent treatment plant is not exempted development. The Board concluded that the food sludge from a food processing factory effluent treatment plant is a waste byproduct of an industrial process and that the change of use of the two underground tanks from use for the storage of effluent generated by cattle on the farm to use for the storage of such waste by-product imported from a food processing factory constitutes a material change of use and is, therefore, development and that the development does not come within the scope of the exempted development provisions of Section 4 of the Planning and Development Act, 2000 and the regulations made thereunder.
- 8.2. PL06.RL.2681: The Board determined on the 6th of May 2010 that the construction of three integrated constructed wetlands, constructed as part of an effluent treatment system, are not exempted development. The Board concluded that the wetlands do not come within the exempted development provisions of Class 3, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

9.0 Assessment

9.1. Introduction

- 9.1.1. The Commissioners will note that a similar question to the current referral was submitted to the PA as a Section 5 application and the planning reference no. for this previous case was L.A. Ref. D5/2025/35. This case is referred to above in para. 4.0 and the documentation of this history case is attached to the file. Accordingly, I would consider that the *Naracanon Trust v An Bord Pleanála* judgement would be a relevant consideration in this instance.
- 9.1.2. Having regard to the previous declaration (L.A. Ref. D5/2025/35) by the PA, which declared that the replacing of an existing concrete slurry tank structure with a new concrete slurry tank structure, like for like in dimensions, is development and is not exempted development, and further following my review of this previous case I can confirm to the Commission that the facts presented in this current referral are not materially different to that presented to the planning authority in planning reference D5/2025/35, accordingly I would recommend that the Commission dismiss this case under section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.
- 9.1.3. Notwithstanding the above, and should the Commission decide to give consideration to this referral I have set out an assessment of the issues raised in the referral below and a draft order arising from the recommendation.

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 would note from the submitted drawings that accompanied the referral submission that the slurry tank structure has an area of c. 136 sq. metres, and the tank structure

is a concrete construction, consisting of a concrete base and concrete walls of 1.8 m high enclosing the slurry tank structure.

- 9.2.4. The proposal relates to the replacement of the existing slurry tank structure with a new concrete slurry tank structure. The removal of the existing tank structure would involve excavation and demolition, and construction would be required for the new tank structure. This 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 would acknowledge that the referrer's submission argues that the replacement slurry tank structure would be exempted development having regard to S.I. No. 65 of 1977, Class 7, of the 1963 Act. However, the new structure would represent a new development and the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended, are the relevant statutory provisions for the consideration of exempted development for any new developments.
- 9.3.2. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000, as amended, (hereafter referred to as the Act) or by Article 6 of the Planning and Development Regulations, 2001, as amended (hereafter referred to as the Regulations). Section 4(1) of the Act has primacy over the exempted development provisions of the Regulations.
- 9.3.3. Section 4(1)(a) of the Act provides that agricultural use of land shall be exempted development and agriculture is given a broad definition in the Act and includes that of horticulture, fruit growing, seed growing, dairy farming, breeding and keeping of livestock, training of horses, rearing bloodstock, use of land as grazing land, meadow land, osier land, market gardens and nursery grounds. I conclude that none of these uses relate specifically to agricultural structures and the exemptions for such structures are considered separately below under the provisions of Article 6(3) of the Regulations, 2001, as amended. Accordingly, I would not consider that the development, the subject of this referral, would benefit from exempted development available in Section 4(1)(a) of the Act.

9.3.4. I would acknowledge that the referrer's primary claim for exemption is Section 4(1)(h) of the Act. Section 4(1)(h) provides an exemption for,

'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'.

9.3.5. I would consider that the nature and extent of works proposed are not for the maintenance, improvement or other alteration of any structure, as it is proposed to replace an existing concrete tank structure with a new concrete tank structure. I therefore would not consider that the development is exempted development having regard to Section 4(1)(h) of the Act.

9.3.6. Article 6(3) of the Regulations provides for rural exempted development in accordance with Schedule 2, Part 3 of the Regulations. Class 6 and Class 8 of Schedule 2, Part 3 relates to agricultural structures and are relevant considerations in this referral case. Class 6 relates to the provision of a roofed structure for housing livestock and ancillary provision for effluent storage. Whereas Class 8 relates to the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character, having an aggregate gross floor space not exceeding 200 sq. m., and ancillary provision for effluent storage. In this case the relevant consideration in this referral is whether the ancillary provision for effluent storage is exempted development having regard to the provisions of the aforementioned Class 6 and Class 8. The available exemption in both Class 6 and Class 8 include 7 no. identical conditions and limitations which I will consider below.

1. No structure shall be used for any purpose other than the purpose of agriculture.

The purpose of the slurry tank is to serve an existing adjoining cattle shed, as such the development would comply with this condition.

2. *The gross floor space of such structure together with any other structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 sq. metres gross floor space in aggregate.*

The extent of the farm holding has not been demonstrated by the referral. I would consider that the onus of proof is on the party seeking to prove the exemption, and based on the information on the file, it has not been demonstrated whether the development would meet the requirements of this condition.

3. *Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*

Similar to Condition no. 2 above, compliance with this condition has not been adequately demonstrated, based on the information available on the file.

4. *No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.*

The slurry tank structure the subject of this referral is located 100 metres from the public road and therefore would meet the requirements of this condition.

5. *No such structure within 100 metres of any public road shall exceed 8 metres in height.*

The slurry tank structure would meet the requirements of this condition.

6. *No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing for the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing*

of the owner and, as may be appropriate, the occupier or person in charge thereof.

The slurry tank structure adjoins a small housing development to the immediate east, Pairc an Chroaire, which comprises of 6 no. detached houses. I would note from the submitted Site Layout Plan (scale 1:500) that it is evident that house No. 4 Pairc an Chroaire is situated approximately 20m from the slurry tank structure. In addition, I have calculated that 5 of the houses at Pairc an Chroaire are located within 100m of the slurry tank structure, with the exception being no. 1 Pairc an Chroaire, which is located in excess of 100m from the slurry tank structure. The development would therefore clearly not meet the requirements of this condition and limitation, and as such the available exemption in Class 6 and Class 8 of Schedule 2, Part 3 would not be available for the development in this referral.

7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

The development would meet the requirements of this condition.

9.3.7. Therefore, in conclusion, and having regard to the above considerations, I would consider that the exemption available in Class 6 and Class 8 of Part 3, Schedule 2 of the Regulations, would not be available for the slurry tank structure.

9.4. Restrictions on exempted development

9.4.1. I have noted above that there are no relevant exempted development provisions in respect 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 this regard I have assessed the development of the slurry tank structure in respect of the relevant Article 9 restrictions, and I would conclude that should the available exemptions in Class 6 or Class 8 of Schedule 2, Part 3 of the Regulations apply in this instance that Article 9 would not de-exempt the said exemptions.

10.0 EIA Screening

10.1.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

11.0 Appropriate Assessment

11.1.1. I have considered case ACP:-324231-26 in light of the requirements S177U of the Planning and Development Act, 2000, as amended.

11.1.2. The closest European Site, part of the Natura 2000 Network, is the Helvic to Ballyquin SPA (Site Code: 004192) located 190m to the south of the subject site.

11.1.3. 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.

11.1.4. The reason for this conclusion is as follows:

- The minor nature and scale of the development.
- The absence of any ecological pathway from the development site to the nearest European Site.

11.1.5. 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.

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

12.0 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 whether the replacement of a concrete slurry tank with a new concrete slurry tank is or is not development or is or is not exempted development:

AND WHEREAS Declan Morrissey requested a declaration on this question from Waterford City and County Council and the Council did not make a declaration in this instance:

AND WHEREAS Declan Morrissey referred this declaration for review to An Coimisiún Pleanála on the 23rd day of April 2026:

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

- (a) Section 2(1), 3(1), 4(1), 4(2) and 4(4) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(3) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) The documentation on the file, including the submission on behalf of the requestor Declan Morrissey:
- (e) the planning history of the site,
- (f) the pattern of development in the area:
- (g) the report and recommendation of the Inspector

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The works involved for the replacement of a concrete slurry tank with a new concrete slurry tank would constitute development under

Section 3(1) of the Planning and Development Act, 2000, as amended,

- (b) The said works would not fall within the scope of the exemptions provided by Section 4(1)(a) and Section 4(1)(h) of the Planning and Development Act 2000, as amended,
- (c) The said works do not come within the exempted development provisions of Class 6 or Class 8, Schedule 2, Part 3 of the Planning and Development Regulations 2001, (as amended), and
- (d) does not come within any of the other exempted development provisions of the Act or Regulations.

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 replacement of a concrete slurry tank with a new concrete slurry tank, at Baile na nGall Mor, An Rinn, Dungarvan, Co. Waterford, 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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Kenneth Moloney
Senior Planning Inspector

22nd September 2026

Form 1 - EIA Pre-Screening

Case Reference	ACP-324231-26
Proposed Development Summary	Whether the replacement of a concrete slurry tank with a new concrete slurry tank is or is not development or is or is not exempted development.
Development Address	Baile na nGall Mor, An Rinn, Dungarvan, Co. Waterford.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2.
	☐ No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

development under Article 8 of the Roads Regulations, 1994. No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____