

PLANNING COMPLIANCE STATEMENT

To accompany a planning application for substitute consent submitted to
An Bord Pleanála under Part XA of the Planning and Development Act
2000 (as amended) in respect to development at Court, Kildimo. Co.
Limerick.

Prepared on behalf of:
O'Carroll Haulage Crane Hire

May 2024



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Title:	Planning Compliance Statement
Project:	23019 O'Carroll Haulage Crane Hire, Kildimo, Co. Limerick
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Date:	29.05.2024
Issue:	Final
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1.0 INTRODUCTION

This statement of planning compliance has been prepared to accompany a planning application made by “O’Carroll Haulage & Crane Hire Ltd” (**the applicant**) directly to An Bord Pleanála pursuant to the provisions of Section 177E of Part XA (‘Substitute Consent’) of the Planning and Development Act 2000 (as amended) for retention permission of development at O’Carroll Haulage Crane Hire, Kildimo, Co. Limerick.

The purpose of this report is to clarify the nature and purpose of the subject development (**“the proposal”**); to demonstrate the exceptional circumstances which exist to support the making of this planning application under Part XA of the Planning and Development Act 2000 (as amended); and how the proposed development is consistent with the provisions of the development plan, and, the proper planning and sustainable development of the area.

This application for substitute consent is accompanied by a remedial Natura Impact Statement (**“rNIS”**). The reasoning for making this application under the ‘Substitute Consent’ provisions is set out in Section 3.2.

2.0 SITE LOCATION and CONTEXT

The subject site is located at the southwest edge of the Limerick Metropolitan area approximately 1km east of the village of Kildimo in County Limerick and approximately 300m south of the National Secondary Route (N69) Limerick City – Askeaton Road.

The western boundary of the development site adjoins the local road (L3038) which extends south from the N69 route and which contains the established access point to the property as shown in Figure 1. The site comprises established industrial premises consisting of an industrial building and associated hardstand storage area used ancillary the use of the property.

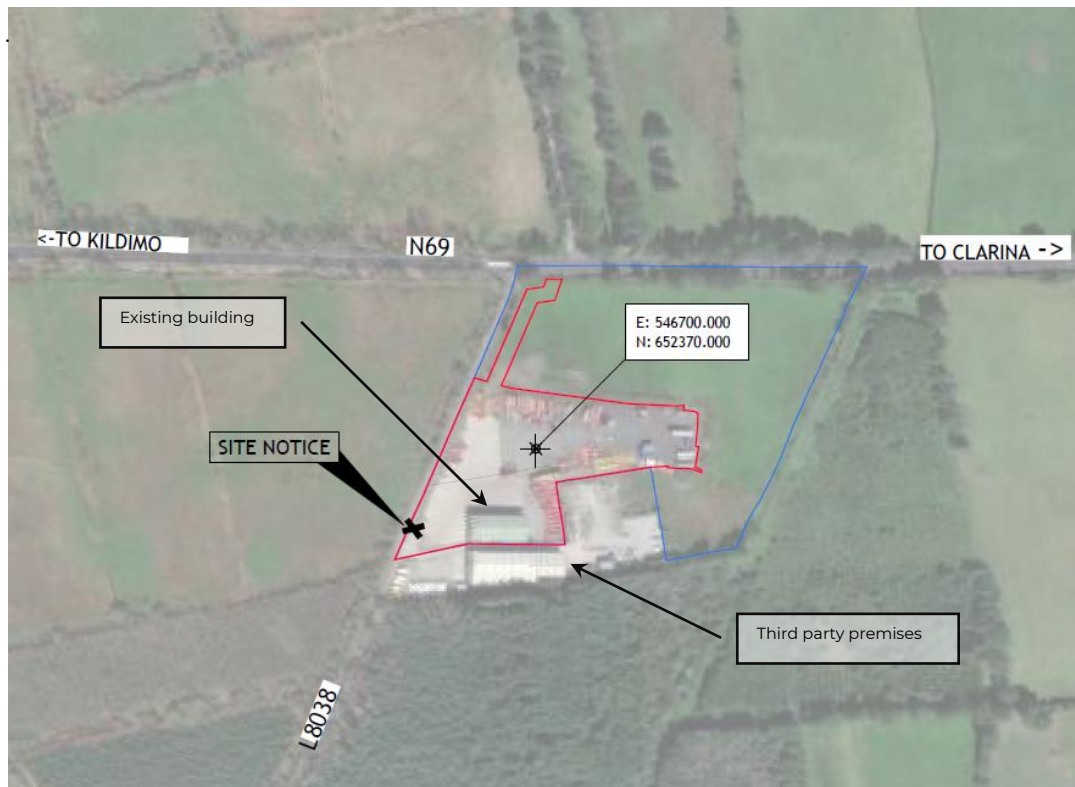


Figure 1 General site configuration and planning application site boundary showing site outlined in red. Extract from submitted ‘Site Location Map’ drawing.

The extent of this associated hard standing has been increased and the nature of that extension forms the primary purpose of this application. Metal security fencing bounds the roadside western site boundary to provide operational security and site safety.

The primary habitat type of the property consists of Buildings and artificial surfaces BL3 as per the Fossitt habitat classification system.

The applicant has conducted his commercial business from the property ('O'Carroll Haulage & Crane Hire'). This activity includes the use of the industrial building and storage of equipment consisting of crane vehicles, crane parts and associated equipment requiring both internal and external storage. The site includes external hardstanding storage area. The applicant has extended the provision of that hardstanding area to the north of the permitted premises and hardstanding by the introduction of compacted fill material and the finishing of that western portion of filled area with concrete surface finish to match with the concrete finish of the existing permitted facility. That extended area has been used for the external parking of vehicles, plant and equipment associated with the applicant's business. The applicant installed new palisade type security fencing along the western roadside boundary and security lighting.

A separate third-party industrial premises exists to the immediate south of the subject site as shown in Figure 1. That premises used by 'Derek Walsh Camper Centre's' consists of an industrial workshop and associated external storage to the front and rear of the building similar to the applicant. That third-party premises has expanded to the rear incrementally over recent years with additional external strigae area granted planning permission.

3.0 BACKGROUND

3.1 Planning History

The applicant's existing business operates from an industrial premises authorised by way of planning permissions granted by LCCC dating back to 1980's, namely;

- **Ref: 98/718:** Permission for construction of warehouse and ancillary offices for the storage of parts and the servicing of equipment for the construction and mining industry; and
- **Ref: 07/576:** Permission for construction of an extension to the rear of existing unit.

These permissions established the nature of development on site, that is, the construction of the (existing) industrial structure and provision of hardstanding on this site, and the use of that structure and associated hardstanding for that industrial activity at this location.

Planning permission details confirm that the use of the site under the 98/718 permission included store, "*service and maintenance parts for all types of construction machinery .i.e Excavators (wheeled and track), Teleporters, Dumtrucks and Rockbreakers*". Furthermore, it is relevant to note that the established and permitted use of the site (established under ref: 98/718) facilitated the unmitigated discharge of surface water from the building and use of that hardstanding, directly to boundary watercourses.

Further to that, a subsequent planning application made in 2021 by the applicant seeking retention permission for extension of hardstanding area, security lighting and boundary fencing was refused by An Bord Pleanála under planning ref: ABP 310821-21 (Limerick City and County Council ref: 21/190). The circumstances of the decision of that application will be re-visited during the course of this

compliance statement in order to address any supposition that the merits of that decision are directly applicable again to this application.

In the meantime, and pursuant to that decision (ABP 310821-21), the applicant is the subject of a planning enforcement case which is currently before the Court in respect to the unauthorised development consisting of the filling and use of the land – which forms the basis of this planning application. This application is intended to regulate that unauthorised development.

Planning History – The Adjacent lands

For contextual purpose, it is relevant to note the nature and extent of development activity occurring on the immediately adjacent commercial property to the south of the subject site. That premises is operated by a separate commercial operator for a separate use and under several planning permissions that have been granted planning permission by Limerick City and County Council for commercial and industrial use, and extension of that industrial activity and external hardstanding for industrial use as referenced below.

Ref: 17/958: Permission for the construction of a workshop extension to the rear of the existing workshop, and Retention permission for external hardstanding yard and to retain existing workshop use from commercial to light industrial use

Ref: 05/122: Permission for renovation and extension to existing commercial repair unit, wastewater treatment system and all ancillary site services

Ref: 21/101: Planning Permission for the construction of a 150 square metre covered storage building and all ancillary site works

Whilst both premises are situated immediately adjacent to one another, it is relevant to note that the third-party premises to the south (as illustrated in Figure 1 and Figure 3) has been allowed to increase overtime, including the external storage area to facilitate that established business.

3.2 Circumstances that led to this Application for Substitute Consent

The purpose of filling of land and provision of hardstanding (part of which is in concrete surface finish), was to provide for additional safe and workable hardstanding /storage area for the express purpose of facilitating the existing and established industrial activity within the applicant's premises.

The nature of the applicant's business (crane hire) gives rise to a need to provide secure external storage area for the storage of crane vehicles and for the storage and organisation of large sections and heavy lifting mobile and crane jibs and parts associated with that activity in between jobs. Though this presents an obvious spatial requirement given the out of the ordinary size and scale of crane parts normally, it does not alter the permitted use of the original premises.

The applicant has advised that he thought he made provision of this additional storage area legitimately, as part of the permitted facility, and within the confines of his property ownership, mistakenly understanding that in doing so, he could avail of the exempted development provisions set out under Class 22, Part 2 of Schedule 3 of the Planning and Development Regulations 2001 (as amended) which provides for hardstanding areas associated with industrial installations.

There was of course a clear misunderstanding by the applicant of the full interpretation and the limitations. In seeking to regularise that unintended 'unauthorised development', the applicant, now understands with the benefit of hindsight informed by technical planning, engineering and ecological expertise - which has concluded a requirement for Natura Impact Statement and remedial measures - that the only mechanism available to apply retrospectively for planning permission in this instance are the 'Substitute Consent' provisions set out under Part XA of the Planning and Development Act 2000 (as amended) pursuant to the provisions of Section 24(12) of that Act. The Board will be minded of the inherent complexity of the planning code where it deals specifically with retrospective (retention) development and environmental considerations, and which tends to require a familiarity with both primary and secondary statutes. This approach was conveyed to the Planning Authority during preplanning consultation with it on April 5th inst.

This approach was only determined following comprehensive review of the previous ABP appeal decision and subsequent topographical, hydrological, and ecological examination of the site and development circumstances. The requirement for Appropriate Assessment in this instance derives from what is described in the AA Screening statement as "*an abundance of caution*" in the context of the *precautionary principle*, and not consequent to any adverse effect either identified as a result of the existing development or determined from continuation of that development/activity. This is discussed further in Section 7.4.

Though the reinstatement of the land to its condition prior to the unauthorised development (by removal of the fill) may appear a simple solution, the applicant does not wish to do that at risk of upsetting ground and hydrological conditions further (given its knowledge now of downstream sensitivity and hydrological connection), and given its understanding that the area of extended hardstanding is consistent with the pattern of permitted and established industrial activity at this location which is referenced earlier in Section 3.1.

This application therefore intends to present a logical and practicable proposal to remedy the situation consistent with planning and environmental provisions.

4.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The development works the subject of this application consist of:

1. Retention permission for works consisting of;
 - (a) the raising of ground levels by filling of land,
 - (b) the provision of concrete surface on part of that filled area,
 - (c) the use of part of the filled area for hardstanding storage of vehicles, materials and plant associated with the established and permitted use of the existing premises including provision of security fence and lighting;
2. Provision of remedial and mitigation measures including:
 - (a) The cessation of use of part of the fill area and facilitating the natural regeneration of that area; and
 - (b) The provision of surface water management measures to improve the quality of the existing permitted discharge and the proposed discharge of surface water from the site to existing boundary surface water drains. These measures include provision of: interceptor surface water drains, petrol interceptor, full retention forecourt type

separator, attention tank, and introduction of controlled rate of discharge prior to new discharge point to boundary surface water drains via new precast concrete headwall.

The above development arrangements are detailed in the enclosed Engineering Planning Report and the Site-Specific Flood Risk Assessment ("**SSFRA**") prepared by PUNCH Consulting Engineers, and in the remedial Natura Impact Statement ("**rNIS**") prepared by Altamar Ltd. Marine and Environmental Consultants.

5.0 DEVELOPMENT ARRANGEMENTS

5.1 Layout

The enclosed drawings include two site layout plans as follows:

- 231279-PUNCH-XX-XX-DR-C-0401 P03 EXISTING (UNMITIGATED)
- 231279-PUNCH-XX-XX-DR-C-0402 P03 PROPOSED (MITIGATED)

The "UNMITIGATED" arrangement shows the existing situation, that is the filled area with no surface water management. Surface water discharges to the existing boundary stream in an unmitigated and uncontrolled arrangement consistent with historic development permitted under the parent permission.

The MITIGATED ('proposed') arrangement includes a reduced area of proposed hardstanding (from what exists at present) and the introduction of surface water management measures pursuant to the recommendations of the rNIS to improve the quality of discharge water to protect the quality of water downstream.

Figure 2 overleaf, illustrates an extract from the 'Proposed' (MITIGATED) arrangement illustrating the general arrangement of the site with proposed surface water management measures (extract from 'SITE LAYOUT PLAN PROPOSED Dwg ...XX-DR-C-0402. Figure 3 (overleaf) illustrates this proposed arrangement in the context of the aerial background and the extent of established permitted development at this location.

The proposed site layout plan makes provision for a replanted hedge positioned along the inside (east) side of the existing perimeter fence, the location of which is shown on the Site LAYOUT PLAN and detailed on Drawing PROPOSED DRAINAGE DETAILS Dwg no. DR-C-0502 ("Proposed Perimeter Detail").

Figure 2

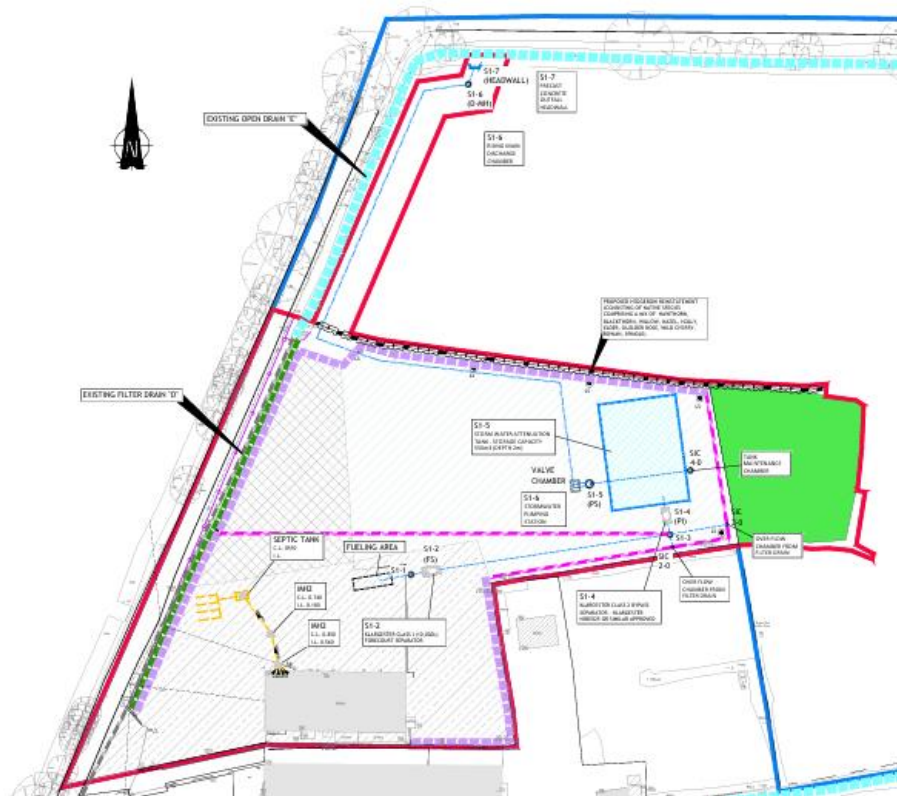


Figure 2 ABOVE: The proposed MITIGATED arrangement

Figure 3

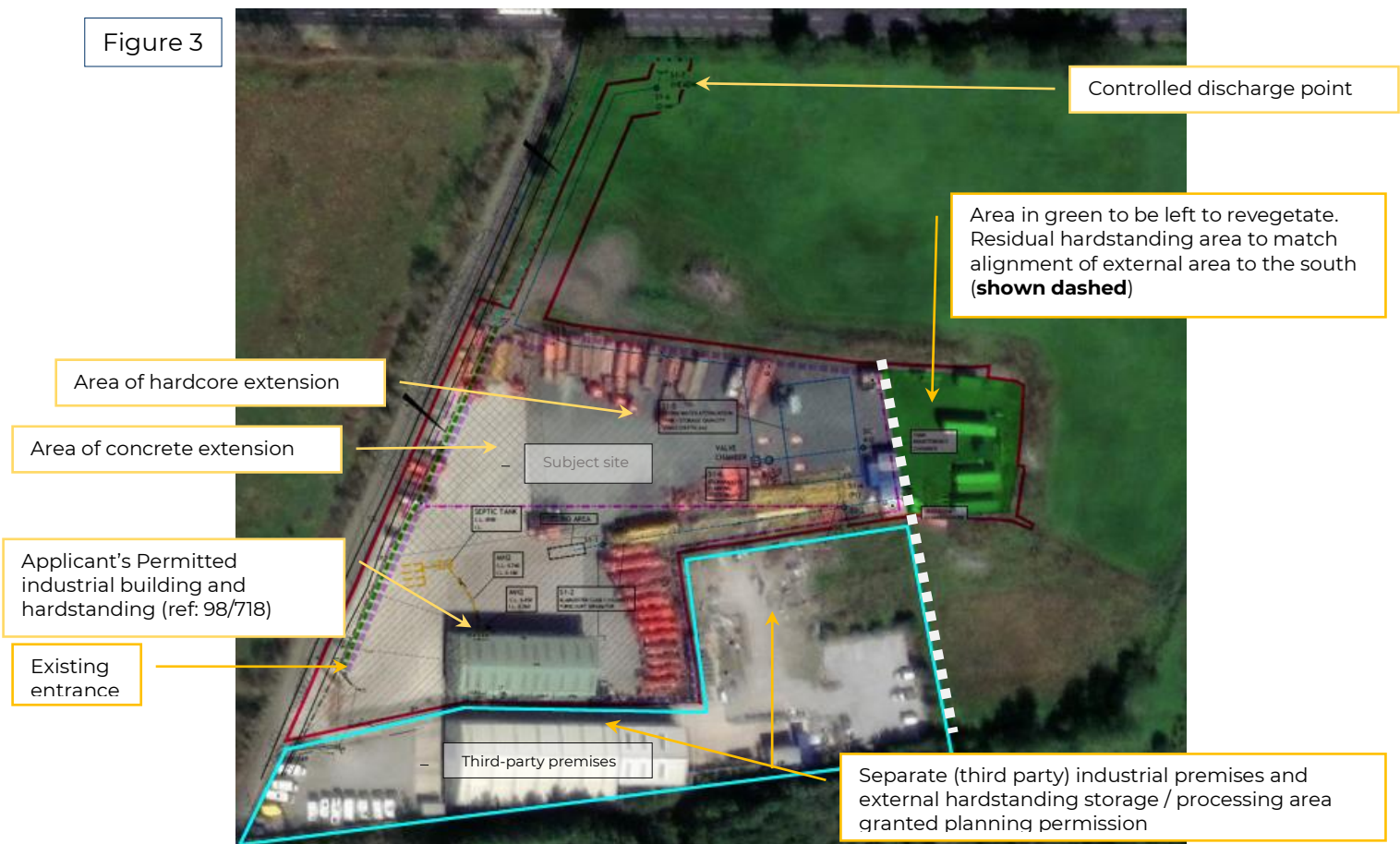


Figure 3 ABOVE: The Proposed (MITIGATED) arrangement on aerial background

The extent of the permitted industrial premises is outlined in bright RED in Figure 4 below. The extent of the proposed external hardstanding storage area is illustrated in YELLOW outline. The extent of the third-party premises to the south is illustrated in BLUE outline.

Figure 4



Part of the filled raised area had been finished with concrete finish the extent of which is clearly visible in Figure 4 (cross-hatch within the YELLOW outline). The remainder of the area to the east of the concrete finish was left in compacted fill material with no concrete surface finish. Topographical levels and sections indicate that a portion of the site had been raised by approximately 0.5m.

The provision of additional hardstand was a necessity to facilitate parking of vehicles and machine parts by the applicant associated with its commercial business carried at this location (mobile cranes, crane parts, and jib sections). By the very nature of the applicant's activity, there is a requirement for external hardstanding to facilitate storage and management of heavy haulage and crane equipment which by its nature, requires open space. Generally, the hardstanding concrete area is intended to include the parking of vehicles, whereas the hardcore area is intended for the storage of dry parts. No fuels or contaminant substances are intended to be stored within the non-concrete area. All fuelling and liquid materials are to be confined to the hard surface concrete areas to negate potential for contaminant discharge to ground. The mitigation measures once in place, will replace the permitted but uncontrolled discharge of surface water to the boundary drain.

The provision of the additional external space is not intended to facilitate some exponential level of commercial growth on this site by the applicant or of this operation or, for any other commercial business. Furthermore, in light of the existing planning enforcement case and, the planning appeal decision in 2021 (ABP-310182-21), the applicant proposes as part of this application, to reduce the use of the hardstanding area within the eastern extremity. The limit of use of the hardstanding area (as detailed on enclosed drawings and illustrated in Figure 3) is commensurate to a level sustainable with the applicant's commercial requirements from its existing business, and not any significant commercial expansion of it.

The extent of the proposed external hardstand storage area on the eastern boundary is matched to the established and permitted commercial and industrial use of the property to the immediate south as granted planning permission by Limerick City and County Council (as illustrated in Figure 3). The proposal will thus enable a consolidation of these existing permitted enterprises at this location by 'squaring-off', the current configuration of both premises and establishing a regular shape in lieu of a haphazard sprawl of either facility. This is illustrated by the dashed WHITE line in Figure 3. The residual area of hardstanding would be left to regenerate naturally.

5.2 Mitigation Measures

The applicant proposes to give effect to the mitigation measures recommended in the enclosed rNIS. The mitigation measures are intended specifically to protect the quality of downstream habitats which from assessment, have been determined to be hydrologically linked to the subject site. Thus, considering the precautionary approach arising from the potential for indirect effects of continued uncontrolled (but permitted) discharge of surface water from the site, these recommendations are not just considered 'engineering best practice' in respect to the extended area, but would result in an improved environmental condition due to the connectivity of the surface water outfall with the designated European sites downstream – The River Shannon SAC and the River Shannon and River Ferus Estuaries SPA.

For clarification, the applicant has advised that there is no discharge of contaminated commercial materials, substances or operational by-products off site into boundary drains. No fuels, oils, lubricant or contaminant material is stored within the filled area. The risk is thus confined to discharge of fine particle hydrocarbons sediments generated from the surface water run-off from the storage and movement of vehicles using the hardstanding storage area into the boundary watercourses unmitigated, and making its way downstream. Observations and reporting set out in the rNIS indicates no evidence of and permanent significant effect having occurred.

The surface water design recommendations provide a solution for the entire hardstanding area. This includes not just the extended hardstanding area, but also the area of the parent permission authorised under planning ref: 98/718 which was permitted and carried out with no surface water management obligations, but which proposed and was permitted for direct (un-managed) discharge of surface water to the boundary drains.

The alternative (which would be to allow the continued arrangement of the permitted development to discharge surface water into boundary streams unmitigated) is not considered best environmental (or planning) practice. Furthermore, the opportunity would be missed to apply current environmental best practice, taking a cumulative approach and an opportunity to bring the permitted arrangement, up to current day standards.

The mitigation measures include the proposed surface water management measures detailed below. These have been taken into consideration and referenced in the submitted rNIS and the rNIS provides further mitigation measures in Section 8 of that report.

5.3 Proposed Surface Water Management

Section 2.3 of the PUNCH Consulting Engineers report confirms that the surface water will be collected and discharged via a mixture of traditional and Sustainable urban Drainage System (SuDS) to the existing open drain "E" marked on PUNCH Consulting drawing 231279-PUNCH-XX-XX-DR-C-0402.

SuDS measures have been designed and proposed to facilitate the current day requirements of all site activities taking a managed approach to the overall site including the existing and permitted operations. The design has been advanced in accordance with the SuDS Manual, and consistent with the pollution prevention guidelines include principally;

- a **filter drain and Bio retention area** to provide interception and on-site attenuation of surface water,
- **petrol interceptor** fitted to the surface water outfall to remove hydro carbons and fine sediment particles to reduce potential risk of contaminant discharge downstream
- **Forecourt Separator** employed for the existing fuelling area to provide full retention separator to deal with potential for spillage with a 7,600L capacity, **and**
- **Attenuation Tank** to reduce peak (surface water) runoff from the site designed to the 1 in 100 year rainfall event threshold with additional designed capacity to accommodate climate change with controlled runoff rate at 3.1 l/s.

Further specifications of these arrangements and supporting design calculations for same are set out in the PUNCH Consulting Engineers Report. All SuDS measures are consistent with best practice UK SuDS Manual and, with Limerick City & County Council drainage requirements.

With these design measures in place, the design calculations predict a relatively small volumes of that collected rainwater entering the surface water network during normal conditions and typical low intensity storms. This design arrangement has been discussed and agreed in principle with the OPW as notated in Section 2.6 of the PUNCH Consulting Engineers Report.

The board may appreciate that the applicant proposes to bear the significant cost resource in bringing the site up to that standard. Given that these are recommended mitigation measures set out in the rNIS, they are proposed as part of this application and the applicant respectfully requests the Board to take them into consideration as site-specific remedial solution. The effects of those mitigation measures have been assessed in the enclosed rNIS.

6.0 PLANNING PROVISIONS & DESIGNATIONS

The subject site is situated on un-zoned land within the area of Limerick Development Plan 2022-2028. The site does not contain nor form part of any archaeological, built or natural amenity feature or designation of special conservation interest or value. The site does not adjoin directly any designated European site.

The Site-Specific Flood Risk Assessment (SSFRA) prepared by PUNCH Consulting Engineers and accompanying this application confirms that the site is located in fluvial and coastal Flood Zones A and though the site benefits from the (OPW) Arterial Drainage Scheme embankments along the Mague river, it retains a residual risk of flooding in the unlikely event of an embankment breach.

The site-specific Flood Risk Assessment (SSFRA), prepared as part of the Limerick Development Plan, does not include Flood Zone mapping in the vicinity of the site. The submitted SSFRA confirms that (OPW) arterial drainage scheme embankments are located along both banks of the River Mague with a crest height of approximately 4.75mAOD adjacent to the site. This height is in excess of the NCFHM predicted extreme coastal flood levels for the 10%, 0.5% and 0.1%AEP events.

7.0 PLANNING APPRAISAL

The Planning Appraisal is set out under the following headings:

7.1 Principle of Development

The principle of development, that is, the provision of an extension to the hardstanding area for the purpose of hardstanding storage associated with the applicant's existing crane hire business, is consistent with the permitted industrial use of the site which has been established at this location since the early 1980's as referenced earlier under planning permission ref: 98/718.

The expansion of that hardstanding area is intended to facilitate the applicant's existing business which it operates, under the parent planning permission at this location. The reduction in the use of the filled area for storage (as discussed earlier) will result in a smaller area of hardstanding reflecting the operational requirement of the existing activity permitted at this location.

Though this is a rural area, the development does not give rise to some uncontrolled opportunity for exponential growth of existing commercial or new industrial activity nor has it, nor would it allow for some form of undesirable precedent which would not be considered on its own merits.

The extent of the proposal is consistent also with the pattern, scale and extent of industrial development that has been permitted on the adjacent site to the south. The general footprint and arrangement of the subject site is now on a par with what Limerick City and County Council as the local planning authority, has deemed appropriate and acceptable at this location and on the adjacent industrial site for the past 30 years and as recently as 2017 and again in 2021. The commercial activities and the commercial areas of both premises are comparable in scale, form and function.

Further to above material considerations, and whilst it is not the intention to argue the merits of the previous determination by the Board in 2021 for similar development (ABP 310821-21 (Limerick City

and County Council ref: 21/190)¹ it is important for the consideration of this proposal, to demonstrate some distinctions between the merits of this case, and the assessment by the Board in respect to that previous case.

Firstly, the Board in its inspectorate's appraisal of that previous case set out under "Planning History", made no express reference to or acknowledgement of the existing planning permission authorised by the 98/718 planning permission which expressly relates to the existing warehouse and hardstanding storage area on the premises for which this current proposal is attached, for the storage of construction vehicles, plant and machinery associated with the mining and construction industry.

Whilst there is no obligation for the Board to refer expressly to that previous planning permission, it is a material consideration given that the previous ('2021') proposal was not a new activity being introduced to the rural area, nor was it a development that would result in some sort of haphazard landuse activity that would set an uncontrollable precedent for other commercial activities at this location. That previous proposal was directly related to the 'permitted development'.

In the absence of reference to the 'permitted' development and permitted use of the site in the previous (ABP) assessment, it is logical to consider that the Board may have either; (i) been unaware that planning permission did and does exist on this site for industrial use and associated hardstanding for construction vehicles, parts and machinery and established since the 1980's; and/or (ii) that the Board was unaware that there is in fact two separate permitted commercial premises operating at this location, instead assuming that it was one uncontrolled and unpermitted development.

To consider this proposition further, reference is made to the appraisal of the '*principle of development*' in the Boards appraisal of the previous ('2021') proposal and specifically, the passages set out under Section 7.2 of the inspectorate report (under the heading 'The Rural Location') which was stated as follows (bold text added for emphasis):

"7.2 The Rural Location

7.2.1. *The site of the proposed development is in a rural area, accessing a minor local road where the maximum speed limit applies. The site lies immediately south of the N69 National Secondary Road where the maximum speed limit applies for that road. The existing premises is a haulage and crane hire business with large machinery and associated vehicles required to enter and exit this site. The principal land use in this area is agriculture. There is a small business premises immediately to the south of the site. **However, it would be mistaken to suggest that there is any form of a planned, orderly industrial estate-type use at this location.***

7.2.2. *The proposed development allows for a very substantial extension of the surfaced area of the site to be utilised for the parking and holding of vehicles and plant associated with the established business. Such a development would allow **for a significant expansion of the facility itself** as plant and machinery are core components of the business. I note that the existing development, prior to the provision of the increased surfaced area, could reasonably have been determined to be a relatively small enterprise in terms of its physical footprint. It is evident that*

¹ Development consisting of Extension of hardstanding area, security lighting and boundary fencing

if one allows the proposed development one is accepting a likely **significant expansion** of the facility and, in my opinion, it would likely **encourage and facilitate further development of these lands and further expansion of the business premises.**

7.2.3. The key question to arise, therefore, is whether this rural location **could be considered appropriate to facilitate substantial expansion of the business.** I first note that this is an unserviced rural area. It is also my submission to the Board that the implications of permitting the proposed development **would be significant in terms of its impact on the road network at this rural location, inclusive of the national route, and because of the impact on the amenities of this rural area.** It is clear that the expansive surfacing of the site would facilitate more intensive activities on the site, which would be of an industrial-type nature in a rural setting and **which would likely generate greater volumes of vehicular movements of plant and machinery into and out of this site onto the road network as the business expands.** It is also clear that the expanded surfaced area has culminated in a substantial loss of roadside hedgerow and its replacement with fencing compatible with an industrial-type use. While there is some hedgerow abutting the national road, the premises are generally exposed when viewed from the road network. A privet hedge backplanted behind the fence would likely do little to minimise the exposure of this expansive surface area and the associated parking and containment of large vehicle and machinery. There has also been the introduction of lighting which increases visibility of the site and drainage provisions have been made on lands prone to flooding, with likely potential implications for adjoining lands and watercourses due to the substantial filling undertaken.

7.2.4. While I acknowledge that the business has been operating at this location for many years, I am of the opinion that facilitating, and thus encouraging, the expansion of a development of this nature in this rural area is not best placed. **The established business can reasonably be viewed as light industry and one which should not be encouraged in this rural area. It is not a compatible land use with agricultural uses** which prevail in this area and its functioning would have negative impacts on road users and the road network by the nature of the traffic generated by the business. The established nature of the premises cannot reasonably justify the expansion of the development footprint on this site, which would facilitate potentially significant intensification at this site. If the existing business seeks to expand significantly in a manner such as that proposed it may be more appropriate to be considering relocation to a serviced area where its needs and development intentions could be met.

7.2.5. Finally, I note the provisions of Limerick County Development Plan as they relate to economic development. Objective ED 025, which refers to the expansion of existing industrial or business enterprises in the countryside, seeks to normally permit expansion proposals. However, this is subject to the scale and size of the development remaining appropriate and not negatively impacting on the character and amenity of the area, as well as the proposal taking into account traffic, public health, environmental and amenity provisions. Given this proposal **could only be viewed as likely facilitating significant intensification of the business activities at this location, the adverse impacts on the rural character of the area that result, and the likely increased vehicular activity on the public road network, and the N69 in particular,** it could reasonably be concluded that

the proposed development would be in conflict with Objective ED 025 of the Development Plan”.

At the risk of the same or similar appraisal conclusion being drawn in this case, a number of material observations are set out in respect to the above assessment which should be taken into account at this time in the assessment of this proposal:

- The suggestion in section 7.2.1 that the ‘principle landuse in the area being agriculture’ or that; *“it would be mistaken to suggest that there is any form or planned orderly industrial estate type development”* doesn’t necessarily or wholly reflect the established pattern of permitted development or the established permitted use of the property or the adjacent premises.

Whilst the subject site may not be located within a formal “industrial estate” *per-se*, the industrial use of the existing premises, is in fact ‘planned and orderly’ in the sense that it is a permitted industrial landuse activity that has been subject to and has been assessed formally by way of planning application, and as being consistent with the planning code applicable to the area. The existing development has been deemed consistent with the Development Plan, and consistent with the ‘proper planning and sustainable development of the area’. These are baseline circumstances. They are material and must be taken into account in the context of this current application and a reasonable understanding of that permission by the applicant - that the existing use of the land has been approved and recognised formally.

- In light of the assessment set out in Section 7.2.2, the development the subject of this application would not give rise to *“significant expansion of the facility”* nor could a grant of planning permission in this instance *“encourage and facilitate further development of these lands and further expansion of the business premises”* in the manner implied in the previous assessment.

The external use of the existing premises for the storage and maintenance of construction related vehicles is an authorised use and is thus deemed an ‘*acceptable rural enterprise*’. The current proposal (a reduction from the previous proposal) is necessary for the applicants existing business and is not intended to facilitate significant expansion of this or other business premises as was the concern expressed by the Board previously. Proposals for new or separate expansion of business premises would each and all be subject to the planning code.

- The observations in section 7.2.4 appears to present somewhat of a retrospective appraisal of the overall development activity at that location regarding the *“established business”* where that assessment stated that it: *“should not be encouraged in this rural location”*. However, the established business is authorised under the existing permission (98/718). This current proposal is consistent with the established pattern of development on the applicants existing premises as well as the adjacent commercial premises which has been granted planning permission by Limerick City and County Council as lately as 2021.
- The development the subject of this application would not give rise to more *“intensive activities”*, given that the intended landuse is consistent with the nature of permissible uses established already under a grant of planning permission and would not give rise to intensification of activities which would appear inconsistent with the permitted activity on

this site or cumulatively, with the extent of permitted development on the adjacent site at this rural location.

- The business is situated on a public road which joins with the N69 to the north. Traffic entering the N69 from this road including existing development traffic is not significant such that gives rise to adverse traffic flows or interference on the capacity of the junction or the traffic on the N96 road as a result of development.

Further to that, the implementation of the Foynes to Limerick Road (including Adare bypass) scheme which was granted planning permission (by the Board) will only improve the already acceptable traffic arrangement by reducing strategic through traffic between Limerick city and Foynes thus addressing any residual suggestion regarding traffic movements and/or road capacity issues.

The above observations are material in the consideration of this case. They present a comprehensive analysis of the nature and the character of this location, and the extent of all planning permissions and permitted landuse activity at this location deemed acceptable and appropriated by Limerick City and County Council as lately as 2021. This establishes that the proposal forms part of an established rural enterprise, the nature, extent and character of which has the benefit of planning permission.

The proposal seeks to facilitate the continuation of the permitted 'acceptable' rural enterprise within one of these established premises. The extent of external area is necessary to facilitate the current operational dynamics in terms of accommodating machine and plant equipment. This is not directly related to, or for the purpose of any extraordinary exponential commercial growth of the business and/or to facilitate other business(s) at this location. The nature of the external activity does not seek to introduce any new use which does not already have planning permission or, any other use which would result in significant growth in traffic to and from the site. The activity is not an activity that attracts public patronage and thus increased traffic generation from a customer bases is unlikely other than modest and reasonable fluctuation in vehicles related to the business coming to and from the premises.

Having regard to the nature of the development activity, its direct association with the permitted and thus 'acceptable' rural enterprises on the applicant's premises and on the adjacent industrial premises, its assimilated spatial configuration with those activities, and, the remedial measures, the proposal is considered consistent with **Objective ECON035 ('Rural Development')** set out in the Limerick Development Plan 2022-2028 where it is the stated objective of the Council to:

"a) Facilitate the development of acceptable rural enterprises and to minimise pollution from agricultural and industrial sources by means of development management and water pollution legislation".

To mitigate the previous removal of roadside hedgerow, new roadside perimeter planting is proposed along the inside (east) side of the perimeter fencing. This location has been selected close to the fence, to facilitate the hedgerow 'fusing' with the fence, to enable it to grow through the vertical fence parts to provide a visually softer, and natural boundary whilst maintaining security to the site. The hedge can be maintained vertically and in terms of height to match, and to screen the fence.

7.2 Flood Risk Assessment

Though the proposed extension to the existing external hardstanding area is located within an area identified as being at risk to both fluvial and coastal flooding, the development proposal can be categorised as a 'Less Vulnerable' land use activity for the purpose of site-specific flood risk assessment (SSFRA) conducted in accordance with the Planning and Flood Risk Management Guidelines for Planning Authorities (2009). Furthermore, the SSFRA confirms that the proposed extension to existing hard standing area is situated behind the (OPW) arterial drainage scheme embankments along the Mague River which are provided to a crest height of 4.75mOD and which is in excess of predicted coastal flood events for the 10%, 0.5% and the 0.1% AEP flood return events.

Notwithstanding that, but due to the residual risk of flooding in the unlikely event of a breach occurring to those embankments, a flood risk assessment was carried out consistent with the aforementioned flood Risk Management Guidelines. That assessment was based on examination of the hydrological environment at this location, an estimation of the flood zoned (in the absence of available flood mapping), the predicted character of flooding, the vulnerability of the site and activity to potential flood risk, and the design measures including the recommended 'flood mitigation measures' set out in Section 4.3 of the SSFRA. These measures, which apply to the overall site, are both practical and implementable. The SSFRA confirms that with these measures in place, the risk of flood damage will be minimised and will not increase the risk of flooding to adjacent or nearby area during extreme flood event.

The undertaking and the findings of the SSFRA are thus consistent with the provisions of **Objective CAF O20 'Flood Risk Assessments'** of the Limerick Development Plan where it is the objective of the Council to; *require the SSFRA to quantify the risks, the effects of selected mitigation and the management of any residual risks with regard to flood risk in relevant locations taking into account climate change.* Furthermore, the undertaking of, and assessment set out in the submitted SSFRA addresses matters which had formed part of the previous decision to refuse planning permission in 2021.

7.3 Surface Water Management

As referenced in section 5.2 of this report and the reference therein to Section 2.3 of the PUNCH Consulting Engineers report, the proposal provides for enhanced surface water arrangements than what exist currently on site. These proposed arrangements include an overall surface water management approach for the entire premises with the introduction of SuDS measures designed and proposed for the entire site (proposed and permitted) based on current day requirements in response to best practice engineering and environmental protection.

The introduction of these measures (the integrated design of the filter drain and Bio retention area, petrol and forecourt interceptor and attenuation tank) have been designed taking into account; the physical, hydrological and flood risk characteristics of the site; the obligation to provide up to date surface water infrastructure including the provision of SuDS design measures based on storm water design calculations to address management and disposal of surface water generated by existing and all development within the site; and the intent by the applicant to improve and enhance the environmental and ecological quality of surface water discharging from its premises.

This site specific surface water management which is; consistent with the Limerick City & County Council drainage requirements and UK Suds Manual and, which will result in improvement to the quality of water leaving the site than that which is operating under the permitted arrangement,

and, the introduction of a controlled runoff rate at an acceptable 3.1 l/sec in lieu of the uncontrolled (but permitted) rate of circa 50l/sec; is thus consistent with the provisions of **Objective IN 012 'Surface Water and SuDS'** set out in the Limerick Development Plan and specifically where it is the stated objective of the Council as follows:

To

".....

- c) **Maintain, improve and enhance the environmental and ecological quality of surface waters and groundwater, including reducing the discharges of pollutants or contaminants to waters, in accordance with the National River Basin Management Plan for Ireland 2018-2021 (DHPLG) and the associated Programme of Measures and any subsequent River Basin Management Plan.**
- d) **Ensure adequate storm water infrastructure to accommodate the planned levels of growth within the Plan area and to ensure that appropriate flood management measures are implemented to protect property and infrastructure.**
-
- f) Address the issue of **disposal of surface water generated by existing development in the area, through improvements to surface water infrastructure, including for example attenuation ponds, the application of sustainable urban drainage techniques, or by minimising the amount of hard surfaced areas, or providing porous surfaces as the opportunity arises.**
- g) **Protect the surface water resources of the Plan area and in individual planning applications request the provision of sediment and grease traps and pollution control measures where deemed necessary.**
- h) **Require all planning applications to include surface-water design calculations to establish the suitability of drainage between the site and the outfall point and require all new developments to include SuDS, to control surface water outfall and protect water quality:**
- i) **Promote SuDS and grey water recycling in developments and responsible use of water by the wider community, to reduce the demand for water supply.**
- j) **Require SuDS schemes to be designed to incorporate the four pillars of water quality, water quantity, biodiversity and amenity to the greatest extent possible within the constraints of a given site."**

(bold emphasis added).

7.4 The remedial Natura Impact Statement

the potential for significant effects on the environment, or on a European site, as a consequence of the development – that is, the development undertaken already, the continuation of that use, and the proposed mitigation, has been assessed as part of the separate AA Screening statement and the rNIS.

The enclosed AA Screening assessment takes into account, the hydrological connection which exists between the site and the downstream designated European sites by way of surface water drainage ditches, and assesses the effect and potential effect of development on the integrity of relevant European sites (the River Shannon SAC and River Shannon and River Fergus Estuaries SPA) taking into account, surface water flow and the proposed surface water mitigation measures.

Whilst (and as reported in the rNIS) there is no evidence of adverse effect having occurred (and thus the likelihood of future adverse effect arising somewhat unlikely) the requirement for AA Stage 2 and preparation of an rNIS derives from as stated in the rNIS; “an abundance of caution” and a precautionary approach being correctly applied in the AA Screening.

The AA Stage 2 – Appropriate Assessment (as set out in the rNIS) concluded that the construction and operation of this development (retention elements) would not be deemed to have a significant impact on the integrity of European sites either alone in combination with other plans and projects based on the implementation of standard construction phase mitigation measures

The AA Screening and Stage 2 appropriate assessment was undertaken in accordance with National and European best practice and guidelines and consistent with the provisions of Article 6 of the Habitats Directive. Based on the findings of that assessment, the proposed development is consistent with the provisions of **Objective EH01 ‘Designated Sites and Habitats Directive’** of the Limerick Development Plan 2022-2028 where it is the stated objective of the Council:

“To ensure that projects/plans likely to have significant effects on European Sites (either individually or in combination with other plans or projects) are subject to an appropriate assessment and will not be permitted under the Plan unless they comply with Article 6 of the Habitats Directive. The Council, will through the planning enforcement process where applicable, seek to restore the ecological functions of designated sites, where they have been damaged through inappropriate development”.

7.5 Environmental Impact Assessment

The development was/is not a project type that requires environmental impact assessment given that the size of the site (1.23ha) is substantially below the 20 hectare threshold applicable to urban (type) projects, where such projects would require environmental impact assessment pursuant to project type 10 (‘Infrastructure projects’) set out in Schedule 5, Part 2 of the Planning and Development Regulations 2001 (as amended). No remedial environmental impact assessment is thus required.

7.6 The existence of ‘Exceptional Circumstances’

The case for ‘exceptional circumstances’ in respect to this planning application for ‘substitute consent’ and which the Board shall have regard to and which are set out under Section 177K(1J) of the PDA 2000 is set under the following paragraphs:

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

Redress:

The making this application by the applicant and the inclusion with it of the rNIS has been prepared and submitted pursuant to the provisions and requirements of Part XA of the PDA 2000 (as amended). The subsequent assessment of the application and the rNIS and the decision by the Board is carried out in accordance with those same legislative provisions which has been drafted in the context of,

and responsive to the requirements of both the Environmental Impact Assessment Directive and the Habitats Directive. Therefore, the regularisation of the development does not facilitate or result in the circumvention of either of those EU directives.

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

Redress:

The applicant maintains in the first instance, its belief that the development was not unauthorised.

In support of its position, the applicant refers to the circumstances of events set out earlier in Section 3.2 of this statement where there was an understanding that the existing business could avail of specific planning exemptions set out under Class 22, Part 2 of Schedule 3 of the Planning and Development Regulations 2001 (as amended) in respect to the provision of hardstanding areas associated with industrial installations and specifically for the purpose of storage within the curtilage of an industrial building (permitted under 98/718). Those circumstances are relevant in redress to this exceptional circumstance.

It is only the nuance requirement for Natura Impact Statement arising from potential indirect effects of the discharge of surface water from that increased hard standing storage area that would bring about a requirement for appropriate assessment of that discharge in the context of requirements transposed from the EU ‘Habitats Directive’. This was determined from subsequent scientific and technical expertise sought and obtained by the applicant and based on consideration of ‘indirect’ effects of the development on designated (Natura 2000) sites downstream and removed from the development site. This was beyond the applicants lay understanding of the integrated nature of the planning code and, environmental policy. The applicants understanding was informed by the development arrangements stated and set out under the parent permission.

Under that permission (ref: 98/718) surface water was proposed (as expressly stated in the planning application documents) and subsequently permitted to discharge to the same boundary stream without mitigation. Thus, the applicant would have been presented with a sound and logical foundation, upon which to base its belief that such practice regarding discharge of surface water to the stream was not only acceptable in principle, but that it would not give rise to a circumstance where the continuation of that practice would be unauthorised due to the potential hydrological interaction with the River Shannon downstream when that connectivity had always existed.

The Board will be mindful that the exempted development provisions and the restrictions of exempted development provisions, are set out in different parts of the Planning and Development Regulations. Their understanding and interpretation, in the context of existing permitted development as well as European directives, and the potential for environmental interactions with designated sites downstream based on hydrological connectivity requires

technical, experienced and qualified familiarity with the planning code as well as the ecological and hydrological environment which the applicant was unaware of.

- (c) *“whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired”;*

Redress:

The ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment has not been substantially impaired. A rNIS has been undertaken at this time, a notice has been published citing that the application does contain an rNIS in which the public can make submissions, and the board has the discretion to consult with any prescribed bodies which it seeks appropriate. Whilst the rNIS has been prepared retrospectively, it has not impeded or impaired the ability to assess the potential effects on designated Natura 2000 sites or to provide for public consultation.

- (d) *“the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development”;*

Redress:

The enclosed rNIS has confirmed that with mitigation in place, the subject development has not, nor is unlikely to give rise to adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development either alone or in combination with other plans or projects for the reasons set out in that separate report and as reference earlier in Section 7.4.

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

Redress:

As no adverse effects to European sites were identified, remediation is not required.

- (f) *“whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development”;*

Redress:

The applicant is satisfied that save for the development the subject of this application, it has complied with the relevant planning permission at this location.

- (g) *“such other matters as the Board considers relevant”.*

Redress:

The applicant submits that in making this application, it has demonstrated its intention to satisfy and comply with all planning and environmental criteria. In doing so, the applicant has proposed mitigation measures in the form of surface water management design measures to control the discharge and quality of water leaving the site. That design is not just consistent with best practice and the provisions of the relevant development plan for the area (Limerick Development Plan 2022-2028) but has been informed by the findings of a site specific flood risk assessment and will improve the current permitted arrangement where no such environmental protection mitigation was required, or is in place. The applicant submits that this demonstrates the intent and willingness of the applicant to remedy this situation and to ensure full regulatory compliance and, has demonstrated that the proposal is consistent with the provisions of the Limerick Development Plan 2022-2028.

8.0 CONCLUSION

This application for substitute consent has demonstrated the applicant's intention to remedy a misinterpretation of the planning code by them, and their intention to improve the environmental credentials of development works for which retention permission is being sought, as well as the existing permitted operations which were permitted and operated at a standard below current engineering and environmental best practice since the 1980s.

The requirement for substitute consent arises out of a requirement to undertake Stage 2 'Appropriate Assessment' when exercising an abundance of caution and the precautionary approach due to the downstream connectivity with European sites even though no effects to designated sites have been identified, nor are considered likely. This is despite the existing of planning permission which did not include any specific surface water management or mitigation measures in respect to ensuring controlled quantity or quality of surface water prior to its discharge to the boundary water course, and this is despite scientific opinion (in the RNI) confirming the probability that the existing drainage ditches (between the site and European sites downstream) provide sufficient filtration and dilution of any unplanned discharge of sediments from surface water run-off.

The surface water management approach set out in this application addresses current best practice, it addresses the potential effects on the raising of land and the subsequent use of that land for the provision of an extended external storage area associated with the established and permitted use of the site. The proposed intention for, and subsequent use of the raised land is consistent with that permitted use of the industrial premises and is consistent in scale and spatial extent to that which has been permitted recently on adjacent commercial premises by the planning authority and which are thus deemed acceptable rural enterprises at this specific location.

There is no evidence to suggest that the provision of the extended hardstanding area has heretofore, and by the absence of any other permission or submitted proposal on adjoining lands which seeks to introduce new commercial activities, established a precedent which would indicate that the proposed extension has and/or would adversely affect the character of this rural area or that it would undermine the provisions of the development plan in respect to development in the

rural areas. The existing use of this site has been formally established since the early 1980s and the nature and extent of the proposal is of an appropriate scale intended ancillary to the permitted use of this rural enterprise without causing significant intensification of the permitted use.

The applicant has demonstrated:

- the case for exceptional circumstances applicable in this instance to support this planning for substitute consent in the manner required in Section 177K(1J) of the PDA 2000.
- The proposal inclusive of the remedial mitigation measures, brings the entire site up to current day standards regarding surface water management and environmental protection. The implementation of remedial infrastructure to remove hydrocarbons and fine sediment particles and to control the (currently uncontrolled) discharge will reduce potential risk of contaminant discharge downstream not just the extended hardstanding area, but the entire premises and existing (permitted) site activity.
- The proposal is consistent with the provisions of the Limerick Development Plan and specifically the provisions of **Objective ECON035 Rural Development** (given that the proposal facilitates the development of (a previously) determined rural enterprises and seeks to minimise pollution; and it is consistent with the provisions of **Objective CAF O20 'Flood Risk Assessments' Objective IN O12 'Surface Water and SuDS'** and **Objective EH 01 Designated Sites and Habitats Directive** given the type and beneficial effects of the proposed remedial surface water design measures, and the outcome of the site specific flood risk assessment and rNIS.
- The proposal will seek to provide additional protection of special amenity features in the area, and specifically, the designated sites downstream including the NATURA 2000 sites the River Shannon SAC and the River Shannon and River Fergus Estuaries SPA consequent to the proposed remedial measures intended to manage and improve the quality of surface water discharge from the entire site (including proposed and existing works).
- The finding of the rNIS which confirms that significant effects to designated European sites are unlikely.

For these reasons, the proposal is considered consistent with the proper planning and sustainable development of the area.