



**Planning & Development
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BY HAND

The Secretary,
An Coimisiún Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902.

20 October 2025

Dear Sir/Madam,

Substitute Consent Application Planning Statement and Covering Letter. Development description advertised on the accompanying statutory notices: "Application to An Coimisiún Pleanála for Substitute Consent. I, David Sykes Ic/o BPS Planning & Development Consultants LTD 01-5394960, intend to apply for substitute consent for development at this site at Effernage, (E.D. Tinacross), Ferns, Co. Wexford. The development consists of: (1) Permission for retention of the following: (a) excavations to the East side of the farmyard and relocation of the excavated material to the West side of the farmyard (to increase the overall yard area and build up the level by approx. six meters), (b) retention of existing weighbridge portacabin - different from that previously granted under planning ref no. 20120458, (c) retention of existing grain storage shed (d) existing agricultural workshop; (2) Permission for retention and completion of the following: (a) bale & agricultural vehicle/machinery storage shed and associated retaining walls, (b) grain storage & drying shed (previously granted under planning ref no. 20120458), (c) agricultural cattle shed (previously granted under planning ref no. 20072461), (d) stormwater drainage for the site including attenuation and petrol interceptor previously granted under planning ref no. 20120458; (3) Permission is also sought for: (a) the completion of excavation works and construction of associated retaining walls, (b) alteration and upgrade to the storm water drainage system, (c) alterations to site entrance, (4) All the above together with associated site works and services. At this site at Effernage, (E.D. Tinacross), Ferns, Co. Wexford. The application is accompanied by a remedial Natura impact statement (rNIS)".

BPS Planning & Development Consultants Ltd, a firm of Irish Planning Institute accredited town planning consultants, has been instructed by David Sykes c/o Mahon Fox Architects of Iberius House, Common Quay St, Townparks, Wexford, Y35 TYD0 to prepare and to lodge a Substitute Consent¹ application to An Coimisiún Pleanála [hereafter "ACP"] for development at Effernage, (E.D. Tinacross), Ferns, Co. Wexford comprising of:

(1) Permission for retention of the following: (a) excavations to the East side of the farmyard and relocation of the excavated material to the West side of the farmyard (to increase the overall yard area and build up the level by approx. six meters), (b) retention of existing weighbridge portacabin - different from that previously granted under planning ref no. 20120458, (c) retention of existing grain storage shed (d) existing agricultural workshop; (2) Permission for retention and completion of the following: (a) bale & agricultural vehicle/machinery storage shed and associated retaining walls, (b) grain storage & drying shed (previously granted under planning ref no. 20120458), (c) agricultural cattle shed (previously granted under planning ref no. 20072461), (d) stormwater drainage for the site including attenuation and petrol interceptor previously granted under planning ref no. 20120458; (3) Permission is also sought for: (a) the completion of excavation works and construction of associated retaining walls, (b) alteration and upgrade to the storm water drainage system, (c) alterations to site entrance, & (4) All the above together with associated site works and services. This application is accompanied by a Remedial Natura Impact Statement (rNIS).²

The rationale for making this Substitute Consent application is set out in Section 1.0. The content of the application is outlined in Section 2.0 (and all sections thereunder). Section 3.0 sets out our client's 'Application for Substitute Consent'.

We note that the legislative and regulatory amendments on Substitute Consent and design flexibility are in force, with effect from 16 December 2023. The Commencement Order is available online³. The Planning and Development (Amendment) (No. 4) Regulations 2023 are also now in operation. The regulations require that the public notices refer to **8 weeks** and not 5 weeks for 3rd party observations to be lodged to ACP (this is stated in both the newspaper and site

¹ "Substitute Consent" means substitute consent granted under section 177K of the Act.

² "Remedial NIS" means a remedial Natura impact statement within the meaning of section 177G of the Act.

³ https://opac.oireachtas.ie/Data/Library3/Documents%20Laid/2023/pdf/HLGHdoclaid191223_140745.pdf

notices). We further note that as of the end of October 2025, Section 130 of the Planning and Development Act 2024 has not been explicitly confirmed as commenced in the available information.

Applications for substitute consent proper, such as this one, can now be accepted by ACP, and can include permission for the completion of part completed development (of which the already completed part is proposed to be retained). We trust this is in order.

Finally, our client notes that this is a retention and completion application, and he has sought, always, to regularise his farm's planning status as quickly as possible following contact from Wexford County Council's Enforcement Section [hereafter "WCC"]. The necessary delay between the WCC decision to invalidate a retention planning application stating: "Having regard to Section 34 (12)(c) of the Planning & Development Act 2000 (as amended) the planning authority cannot consider this application for retention" and the lodgement of this Substitute Consent application arises from the need, inter alia, to carry out additional ground and surface water testing and to commission the attached remedial Natura Impact Assessment and a Water Framework Directive Compliance Assessment Report. These reports are fully up to date as regards all relevant testing and references to ongoing monitoring. We trust that this will not impact the ongoing process of our client regularising the planning status of his farm.

As per the Planning Regulations 2001 (as amended) and the list of Substitute Consent requirements set out herein (which accompanies the attached application form), please find a complete electronic copy of the application to be submitted to the Commission attached on a USB drive.

This planning application has been prepared by the following consultants on behalf of the Applicant:

- BPS Planning & Development Consultants Ltd - MIPI.
- Mahon Fox Architects – MRIAI.
- Jim Hurley, SWC Promotions - Ecologist.
- Fehily Timoney and Company - Environmental Engineers.
- Capital Surveys - MIEI.
- Geoff Barry – Agricultural Consultant.
- Brian Foran Gardens - Landscape Designer.

For the avoidance of doubt, this letter, and all accompanying material forms part of our client's planning application.

Planning application enclosures (copies on also on attached portable USB drive)

No.	Items	Member of project team	Copies
1	Application to An Coimisiún Pleanála for Substitute Consent Form No. 7, Article 227 of the Planning and Development Regulations 2001 (as amended) for Substitute Consent (incl. Development Description, calculation of fees (€2400 – see attached fee calculation document), confirmation of property ownership, etc) completed in hard copy.	Applicant & BPS	1
2	Newspaper notice (Wexford People published 15/10/2025). A copy of this notice with the advertisement outlined in red accompanies this planning application.	BPS	1
3	Site Notice (erected 15.10.2025) – site notice copy attached and location indicated on the attached OS Site Location Map and Plan at scales of 1:1000 & 1:2,500 and on the Site Layout – Existing Plan at a scale of 1:500. Each drawing show the location of the statutory public site notice.	BPS, Mahon Fox Architects & client.	1
4	Substitute Consent Planning Application Statement (this letter).	BPS	6
5	Suite of OS maps (OSI Licence Receipt attached) and architectural drawings (as listed below) and drawing register / issue sheet (drawing register also included below).	Mahon Fox Architects	6
6	Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS).	Jim Hurley, SWC Promotions, Ecologist	6
7	Water Framework Assessment Compliance Report.	Fehily Timoney and Company	6
8	Cover Letter Capital Surveys.	Capital Surveys – Chartered Engineers & Surveyors.	6
8(a)	Slope Stability Report.		
8(b)	Sewer Hydraulic Design Calculations.		
9	Farmer Full - Fertiliser Plan 2024.	Geoff Barry – Agricultural Consultant.	6
10	Landscaping Specification 2824-Sbls.	Brian Foran Gardens - Landscape Designer	6
11	Planning application fee of €2400 attached by way of cheque. See attached fee calculation document.	BPS & Client	1

Drawing register/schedule – 6 no. copies of each (copies of each also on attached portable USB drive)

	DWG No.	Sheet title	Scale
Project architect – Mahon Fox Architects MR1A1			
1	A-P-00-01	HISTORIC 6 INCH SITE LOCATION MAP	1:10,560
2	A-P-00-02	Site Location Plan	1:2,500
3	A-P-03	Site Layout Existing	1:500
4	A-P-04	Proposed Site Layout	1:500
5	A-P-00-05	Existing Grain Storage Shed & Workshop	Various
6	A-P-00-06	Bale & Agricultural Vehicle/Machinery	1:200
7	A-P-00-07	Entrance Proposed Alterations	Various
8	A-P-00-08	Weighbridge Building	1:100
9	A-P-00-09	Agricultural Cattle Shed	1:100
10	A-P-00-10	Grain Storage & Drying Shed	1:200
11	A-P-00-11	Existing Site Sections	1:500
12	A-P-00-12	Proposed Site Sections	1:250
13	A-P-00-13	River Bann Location	1:20,000
14	A-P-00-14	Site Map – Water Samples	1:2500
Project Engineer – Capital Surveys			
15	22-1457	Drainage Design & SuDS Arrangement Existing Farm Facility with Proposed Extension	1:500
16	1	Retaining Wall Details & Sections. Suds / Swale/ Attenuation Tank Details	1:500
Brian Foran Gardens			
17	2824SBLP	Landscaping Plan Proposed Native Plants	1:1000

Contents

1.0	Validation
1.1	Basis for application under Section 177E of the Planning Act 2000 (as amended)
1.2	Content of application under section 177E (2) - Planning Act 2000 (as amended)
1.3	Content of substitute consent applications – Planning Regulations 2001 (as amended)
1.4	Information to support ACP's assessment under s. 177E of the Act (as amended)
2.0	Reasons for lodging a Substitute Consent application
2.1	The issue of possible pre-planning under section 177E (1A) of the Planning Act (amended)
3.0	Substitute Consent application under section 177E of the Planning Act (amended)
3.1	Proposed Regularisation and Completion of Development
3.2	Site Location and Description
3.3	Planning history
3.4	No Planning Authority Report pertaining to this matter
3.5	Policy context
3.5.1	Wexford County Development Plan 2022-2028
3.6	Screening
3.6.1	Environmental Impact Assessment
3.6.2	Appropriate Assessment
4.0	Matters to be considered by ACP under substitute consent planning applications
5.0	Application for substitute consent – Planning Assessment Matters
6.0	Conclusion
7.0	Recommendation

1.0 Validation

Section 177E of the Planning Act 2000 (as amended⁴) is included herein as follows:

177E.— (1) An application for substitute consent [in respect of development of land] shall be made to the Board [the Commission all following instances].

(1A) The Board may, at its own discretion and at the request of a person who intends to make an application for substitute consent, enter into consultations in respect of the application with that person before he or she makes the application.

(1B) Subject to subsection (2A), an application for substitute consent may be made by—

(a) a person who has carried out the development referred to in subsection (1), or

(b) the owner or occupier of the land on which the development has been carried out.

(1C) The Board shall only consider an application for substitute consent in respect of development of land where—

(a) subject to subsection (1D), the Board is satisfied under section 172 that an environmental impact assessment was required or is required for the development,

(b) subject to subsection (1E), the Board is satisfied under section 177U that an appropriate assessment was required or is required for the development, or

(c) subject to subsections (1D) and (1E), the Board is satisfied under sections 172 and 177U, that both of the assessments referred to at paragraphs (a) and (b) were required or are required for the development.

(1D) Where the Board receives an application which is accompanied by a remedial environmental impact assessment report under subsection (2)(b) and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an environmental impact assessment is required and was required and the Board shall consider the application.

(1E) Where the Board receives an application which is accompanied by a remedial Natura impact statement under subsection (2)(b), and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an appropriate assessment is required and was required and the Board shall consider the application.]

(2) An application for substitute consent shall—

(a) state the name of the person making the application,

(b) be accompanied by a remedial environmental impact assessment report or remedial Natura impact statement, or both,

(c) be accompanied by the fee payable in accordance with section 177M,

(d) comply with any requirements prescribed under section 177N, and

(e) be accompanied by any other document that the applicant considers would be of assistance to the Board in making a decision in relation to his or her application.]

(2A) Where an application for substitute consent is made in respect of development of land for which planning permission has been granted, that application may be made in relation to—

(a) that part of the development permitted under the permission that has been carried out at the time of the application, or

(b) subject to subsection (2B), that part of the development referred to in paragraph (a) and all or part of the development permitted under the permission that has not been carried out at the time of the application.]

(2B) Where subsection (2A)(b) applies the applicant shall, in relation to that part of the development that has not been carried out at the time of the application, furnish one or both of the following to the Board with his or her application:

(a) where a remedial environmental impact assessment report has been furnished with the application, an environmental impact assessment report;

(b) where a remedial Natura impact statement has been furnished with the application, a Natura impact statement.]

(3) [DELETED].

(4) The Board may at its own discretion, on request extend the period F862[specified in section 177B (whether the notice given under section 177B(1) was confirmed or amended before the date of the coming into operation of section 40 (a) of the Planning and Development, Maritime and Valuation (Amendment) Act 2022, or confirmed or amended on or after that date in accordance with section 41 (10) of that Act) or specified in section 261A], for the making of an application for substitute consent, by such further period as it considers appropriate.

(4A)(a) The Board shall consider whether a remedial environmental impact assessment report submitted under this section identifies and describes adequately the direct and indirect significant effects on the environment of the development.

(b) Paragraph (c) applies where the Board considers that the remedial environmental impact assessment report does not identify or adequately describe such effects.

(c) The Board shall require the applicant for substitute consent to furnish, within a specified period, such further information which is necessary to ensure the completeness and quality of the remedial environmental impact assessment report and which is directly relevant to reaching the reasoned conclusion on the significant effects on the environment of the development as the Board considers necessary to remedy such defect.]

(4B) Where the Board considers that a remedial Natura impact statement does not comply with paragraph (a), (b) or (c) of section 177G(1), the Board shall require the applicant for substitute consent to furnish, within a specified period, such further information as it considers necessary for the statement to so comply.

⁴ In the interests of clarity, we refer in this section to the version of the Planning Act 2000 which is set out in consolidated form at: <https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/pdf?annotations=true> and at <https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/html>

(4C) Where further information required by the Board under subsection (4A)(c) or (4B) is not furnished to it by the applicant within the period specified under that subsection, or within any further period as may be specified by the Board, the application shall be deemed to have been withdrawn by the applicant.]

(5) As soon as may be after receipt of an application for substitute consent under this section, which is not invalid, the Board shall send a copy of the application and all associated documentation, including the F866[remedial environmental impact assessment report, or the remedial Natura impact statement, or both that report and that statement, as the case may be, and, where subsection (2A)(b) applies, the environmental impact assessment report or Natura impact statement or both that report and that statement[F867], as the case may be.] to the planning authority for the area in which the development the subject of the application is situated and such documentation shall be placed on the register.]

(6) Where a remedial environmental impact assessment report, remedial Natura impact statement, environmental impact assessment report or Natura impact statement is received by the Board in response to a requirement under subsection (2CA), (2CB) or (2CC) of section 177K, the Board shall, as soon as may be after its receipt, send the report or statement, as the case may be, to the planning authority referred to in subsection (5), and the planning authority shall place the report or statement on the register.

1.1 Basis for application under Section 177E of the Planning Act 2000 (as amended)

The following points concern the basis for our client's application submitted under Section 177E:

- This application for substitute consent is being made by the "person who has carried out the development".
- The development is a development which has been carried out where an appropriate assessment is required. In this case WCC deemed that an rNIS is required (and Peter Sweetman argued this in an objection to the WCC planning application). An rNIS is attached to this application. We trust that the Commission is satisfied under section 172 that an environmental impact assessment was required and is required for the development.

We acknowledge section 177E(1C)(c) which states: "subject to subsections (1D) and (1E), the Board [Commission] is satisfied under sections 172 and 177U, that both of the assessments referred to at paragraphs (a) and (b) were required or are required for the development". This suggests our client must provide both an rNIS and EIAR; however, sections 177E(1D), 177E (2)(b), and 177E (1E) offer clarification stating:

*(1D) Where the Board ["Commission" in all instances] receives an application which is accompanied **by a remedial environmental impact assessment report under subsection (2)(b)** and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an environmental impact assessment is required and was required and the Board shall consider the application..*

*(2) An application for substitute consent shall— ... (b) be accompanied by a remedial environmental impact assessment report **or remedial Natura impact statement**, or both.*

*(1E) **Where the Commission** ["Board" amended] **receives an application which is accompanied by a remedial Natura impact statement under subsection (2)(b), and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Commission shall be deemed to be satisfied that an appropriate assessment is required and was required and the Commission shall consider the application*** [emphasis each added by BPS].

- Our client is the owner and occupier of the land.

Consequently, our client may apply to the Commission for substitute consent in respect of the development.

1.2 Content of application under section 177E (2) - Planning Act 2000 (as amended)

Section 1.1 of this letter has confirmed that the Commission "shall consider the application" ["Commission" is substituted for Board"]. Section 177E (2) sets out the validation requirements which apply to substitute consent applications. These requirements are addressed as follows. An application for substitute consent shall:

- *State the name of the person making the application:* David Sykes.
- *Be accompanied by a remedial environmental impact assessment report or remedial Natura impact statement, or both:* The application is accompanied by a remedial Natura Impact Statement.
- *Be accompanied by the fee payable in accordance with section 177M:* Please find a cheque attached for the statutory fee of €2400.
- *Comply with any requirements prescribed under section 177N:* As set out in section 1.3 of this letter, the Planning and Development Regulations 2001 (as amended) are fully addressed including as regards:

- (1) The proper procedure and administration directed by the Planning and Development Act 2000 (as amended) has been followed;
 - (2) The submission of information in respect of an application is as required;
 - (3) Notices have been published in the Wexford People and erected at the public road entrance to the site (the site adjoins only one public road);
 - (4) Our client has confirmed on the attached application form that he is the freehold owner of these lands; and
 - (5) The attached Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS) is provided by a qualified and experienced ecologist and contains all of the relevant information and assessment details as regards Appropriate Assessment.
- *Be accompanied by any other document that the applicant considers would be of assistance to the Board [Commission] in making a decision in relation to his or her application:* Please find further details provided in this covering letter, in the attached Mahon Fox Architect's drawings, the rNIS, the Water Framework Directive Compliance Assessment Report, the engineering details and drawings, the Landscaping Plan, the Farmer Full Fertiliser Plan 2024, etc. as set out in the drawings and documents tables provided above.
 - *Regarding section 177E (2A) - Where an application for substitute consent is made in respect of development of land for which planning permission has been granted:* We note that this Substitute Consent application arises from development carried out that resulted in WCC issuing an Enforcement Notice. The attached drawings set out all areas where retention permission is required as regards works completed to date and also where permission is required to complete the development. The attached Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS) addresses both the existing works requiring retention and the works yet to be completed.
 - *Acknowledgement that the Commission may require further information:* The Project Team acknowledges how the Commission may require further information including an amended rNIS (which "describes adequately the direct and indirect significant effects on the environment of the development") and/or "such further information which is necessary to ensure the completeness and quality of the remedial environmental impact assessment report and which is directly relevant to reaching the reasoned conclusion on the significant effects on the environment of the development as the Commission ["Board" replaced] considers necessary to remedy such defect". The Project Team will provide further infrastructure if and when and to whatever deadline is considered appropriate.

1.3 Content of substitute consent applications – Planning Regulations 2001 (as amended)

Part 19 'APPLICATION TO AN BORD PLEANÁLA [now An Coimisiún Pleanála] FOR SUBSTITUTE CONSENT UNDER SECTION 177E OF THE ACT' of the Planning and Development Regulations 2001 (as amended) and Article 227 of the Planning and Development Regulations 2001 (as amended) are addressed as follows:

Notes:

- (1) No notice is required to the EIAR Portal. This application is accompanied only by an rNIS and not an EIAR. No notice is required to the EIAR Portal.
- (2) An electronic copy of this application is attached to this application (on a USB computer memory drive).

Content of applications for substitute consent generally (Article 227)

- *Article 227(1):* This application for substitute consent is made in the form set out at Form No. 7 of Schedule 3. See a completed form attached.
- *Article 227(2):*

Newspaper notice of application for substitute consent: As per Article 223. (1)(a), a newspaper notice was published in the Wexford People within the period of 2 weeks before the making of this application for Substitute Consent in respect of the proposed retention and completion of development. The Wexford People is a newspaper approved under article 18(2) by the planning authority for the area in which the development the subject of the application for substitute consent is located. Please find an original copy of the newspaper notice attached (the entire dated page of the newspaper is included).

Site notice of application for substitute consent: A copy of the site notice as required by Article 227. (2)(aa) of the P & D Regulations 2001 (as amended). The site notice was erected on 15.10.2025 as set out on the notice. The position of the site notice on the site is shown on the attached OS Maps and Existing Site Layout Plan prepared by Mahon Fox Architects. This notice addresses the Planning and Development (Amendment) (No. 4) Regulations 2023 which altered

"5 weeks" to "8 weeks". BPS has cut and pasted the new form provided in the new regulations into a Word document, completed it, and signed it.⁵

Notice of the application has therefore been published pursuant to article 223(1)(a), and a copy of the site notice erected or fixed on the land or structure pursuant to article 223(1)(b). This notice addresses the Planning and Development (Amendment) (No. 4) Regulations 2023 which altered "5 weeks" to "8 weeks".⁶

- In accordance with Article 227. (2)(b) of the P & D Regulations 2001 (as amended), 6 copies of the OS Site Location Maps and Site Plans are attached at the proper scales (see the tables above).
- In accordance with Article 227. (2)(b) of the P & D Regulations 2001 (as amended), 6 copies of the following maps and drawings are provided: Dwg. No. A-P-00-01 HISTORIC 6 INCH SITE LOCATION MAP 1:10,560, Dwg. No. A-P-00-02 'Site Location Plan' 1:2,500, Dwg. No. A-P-03 'Site Layout Existing' 1:500; and Dwg. No. A-P-04 Proposed Site Layout 1:500.
- In accordance with Article 227. (2)(c) of the P & D Regulations 2001 (as amended), 6 copies of plans and other particulars required to describe the works to which the development relates (include detailed drawings of floor plans, elevations and sections) as appropriate. Please refer to the above table setting out all attached drawings or refer to the attached Mahon Fox Architect's Drawing Register.
- In accordance with Article 227. (2)(cb) of the P & D Regulations 2001 (as amended), please find attached 6 no. copies of a Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS) and details of the firm of ecologists' competence and experience, including relevant qualifications in relation to the report. As noted by the PDR at Article 227, (2A) "The information furnished under sub-article (2)(cb) may be accompanied by a description of the features, if any, of the development or the measures, if any, incorporated or envisaged to avoid, prevent or reduce what might otherwise be or have been significant adverse effects on the environment of the development". The Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS) has been prepared by Jim Hurley, 'ecologist. Mr Hurley is an ecologist of national standing. This report includes a description of the features of the development (as set out on the abovementioned drawings) and the measures incorporated and envisaged to avoid, prevent or reduce speculative concerns raised by WCC.

Water Framework Directive Compliance Assessment Report: This rNIS is supported by the attached Water Framework Directive Compliance Assessment Report prepared by Fehily Timoney Environmental Consultants. Please find 6 copies attached.

Further supporting details: The rNIS is further supported by Capital Surveys' Chartered Engineers & Surveyors' Slope Stability Report, Sewer Hydraulic Design Calculations; by Geoff Barry – Agricultural Consultant's Farmer Full – Fertiliser Plan 2024; and by Brian Foran Gardens Landscaping Specification and Landscape Plan.

Other details submitted with this application:

- 6 no. copies of this covering Planning Statement letter prepared by BPS Planning & Development Consultants LTD.
- 6 no. copies of the decision letter of Wexford County Council, dated 18 October 2024, to refuse to consider the planning application made under planning application reg ref. reg. ref. 20241028 (and 6 copies of an objection lodged by Mr Peter Sweetman pertaining to the matter of Substitute Consent being required).
- 6 no. copies of WCC's Enforcement Notice dated 21 March 2024.
- A cheque for €2400 which is the fee payable for this Substitute Consent planning application (this is as discussed previously with WCC Planning Administration Section).

Any additional information or documentation that may be requested by the Board, within the period specified in such a request.

Our client will respond to any request from ACP for additional information or documentation.

1.4 Information to support ACP's assessment under s. 177E of the Act (as amended)

In this case, Wexford County Council has determined that AA at Stage 2 phase - rNIS - is required. This means that our client must apply to ACP for leave to apply for Substitute Consent. ACP is required to follow the assessment process set out Section 177E.— (1) 'Decision of Board on whether to grant leave to apply for substitute consent' of the Act (as amended) states:

- 177E.—(1) An application for substitute consent [in respect of development of land] shall be made to the Board.

Response: This application is made directly to ACP.

⁵ See: <https://www.irishstatutebook.ie/eli/2023/si/648/made/en/print>

⁶ See: <https://www.irishstatutebook.ie/eli/2023/si/648/made/en/print>

- (1A) *The Board [Commission] may, at its own discretion and at the request of a person who intends to make an application for substitute consent, enter into consultations in respect of the application with that person before he or she makes the application.*

Response: This application is made directly to ACP following a decision by WCC that it cannot consider a standard planning application as an rNIS was deemed required (see attached letter dated 18 October 2024). This being the case, pre-planning to established whether a Substitute Consent planning application was required, would not appear necessary.

- Subject to subsection (2A), an application for Substitute Consent may be made by— a person who has carried out the development referred to in subsection (1), or the owner or occupier of the land on which the development has been carried out.

Response: This application is made on behalf of our client who carried out and is carrying out the development and who is the owner of the lands.

- (1C) *The Board [Commission in all instances] shall only consider an application for substitute consent in respect of development of land where— subject to subsection (1D), the Board is satisfied under section 172 that an environmental impact assessment was required or is required for the development, subject to subsection (1E), the Board is satisfied under section 177U that an appropriate assessment was required or is required for the development, or subject to subsections (1D) and (1E), the Board is satisfied under sections 172 and 177U, that both of the assessments referred to at paragraphs (a) and (b) were required or are required for the development.*

Response: Appropriate Assessment was deemed required by WCC. This substitute consent application pertains to the retention of development for which remedial Natural Impact Statement is now required as Appropriate Assessment was required at the time of its construction.

- (1D) *Where the Board [Commission in all instances] receives an application which is accompanied by a remedial environmental impact assessment report under subsection (2)(b) and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an environmental impact assessment is required and was required and the Board shall consider the application.*

Response: Appropriate Assessment has been deemed required by WCC. This substitute consent application pertains, inter alia, to the retention of development. Appropriate assessment was required at the time of its construction. An Environmental Impact Assessment Report is not required. An rNIS is attached.

- (1E) *Where the Board [Commission in all instances] receives an application which is accompanied by a remedial Natura impact statement under subsection (2)(b), and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an appropriate assessment is required and was required and the Board shall consider the application.*

Response: Appropriate Assessment was deemed required by WCC. This substitute consent application pertains, inter alia, to the retention and completion of development. Appropriate assessment was required at the time of its construction. Therefore, we understand, that ACP shall consider the application subject to the provision of an rNIS. Please find an rNIS attached.

- (2) *An application for substitute consent shall— state the name of the person making the application, be accompanied by a remedial environmental impact assessment report or remedial Natura impact statement, or both, be accompanied by the fee payable in accordance with section 177M, comply with any requirements prescribed under section 177N, and be accompanied by any other document that the applicant considers would be of assistance to the Board [Commission] in making a decision in relation to his or her application.*

Response: Our client, David Sykes, is making the application. A Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS) is attached. The appropriate statutory fee in accordance with section 177M is attached. The requirements prescribed under section 177N are addressed. The application is accompanied by the list of documents and drawings included in Section 2.2.1 of this letter. These meet the requirements for a standard planning application and, we submit, are adequate to assess this application.

- (2A) *Where an application for substitute consent is made in respect of development of land for which planning permission has been granted, that application may be made in relation to—that part of the development permitted under the permission that has been carried out at the time of the application, or subject to subsection (2B), that part of the development referred to in paragraph (a) and all or part of the development permitted under the permission that has not been carried out at the time of the application.*

Response: The development seeking retention by way of substitute consent is completed. Completion of development is also proposed. The attached rNIS addresses all developments included in the advertised development description.

- (2B) Where subsection (2A)(b) applies the applicant shall, in relation to that part of the development that has not been carried out at the time of the application, furnish one or both of the following to the Board [Commission] with his or her application: where a remedial environmental impact assessment report has been furnished with the application, an environmental impact assessment report; where a remedial Natura impact statement has been furnished with the application, a Natura impact statement.

Response: The development seeking retention by way of substitute consent is completed. Completion of development is also proposed. The attached rNIS addresses all developments included in the advertised development description.

- (3) Removed from the Act.
- (4) The Board [Commission] may at its own discretion, on request extend the period specified in section 177B (whether the notice given under section 177B(1) was confirmed or amended before the date of the coming into operation of section 40 (a) of the Planning and Development, Maritime and Valuation (Amendment) Act 2022, or confirmed or amended on or after that date in accordance with section 41 (10) of that Act) or specified in section 261A1, for the making of an application for substitute consent, by such further period as it considers appropriate.

Response: This issue does not appear to arise in the current instance.

- (4A)(a) The Board [Commission] shall consider whether a remedial environmental impact assessment report submitted under this section identifies and describes adequately the direct and indirect significant effects on the environment of the development.

Response: It is the professional opinion of BPS that the attached rNIS report prepared by Jim Hurley identifies and describes adequately the direct and indirect significant effects on the environment of the development. A Water Framework Directive Compliance Assessment Report is also attached, and Mr Hurley relies partly on this and on the other documents listed above. We trust this is in order. If the Board considers that this remedial NIS report does not identify or adequately describe such effects further details can be provided on request.

- (4B) Where the Board considers that a remedial Natura impact statement does not comply with paragraph (a), (b) or (c) of section 177G(1), the Board shall require the applicant for substitute consent to furnish, within a specified period, such further information as it considers necessary for the statement to so comply.

Response: It is the professional opinion of BPS that the attached rNIS report prepared by Jim Hurley (and the attached Water Framework Directive Compliance Assessment Report and other listed details on which Mr Hurley partly relies) identifies and describes adequately the direct and indirect significant effects on the environment of the development. We trust this is in order. If the Board [Commission] considers that the remedial environmental impact assessment report does not identify or adequately describe such effects further details can be provided on request.

- (4C) Where further information required by the Board [Commission] under subsection (4A)(c) or (4B) is not furnished to it by the applicant within the period specified under that subsection, or within any further period as may be specified by the Board, the application shall be deemed to have been withdrawn by the applicant.

Response: It is the professional opinion of BPS that the attached rNIS reports prepared by Jim Hurley (and the attached Water Framework Directive Compliance Assessment Report and other listed details on which Mr Hurley partly relies) identifies and describes adequately the direct and indirect significant effects on the environment of the development. We trust this is in order. If the Commission considers that the remedial environmental impact assessment report does not identify or adequately describe such effects further details can be provided on request.

- (5) As soon as may be after receipt of an application for substitute consent under this section, which is not invalid, the Board [Commission] shall send a copy of the application and all associated documentation, including the remedial environmental impact assessment report, or the remedial Natura impact statement, or both that report and that statement, as the case may be, and, where subsection (2A)(b) applies, the environmental impact assessment report or Natura impact statement or both that report and that statement as the case may be to the planning authority for the area in which the development the subject of the application is situated and such documentation shall be placed on the register.

Response: This is a matter for ACP and WCC.

- (6) Where a remedial environmental impact assessment report, remedial Natura impact statement, environmental impact assessment report or Natura impact statement is received by the Board [Commission in all instances] in response to a requirement under subsection (2CA), (2CB) or (2CC) of section 177K, the Board shall, as soon as may be after its

receipt, send the report or statement, as the case may be, to the planning authority referred to in subsection (5), and the planning authority shall place the report or statement on the register.

Response: This is a matter for ACP and WCC.

Is Appropriate Assessment required at Stage 2?

As Wexford County Council has determined in the attached letter dated 18 October 2024 that Stage 2 Appropriate Assessment is required and our client had submitted this with his planning application, we submit that the matter of whether Appropriate Assessment was or was not required has been decided. AA is required at Stage 2 and as such the Substitute Consent process arises.

2.0 Reasons for lodging a Substitute Consent application

On the 28th of August 2024, our client lodged a retention planning application, reg. ref. 20241028, to WCC for development described as:

Permission for retention and completion of the following: 1. a) bale & agricultural vehicle/machinery storage shed and associated retaining walls, b) grain storage & drying shed (previously granted under planning ref no. 20120458), c) agricultural cattle shed (previously granted under planning ref no. 20072461), d) stormwater drainage for the site including attenuation and petrol interceptor previously granted under planning ref no. 20120458, 2. Permission for retention of the following: a) excavations to the east side of the farmyard and relocation of the excavated material to the west side of the farmyard (to increase the overall yard area and build up the level by approx. six meters), b) retention of existing weighbridge portacabin - different from that previously granted under planning ref no. 20120458, 3. Permission is also sought for: a) the completion of excavation works and construction of associated retaining walls, b) alteration and upgrade to the storm water drainage system, c) alterations to site entrance, d) extension to the rear of previously granted grain storage and drying shed (original planning ref no. 20120458), e) completion of concrete finishes to yard. All the above together with associated site works and services.

On the 30th of September 2024, Peter Sweetman lodged an objection (6 copies attached) which stated:

This development is within the Zone of Influence of Slaney River Valley SAC (000781) Appropriate Assessment is required. Pursuant to Section 34(12) of the Planning and Development Act, 2000 as amended, the Planning Authority must refuse to consider the application to retain unauthorised development of land, if the application for permission had been made in respect of the development concerned before it was commenced, the application would have required that one or more than one, of the following was carried out; (a) an environmental impact assessment, (b) a determination as to whether an environmental impact assessment is required, or (c) an appropriate assessment (emphasis added by Mr Sweetman).

The reasons for making this retention planning application were because Wexford County Council notified our client that, arising from the Peter Sweetman objection, they now cannot proceed to assess the retention planning application as remedial Natura Impact Assessment [hereafter "rNIS"] is required. There is now no record of this planning application, reg. ref. 20241028, available online at WCC. We understand that the planning officer Oisín Boland at WCC essentially marked the planning application as incomplete and not only invalid but not a planning application which could be considered for possible validation. On the phone to Mahon Fox Architects, WCC noted how "the council will not be able to decide on the application and that we would be best submitting an application for substitute consent to An Bord Pleanála" [now the Commission]. The planning application was withdrawn by our client. A letter confirming this withdrawal has been requested from WCC; however, it has not been possible to obtain this.

We note that the reason no Appropriate Assessment Screening Report had accompanied the retention planning application made to WCC was that our client was under pressure from WCC Enforcement Section to lodge it. In any case, the matter is now out of our client's hands, as WCC determined that remedial NIS is required.

Arising from the above, our client advised WCC Enforcement Section that an application for Substitute Consent would need to be made to the Commission. The timeline for lodgement of this application has been extended a number of times (in agreement with WCC Enforcement Section) to allow the rNIS and Water Framework Directive Compliance Assessment Report to be completed (this required water testing which needed to be carried out over an extended time period).

1. Enforcement Notice No. 0233-2023 (6 no. copies attached), issued on the 21st of March 2024, states:

And whereas, the said unauthorised development consists of: The unauthorised construction of a steel shed structure on site, without the benefit of planning permission; in contravention of Section 32 (2) of the Planning & Development Act 2000 as amended.

Response: This Substitute Consent planning application includes for the retention of this shed for the storage of bales and agricultural vehicle/machinery.

2. A letter dated 13th November 2023 issued under Section 152 of the Planning and Development Act 2000 (as amended) – Ref. JP/PTM/PE 0203-2023 - which states:

It appears to the Planning Authority that the unauthorised development comprises the following: Possible unauthorised stockpiling and possible unauthorised ground works.

Response Our client responded by letter on the 10th of December 2023 stating:

Further to your letter of the 13th November 2023 I can confirm that there is no stockpiling of material on the above lands, we have raised the existing field level adjacent to the farm yard complex with excavated material from the opposite side of the farmyard to enable the hardstand to the north-eastern side of the farm yard to be extended to facilitate storing of silage bales and provide safe turning space for agricultural machinery in the farm yard. The current GAP regulations (Good Agricultural Practice for Protection of Waters Regulations) which came into force in March 2022 require that silage bales including high dry matter silage or haylage, can only be stored a maximum of two bales high in the absence of adequate facilities for the collection and storage of effluent run off, as such we extended the hardstand area to accommodate the additional space required when the bales are stored 2 high unfortunately we were unaware that we required permission to level up the ground at the farm yard. The material used to raise the level of the yard was excavated from the embankment on the south-eastern side of the farmyard to enable the provision of an agricultural shed for the storing and drying of grain (see permission number 20120458). The raising of the field contours up the level of the farmyard is to facilitate the continuing use of the agricultural practices in the farm yard. We were of the belief that the provision of an open loose yard, silo or silage area or assembly yards were exempt from planning. I have attached a copy map showing the location of where the excavated material was sourced and placed to form the raised hardstand. If you conclude that these works are not exempt and require the benefit of Planning Permission, we would hope that you could give us the opportunity to make an application to retain these works as they are necessary for safe operation of farm machinery on the farm stead.

This Substitute Consent planning application includes for the retention of the following "excavations to the East side of the farmyard and relocation of the excavated material to the West side of the farmyard (to increase the overall yard area and build up the level by approx. six meters)".

Also, having received these letters, our client decided to review all parts of the farm as regards planning compliance and any outstanding development needs and to apply for permission for the following development requiring retention or full permission. BPS and Mahon Fox Architects carried out a detailed assessment of the farmyard and property.

The applicant is a well-known local farmer. David Sykes manages this cattle and tillage farm in Effernoge, Ferns. The farm has expanded in recent years and tillage in the form of grain and straw comprises a large and growing area within the farm enterprise. In the early 2000s, David found himself working with outdated buildings. This is a farm wherein the farmhouse was built before 1875. There was a workshop installed in 1950, the long barrel vault was built in the 1960s, while the grain storage buildings were first part built in 1932 and the building beside it in 1954. Some changes were made to the existing to the older buildings to try to make do. Lean too's were removed and roofs were lifted on the same footprint, etc. This was not enough. Times had changed the farm needed to move with the times.

To make the farm as efficient as possible the applicant needed larger storage buildings including bale and agricultural vehicle storage sheds and grain drying and storage buildings and to make the farmyard more workable and secure. The following areas of development were undertaken and need to be completed:

- **Grain sheds** - The heights of the grain sheds are dictated by height required for the tipping of large trailers. In 2007, David sought permission to construct a cattle shed building with underground slatted tanks. Due to the recession the Department of Agriculture cut back on grants and they only provided a fraction of the grants they were originally offering when the planning permission was originally being sought. As a result, only circa 75% of the cattle shed was constructed. Now, David intends to fully complete the building and is therefore seeking permission for retention and completion of the building as part of this application. Please see a report from Geoff Barry enclosed.
- **Bale and agricultural vehicle storage** - The existing partially built bale and vehicle storage building for which retention and completion is being sought is to be used to provide shelter the various agricultural vehicles and associated implements which are used for farm activities and also when completed will have the capacity to store approx. 2,500 large square bales. These bales will be stored within the shed until winter months, some will be used on the farm and the remaining will be sold to various dealers throughout the country during winter months. The shed is also intended to be used as secure lock up for modern farm machinery. In 2012 the applicant sought permission for the erection of an agricultural shed for the purposes of storing and drying grain. Works did commence on this building however they were suspended due to various family reasons. It is now the applicant's intention to complete the building and hence permission for retention and completion is being sought. In relation to the grain storage and drying shed we estimate the volume of traffic entering and leaving the site will be 3-6, 20 tonne loads of grain daily throughout the harvest time, all of which is brought in by tractor and trailer. The majority of the grain will come from the north direction.
- **Access to the farm** - The vehicles traveling to the site with the grain will have an easy gentle approach into and out of the site, alterations to the site entrance have been proposed within this application. Security has been an ongoing issue on the farm, David has had 3 robberies over the last number of years all of which have been reported to the

Gardai. As a consequence, security cameras have been erected onsite. The proposed new entrance walls and gate will provide additional security to the site and will inhibit the theft of vehicles and other agricultural implements.

- *Weighbridge building* - In the 2012 application for the grain storage and drying shed the applicant sought permission to erect a weighbridge building. Its purpose is to accommodate the admin associated with logging grain, straw, hay and silage entering and leaving the farm. The added benefit is that the building provides a level of security for the farmyard. A temporary building in form of a portacabin fulfils the function of the weighbridge building.
- *Excavation* - Considerable excavation works were required in order to clear and level the area to facilitate the construction of the grain drying and storage shed granted in 2012 under planning ref no. 20120458. The building is orientated running along the contour lines to reduce the amount of excavation, for the shed area alone it required the excavation of soil and rock up to 5.5 meters deep over a minimum length of about 68 metres. This is to facilitate construction machinery access and the construction of the retaining walls themselves prior to back filling. Cutting and baling of silage is required on the farm for winter feed for the cattle. New legislation has been introduced limiting the storage of silage bales from 3 high to 2 high where the bales are stored on hardstanding's. To facilitate the storage of the same quantity of bales the yard area needed to be extended, therefore there was a benefit to the applicant in excavating the material to facilitate the new grain shed while also extending the yard to the West. The applicant has been moving material from one side of the site to the other where all material is kept within the site. The extended yard area is also beneficial for the ease of loading and unloading the silage bales avoiding compacting and tearing up land. Material from the site has been used to build up the yard area and the applicant is happy that should it be required ACP can indicate where it would like a trench dug to demonstrate that only material from the site has been used for fill. Justin Kelly of Capital Surveys Ltd have been appointed to undertake the measured topographical survey and civil design works associated with this application. They have calculated that approximately 48,000 cubic meters of soil and rock have been excavated from the east side of the site and relocated and used as fill to extend the farmyard area Westwards.
- *Stormwater drainage* - Capital Surveys have designed and refined the stormwater drainage system adding a concrete storage cell unit to facilitate rainwater attenuation. This concrete storage tank has been proposed while considering the farming activities on the site. The unit will have access chambers to facilitate maintenance and will require cleaning on an annual basis. As the yard area is made up of both permeable and impermeable materials the amount of storm water storage is 360m³, the discharge to the adjacent open drain will be 12 litres/second. As part of the application a new ACO drain to the main entrance along oil/silt interceptor has been identified and specified. Capital Surveys have also included a report on the stability of the excavated sloped area running parallel along the road. A retaining wall has been designed which will stabilise the bank and will step down gradually Northwards towards the main entrance where the remainder will be graded down.
- *Landscaping* - This application is accompanied by a landscaping proposal as prepared by Brian Foran. A pollinator friendly planting scheme has been prepared by Brian Foran (Horticulturist) and is included with this application. The scheme will aid in reducing the visual impact of the sloped earth embankment resulting from the works required to level out the farmyard. The scheme proposes the planting & managing over 1600 additional native trees and shrubs at this site. As the planting scheme is implemented and managed appropriately, it will, within a relatively short period of time screen the existing and proposed developments while creating a quality ecosystem rich in native botanical diversity establishing new wildlife corridors connecting habitats whilst enhancing the existing rural character and improving local visual amenity. The proposed planting will also act as a wind break, reducing the impact of the westerly winds on the farmyard. The tree & shrub roots will bind the soil in the constructed soil banks, reduce erosion and regulate water runoff from the site. The trees & shrubs will have the added advantage of storing carbon dioxide and releasing oxygen providing a positive impact on the local environment.

On the 18th of October 2024, WCC issued a letter (6 no. copies attached), which states:

The attached application received on the 28-Aug-2024 is returned to you pursuant to the above legislation for the following reason. Section 34(12) of the Planning & Development Act 2000 (as amended) states that a Planning Authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more of the following was carried out:

An Environmental Impact Statement

*A determination as to whether an Environmental Impact Assessment is required, or
An Appropriate Assessment.*

The Application submitted seeks the retention and completion of the following:

bale & agricultural vehicle/machinery storage shed and associated retaining walls, grain storage & drying shed (previously granted under planning ref no. 20120458), agricultural cattle shed (previously granted under planning ref no. 20072461), stormwater drainage for the site including attenuation and petrol interceptor.

Retention is also sought for the following:

excavations to the east side of the farmyard and relocation of the excavated material to the west side of the farmyard (to increase the overall yard area and build up the level by approx. six meters), retention of existing weighbridge portacabin - different from that previously granted under planning ref no. 20120458.

Finally planning permission is sought for the following:

the completion of excavation works and construction of associated retaining walls, alteration and upgrade to the storm water drainage system, alterations to site entrance, extension to the rear of previously granted grain storage and drying shed (original planning ref no. 20120458), completion of concrete finishes to yard.

Having regard to the location of the site in close proximity to the Slaney River Valley SAC, the level of work to be retained, continued excavation of the site and the nature of the development ongoing on site, it is the view of the Planning Authority that an Appropriate Assessment is required. Section 34(12)(c) outlines that the Planning Authority cannot consider this application for retention.

For the above reasons, and following receipt of the Wexford County Council decision letter by our client, BPS is now directed to make a Substitute Consent application to ACP (as per Section 177E of the Planning Act 2000 (as amended)). This application is both for leave to apply for Substitute Consent and an application for Substitute Consent.

The nature of the planning application originally made to WCC was set out in a Stage 1 Appropriate Assessment Screening Report produced by Jim Hurley, ecologist, for the attention of WCC. This current Substitute Consent application is accompanied by a Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS) ["rNIS"] which confirms:

While access to more data is always highly desirable, it is considered that sufficient information, environmental and ecological baseline data, and details of the conservation objectives for the Natura 2000 sites assessed were available to carry out an assessment of the significant effects likely to arise from the application site. Any insufficiency of information is compensated for by the application of the precautionary principle.

The nature, size and location of the application site and possible impacts arising from same, the qualifying interests, conservation objectives of the relevant Natura 2000 sites, and the potential for cumulative impacts arising from other plans and current activities or existing pressures on the relevant Natura 2000 sites were all considered in impact evaluation.

The proposed development is not directly connected to, or necessary for, the management of any Natura 2000 site. There will be no land-take, loss, reduction, alteration and/or fragmentation of any qualifying and/or designated habitat in the Natura 2000 network, or any habitats that Natura 2000 sites have been selected for. The proposed development will not require water abstraction.

There will be no significant disturbance, species fragmentation, and/or reduction in species density regarding any of the key species that Natura 2000 sites have been identified for. There will be no disturbance and/or displacement of any of key species that the Natura 2000 sites have been selected for or qualifying and/or designated species in the Natura 2000 network due to disturbance or noise as noise emanating from the proposed development will be of a temporary nature and will be similar to existing background noise generated by human activities at the existing farmyard.

It has been established that no Natura 2000 site other than the Slaney River Valley Natura 2000 site is likely to be adversely impacted by advancement of the proposed development. Since the Slaney River Valley Natura 2000 site is in hydrological connection with the application site and is a down-gradient receptor for both groundwater and surface water draining from the subject site, that Natura 2000 site has the potential to be subject to indirect impacts. The only source of possible adverse impact identified is deterioration of water quality in the impacted site. Possible impacts on the Slaney River Valley Natura 2000 site are considered to be indirect as the proposed development is not located in that Natura 2000 site.

The proposed mitigation measures and safeguards for the application site ensure that the farmyard is unlikely to have any significant impact on the integrity of the River Bann adjoining the application site, part of the Slaney River Valley Natura 2000 site. "The 'integrity of the site' can be usefully defined as the coherent sum of the site's ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated" (EC, 2018 page 50).

It can be confirmed that nothing significant has been identified that is not mitigatable and has not been mitigated.

Potentially adverse effects arising from the application site on the River Bann and the wider Slaney River Valley Natura 2000 site are not deemed to be significant for the following reasons:

- a) *It is not proposed to discharge any harmful chemicals, fuels, oils, greases, foul water, or any deleterious matter or liquids other than rainwater to groundwater and/or surface watercourses from the application site. Any unplanned and/or accidental discharges are likely to be minor in both volume and impact and to pose minimal threat to water quality. There will be no discharges of sewage; toilet facilities for those working onsite are available offsite in the farmhouse close by. The storage of the silage bales will be on a paved slab draining to the slatted shed. All fuels, oils, greases, and hydraulic fluids are stored in secure bunded areas adjoined by a designated area in which the refuelling and maintenance of machinery takes place. Bunding is to a volume not less than the greater of either 110% of the capacity of the largest tank or drum within the bunded area or 25% of the total volume the substance that could be stored within the bunded area. If temporary diesel or petrol pumps are to be used,*

they are sited within temporary bunded units. All plant and equipment carries oil/fuel spill kits. Drip trays are used under all vehicles during refuelling. Waste oils, empty oil containers and other hazardous wastes are disposed of in accordance with the requirements of the Waste Management Act, 1996.

- b) SuDS (Sustainable Drainage Systems) principles will be implemented during construction works to avoid any discharges of silt to watercourses. Earthworks will not be conducted during sustained or intense rainfall events.*
- c) Uncured concrete can kill fish and macro-invertebrates by altering the pH of the water. Concrete delivery vehicles will be precluded from washing out at or in the environs of the site, or at such location as would result in a discharge to surface waters. If bagged cement is stored on site during construction work, it will be held in a dry secure area when not in use. There will be no discharge of any uncured concrete to the Natura 2000 network.*
- d) Water quality in the River Bann is rated 'Moderate', and the waterbody is identified as being 'At Risk' of not achieving 'Good' water quality status as required pursuant to the Water Framework Directive (WFD) and the European Communities (Water Policy) Regulations 2003 (EPA, 2019). A WFD assessment was conducted regarding the present application to determine if any specific components or activities associated with the proposed development was likely to compromise WFD objectives, causes a deterioration in the status of any surface water or groundwater body, and/or jeopardises the achievement of good surface water or groundwater status (Fehily Timoney, 2025). The overall conclusion of the WFD compliance assessment is that there will be no risk of deterioration in status from the proposed development nor will it prevent of the achievement of the objectives for the River Bann which is part of the River Slaney Valley SAC (Fehily Timoney, 2025).*
- e) There will be no changes in key indicators of conservation value such as deterioration in the quality and/or quantity of water and/or other resources that sustain Natura 2000 sites.*
- f) Wastes generated from the proposed construction works will be collected for removal offsite for recycling or disposal by permitted contractors in accordance with Waste Management Regulations. All wastes will be removed for offsite disposal.*
- g) Since it is not proposed to import any filling or soil to the proposed development site, the threat of the proposed works introducing or spreading invasive alien plants via plant materials and/or seeds or fruits of alien invasives will be entirely absent.*
- h) No potential adverse ecological impacts likely to arise from advancement of the proposed development have been identified, either direct, indirect, or secondary, either alone, ex-situ, or in combination with other plans or projects.*
- i) By virtue of its nature and small size and scale the proposed development will have no transboundary impacts of significant impacts on climate change.*

Therefore, in accordance with Article 6(3) of the Habitats Directive and Part 5 of the Birds and Natural Habitats Regulations, relevant case law, established best practice, and the precautionary principle, the overall conclusion and determination of this Natura Impact Statement is, based on the evidence set out above, that provided the mitigation measures set out in Section 8.9 are fully implemented, the proposed development will not, either alone or in combination with other plans or projects, give rise to significant negative effects on the conservation objectives or site integrity of the Slaney River Valley SAC, or any other Natura 2000 site, and is not likely to compromise any nature conservation objectives or the integrity of any Natura 2000 site.

In essence, our client carried out development on a large farm which they now understand was not exempted development and which material departed from previous planning permission, reg. ref. 20120458.

This development is within the Zone of Influence of Slaney River Valley SAC (000781) and, as such, Appropriate Assessment is required, leaving the only route to obtaining retention permission being Substitute Consent.

The attached drawings and reports provide all relevant full details of this development. These reports include an rNIS and a Water Framework Directive Compliance Assessment Report and other accompanying details (as listed above).

We trust that the above statement provides an adequate explanation of the basis for this Substitute Consent planning application (as this is the same as that offered to WCC which refused to consider a submitted planning application).

Finally, WCC Planning Department and Enforcement Sections have each informally noted that revisions would have been needed to the development description. These revisions have been made and are included in the development description now advertised, including by way of the statutory newspaper (advertised in the Wexford People) and site notices (erected in the location shown on the attached OS site location maps and the Existing Site Layout Plan).

Effernoge, Tinnacross	
Address	Effernoge, Tinnacross
Planning_Number	20241028
Thematic_Decision	Decision Pending
DirectLink2DMS	More info
Description	Permission for retention and completion of the following: 1. a) bale & agricultural vehicle/machinery storage shed and associated retaining walls, b) grain storage & drying shed (previously granted under planning ref no. 20120458), c) agricultural cattle

Fig. 1: Details of the retention and completion planning application submitted to Wexford County Council under reg. ref. 20241028

2.1 The issue of possible pre-planning under section 177E (1A) of the Planning Act (amended)

Our client has been advised and is aware that under section 177E (1A) of the Planning Act (amended): "The Board [Commission] may, at its own discretion and at the request of a person who intends to make an application for substitute consent, enter into consultations in respect of the application with that person before he or she makes the application".

The Project Team notes how we under pressure from WCC Enforcement Section to lodge this application. Therefore, there was no time to arrange and to attend pre-planning. This application is as comprehensive as we could achieve in the time available. We trust this is in order.

3.0 Substitute Consent application under section 177E of the Planning Act (amended)

Section 177E of the Planning and Development Act 2000 (as amended) refers to an 'Application for substitute consent'.

This Substitute Consent planning application has been advertised in the statutory public notices with an amended version of the development description submitted to WCC.

3.1 Proposed Regularisation and Completion of Development

The development requiring Substitute Consent comprises of the following:

(1) Permission for retention of the following:

- (a) excavations to the East side of the farmyard and relocation of the excavated material to the West side of the farmyard (to increase the overall yard area and build up the level by approx. six meters),
- (b) retention of existing weighbridge portacabin - different from that previously granted under planning ref no. 20120458,
- (c) retention of existing grain storage shed,
- (d) existing agricultural workshop;

(2) Permission for retention and completion of the following:

- (a) bale & agricultural vehicle/machinery storage shed and associated retaining walls,
- (b) grain storage & drying shed (previously granted under planning ref no. 20120458),
- (c) agricultural cattle shed (previously granted under planning ref no. 20072461),
- (d) stormwater drainage for the site including attenuation and petrol interceptor previously granted under planning ref no. 20120458;

(3) Permission is also sought for:

- (a) the completion of excavation works and construction of associated retaining walls,
- (b) alteration and upgrade to the storm water drainage system,
- (c) alterations to site entrance, &

(4) All the above together with associated site works and services.

This application is accompanied by a Remedial Natura Impact Statement.

3.2 Site Location and Description

The site is located in the rural area c.1.9kms to the southeast of the town of Ferns, Co. Wexford within the rural area of Milltown. Figs. 2 to 7 show the location of the development requiring retention and completion relative at our client's farm. The site is located southeast of Ferns Village. The site can be seen from the N11 and consist of a large agricultural complex.

The River Bann is located to the northwest, west, and southwest of the farmyard – with a minimum setback of approx. 100m to the nearest farmyard structure. The River Bann connects to the Slaney River Valley SAC (000781) which is a designated European site.

The application site is located in an lowlands area and is accessed from the local road network. The site is a sizable farmyard complex of which most appears to have been in place for a long time. Other parts are of newer construction. An existing overhead power line is visible on site.

For the purpose of supporting ACP's assessment with clarity around the area of development within the farmyard, please refer to Mahon Fox Dwg. No. A-P-03 which offers a Key - see Fig. 9. We have enlarged the key such that this can easily be read. The drawing shows the locations of:

1. The weighbridge originally permitted under reg. ref. 20120458.
2. The weighbridge portacabin building for which retention is required – planning notices item 1(b).
3. An existing agricultural shed.
4. Existing slatted cattle shed & silage pit – retention and completion required (previously permitted under planning ref. 20072461) - planning notices item 2(c).
5. Grain storage shed requiring retention and completion (previously permitted under ref. 20120458 - planning notices item 2(b).
6. Existing agricultural workshop - planning notices item 1(d).
7. Bale and agricultural vehicle/machinery storage shed. Retention and completion required - planning notices item 2(a).
8. Existing farmhouse – disused.
9. Redundant molasses tank to be relocated.
10. Domestic garage.
11. Existing grant store building - planning notices item 1(c).

Mahon Fox Dwg. No. A-P-03 also sets out areas where excavation has taken place which requires retention and also an area to be excavated and relocated to the north site boundary (completion).

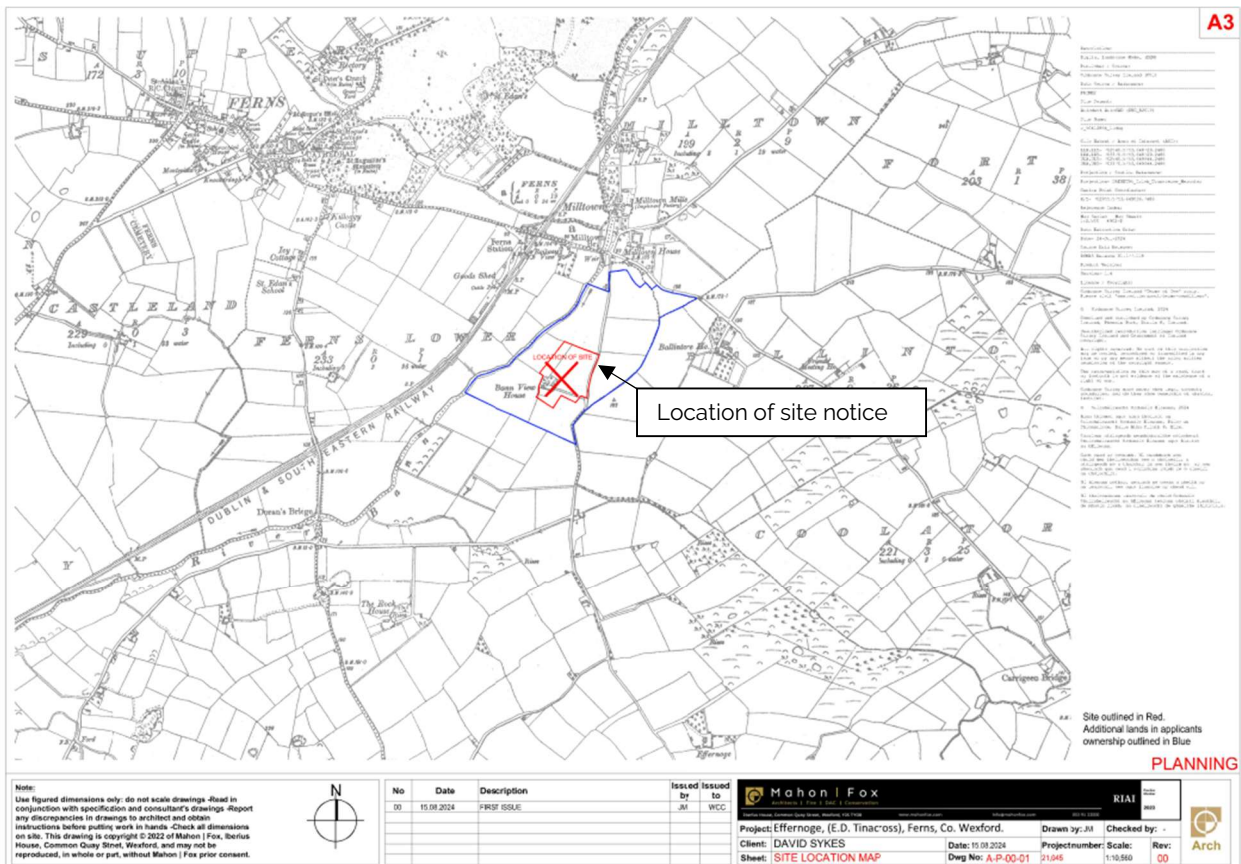


Fig. 2: The location of the Sykes Farm and the extent of the planning application red line boundary (Source: Google Maps)

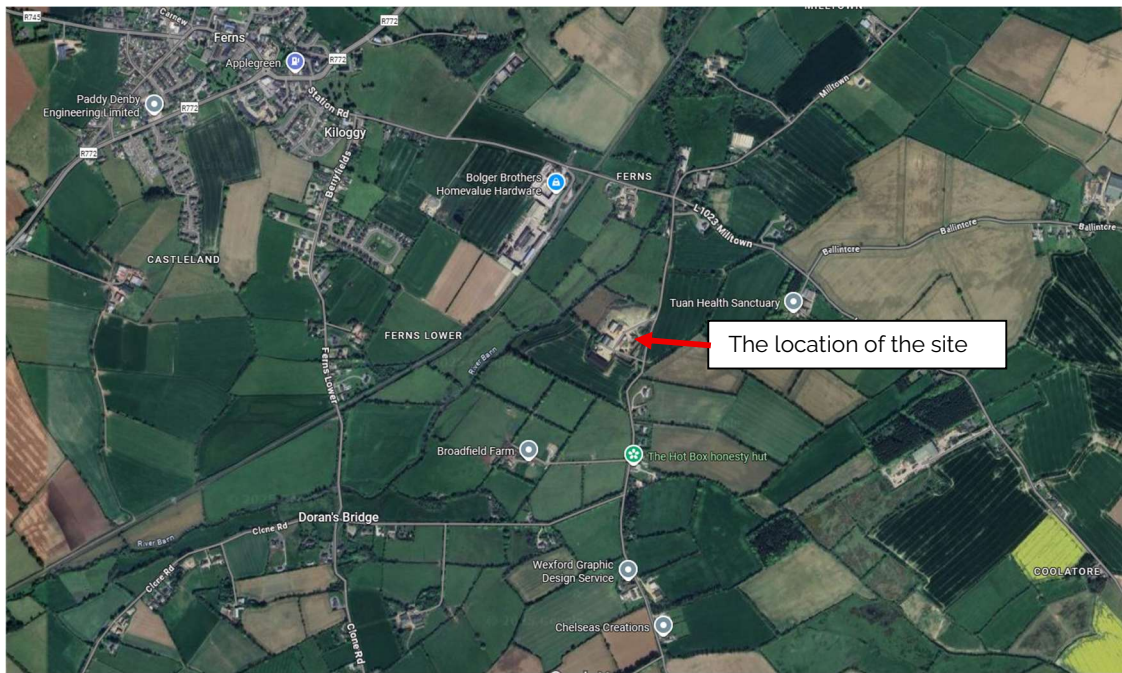


Fig. 3: The location of the Sykes Farm (Source: Google Maps)



Fig. 4: The location of the site relative to the River Bann (Source: Google Streetview)



Fig. 5: The farm entrance area and view of the site from the public road (Source: Google Streetview, 2023)

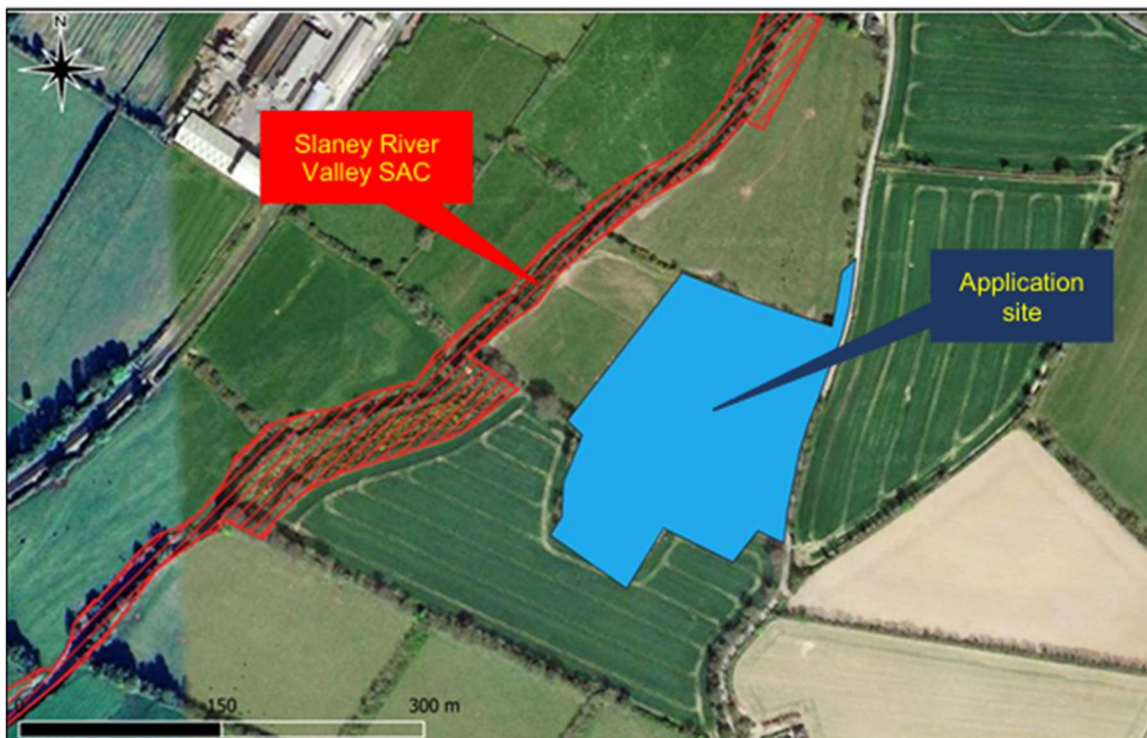


Fig. 6: Proximity of the site to the River Bann and the Slaney River SAC (Source: Jim Hurley, Ecologist)

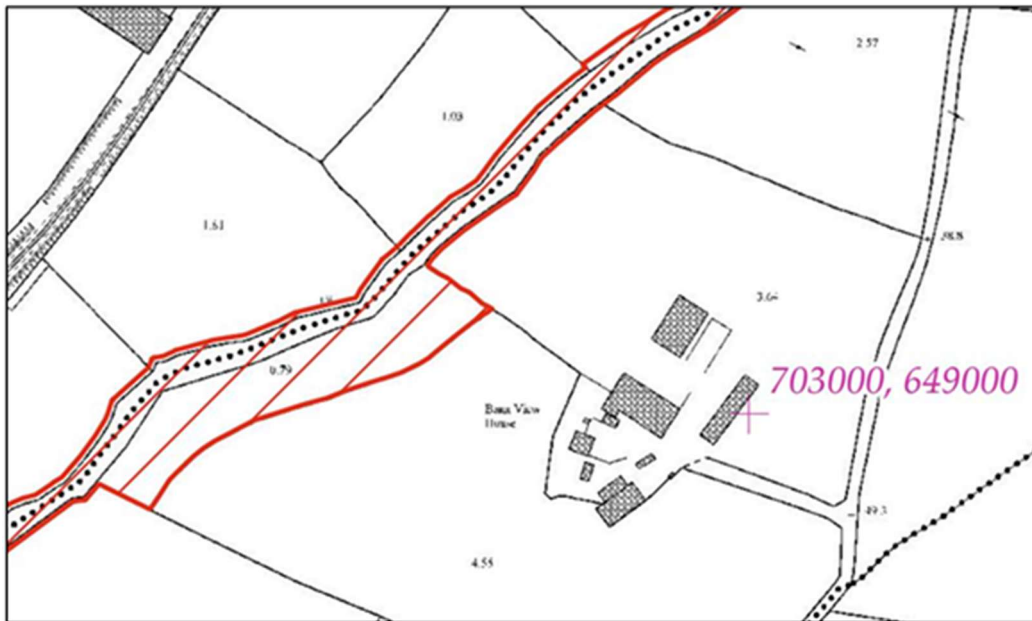


Fig. 7: Proximity of the site to the River Bann and the Slaney River SAC (Source: Jim Hurley, Ecologist)

Water Body ID	Water Body Name	Hydromorphological Description	Current Status (2016-2021)	Risk of Not Meeting WFD Objectives by 2027
IE_SE_12B010900	River Bann	Not available	Moderate	At risk

Fig. 8: WFD Water Bodies Within Study Area and Status (Source: Fehily Timoney and Company)

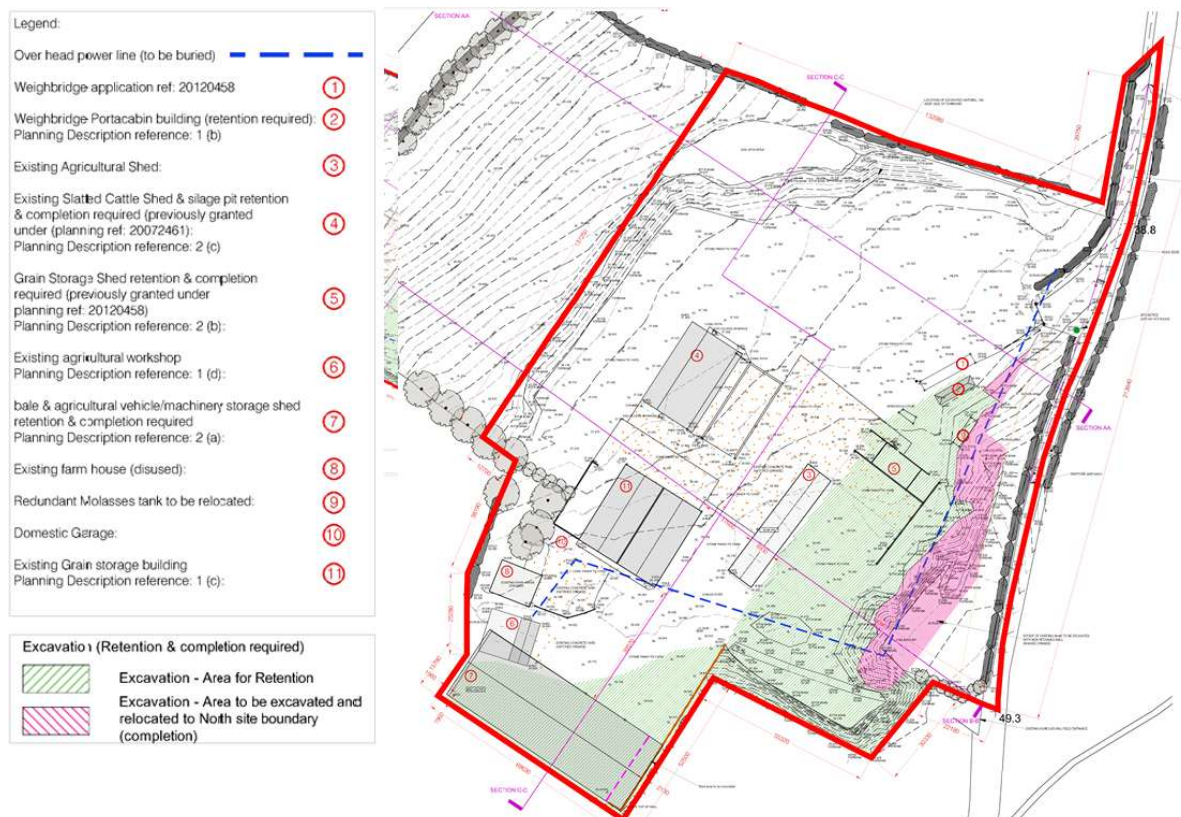


Fig. 9: Key to existing development within the farmyard – Mahon Fox Dwg. No. A-P-03

3.3 Planning history

Two previous planning applications, reg. refs. 20072461 and 20120458, have been permitted by WCC as the developments proposed were deemed to be acceptable, appropriate, and not to impact adversely on the River Bann.

- In respect of planning permission, reg. ref. 20072461 for: 1) ERECTION OF 2 NO. AGRICULTURAL SHEDS, 2) PROVISION OF 2 NO. SLATTED SOILED WATER TANKS, 3) PROVISION OF NEW SILAGE PIT, 4) PROVISION OF NEW DUNGSTEAD, 5) PROVISION OF NEW AGRICULTURAL ENTRANCE. The WCC Environment Technician raised a number of queries which were addressed (see Fig. 10). Planning permission was granted subject to the conditions shown in Fig. 11.

RECOMMENDATION OF ENVIRONMENTAL FINANCING	
Planning No.: 20072461	Applicant: DAVID SYKES
Application Date: 28-Jun-2007	Case Officer: Sonia Shiels
Location: EFFERNOGE, TINNACROSS	District: ENNISCORTHY AREA

Proposal: 1) ERECTION OF 2 NO. AGRICULTURAL SHEDS, 2) PROVISION OF 2 NO. SLATTED SOILED WATER TANKS, 3) PROVISION OF NEW SILAGE PIT, 4) PROVISION OF NEW DUNGSTEAD, 5) PROVISION OF NEW AGRICULTURAL ENTRANCE

Planners Notes/Histories, if any

Is the correct site notice present and legible: Yes ☐ No ☒ Date Site Visited: _____

DESK STUDY ONLY

RECOMMENDATION

Grant With Conditions ☒ <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>SD12 (EF01)</td><td></td></tr> <tr><td>SD13 (EF03)</td><td></td></tr> <tr><td>SD14 (EF06)</td><td></td></tr> <tr><td>SD15 (EF14)</td><td></td></tr> <tr><td>SD17 (EF14)</td><td></td></tr> <tr><td>SD18 (EF15)</td><td></td></tr> <tr><td>SD19</td><td></td></tr> <tr><td>SD20 (PU05)</td><td></td></tr> <tr><td>SD21 (EF12)</td><td></td></tr> <tr><td>PH06</td><td></td></tr> <tr><td>PH13</td><td></td></tr> <tr><td>PH14</td><td></td></tr> <tr><td>EF18</td><td></td></tr> <tr><td>EF19</td><td></td></tr> <tr><td>EF20</td><td></td></tr> <tr><td>EF21</td><td></td></tr> <tr><td>EF22</td><td></td></tr> </tbody> </table>	SD12 (EF01)		SD13 (EF03)		SD14 (EF06)		SD15 (EF14)		SD17 (EF14)		SD18 (EF15)		SD19		SD20 (PU05)		SD21 (EF12)		PH06		PH13		PH14		EF18		EF19		EF20		EF21		EF22		Further Information ☒ <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>FP01</td><td></td></tr> <tr><td>FP22</td><td></td></tr> <tr><td>FP24</td><td></td></tr> <tr><td>FP27</td><td></td></tr> <tr><td>FP29</td><td></td></tr> <tr><td>FP30</td><td></td></tr> <tr><td>FP30A</td><td></td></tr> <tr><td>FP32</td><td></td></tr> <tr><td>FP33</td><td></td></tr> <tr><td>FP34</td><td></td></tr> <tr><td>FP35</td><td></td></tr> <tr><td>FP36</td><td></td></tr> <tr><td>FP37</td><td></td></tr> <tr><td>FP38</td><td></td></tr> <tr><td>FP39</td><td></td></tr> </tbody> </table>	FP01		FP22		FP24		FP27		FP29		FP30		FP30A		FP32		FP33		FP34		FP35		FP36		FP37		FP38		FP39		Refuse ☐ <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>RF01</td><td></td></tr> <tr><td>RF03</td><td></td></tr> <tr><td>RF04</td><td></td></tr> <tr><td>RF05</td><td></td></tr> <tr><td>RF06</td><td></td></tr> <tr><td>RF07</td><td></td></tr> <tr><td>RF08</td><td></td></tr> <tr><td>RF09</td><td></td></tr> <tr><td>RF10</td><td></td></tr> <tr><td>RF11</td><td></td></tr> <tr><td>RF12</td><td></td></tr> <tr><td>RF13</td><td></td></tr> <tr><td>RF14</td><td></td></tr> </tbody> </table>	RF01		RF03		RF04		RF05		RF06		RF07		RF08		RF09		RF10		RF11		RF12		RF13		RF14	
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PLEASE RETURN TO PLANNING DEPARTMENT ON OR BEFORE:
13/7/07

Non Standard Conditions and Comments

- Submit maps to show area of spread with Buffer Zone removed
- Submit details of stocking rate (No of animals)
- Submit calculations to show storage required for slurry, soiled water and silage runoff
- " " " " " " " " " " " " " " " "

Note: All calculations shall be in accordance with SI no 378 of 2006 N.Irote Regulations

Signed: Liam Blunkett Date: 9-7-07

Fig. 10: WCC's Environment Technician's assessment of planning permission, req. ref. 20072461

Planning Register No. 20072461

CONDITIONS AND REASONS THEREFOR

1. The proposed development shall be carried out strictly in accordance with the plans and particulars lodged with the planning application, except as otherwise required by the conditions of this permission.

REASON:

To ensure the proposed development strictly accords with the permission and that effective control is maintained.

2. All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

REASON:

In the interests of traffic safety.

END OF SCHEDULE

Please note you are now required to remove your site notice(s) immediately.

Fig. 11: Conditions pertaining to planning permission, reg. ref. 20072461

- In respect of planning permission, reg. ref. 20120458, to: "ERECT AN AGRICULTURAL SHED WITH ALL ANCILLARY SERVICES FOR THE PURPOSE OF STORING AND DRYING GRAIN", no concerns were raised by WCC as regards planning compliance with planning permission reg. ref. 20072461 and there were no records of any enforcement proceedings having arisen at the farm at that time. WCC's Executive Engineer noted how 'Design details for the

surface water disposal are acceptable". The WCC SE Scientist (Environment) recommended a grant of planning permission subject to conditions. Planning permission was granted subject to conditions.

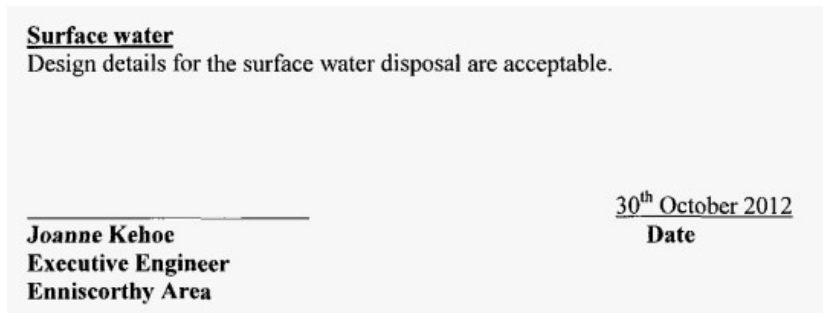


Fig. 12: WCC engineer's assessment of surface water disposal measures under planning permission, reg. ref. 20120458

RECOMMENDATION OF SENIOR EXECUTIVE SCIENTIST (ENVIRONMENT)		MEMO: PLANNING SECTION
Planning No: 20120458	Applicant: DAVID SYKES	PLANNING APPLICATION: 20120458
Application Date: 01-Jun-2012	Application Type: PERMISSION	APPLICANT: David Sykes
Location: EFFERNOGE, TINACROSS	District: North - Enniscorthy	RECOMMENDATION: Grant with conditions
Proposal: ERECT AN AGRICULTURAL SHED WITH ALL ANCILLARY SERVICES FOR THE PURPOSE OF STORING AND DRYING GRAIN		1. The proposed agricultural shed will be used for drying and storing grain only.
Is the correct site notice present and legible: ☒ Yes ☐ No Date Site Visited 11/7/12		2. Uncontaminated surface run-off from roofs and clean paved areas within the development shall be collected separately from effluent and shall be disposed of to an approved watercourse adjoining the site in accordance with the Department of Agriculture and Food specifications S129.
		3. All construction work shall be constructed in accordance with the appropriate standards. A copy of the Department of Agriculture and Food certification shall be provided to the planning authority before unit becomes operational.
		4. NSE01
		5. Dust emission or total particulate release to the airborne environment shall not exceed 350mg/m ² per day. Dust measurements shall be carried out, in real time, by direct reading airborne particle measuring equipment, capable of measuring for different dust particle sizes simultaneously, to include at a minimum Total Suspended Particles (TSP), and Particulate Matter <10 µm (PM ₁₀) fractions. This equipment is to have the English EA MCERTS certification or equivalent, which ensures reliable and accurate recording of PM ₁₀ data.
		REASON: To minimise the generation of dust by the proposed development in the interests of the orderly development of the area.
Signed <i>[Signature]</i> Date 12/7/12 CK		
Authorised <i>[Signature]</i> Date 15/7/12		

Fig. 13: WCC's SE Scientist (Environment) assessment of planning permission, reg. ref. 20120458

Planning Enforcement history comprises of Enforcement Notice No. 0233-2023 issued by WCC on the 21st of March 2024, which states: "And whereas, the said unauthorised development consists of: The unauthorised construction of a steel shed structure on site, without the benefit of planning permission; in contravention of Section 32 (2) of the Planning & Development Act 2000 as amended". Subsequent discussions with WCC have resulted in an agreement that the current substitute consent planning application will seek to regularise all areas of unauthorised development set out herein (see Section 3.3 of this letter).

3.4 No Planning Authority Report pertaining to this matter

BPS is aware of correspondence between our client and WCC arising from Enforcement Notice No. 0233-2023. This does not however constitute a planning authority report. The 2024 retention planning application lodged to WCC was not accepted and, as such, there is no planning authority report.

In the absence of a specific WCC report, this substitute consent planning application attempts to anticipate the concerns which WCC may have. We trust this is in order.

3.5 Policy context

The following policy and guidelines are relevant to the assessment of the development:

- National Planning Framework – Project Ireland 2040.
- Southern Region Spatial and Economic Strategy (RSSES)
- Climate Action Plan 2024.
- Traffic and Transport Assessment Guidelines (2014).
- Development Management, Guidelines for Planning Authorities (2007).
- The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).
- Development Management Guidelines for Planning Authorities (2007).

Other relevant Guidance:

- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009).

- Realising our Rural Potential: The Action Plan for Rural Development' (Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, 2017)
- The European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022, (S.I. No. 113 of 2022).

3.5.1 Wexford County Development Plan 2022-2028

Volume 1 – Written Statement

Section 6 – Economic Development Strategy

Section 6.3 refers to Climate Action and Economic Development. Objectives relative to supporting the green economy include: "Support the agriculture sector to transition to economically and environmentally viable farming methods that reduce greenhouse gas emissions, are beneficial for local biodiversity and rural communities whilst still delivering high quality food and providing a high standard of animal welfare."

Section 6.4 - Policy Context. Reference is had to the National Planning Framework and to the Government's Rural Development Policy. This includes the document: 'Realising our Rural Potential: The Action Plan for Rural Development' (Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, 2017).

Strategic Economic Development Objectives for the County are included.

Section 6.6.5 has regard to Place Objectives and measures to enhance the local environment.

Objective ED49: To ensure that commercial development in rural areas is related to agriculture, horticulture or other rural related resource or activity. Exceptions to this objective are detailed in Section 6.7.6, of this chapter, Chapter 7 Tourism Development, Chapter 12 Coastal Zone Management and Marine Spatial Planning, Volume 8 County Retail Strategy and Volume 10 Energy Strategy.

Section 6.7.5 refers to The Green Economy:

- Objective ED85: To develop the county as a leading innovator in the green economy in areas such as sustainable agriculture, sustainable construction, the production of renewable energy and the bio-economy, and to support development of enterprises and technologies that employ green technologies and support a low carbon economy.

Section 6.7.8 concerns the Rural Economy and Objectives include those that support rural economic diversification:

- Objective ED90 - To enhance the competitiveness of our rural areas by supporting innovation in rural economic development and enterprise through the diversification of the rural economy into new sectors and services including ICT based industries and those addressing climate change and sustainability.
- Objective ED91 - To facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.
- Objective ED98 - To ensure all developments permitted in rural areas in accordance with Objective ED49, including agricultural, horticultural and rural diversification do not impact negatively on the quality of the environment or character of the rural area or rural settlement. Applications for all such developments will be required to submit details to demonstrate that the proposed development:
 - Will not result in the contamination of potable water, surface or ground waters, or impact on natural or built heritage;
 - Is appropriate in terms of scale, location, design and that the character of the farm or settlement is retained and enhanced where possible;
 - When located on a farm, it is located within, or adjacent to, existing farm buildings, unless the applicant has clearly demonstrated that the building must be located elsewhere for essential operational or other reasons;
 - Is appropriately sited so as to benefit from any screening provided by topography or existing landscaping and does not seriously impact on the visual amenity of the area;
 - Will not result in an unacceptable loss of residential amenity by reason of noise, odour or pollution;
 - Will not result in a traffic hazard,
 - Will provide for adequate waste management; and
 - Where possible will restore and/or enhance built and/or natural heritage.

Section 6.7.6.1 – Agricultural Development

This notes that agriculture includes: ... the use of the land as grazing land, meadow land etc.

Objective ED101 - To facilitate the modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential amenity. Planning applications for new agricultural structures must clearly outline the use of the structure (livestock / equine / pig / poultry / storage) subject to Objectives ED97 and ED98.

Objective ED102 - To ensure agricultural waste is managed and disposed in a safe, efficient and sustainable manner having regard to the environment and in full compliance with the European Communities Good Agricultural Practice for the Protection of Waters Regulations (2014) and relevant best practice guidelines.

Section 6.7.6.2 refers to Rural Diversification including Agri-Food. The Planning Authority recognises that a balance needs to be maintained between facilitating appropriate forms of rural development and protecting the rural environment. Farm based enterprise including agri-tourism proposals, open farms/pet farms and equestrian activities will be facilitated subject to environmental and development management standards.

Rural Diversification Objectives ED104 – ED107 refer.

Chapter 13 – Heritage and Conservation

Section 13.2 refers to Natural Heritage, including Natura 2000 Sites. Table 13.1 refers.

Objective NH04: To protect the integrity of sites designated for their habitat and species importance and prohibit development which would damage or threaten the integrity of these sites. Such sites include Special Areas of Conservation (SACs) and candidate SACs, Special Protection Areas (SPAs), Natural Heritage Areas (NHAs) and proposed NHAs, Nature Reserves, Refuges for Fauna and RAMSAR sites. To protect protected species wherever they occur.

Volume 2 Development Management Manual

Section 6 Transport and Mobility

Section 6.1.4 refers to Country Roads/Green Routes.

Section 6.2 to Assessment of Road Traffic Safety.

Section 6.2.5 to Design Speeds – Table 6-5 refers.

Section 6.2.6 to Siting and Design of Access/Egress Points. This includes regard to Sightlines and Visibility.

3.6 Screening

3.6.1 Environmental Impact Assessment

The application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended), which is for the regularisation of development pertaining to a farmyard is not a class of development under the classes listed Schedule 5 of the Planning & Development Regulations 2001 (as amended) and therefore no EIA screening is required.

3.6.2 Appropriate Assessment

Consideration of the Likely Significant Effects on a European Site Article 6(3) of the Habitats Directive. The requirements of Article 6(3) as related to appropriate assessment of a project under part XA (Substitute Consent) are considered fully in this section. The areas addressed in this section are as follows:

- Screening for appropriate assessment.
- Appropriate assessment of implications of this development for regularisation on the integrity of each European site.
- The Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS) and Supplemental Information.

The application is accompanied by a Stage 1 Appropriate Assessment and a Stage 2 remedial NIS which describes the development for regularisation and completion, the project area and the surrounding area and includes for the implementation of mitigation measures.

The rNIS has been prepared by Jim Hurley, an Ecological Consultant and is informed by desk study including reference material from the NPWS website and data base and by field surveys. Mr Hurley's work is also supported by a Water Framework Directive Compliance Assessment Report prepared by Fehily Timoney Environmental Consultants and by the other details listed above.

The rNIS together with supplemental information concludes that, following an examination, analysis and evaluation of the relevant information, including the nature of the predicted effects from the development proposed for regularisation,

and mitigation measures to avoid such effects, that the said development will not adversely affect the integrity of any European site, either alone or in combination with other plans and projects.

The rNIS submitted, identified and characterised the possible implications of the development on the European sites, in view of the site's conservation objectives. These details have been provided to enable the Board to carry out an appropriate assessment of the proposed works.

4.0 Matters to be considered by ACP under substitute consent planning applications

This part of the BPS letter provides an assessment of this application for substitute consent for the retention and completion of development under Section 177E of the Planning and Development Act 2000(as amended). The site is located close to the River Bann which connects to the Slaney River Valley SAC (000781) which is a designated European site.

A Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS)and application under Section 177E has been lodged by our client, David Sykes. It has been sent for determination to the Board by the Local Authority on the basis of the proposed development's likely significant effect on a European site. Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.

The Planning and Development, Maritime and Valuation (Amendment) Act, 2022 (Commencement of Certain Provisions) (No. 2) Order 2023 (S.I. 645 of 2023) came into effect on 16th December 2023. The Commencement Order brings into operation sections (10) to (21), sections (23) to (40) and subsections (8) to (12) of section (41) of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Consequently, as now required, the assessment of this application for substitute consent includes consideration of 'exceptional circumstances'.

In previous substitute consent planning applications with which BPS has been involved, the Board has had regard to the following matters:

1. *Exceptional circumstances*

The tests / matters to have regard to in considering exceptional circumstances in an application for substitute consent are set out in Section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Section 30 amends Section 177K of the 2000 Act. In considering whether exceptional circumstances exist, the Board is required to have regard to the matters set out under the criteria as set out within this part of the Act as follows:

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

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

The EIA Directive seeks to provide for an assessment of the likely significant effects of a development on the environment prior to decision making, and to take account of these effects in the decision making process. The Habitats Directive seeks to ensure the conservation of a wide range of rare, threatened or endemic animal and plant species and the conservation of rare and characteristic habitat types. The current application refers to the Habitats Directive and includes a remedial NIS.

ACP is asked to review the attached Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS)prepared by Jim Hurley which is a nationally respected ecologist. To support the work of Mr Hurley, a Water Framework Directive Compliance Assessment Report was commissioned). This report identifies and describes adequately the direct and indirect significant effects on the environment of the development. We trust this is in order. If the Board considers that the remedial environmental impact assessment report does not identify or adequately describe such effects, as regards any part of the development, further details can be provided on request.

It is noted that the current application is for a regularisation of development similar to a previous proposal submitted to WCC in 2024 (reg. ref. 20241028) that was invalidated as noted in the Planning History Section above. The entire planning application for retention and completion as submitted by to WCC was prepared by Mahon Fox Architects which is familiar with all areas of the detail of this development and who have prepared the attached drawings.

Given the potential for the development proposal to generate negative impact on habitats within the River Slaney SAC, and given the potential negative impacts on water quality in the River Bann arising from the development proposal due to proposed spreading of effluent, AA is required for the development proposal and an rNIS is attached.

Given the submission of an rNIS, the development would not circumvent the purpose and objectives of the Habitats Directive.

Having regard to the nature and scale of what is agricultural development, BPS is satisfied that this development is not of a class under Schedule 5, Parts 1 and 2 of the Planning and Development Regulations 2001 (as amended) and the requirement to undertake a remedial Environmental Impact Assessment does not arise in this case.

Jim Hurley, ecologist, was asked by our client to undertake an rNIS following Wexford County Council's brief review of planning application, reg. ref. 20241028. The planning authority refused to consider the planning application quoting Section 34(12) of the Act (as amended), with its Planning Report noting only how the planning application was invalid on the grounds of an rNIS being required 'and' arising from issues pertaining to the public notices.

The retention and completion of development raises no significant environmental concerns as regards any European site including the Slaney River Valley SAC (000781). Section 9.2 'Conclusion' of the attached rNIS states:

While access to more data is always highly desirable, it is considered that sufficient information, environmental and ecological baseline data, and details of the conservation objectives for the Natura 2000 sites assessed were available to carry out an assessment of the significant effects likely to arise from the application site. Any insufficiency of information is compensated for by the application of the precautionary principle.

The nature, size and location of the application site and possible impacts arising from same, the qualifying interests, conservation objectives of the relevant Natura 2000 sites, and the potential for cumulative impacts arising from other plans and current activities or existing pressures on the relevant Natura 2000 sites were all considered in impact evaluation.

The proposed development is not directly connected to, or necessary for, the management of any Natura 2000 site. There will be no land-take, loss, reduction, alteration and/or fragmentation of any qualifying and/or designated habitat in the Natura 2000 network, or any habitats that Natura 2000 sites have been selected for. The proposed development will not require water abstraction.

There will be no significant disturbance, species fragmentation, and/or reduction in species density regarding any of the key species that Natura 2000 sites have been identified for. There will be no disturbance and/or displacement of any of key species that the Natura 2000 sites have been selected for or qualifying and/or designated species in the Natura 2000 network due to disturbance or noise as noise emanating from the proposed development will be of a temporary nature and will be similar to existing background noise generated by human activities at the existing farmyard.

It has been established that no Natura 2000 site other than the Slaney River Valley Natura 2000 site is likely to be adversely impacted by advancement of the proposed development. Since the Slaney River Valley Natura 2000 site is in hydrological connection with the application site and is a down-gradient receptor for both groundwater and surface water draining from the subject site, that Natura 2000 site has the potential to be subject to indirect impacts. The only source of possible adverse impact identified is deterioration of water quality in the impacted site. Possible impacts on the Slaney River Valley Natura 2000 site are considered to be indirect as the proposed development is not located in that Natura 2000 site.

The proposed mitigation measures and safeguards for the application site ensure that the farmyard is unlikely to have any significant impact on the integrity of the River Bann adjoining the application site, part of the Slaney River Valley Natura 2000 site. "The 'integrity of the site' can be usefully defined as the coherent sum of the site's ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated" (EC, 2018 page 50).

It can be confirmed that nothing significant has been identified that is not mitigatable and has not been mitigated.

Potentially adverse effects arising from the application site on the River Bann and the wider Slaney River Valley Natura 2000 site are not deemed to be significant for the following reasons:

- a) *It is not proposed to discharge any harmful chemicals, fuels, oils, greases, foul water, or any deleterious matter or liquids other than rainwater to groundwater and/or surface watercourses from the application site. Any unplanned and/or accidental discharges are likely to be minor in both volume and impact and to pose minimal threat to water quality. There will be no discharges of sewage; toilet facilities for those working onsite are available offsite in the farmhouse close by. The storage of the silage bales will be on a paved slab draining to the slatted shed. All fuels, oils, greases, and hydraulic fluids are stored in secure bunded areas adjoined by a designated area in which the refuelling and maintenance of machinery takes place. Bunding is to a volume not less than the greater of either 110% of the capacity of the largest tank or drum within the bunded area or 25% of the total volume the substance that could be stored within the bunded area. If temporary diesel or petrol pumps are to be used, they are sited within temporary bunded units. All plant and equipment carries oil/fuel spill kits. Drip trays are used under all vehicles during refuelling. Waste oils, empty oil containers and other hazardous wastes are disposed of in accordance with the requirements of the Waste Management Act, 1996.*
- b) *SuDS (Sustainable Drainage Systems) principles will be implemented during construction works to avoid any discharges of silt to watercourses. Earthworks will not be conducted during sustained or intense rainfall events.*

- c) *Uncured concrete can kill fish and macro-invertebrates by altering the pH of the water. Concrete delivery vehicles will be precluded from washing out at or in the environs of the site, or at such location as would result in a discharge to surface waters. If bagged cement is stored on site during construction work, it will be held in a dry secure area when not in use. There will be no discharge of any uncured concrete to the Natura 2000 network.*
- d) *Water quality in the River Bann is rated 'Moderate', and the waterbody is identified as being 'At Risk' of not achieving 'Good' water quality status as required pursuant to the Water Framework Directive (WFD) and the European Communities (Water Policy) Regulations 2003 (EPA, 2019). A WFD assessment was conducted regarding the present application to determine if any specific components or activities associated with the proposed development was likely to compromise WFD objectives, causes a deterioration in the status of any surface water or groundwater body, and/or jeopardises the achievement of good surface water or groundwater status (Fehily Timoney, 2025). The overall conclusion of the WFD compliance assessment is that there will be no risk of deterioration in status from the proposed development nor will it prevent of the achievement of the objectives for the River Bann which is part of the River Slaney Valley SAC (Fehily Timoney, 2025).*
- e) *There will be no changes in key indicators of conservation value such as deterioration in the quality and/or quantity of water and/or other resources that sustain Natura 2000 sites.*
- f) *Wastes generated from the proposed construction works will be collected for removal offsite for recycling or disposal by permitted contractors in accordance with Waste Management Regulations. All wastes will be removed for offsite disposal.*
- g) *Since it is not proposed to import any filling or soil to the proposed development site, the threat of the proposed works introducing or spreading invasive alien plants via plant materials and/or seeds or fruits of alien invasives will be entirely absent.*
- h) *No potential adverse ecological impacts likely to arise from advancement of the proposed development have been identified, either direct, indirect, or secondary, either alone, ex-situ, or in combination with other plans or projects.*
- i) *By virtue of its nature and small size and scale the proposed development will have no transboundary impacts of significant impacts on climate change.*

Therefore, in accordance with Article 6(3) of the Habitats Directive and Part 5 of the Birds and Natural Habitats Regulations, relevant case law, established best practice, and the precautionary principle, the overall conclusion and determination of this Natura Impact Statement is, based on the evidence set out above, that provided the mitigation measures set out in Section 8.9 are fully implemented, the proposed development will not, either alone or in combination with other plans or projects, give rise to significant negative effects on the conservation objectives or site integrity of the Slaney River Valley SAC, or any other Natura 2000 site, and is not likely to compromise any nature conservation objectives or the integrity of any Natura 2000 site.

The accompanying WFD compliance assessment concludes at its Section 6.0:

A WFD compliance assessment has been undertaken for the proposed development at Effernogogue, Ferns, Co Wexford. The assessment is carried out using the UK Environment Agency's 'Water Framework Directive Assessment: Estuarine and Coastal Waters'. It is noted that although no specific guidance exists for freshwater bodies, the UK's Planning Inspectorate guidance 'Nationally Significant Infrastructure Projects: Advice on the Water Framework Directive' recommends a similar format be followed for all WFD assessments.

The key focus of the assessment was to ensure that the construction and operation of the proposed development does not result in a deterioration in the current WFD status of the water bodies within the WFD study area, the River Bann.

The scoping stage of the WFD compliance assessment has concluded that the activities associated with the proposed development represented a risk to the WFD status and objectives and therefore were scoped into the assessment. The relevant quality elements contributing to the overall status were considered and how each potential impact could affect these.

The potential impact of the proposed development were assessed in the context of the environmental objectives for the water body affected. Mitigation measures included within the project design and the application of a comprehensive suite of mitigation measures will ensure that there will be no significance effects on the WFD status of the water bodies within the study area.

The overall conclusion of the WFD compliance assessment is that there will be no risk of deterioration in status from the proposed development nor will it prevent of the achievement of the objectives for the River Bann which is part of the River Slaney Valley SAC.

BPS has reviewed the submitted development and the rNIS and WFD compliance assessment reports and it is also our professional opinion that with the implementation of the measures recommended by Jim Hurley during the remaining

construction phase and the operational stage of the development, all potential negative impacts on the SAC can be prevented. The current proposal will have no impact in combination with other plans or projects as it is of a rural agricultural scale and close to the already serviced town of Ferns. We have also considered other recent planning permissions and existing developments in the area. Regarding possible 'in combination' impacts, BPS recommends that ACP review Fig. 14 which sets out all Wexford planning applications and other existing developments in the vicinity of the site which confirm how the proposal is close to an already serviced area.

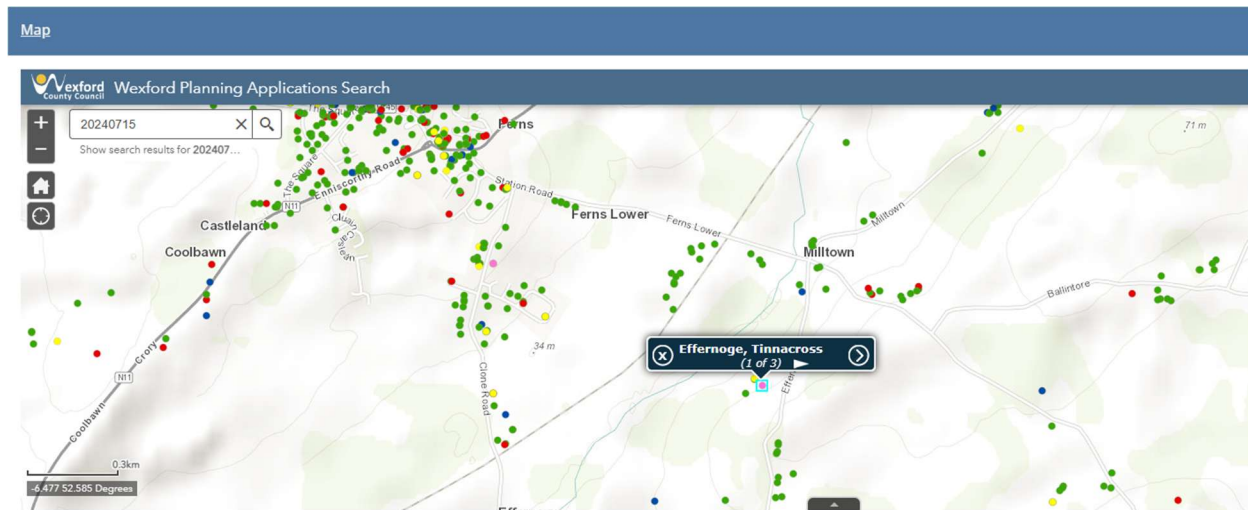


Fig. 14: Excerpt from Wexford County Council's Planning Application Search Viewer

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

BPS has discussed this matter with our client. He states that the family have operated a large farm at this location for decades. The farm has grown, and technical requirements have increased over time (see Section 2.0 of this letter). Planning permissions were obtained under reg. refs. 20072461 and 20120458. Misunderstandings arise in this case as regards what our client considered exempt development as regards agricultural developments, the building of sheds, the carrying out of excavations, and installation of drainage works, etc. and the amendment of elements of previous planning permissions.

As ACP is aware, there are exempted development provisions set out in both the Act and the Regulations as regards agricultural developments. Our client has incorrectly relied on one or more of the following exemptions as regards all development now included in this Substitute Consent planning application. Mr Sykes is a lay person in these matters and accepts that he should have sought advice prior to carrying out development which was needed by the farm and continues to be needed.

The provisions of the Act and Regulations which Mr Sykes had a lay person's awareness of include:

- Section 4(1)(a) of the Act which states: "The following shall be exempted developments for the purposes of this Act— (a) 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" and
- SCHEDULE 2, Article 6, Part 2, 'Exempted Development — Rural' of the Planning and Development Regulations 2001 (as amended) including:

CLASS 3 – "Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works."

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."

CLASS 7 – "Works consisting of the provision of a roofed structure for the housing of pigs, mink or poultry, having a gross floor space not exceeding 75 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage."

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 square metres, and any ancillary provision for effluent storage."

CLASS 9 – “Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.”

Class 11: “Development consisting of the carrying out, on land which is used only for the purpose of agriculture or forestry, of any of the following works— (a) field drainage, (b) land reclamation, (c) the removal of fences, (d) the improvement of existing fences, (e) the improvement of hill grazing, or (f) the reclamation of estuarine marsh land or of callows, where the preservation of such land or callows is not an objective of a development plan for the area.

Having carried out these works, our client was advised by WCC that the development does not constitute exempt development because the development must be used only for agriculture with Section 4(1)(a) of the Act referring to 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”, Article 9 of the Planning & Development Regulations 2001 (as amended) set out applicable ‘Restrictions on Exemption’, and the development was carried out close to an SAC thereby amending applicable exempted development rights.

The reason for making this retention planning application is because Wexford County Council notified our client that the development was not exempted development and issued Enforcement Notice ref. 0233-2023 (dated 21 March 2023). This matter is presently before the courts with proceedings paused to permit this substitute consent application to be made.

Our client accepts that retention permission is required and did, in good faith, seek in 2024 – by way of a retention planning application lodged to WCC – to obtain that permission having made a genuine error in his understanding of what did or did not constitute exempted development. We trust that this explains how our client had or could reasonably have had a belief that the development was not unauthorised.

Finally, we note, as per the above planning history section, that our client has previously received two significant agricultural planning permissions pertaining to the farmyard. Mr Sykes had no reason to think that such agricultural developments would not be supported, especially when built for good reasons. The ‘as built’ whole of the development requiring retention and completion appears as would a farm which has carried out agricultural development under Section 4(1)(a) of the Planning and Development Act 2000 (as amended).

Having regard to the above, in the opinion of BPS, Mr Sykes’ knowledge of the site planning history would not preclude the granting of substitute consent in this instance if deemed appropriate by the Board, given that this process is the only mechanism through which the status of the existing development may be regularised.

(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.

BPS has discussed this matter with Jim Hurley, ecologist, who confirms his opinion that the fact that much of this development is complete and now seeking retention permission, has not impaired his ability to carry out the attached rNIS. Indeed, he considers that having visited the site and requested further site testing, that he and Fehily Timoney are in a beneficial position whereby it has been possible to determine precisely how the development is currently operating and to base their conclusions on up to date water quality measurements. These water quality tests provide results which pertain to the developments in operation. It is not necessary, excepting some anticipated and accounted for completion of development, for any uncertain predictions to be made as regards the likely future water quality at this location as regards ground water, surface water run-off from the development, and the water quality in the River Bann.

Regarding public participation, our client sought retention permission from WCC and advertised this planning application by way of newspaper and site notices (WCC subsequently refused to consider the planning application and has removed it from their records). The current substitute consent application has been advertised in the newspaper and will continue to be advertised by way of the site notices should any party wish to submit an observation.

Our client, a local farmer, has not been contacted by any 3rd party following this advertising and is not aware of any person who maintains concerns regarding the proposals.

BPS has advised our client regarding *An Taisce v an Bord Pleanála*, *an Taisce v an Bord Pleanála*, and *Sweetman v an Bord Pleanála* [2020] IESC 39.

Having regard, therefore, to the documentation submitted, BPS would not consider this to be the case. Mr Sykes has advertised his intention to lodge this application by the appropriate form of public notice as submitted to the Board. This development does not require the undertaking of a remedial Environmental Impact Assessment. The application is accompanied by a remedial NIS which is included on the application file.

(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.

Please refer to Mr Hurley's attached rNIS report. The conclusion of the NIS is included above within this letter. BPS submits that, with the further implementation of mitigation measures pertaining to this development at Effernoge, (E.D. Tinacross), Ferns, Co. Wexford. All potential negative impacts on the River Bann, which connects to the River Slaney SAC can be prevented.

No actual or likely significant effects on the environment due to the development proposed for regularisation have been identified. The site is proximate to the River Bann which connects to the River Slaney SAC.

The Slaney River Valley Special Area of Conservation (SAC) is designated under the EU Habitats Directive to protect a range of priority habitats and species. Below is the complete list of qualifying interests, including Annex I habitats (with their EU codes) and Annex II species.

EU Code	Habitat Name
1130	Estuaries
1140	Mudflats and sandflats not covered by seawater at low tide
1330	Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>)
1410	Mediterranean salt meadows (<i>Juncetalia maritimi</i>)
3260	Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation
91A0	Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles
91E0	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)

Fig. 15: Qualifying interests in the River Slaney SAC - Annex I habitats

EU Code	Species Name (Scientific Name)
1029	Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)
1095	Sea Lamprey (<i>Petromyzon marinus</i>)
1096	Brook Lamprey (<i>Lampetra planeri</i>)
1099	River Lamprey (<i>Lampetra fluviatilis</i>)
1103	Twaite Shad (<i>Alosa fallax fallax</i>)
1106	Salmon (<i>Salmo salar</i>)
1355	Otter (<i>Lutra lutra</i>)
1365	Harbour Seal (<i>Phoca vitulina</i>)

Fig. 16: Qualifying interests in the River Slaney SAC - Annex II habitats -

The remedial NIS sets out detailed mitigation measures which seek to avoid any future impacts on the SAC, in the event substitute consent is granted for the completion of the development.

The current proposal will have no impact in combination with other plans or projects as it is of such a scale and close to an already serviced area.

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

Please refer to the attached rNIS and Water Framework Directive Compliance Assessment Report.

The site is in a Flood Zone C. The Office of Public Works indicates no record of flood events within 500m of site.

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

BPS has reviewed the Planning Register regarding our client's property and discussed the planning status of the property with our client. We can confirm that our client's farm is wholly regular regarding its planning status excepting the current matters requiring retention (which he had mistakenly understood constituted exempted development) arising from WCC's issued Enforcement Notice. The farm has not been the subject of any previous enforcement proceedings.

Previous planning applications, reg. refs. 20072461 and 20120458, have been permitted by WCC as the developments proposed were deemed to be acceptable, appropriate, and not to impact adversely on the River Bann (see Section 5.0 of this letter).

Our client is attempting to regularise the planning status of the farm and these lands. All planning matters arising are a matter of public record.

The planning permission issued by ACP will be fully complied with and supervised in its planning condition compliances by Mahon Fox Architects and Jim Hurley, ecologist.

(g) Such other matters as the Board considers relevant.

Our client will submit any further information the Board considers relevant to its assessment. He asks ACP to note how the development proposed for retention and completion is wholly rural in nature. The mitigation measures currently in place and/or those proposed by Mr Hurley will be fully implemented and, in this regard, they could be required by way of condition, etc.

These matters are considered in full, within the following section of this letter.

Exceptional circumstances have been set out and reiterated. Given the foregoing, BPS submits Mr Sykes has adequately demonstrated there are exceptional circumstances pertaining with specific reference to Section 177K(1J) of the Planning and Development Act, 2000 (as amended). This is as amended by Section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022.

5.0 Application for substitute consent – Planning Assessment Matters

The 2022 Act has amended the Planning and Development Act 2000 (the Act) at Part XA to streamline substitute consent procedures for applications to regularise existing developments, such as our client's development, requiring retrospective Appropriate Assessment to provide for a single-stage application process, including by the deletion of the initial leave to appeal stage. These new provisions of the Act are now enacted and S.I. No. 648/2023 - Planning and Development (Amendment) (No. 4) Regulations 2023 are also now operational.

In the sections above, BPS has addressed the provisions of the Act including offering details regarding matters which ACP has previously considered when assessing substitute consent applications.

We note the following points:

- **Principle of Development/Application:** The application for Substitute Consent relates to agricultural development set out within an existing farmyard. Section 3.2 of this letter provides a Site Layout Plan and a Key for locating all parts of the development requiring retention and completion permission. The said unauthorised works have already taken place and areas of the development are complete and operational while others require completion. It is of note that the issue of a regularisation application, similar to a retention application, is whether the works would have been considered appropriate and done in the first place had permission been applied for and subsequently been granted.

The development is fundamentally agricultural development. That it is a family run farm business and it is providing valuable employment and is important to the well-being of the area. The development proposed for retention and completion is acceptable in principle as regards national, regional, and local planning policies. The development comprises of traditional forms of agricultural buildings and other associated development. The development appears wholly rural and appropriate within the landscape. The buildings and ancillary development are functional and efficient, sympathetic to their surroundings, and do not impact adversely on the environment. This application includes a Remedial NIS. The proposal addresses all best practice and/or statutory requirements as regards water, wastewater, agricultural waste. etc. The site is located within a rural area where the predominant land use is agriculture. The application site and landholding form part of an existing agricultural complex.

The Policy Section as noted above, refers to Strategic Economic Objectives in the Wexford CDP 2022-2028, which include support for sustainable agriculture, which does not negatively impact on the environment or the rural character of the area. These include Section 6.7.6 Rural Economy Objectives including ED98, which provides the criteria for rural development including regard to impact on surface or groundwater, siting, access/traffic hazard, waste management etc. Also, Section 6.7.6.1 refers to Agricultural Development Objectives including ED102 relative to the disposal of agricultural waste.

We submit that the proposal as an agricultural activity is considered to be acceptable in principle. However, it is necessary to address a number of planning issues.

- **Planning policy support:** The development is supported by national, regional and local planning policies which seek to encourage agriculture, rural diversification, rural employment etc. The applicant operates a large farm landholding, and this should, at least in principle, be supported and encouraged as regards the Policies and Objectives set out in Volumes 1 and 2 of the Wexford County Development Plan 2022-2028 (Section 6.7.6.1 is very supportive of rural agricultural development), the Regional Spatial and Economic Strategy (RSES), the Governments 'Charter for Rural

Ireland' (2016), the Government document 'Realising Rural Potential: The Action Plan for Rural Development' (DoAHRRGA) 2017. Please refer to Section 3.5 of this letter which notes the planning policies and objectives which support this proposal.

- **Unauthorised development:** Our client received an Enforcement Notice from WCC pertaining to: "The unauthorised construction of a steel shed structure on site, without the benefit of planning permission." Arising from receipt of this Enforcement Notice, Mr Sykes entered into discussions with WCC and concluded that areas of completed and part completed development at his farmyard required retention permission. He proposed to regularise the planning status of the farmyard which, until the Enforcement Notice was received, had been regular. Mr Sykes had obtained previous planning permissions for development in the farmyard and had failed to understand the exempted development provisions of the Act and Regulations. Having received advice from BPS and Mahon Fox Architects, our client was quick to accept his mistake(s) especially as the development required Appropriate Assessment thereby removing exempted development rights under the Regulations. As has been noted in the Exceptional Circumstances Section above, our client notes that the previous permissions support the established agricultural use of the site. Access is via the existing entrance, which was the entrance included in each of the two previous permissions. No further unauthorised works have been undertaken by the applicant who has – since the WCC Enforcement Notice was issued – only sought to obtain retention permission to regularise the site.
- **Agricultural development:** All parts of this planning application pertain to appropriate agricultural development sited within a farm and its farmyard. No planning concerns arise beyond the need to protect the River Bann's water quality. It is accepted that this agricultural development should not have been undertaken without first obtaining planning permission. The reason for this is explained above. Our client is now seeking to regularise the planning status of the farm and to address WCC's Enforcement Notice. This is the first time the farm has been the subject of enforcement proceedings.
- **Timescale:** There has been some delay in lodging this application to ACP as it has been necessary to carry out additional water testing. This additional testing is detailed in the attached rNIS and Water Framework Directive Compliance Assessment Report. These reports fully address WCC's concern that this matter required careful assessment as regards possible impacts on the River Slaney SAC.
- **Design and Layout and Visual Impact:** As shown on the drawings submitted, the agricultural developments requiring retention and completion are spread around the farmyard and its environs (see Section 3.2 of this letter). BPs submits that there is no part of the development which would cause the farmyard to be any more visually prominent in this rural area than it already is. Further, there are other agricultural and other developments in the vicinity into which the farmyard development integrates visually within the landscape. Ferns itself is only a short distance away.
- **Roads:** The site is accessed via the narrow road network off the L1023 Local Road which is further to the north. As shown on the plans there is an existing recessed agricultural entrance to the northeast of the site. The entrance is unchanged from that deemed acceptable to the WCC Roads Department under the previous two planning permissions. Sightlines are adequate to the north and south (see Figs. 17 and 18). Traffic in the area is low. Section 6.2.6 of Volume 2 of the WCDP 2022-2028 which refers to Siting and Design of Access/Egress Points. This includes regard to Sightlines and Visibility. Where the Road speed limit is greater than 60kph the sightline requirement (from a point 3m back for the edge of the public road) is 65m. This also refers to the Design and Construction of Access/Egress points and to Surface Water Management. Also to impacts on Existing Mature Trees and Existing Built Features at the Road Frontage. These requirements are met. The entrance is up gradient of the site and therefore no surface water can or will pass on to the public road.



Fig. 17: Sightline south from the existing agricultural entrance



Fig. 18: Sightline north from the existing agricultural entrance

- Wastewater and Surface Water Management:** The Site Layout Plan submitted indicates on-site drainage for completed development. Drainage measures are proposed at construction phase for all development to be completed on site. Please refer to the Mahon Fox drawings, to the rNIS, and to the Water Framework Directive Compliance Assessment. The site is located in Flood Zone C and is not at risk of flooding including from pluvial events. There is no significant risk of unanticipated surface water run-off from the site. The attached Water Framework Directive Compliance Assessment Report notes, in any case, how: "To mitigate against any runoff of silt-laden surface water during excessive rainfall, flash flooding, or a storm event, construction works will be conducted during periods of forecast settled weather. Silt fences will be made available for installation overnight as a contingency backup in the event of unexpected rainfall" and "Drainage ditches will be subject to regular visual inspection to ensure they remain free-flowing for full effectiveness in managing surface water runoff from the site. Inspections will focus on identifying blockages, sediment build-up, vegetation overgrowth, or any signs of erosion or structural damage that could compromise performance and impact the health of the River Bann. Maintenance activities, such as clearing debris, removing excess silt, and repairing any damaged sections, will be carried out promptly when required. This proactive approach will help maintain the integrity and functionality of the drainage system, reducing the risk of localised flooding or uncontrolled discharges whilst supporting ongoing compliance WFD requirements. The project ecologist has confirmed that in his opinion, there is nothing taking place on site at present nor is any development proposed which would likely cause any significant environmental impacts including on any Natura 2000 site. We submit that sufficient details have been provided for the Commission to confirm this is the case.
- Ecological assessment:** The ecologist has found no significant concerns to arise and generally considered the proposal to be standard for a rural area. Mr Hurley is a suitably qualified and experienced ecologist which has visited the site. No significant environmental concerns arise. No EIAR is required under the Planning Acts and Regulations.
- Appropriate Assessment:** Mr Hurley has confirmed that the Stage 1 Appropriate Assessment has confirmed that a Stage 2 rNIS is required. To aid his assessment, the Water Framework Directive Compliance Assessment has also been prepared. Mr Hurley confirms that the existing development requiring retention is not impacting adversely on water quality and subject to the measures set out in his report and the WFD Compliance Assessment, the proposal to complete development will also not impact adversely on water quality. The development is not and will not impact adversely on the Bann River's water quality and, as such, no downstream impacts on the River Slaney SAC are anticipated as regards the qualifying interests / conservation objectives therein. The proposed works are limited in scale and will comply with the required mitigations to ensure that there will be no further impacts arising which would affect the coherence of the SAC's ecological structure and function; particularly with regard to the Annex II populations recorded in the study area.

It is concluded by the ecologist who prepared the rNIS that from the evidence presented in the current assessment, that the potential direct, indirect and cumulative impacts that may arise from the proposed works do not have the potential to affect the integrity of the River Slaney SAC. That the proposed development is within an area of low probability of flooding as indicated by the Geological Survey of Ireland (GSI) Flood risk assessment map at Flood info.ie (2022). That vulnerability of the SAC from the development and proposed development on site is thus classed as of low probability. That with the implementation of these measures at operational stage of the existing development all potential negative impacts on the downstream SAC can be prevented.

- **Further Information:** It is accepted that ACP may need to request Further Information, and this will be addressed in the event this arises.
- **Planning conditions:** We note that our client's previous two planning permissions pertaining to the existing farmyard were granted subject to conditions. Any conditions attached to an ACP grant of permission will be implemented in full and can be supervised by the project ecologist.
- **Response to Development Contributions:** Our client is aware that he must comply with WCC Development Contributions Scheme 2018.

6.0 Conclusion

The agricultural developments for which retention and completion permission are required are acceptable in principle under the Wexford County Development Plan 2022-2028 and are supported in practice by national, regional and local planning policy.

The development does not raise any significant planning concerns and all ecological and Water Framework Directive concerns arising have been addressed in the attached reports. The development to be retained and completed will not impact significantly and adversely on the River Slaney SAC or on the water quality in the River Bann. The proposed developments are not directly connected with the management of the Slaney River Valley SAC or any other Natura 2000 site.

All other planning considerations are minor and/or are ones which have previously been found to be acceptable by Wexford County Council under previous planning assessments. For example, the site entrance is acceptable, the visual impact of the farmyard in its totality is acceptable, and the 'in principle' need to support agricultural development in this area is well established.

7.0 Recommendation

Having regard to the above, we recommend that Substitute Consent planning permission be granted subject to applicable conditions including the recommendations of the rNIS and the Water Framework Directive Compliance Assessment Report.

The recommendations of these reports can be fully implemented to ensure that all surface waters are not adversely impacted and then pass towards and into the River Slaney SAC via the River Bann.

8.0 Finally

If you require any further information, please contact BPS using the details on this letterhead.

Further copies of any of the documents and drawing provided can be made available on request.

With best wishes,

Brendan Buck

Brendan Buck MIPI
Managing Director
BPS Planning Consultants Ltd